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WHO: The Office of the Federal Register.

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

WASHINGTON, DC

(TWO BRIEFINGS)

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WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

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Presidential Documents

Title 3—

The President

Executive Order 12890 of December 30, 1993

Amendment to Executive Order No. 12864

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to provide for the appointment of up to 30 members to the United States Advisory Council on the National Information Infrastructure, it is hereby ordered that section 1(a) of Executive Order No. 12864 is amended by deleting the number "25" and inserting the number "30" in lieu thereof.

William J. Clinton

THE WHITE HOUSE,
December 30, 1993.

[FR Doc. 94–290
Filed 1–3–94; 2:48 pm]
Billing code 3195–01–P

Rules and Regulations

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

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

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS No. 1647–93]

RIN 1115–AD61

Priority Dates for Employment-Based Petitions

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service (Service) regulations by providing that an application for labor certification filed with a state employment office before October 1, 1991, must be filed with the Service in connection with a petition filed under section 203(b) of the Immigration and Nationality Act (Act) before October 1, 1993, in order to maintain a pre-October 1, 1991 priority date. This rule implements section 302(e)(2) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA), which amended section 161(c)(1) of the Immigration Act of 1990 (IMMACT). This rule is necessary to ensure full public awareness of the October 1, 1993 deadline

DATES: This interim rule is effective January 5, 1994. Written comments must be submitted on or before February 4, 1994

ADDRESSES: Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW , room 5307, Washington, DC 20536. To ensure proper handling please reference INS No 1647–93 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Michael W. Straus, Senior Immigration Examiner, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., room 7122, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: On November 29, 1991, the Service published a final rule in the **Federal Register** at 56 FR 60897–60913, revising 8 CFR 204.5(d), which provides that the priority date for an employment-based petition that is accompanied by a labor certification shall be the date the request for labor certification was accepted for processing by any office within the employment service system of the Department of Labor. A priority date cannot be established unless the Service approves a petition under section 203(b) of the Act based on a labor certification approved by the Department of Labor. Subsequent to the promulgation of this regulation, the President signed into law the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, (MTINA) Public Law 102–232, dated December 12, 1991. Section 302(e)(2) of the MTINA, which amended section 161(c)(1) of the Immigration Act of 1990 (IMMACT), Public Law 102–649, dated November 29, 1990, was enacted in order to address the transition of labor certifications filed before October 1, 1991 into the new employment-based immigrant visa categories created by IMMACT. Section 302(e)(2) of MTINA provides that, in order to maintain the priority date of a labor certification filed in connection with an employment-based petition which was submitted to a state employment office before October 1, 1991, the employer must file a petition under section 203(b) of the Act before October 1, 1993. Section 302(e)(2) of MTINA further provides that if the Department of Labor approves a pre-October 1, 1991 labor certification application subsequent to October 1, 1993, the employer must file a petition under section 203(b) of the Act within 60 days of the date of certification. Although not specifically provided for in section 302(e)(2) of MTINA, the Service has interpreted that section to require that, in the case of labor certifications which have been certified by the Department of Labor between August 2, 1993 and October 1, 1993, a petition under section 203(b) must be filed within 60 days after the date of certification to preserve the earlier priority date. This reading of section 302(e)(2) of MTINA furthers congressional intent by allowing at least 60 days from the date of certification to file the petition under section 203(b) of the Act.

In light of the above, 8 CFR 204.5(d) will be amended to reflect these MTINA amendments. The regulation will be further amended to provide that if the petitioner fails to maintain the priority date by filing a timely petition, the new priority date shall be the date a new petition is properly filed with the Service.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based on the "good cause" exception found at 5 U.S.C. 553(b)(B) and (d)(3). The reasons and necessity for immediate implementation of this interim rule are as follows: Immediate promulgation of this interim rule is necessary to insure full public awareness of the October 1, 1993 deadline mandated by MTINA. Specifically, petitioning employers who submitted labor certification applications with a state employment office before October 1, 1991 and who have not submitted a petition with the Service under section 203(b) of the Act, must be made clearly aware that the provisions of 8 CFR 204.5(d), regarding assignment of priority dates, have been superseded by the MTINA amendments. Moreover, immediate promulgation of these regulations will inform the petitioning employer that, in cases where the request for labor certification was filed with a state employment office before October 1, 1991, it should file a petition under section 203(b) of the Act with the Service as soon as possible after the Department of Labor has issued the labor certification in order to obtain an earlier priority date

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. It is anticipated that this rule affects only a very limited number of petitioners and aliens who filed requests for labor certifications prior to October 1, 1991, but have not yet filed petitions under section 203(b) of the Act This rule is

not significant within the meaning of section 3(f) of E.O. 12866, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 204

Administrative practice and procedure, Aliens, Employment, Immigration, Petitions.

Accordingly, part 204 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 204—IMMIGRANT PETITIONS

1. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 8 CFR part 2.

2. In § 204.5, paragraph (d) is amended by adding a new sentence immediately following the first sentence of the paragraph to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(d) *Priority date.* * * * In the case of labor certifications accepted for processing by any office within the employment service system of the Department of Labor before October 1, 1991, if a petition filed under section 203(b) of the Act is not filed before October 1, 1993, or within 60 days after the date of certification by the Department of Labor, whichever is later, the priority date shall be the date the petition is properly filed with the Service. * * *

* * * * *

Dated: December 30, 1993.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–175 Filed 1–4–94; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 26

RIN 3150–AE38

Modifications to Fitness-For-Duty Program Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations governing fitness-for-duty (FFD) programs that are applicable to licensees who are authorized to construct or operate nuclear power reactors and to licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM). The amendment permits licensees to reduce the random testing rate for all persons covered by the fitness-for-duty regulations to an annual rate equal to 50 percent.

EFFECTIVE DATE: January 1, 1994.

ADDRESSES: Copies of the regulatory analysis, the comments received, and the Government Accounting Office (GAO) report (GAO/GGD–93–13) of November 1992 may be examined at the NRC Public Document Room, 2120 L Street NW, (Lower Level), Washington, DC.

Copies of NUREG–1354, NUREG/CR–5758 (Volumes 1, 2, and 3), and NUREG/CR–5784 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5282 Port Royal Road, Springfield, VA 22161. A copy is available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street NW, (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Loren L. Bush, Jr., Safeguards Branch, Division of Radiation Safety and Safeguards, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 504–2944.

SUPPLEMENTARY INFORMATION:

Background

The NRC has reviewed experiences gained since publication of the current FFD rule on June 7, 1989 (54 FR 24468), and implementation by power reactor licensees on January 3, 1990, and determined that it may be appropriate to modify the random testing rate. Accordingly, on March 24, 1993 (58 FR 15810), the Commission published a proposed modification to the FFD rule that would permit a reduction in the random testing rate for licensee employees, but maintain the 100-percent random testing rate for contractors and vendors.

Summary of Public Comments

The comment period expired on June 22, 1993. Forty comment letters were received. Twenty-eight were from power reactor licensees, six from unions, one from an industry association, one from a vendor, three from licensed reactor operators, and one from a private citizen. There was overwhelming support for the proposed reduction in the annual rate of random testing for licensee employees. Most of the commenters believed that the reduced rate also should apply to contractors and vendors, and several commenters proposed a flexible, performance-based rate. There was no support for excluding from any reduction in the random testing rate certain positions critical to the safe operation of a nuclear power plant, such as licensed reactor operators. A summary of the comments received and the NRC's responses are presented below.

1. Comment. The random testing rate for licensee employees should be reduced to 50 percent.

All of the 23 commenters submitting comments on the Commission's proposed reduction of the random testing rate to 50 percent for licensee employees supported the proposal. The reason most often expressed was the low rate of positive random test results experienced by licensee employees, particularly in comparison with other industries having significant safety concerns. These commenters believe that this low industry-wide positive rate justifies the lowering of the random testing rate to 50 percent. Some commenters stated that a 50-percent rate for licensee employees would make that rate consistent with the random testing rate currently required in the substance abuse programs mandated for entities regulated by the agencies within the Department of Transportation (DOT), including the Federal Aviation Administration and the Federal Highway Administration. They also noted that DOT is currently considering lowering its proposed random testing rate below 50 percent even though Federal Highway Administration data, for example, indicate a significantly higher positive rate than that experienced among NRC licensee employees. Another commenter pointed out that the lowered random testing rate for licensee employees subject to the NRC's FFD rule also would be consistent with the random rate applied in the Commission's own internal drug testing program.

Other commenters supported the reduction with the expectation of significant cost savings for licensees as a result of only testing approximately one-half the number of employees now being tested. In this regard, the Nuclear Management and Resources Council (NUMARC) made reference to the November 1992 GAO report, "Employee Drug Testing: Opportunities Exist To Lower Drug-Testing Program Costs" (GAO/GGD–93–13), which suggests reduced random testing rates as a means of producing cost efficiencies in

Federally mandated drug testing programs without adversely affecting program integrity.

Concerning the relative effectiveness of alternative random testing rates, some commenters believe that a 50-percent random testing rate would produce satisfactory deterrence of drug and alcohol abuse. This is particularly true in light of the fact that other FFD program elements, such as program awareness training and behavioral observation, and the access authorization program will continue to inhibit such behavior. Two commenters also supported the proposed change because it would lessen the disruption of workers lives and reduce the invasion of privacy that random drug testing creates.

NRC Response

The NRC concurs with those commenters who stated that a 50-percent random testing rate as applied to licensee employees can be expected to provide sufficient deterrence to justify lowering the rate at this time. It also agrees with the observation that the access authorization program and other FFD program elements, such as policy communications and awareness training, behavioral observation, for-cause testing, employee assistance programs, and the imposition of strict sanctions for violations of an FFD policy will continue to deter drug and alcohol abuse by most of the workforce. As some commenters noted, requiring fewer tests of licensee employees should decrease the privacy invasion experienced by some employees. It also should result in cost savings across the industry by reducing lost work hours and the number of tests to be administered.

The Commission recognizes that positive results in the nuclear power industry's random testing are generally among the lowest of any U.S. industry. Nonetheless, it realizes that there are many variables that can affect the rate of positive testing results and that relatively low positive test results, by themselves, are not the only indicator of the effectiveness of a testing program either on an industry-wide or a licensee program level. Some of the variables that could affect the testing results are the propensity of the population being tested to use drugs and alcohol, the effectiveness of other program elements, and the extent to which tested employees have been successful in subverting the testing process and avoiding detection.

The NRC does not have sufficient information about these or other factors that may influence testing results to be able to determine that the decreasing positive rates reported by licensees are an unqualified indication of FFD program effectiveness. Nonetheless, the Commission is gratified to observe the decreasing positive rates in licensee employees' random test results during the past three years. The recently published NUREG/CR–5758, Volume 3, "Fitness for Duty in the Nuclear Power Industry: Annual Summary of Program Performance Reports," indicates that licensee employees' positive random testing rate in 1992 was 0.20 percent as compared to 0.28 percent in 1990 and 0.22 percent in 1991. There also have been decreasing positive rates for random testing of contractor and vendor personnel, viz., 0.56 percent in 1990, 0.55 percent in 1991, and 0.45 percent in 1992.

In making its decision, the Commission has considered these testing results along with the apparent continuing strength of the other elements of most licensees' FFD programs, the reduced invasion of employees' privacy interests, and the potential for cost savings. In light of this industry experience and of these beneficial effects, the Commission has concluded that it is reasonable at this time to lower the random testing rate for licensee employees and contractor and vendor personnel to 50 percent. The response to Comment 4 discusses the Commission's reasons for allowing reduction in the random testing rate for contractor and vendor personnel.

2. Comment. The random testing rate should be reduced to less than 50 percent.

Four commenters recommended that the random testing rate be reduced to less than 50 percent. The rates they recommended varied from 5 percent to 25 percent. Their central argument was that the random testing rate can be lowered substantially without threatening the effectiveness of the program. The very low rates of drug and alcohol positive tests that have been recorded by the nuclear industry during the first two years of FFD program operations are the basis for their recommendation. One licensee stated that most chronic drug users probably have been eliminated and currently there is not a serious drug or alcohol abuse problem in the industry. This commenter and NUMARC also cited the GAO study that found that the percentage of positives does not vary significantly among Federal agency drug testing programs, regardless of what random rate is used. Another licensee emphasized that behavioral observation, not random testing, is the most potent tool in detecting drug abuse. Another commenter recommended that the NRC consider further reductions because the effectiveness of other program elements makes a random rate of even 50 percent unnecessarily high.

Significant cost savings was given as the most compelling reason to reduce the random rate below 50 percent. One licensee estimated the industry would save up to $30 million annually without degradation of the overall program.

NRC Response

As stated in the response to Comment 1 above, positive random testing results are not, by themselves, the only indicator of the FFD program's effectiveness in detecting substance abuse. The NRC does not have sufficient information about the many variables that could affect testing results to be able to determine that a lower random testing rate would maintain an acceptable level of program effectiveness. Therefore, the Commission believes that the industry's relatively low numbers of drug and alcohol positive random test results should not be used as the sole justification for lowering the random testing rate below 50 percent. While behavorial observation and for-cause testing are valuable program elements, there still must be a strong random testing program that provides an adequate level of detection and deterrence. The Commission continues to believe that it must choose a conservative and prudent random testing rate that maximizes both detection and deterrence of substance abuse while minimizing the monetary and social costs of such testing. The Commission believes that a 50-percent random testing rate will strike the proper balance between the dictates of public health and safety, the financial needs of licensees, and the privacy and other interests of workers subject to the testing requirement. Given the substantial unknowns currently associated with the true detection and deterrence effectiveness of alternative random testing rates as applied to the particular conditions of the nuclear power industry workforce, the Commission believes that it cannot establish a random testing rate lower than 50 percent for any segment of the industry at this time.

It should also be noted that relatively low positive test rates do not necessarily indicate that there is not a drug and alcohol abuse problem, as some commenters asserted. First, some users have become adept at avoiding detection, and the use of increasingly effective subversion techniques may be one reason why random testing results

are decreasing. Second, while it may be that most of the chronic drug users who were in the industry when the program started have been detected or have left, there can be expected to be a continuing level of intermittent illegal drug use and alcohol abuse among industry employees; such use is difficult to detect. The Commission concludes that the low positive random test results do not indicate that there has ceased to be a drug and alcohol abuse problem and that further reduction in the random testing rate would not be appropriate at this time.

In response to the commenters' reference to the GAO's observation that the percentage of positives does not vary significantly among Federal agency drug testing programs, the NRC notes that the GAO's objective in that report was to identify potential cost savings in Federal employee drug testing programs. Its objective did not include determination of the relative deterrent values of alternative random testing rates. In accomplishing its objective, the GAO properly concentrated on only the costs associated with Federal employee drug testing. It did not perform an indepth analysis of the several variables that influence testing results nor of the very complex relationship between those variables and the deterrence value of testing. Such variables would include the inclination for drug or alcohol abuse among the employees in the various industries in which the Federal testing programs operate, the extent to which the strength and effectiveness of other, non-testing program elements, such as drug awareness training, may affect testing results, and the relative stringency of sanctions imposed by the various Federal agencies following positive test results. Because the GAO's objective was to address the cost rather than the deterrence effectiveness of testing, the NRC does not consider the commenter's reference to the GAO's observation to be a persuasive argument for reduced random testing rates.

The NRC will continue to monitor implementation of the rule and will modify the rule in response to industry experience, advances in technology, or other considerations to ensure that the rule is achieving the general performance objectives set forth in 10 CFR Part 26.

3. Comment. The random testing rate should be flexible and based on performance, such as the positive rate of random testing.

Twelve commenters recommended that the Commission allow some form of performance-based approach to determine the random testing rate. Under such a system, the random testing rate would vary over time. This would depend on each licensee's or, alternatively, the industry's positive random test results from a previous period. One licensee, for example, suggested that each licensee's random testing rate should be based upon that particular licensee's previous 12-month testing results. Under this approach, a licensee would be subject to a minimum 50-percent random testing rate if it experienced a positive rate of greater than 0.50 percent during the previous 12 months. That licensee could reduce its random rate to 25 percent if it subsequently had a 12-month positive rate between 0.25 percent and 0.50 percent or to as low as 10 percent if its positive rate for the previous year was less than 0.25 percent. Three other licensees recommended similar schemes whereby a licensee's random rate would be determined by its own record of positive test results. One of these recommendations based the rate on the results of the previous 2 years rather than those of the previous 12 months.

NUMARC proposed that the industry-wide random testing rate be determined by the industry-wide random testing results from the previous period. This recommendation was endorsed by five licensees. Under NUMARC's proposed approach, the industry would be allowed by regulation to adjust its random testing rate based on testing results from the previous reporting period. All licensees would be required to test at a 100-percent random rate if the industry-wide positive rate were greater than 1.0 percent in the previous period, at a 50-percent random rate if the positive rate was between 0.50 percent and 1.0 percent, at a 25-percent random rate if the positive rate was between 0.25 percent and 0.50 percent, and at a 10-percent random rate if the positive rate was less than 0.25 percent. Two of the eleven licensees favoring a performance-based testing system provided a general recommendation that did not specify whether the random testing rate should be based on the positive testing results of each individual licensee, or on the results of the industry as a whole.

The commenters noted various potential advantages of adopting a performance-based approach to setting the random testing rate. One stated that adopting such an approach would be consistent with the NRC's initiative to identify performance-based programs that would be beneficial to the industry. Another listed cost savings, equity in that each licensee's random rate would be commensurate with its program performance, and an incentive for licensees to maximize program conformance with the FFD rule as advantages of such an approach.

NRC Response

During development of 10 CFR part 26 in 1989, the Commission considered a variation of the flexible, performance-based random rate similar to the approaches recommended by these commenters. (See, for example, the NRC's response to Comment 7.4.2 in NUREG–1354, "Fitness for Duty in the Nuclear Power Industry: Responses to Public Comments.") At that time, the Commission decided against adopting a performance-based rate for various reasons. As stated above, positive random testing results are not the only indicator of detection and deterrence effectiveness or of overall random testing program performance to allow the testing rate to vary with testing results. Adopting a performance-based approach would tend to discourage the initiatives that the Commission is encouraging in 10 CFR 26.24(b) and in Section 2.1 of Appendix A to Part 26. In § 26.24(b), the NRC allows licensees to implement programs with more stringent standards, for example, lower screening and confirmation cutoff levels and a broader panel of drugs than those specified in the rule. In Section 2.1 of Appendix A, licensees are permitted to test for any illegal drugs during a for-cause test or analysis of specimens suspected of being adulterated or diluted. Program performance data for the first three years of FFD program implementation have shown that those licensees using screening cutoff levels for marijuana that are lower than the maximum allowed 100 nanograms per milliliter (ng/ml) have had a higher percentage of confirmed positive results than those screening at 100 ng/ml. (See NUREG/CR–5758, Vols. 1–3.) Licensees that employ special measures to detect attempts to dilute specimens or flush metabolites from the body report that their positive rate is about doubled. This result is similar to data presented to the Department of Health and Human Services' Drug Testing Advisory Board on June 10, 1993, and reported in "The National Report on Substance Abuse" on June 18, 1993. (The study is currently undergoing peer review before publication.) Adopting a performance-based approach that allowed licensees to reduce their random testing rates as positive testing results declined would likely discourage licensees from adopting lower screening cutoff levels and taking measures to detect attempts by users to avoid detection.

Lastly, a performance-based approach would require the collection and analysis of performance data to provide

the bases for adjustments to the random testing rate. Such data is not currently collected by the licensees or the NRC. Previous efforts known to the NRC staff to identify and analyze the many candidate performance indicators for measuring the effectiveness of random testing have been inconclusive, primarily because of the numerous variables. Furthermore, assuming that the proper performance indicators can be developed, it would appear that the collection and analysis of data to support a performance-based approach would add a considerable administrative burden to both licensees and the NRC.

For all these reasons and until further experience is gained that would support a performance-based approach, the Commission declines to adopt such an approach to setting the random testing rate.

4. Comment. The reduction in the random testing rate should be applied to all workers.

Four of the 30 commenters on this issue—three unions and one licensee—supported the Commission's proposal that licensees maintain the 100-percent random testing rate for contractor and vendor employees. Their reasons included a concern for lack of commitment by contractor employees to maintaining the industry's high drug-free standard and the need for the higher testing rate to provide continued deterrence for contractor employees. One of the three unions recommended that long-term contractors should have the same lower random testing rate as that of licensee employees because test results of long-term contractors and licensee employees have been almost identical.

There were several issues consistently mentioned by those 26 commenters who opposed maintaining the 100-percent random testing rate for contractor and vendor employees. There was a general concern for unnecessary inconsistencies in random testing rates between Federal agencies. Commenters recommended that the NRC program be kept as consistent as possible with programs in other Federally regulated safety-related industries. These include the DOT programs that currently require contractors and vendors to be randomly tested at a 50-percent rate.

Various licensees cited the testing results from 1990 and 1991 which, in their opinion, create no statistically sound rationale for testing contractor and vendor employees at a rate different from that of licensee employees. They argued that, while the contractor/vendor positive testing rate has been twice that of licensee employees, it is still low enough to make unnecessary the expenditure of the resources necessary to maintain two separate random testing pools.

Various commenters noted that contractors and vendors are subject to the identical access authorization and other FFD program requirements as are licensee employees, including behavioral observation. These stringent requirements, in their view, obviate the need to keep the contractor/vendor random rate at 100 percent. Some also noted that the deterrent value of random testing is in the act of testing itself and not in what many consider to be a high rate of testing. Some commenters warned that keeping contractors and vendors at 100 percent could be construed as discriminatory against those employees and may be perceived as punitive rather than as a corrective measure. Two licensees also cited a study of the detection effectiveness of nine random testing rates published in NUREG/CR–5784, "Fitness for Duty in the Nuclear Power Industry: A Review of the First Year of Program Performance and an Update of the Technical Issues," which indicates that a 100-percent testing rate is only a little more effective than a 50-percent rate for detecting occasional drug users.

NRC Response

Although there is a difference between the positive results of random testing of licensee employees and those of contractor and vendor employees, the positive random testing rate of both groups has been less in each year since 1990, as stated in the response to Comment 1 above. While the contractor/vendor random testing positive rates continue to be about twice the rate for licensee employees and statistical analysis of the data shows that the difference in proportion between the contractors' and licensees' employees is not explained within statistical fluctuations (therefore, differences in the rates are statistically significant), the Commission agrees that the absolute numbers of positive test results of all categories of nuclear power workers are low Therefore, the Commission will permit its licensees to lower the random testing rate to 50 percent for all persons covered by 10 CFR part 26. However, the Commission will continue to monitor licensee program performance and effectiveness and will make program adjustments as necessary.

In response to the comments regarding the study of the detection effectiveness of nine random testing rates published in NUREG/CR–5784, the Commission notes that the study explicitly dealt with only the hypothetical detection effectiveness of those alternatives. It did not address their relative deterrence effectiveness. While it may be that the effectiveness of a 100-percent random testing rate for deterring occasional drug users could be slightly higher than that of a 50-percent rate, the Commission nonetheless believes that a 50-percent random testing rate will provide sufficient deterrence to drug and alcohol abuse by contractor and vendor employees.

With respect to commenters' concerns about unnecessary inconsistencies in random testing rates between Federal agencies, the Commission continues to believe that the random test rate for employees in the nuclear power industry need not be similar to the rates applied to employees in all, or even most, other Federal agencies or Federally mandated programs. Not all Federal agencies have identical safety concerns or responsibilities.

5. Comment. There should be no difference in the random testing rate for certain positions critical to the safe operation of a nuclear power plant.

Seventeen commenters responded to the Commission's question as to whether certain positions critical to the safe operation of a nuclear power plant, such as licensed reactor operators, should be excluded from any reduction of the random testing rate. All these commenters recommended against such differentiation. Two licensees stated that treating people in positions critical to safety differently from other employees could have a negative effect on the morale, self-image, and motivation of this group of highly trained and dedicated specialists Another stated that all plant employees are critical to safe operation Therefore, a reduction in the random testing rate should apply to all employees The potential for added record-keeping requirements creating unnecessary burdens for the industry was another reason for not making this distinction. In the opinion of one commenter, the 1990–1992 industry-wide program performance data do not support testing people in positions critical to safety at a different rate than that applied to other licensee employees Finally, one licensee cited potential problems getting union agreement to testing this classification of employees at a higher rate than other licensee personnel subject to the FFD rule.

NRC Response

The essence and unanimity of these comments—that licensed operators and other employees in positions critical to the safe operation of a nuclear power plant should not be excluded from a

reduction of the random testing rate—is not surprising. These particular members of the nuclear power industry's workforce have collectively demonstrated their dedication to safe and efficient plant operations. As at least one commenter noted, the industry's program performance data for the first three years of operation do not support differentiating between people in safety-critical positions and other licensee employees insofar as the random testing rate is concerned. The 1992 program performance data, for example, show that eighteen of the industry's approximately 5,000 licensed operators tested positive for drugs or alcohol or otherwise violated the licensee's FFD policy; twelve of these were a result of random testing. When comparing these results to the 461 positive results out of 156,730 random tests administered to the industry workforce, the difference in proportion between the licensed operators and the industry workforce is within statistical fluctuations and the difference in the positive rates is not statistically significant. While the NRC expects licensees to continue to take action to drive this number of positives down even further, this record does not merit testing people in these positions at a rate different from that applied to other licensee employees. The Commission, therefore, concurs with the commenters' recommendation that certain positions critical to the safe operation of a nuclear power plant, such as licensed reactor operators, should not be excluded from a reduction of the random testing rate.

6. Comment. Random testing is expensive and produces false positives. Furthermore, chronic users are able to avoid detection.

Two commenters, a power plant worker and a union, argued against the usefulness of continued random testing. One of these commenters stated that random testing produces false positives. These cost the industry large amounts of money in settlements and damage the public's perception of licensees' fairness. As additional support for this position, this commenter warned that chronic drug abusers are particularly adept at escaping detection from random testing by subverting the testing process. The other commenter recommended that random testing be eliminated because it is not effective in identifying workers who are impaired at the time urine samples are collected. For-cause testing, in this commenter's opinion, is more effective because it more accurately reflects a worker's present ability to perform his/her job at the time he/she is tested. This commenter also stated that random testing appears to be a means of having the NRC enforce the Controlled Substances Act which is not the NRC's responsibility.

NRC Response

The Commission has long been well aware of the types of FFD program-related concerns as addressed by these commenters. During the promulgation of 10 CFR part 26 in 1989, the Commission fully addressed these and many other such concerns. (See NUREG–1354, "Fitness for Duty in the Nuclear Power Industry: Responses to Public Comments.") At that time the NRC concluded, for example, that licensee FFD programs should be concerned not only with impairment, but also with worker reliability and trustworthiness. The NRC believes that any illegal drug use or alcohol abuse by a worker reflects upon his or her trustworthiness and reliability. Likewise, random testing is not intended, nor has it ever functioned, as a means to enforce the Controlled Substances Act. Section 26.29(b) provides that licensees, contractors, and vendors shall not disclose test results to law enforcement officials unless those officials request such information under court order. It also is noted that there is no requirement to routinely provide such officials with testing results.

The Commission is well aware that there is a potential for false positive results and, therefore, has required numerous quality control measures and safeguards to prevent such occurrences. In Appendix D to NUREG/CR–5758, Volume 3, the testing process errors that were reported by licensees during the first three years under the FFD rule were analyzed. Of over 800,000 specimens tested, there were two false positives of personnel specimens reported by the laboratories, both due to administrative errors. In both cases, the quality assurance programs detected and corrected the problem.

Because of the NRC's particular concern with the degree to which the testing process can be subverted, the Commission staff has continued to track the ways in which workers have subverted testing processes in industries across the country. These efforts have resulted in staff recommendations for amending 10 CFR part 26 to introduce various means for combatting subversion. Lastly, the Commission believes that the added protection of public health and safety that the FFD program provides is well worth the industry's costs of administering this program.

7. Comment. Maintaining two separate populations of workers for random testing is an unnecessary and expensive burden.

Some of the commenters stated that requiring two random testing rates would force licensees to develop two separate testing programs. The resulting additional administrative and financial burdens would cancel out any savings resulting from reducing the licensee employee rate to 50 percent. NUMARC stated that the industry would save approximately $4.1 million if the number of tests of contractor and vendor employees was cut in half.

NRC Response

Some of the comments noted above asserted that separate random testing rates for licensee employees and contractors/vendors would create additional administrative and financial burdens for licensees. Although this issue is somewhat moot since the Commission will permit licensees to reduce the random testing rate to 50 percent per year for all persons covered by Part 26, the Commission does not concur that conducting random testing using two random rates would have caused appreciably higher administrative or operating costs. Presumably, most licensees' data bases already distinguish between licensee employees and contractor/vendor employees subject to testing. Numerous commenters on the initial rule in 1989 indicated that the workforce population should be separated so that permanent employees would not be tested at a much higher rate to make up for contractors who might not be on site when selected for testing (see comment/response 7.4.3 of NUREG–1354). The NRC staff understands that several licensees have divided their testing population as permitted by the rule. The number and identity of licensee employees in the testing pool remains rather constant over time. The number and identity of contractor/vendor employees in the testing pool, on the other hand, varies quite considerably over time depending on outages and other operational considerations. A licensee may choose to create more than one test population so that it may test portions of its workforce at a greater rate or reduce the burden on its employees from being tested at a higher rate to compensate for the testing of contractors and vendors not normally on site.

8. Comment. The Commission should modify certain portions of 10 CFR part 26 based on industry experience and lessons learned and incorporate numerous program enhancements as discussed at various industry forums.

Eight commenters recommended that the Commission make future

modifications to certain portions of 10 CFR part 26 based on industry experience and lessons learned and incorporate numerous program enhancements as discussed at various industry forums.

NRC Response

The specific recommendations for ways in which part 26 can be improved and numerous other program enhancements are currently being considered by the NRC in conjunction with a general package of rule revisions currently under development.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, the NRC has not prepared an environmental impact statement, nor an environmental assessment for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) These requirements and amendments were approved by the Office of Management and Budget, approval number 3150–0146.

Since the rule will permit licensees to reduce the random testing rate for their employees, the resulting reduction in the reporting and recordkeeping burden is expected to be an average of 223 hours per site, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019 (3150–0146), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The NRC has prepared a regulatory analysis for this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Loren L. Bush, Jr., Division of Radiation Safety and Safeguards, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2944.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants and activities associated with the possession or transportation of Category I material. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards issued by the Small Business Administration in 13 CFR part 121.

Backfit Analysis

The rule represents a relaxation from current part 26 requirements for drug testing since the rule permits (but does not require) licensees to reduce the random testing rate for all persons covered by the rule. Accordingly, the rule does not represent a backfit as defined in 10 CFR 50.109(a)(1), and a backfit analysis is not required for this rule.

List of Subjects in 10 CFR Part 26

Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Hazardous materials transportation, Management actions, Nuclear materials, Nuclear power plants and reactors, Penalties, Protection of information, Radiation protection, Reporting and recordkeeping requirements, Sanctions, Special nuclear materials.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 26.

PART 26—FITNESS FOR DUTY PROGRAMS

1. The authority citation for part 26 continues to read as follows:

Authority: Secs. 53, 81, 103, 104, 107, 161, 68 Stat. 930, 935, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2111, 2112, 2133, 2134, 2137, 2201); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

2. In § 26.24 paragraph (a)(2) is revised to read as follows:

§ 26.24 Chemical and alcohol testing

(a) * * *

(2) Unannounced drug and alcohol tests imposed in a statistically random and unpredictable manner so that all persons in the population subject to testing have an equal probability of being selected and tested. The tests must be administered so that a person completing a test is immediately eligible for another unannounced test. As a minimum, tests must be administered on a nominal weekly frequency and at various times during the day. Random testing must be conducted at an annual rate equal to at least 50 percent of the workforce.

* * * * *

Dated at Rockville, Maryland, this 29th day of December, 1993.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94–131 Filed 1–4–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–208–AD; Amendment 39–8783; AD 93–24–51]

Airworthiness Directives; Airbus Industrie Model A310 and A300–600 Series Airplanes

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) T93–24–51 that was sent previously to all known U.S. owners and operators of all Airbus Model A310 and A300–600 series airplanes by individual telegrams. This AD requires repetitive operational tests of feel and limitation computers (FLC) 1 and 2. This amendment is prompted by a report that the pitch control on a Model A300–600 series airplane operated with stiffness. The actions specified by this AD are intended to prevent stiff operation of the pitch control and undetected loss of rudder travel limitation function.

DATES: Effective January 20, 1994, to all persons except those persons to whom it was made immediately effective by telegraphic AD T93–24–51, issued

December 1, 1993, 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 January 20, 1994.

Comments for inclusion in the Rules Docket must be received on or before March 7, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–208–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information 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; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–130.

SUPPLEMENTARY INFORMATION: On December 1, 1993, the FAA issued telegraphic airworthiness directive (AD) T93–24–51, which is applicable to all Airbus Model A310 and A300–600 series airplanes. That action was prompted by a report from an operator that the pitch control on a Model A300–600 series airplane operated with stiffness. Investigation into the cause of this stiffness revealed that the feel and limitation computer (FLC) failed and caused stiff operation of the pitch control. This condition, if not corrected, could result in stiff operation of the pitch control and undetected loss of rudder travel limitation function, which may adversely affect controllability of the airplane.

Airbus Industrie has installed these computers on all Model A310 and A300–600 series airplanes. Each airplane has two FLC's, designated FLC 1 and FLC 2. The FLC and the pitch feel fault lights are integral components of the pitch feel system. (The pitch feel fault lights indicate a failure of the FLC.)

Currently, these airplanes are allowed to operate with one inoperative pitch feel system. If the airplane is operated with one inoperative pitch feel system, failure of the other FLC could result in stiff operation of the pitch control and undetected loss of rudder travel limitation function. This failure could also allow excessive elevator movement, which could expose the airplane structure to excessive air loads.

Airbus Industrie has issued All Operator Telex (AOT) 27–14, dated November 2, 1993, applicable to all Airbus Model A310 and A300–600 series airplanes, that describes procedures for performing repetitive operational tests to verify proper operation of FLC's 1 and 2. The Direction Geńerale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified this AOT as mandatory and issued French telegraphic airworthiness directive 93–202–153(b), dated November 2, 1993, 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 § 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 the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued Telegraphic AD T93–24–51 to require repetitive operational tests to verify proper operation of FLC's 1 and 2. The actions are required to be accomplished in accordance with the AOT previously described. Any FLC that fails the operational test is required to be repaired or replaced in accordance with a method approved by the FAA.

The AD also prohibits operation of any airplane with an inoperative pitch feel system or inoperative pitch feel fault lights.

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 December 1, 1993, to all known U.S. owners and operators of all Airbus Model A310 and A300–600 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

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 shall 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 93–NM–208–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 that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. 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:

93–24–51 Airbus Industrie: Amendment 39–8783. Docket 93–NM–208–AD.

Applicability: All Airbus Model A310 and A300–600 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent stiff operation of the pitch control and undetected loss of rudder travel limitation function, which may adversely affect controllability of the airplane, accomplish the following:

(a) Within 7 days after the effective date of this AD, perform an operational test to verify proper operation of feel and limitation computers (FLC) 1 and 2 in accordance with Airbus Industrie All Operator Telex 27–14, dated November 2, 1993. Thereafter repeat this test at intervals not to exceed 7 days.

(b) If any FLC fails the test, prior to further flight, replace with a new or serviceable FLC, or repair the FLC in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(c) As of the effective date of this AD, no airplane shall be operated with an inoperative pitch feel system or inoperative pitch feel fault lights.

(d) 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. 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.

(e) 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.

(f) The test shall be done in accordance with Airbus Industrie All Operator Telex 27–14, dated November 2, 1993. 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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on January 20, 1994, to all persons except those persons to whom it was made immediately effective by telegraphic AD T93–24–51, issued December 1, 1993, which contained the requirements of this amendment.

Issued in Renton, Washington, on December 28, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–21 Filed 1–4–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–CE–46–AD; Amendment 39–8787; AD 94–01–05]

Airworthiness Directives: Allied Signal Aerospace Company, Air Transport Avionics (Formerly Bendix/King Air Transport Avionics Division) Traffic Alert and Collision Avoidance System II Processors

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Allied Signal Aerospace Company, Air Transport Avionics (Allied Signal) Traffic Alert and Collision Avoidance System (TCAS) II processors that are installed on aircraft. This action requires replacing the existing TCAS II processor with a new processor that incorporates updated computer logic. The development of candidate enhancements to TCAS II logic that improves its utility and increases its overall operational acceptance prompted the proposed action. The actions specified by this AD are intended to prevent collisions or near misses caused by incompatibility between the TCAS II processors and the current air traffic control system.

EFFECTIVE DATE: February 4, 1994.

ADDRESSES: Information that relates to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

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: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that applies to certain Allied Signal TCAS II processors that are installed on aircraft was published in the **Federal Register** on September 9, 1993 (58 FR 47405). The action proposed to require (1) removing from service all processors that do not have computer logic "Change 6.04A" incorporated; and (2) mandatory incorporation of "Change 6.04A" into the TCAS II computer system.

The affected TCAS II processors are not designed for a specific aircraft type. These Allied Signal TCAS II processors are installed on, but not limited tc the following airplanes:

- Aerospatiale ATR–42;
- Airbus Industries A–340;
- Beech Model 65–A90 airplanes;
- Boeing 727–100, 727–200, 737–200, 737–300, 737–400, 737–500, 747–100, 747–200, 747–300, 747–400, 747SP, 757–200, 767–200, and 767–300 Series airplanes;
- de Havilland DHC–7 series and Model DHC–8–100 airplanes;
- Fokker Models F.28 Mark 1000 and Mark 4000 airplanes;
- General Dynamics Models Convair 340 and 440 airplanes;
- Gulfstream Models G–159 and G–IV airplanes;
- Lockheed L1011 series airplanes;
- McDonnell Douglas—DC–8–60, DC–9–31, DC–9–51, DC–10–10 DC–10–

30, DC–13–30F, MD–11, and MD–80 series airplanes; and

• Rockwell International NA–265–65 airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received from 33 different owners, operators, manufacturers, and organizations.

All commenters express their concern of the FAA's compliance date of December 30, 1993, especially since Allied Signal's service bulletin will not be available until early 1994. The following summarizes the compliance times that the commenters recommended:

• 18 recommended one year or less;

• 5 recommended longer than one year; and

• 10 recommended an extension without a proposed time.

The National Air Traffic Controllers Association and the Airline Pilots Association both recommend an "aggressive implementation" of "Change 6.04A". The FAA has re-evaluated the December 30, 1993, compliance time and has determined that the compliance time should be changed to December 31, 1994. In addition, "Change 6.04A" has been upgraded to "Change 6.04A Enhanced", which eliminates unnecessary non-crossing resolution advisories (RA's) included in "Change 6.04A". Allied Signal has assured the FAA that (1) the upgrade to "Change 6.04A Enhanced" is minor and will be incorporated in the logic change for the TCAS II processor upgrades; and (2) this compliance time correlates with their schedule for disseminating service information and kits necessary to accomplish the incorporation of "Change 6.04A Enhanced". The proposed AD has been changed to reflect the compliance time change and logic change described above.

In addition, Allied Signal states that "Change 6.04", which is FAA-certified and is currently in service, accomplishes the major intent of "Change 6.04A Enhanced" and should be considered as an acceptable interim version to allow the eventual upgrade to "Change 6.04A Enhanced". The FAA recognizes that "Change 6.04" incorporates several of the features of "Change 6.04A Enhanced". However, the FAA has determined that (1) "Change 6.04" does not provide an equivalent level of safety to that of "Change 6.04A Enhanced"; and (2) "Change 6.04A Enhanced" should be incorporated as a way to prevent collisions or near misses caused by incompatibility between the TCAS II processors and the current air traffic control system. Compliance time extension consideration will be given on a case-by-case basis to airlines or operators experiencing compliance difficulties that arise because of fleet size. The proposed AD remains unchanged as a result of this comment.

Allied Signal also lists several additional aircraft that these TCAS II processor units are certified for installation. The FAA has incorporated these into the proposed AD.

One commenter, who supports the implementation of "Change 6.04A Enhanced", requests that the FAA issue a supplementary notice of proposed rulemaking (NPRM) to propose installing this revised software by June 30, 1995. This commenter states that significant differences exist between "Change 6.04A" and "Change 6.04A Enhanced". The FAA does not concur. Comments received in response to the proposed AD reflect unanimous support for implementing "Change 6.04A Enhanced". The FAA considers the logic change (which reduces non-crossing RA's) to be minor. The intent is to correct the unsafe condition by installing modified TCAS II computer units that incorporate updated logic. The FAA has determined that the requirement to implement Version 6.04A software, including the latest enhancement, will (1) correct the unsafe condition; (2) maintain the same intent originally proposed without altering the substance of the proposed rule; and (3) impose no additional burden on the public than was previously proposed.

In addition, issuing a supplemental NPRM would necessitate (under the provisions of the Administrative Procedures Act) reissuing the notice, reopening the public comment period, considering any additional comments received, and eventually issuing a final rule. The time required for these procedures could take as long as four additional months. In light of this, and in consideration of the amount of time that has already elapsed since issuance of the original NPRM, the FAA concludes that soliciting further public comment is not necessary and that further delay of the final rule action is not appropriate.

Several commenters request that the FAA revise the economic impact specified in the proposed AD to reflect costs associated with the development, testing prior to certification, and certification of the modified processor. These costs would be absorbed by suppliers, installers, and airline operators. The FAA does not concur that the economic impact statement include this information. The 1 workhour necessary to accomplish the proposed action was provided to the FAA by the TCAS II processor manufacturer based on the best data available to date. This number represents the time required to install the revised software. The cost analysis in AD rulemaking actions typically does not include costs associated with development, testing prior to certification, and certification of a modified processor. The proposed action remains unchanged as a result of these comments.

After careful review of all available information including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the change in compliance time, the logic reference change, the incorporation of known aircraft that these TCAS II processor units are installed on, and minor editorial corrections. The FAA has determined that these changes and corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 3,000 TCAS II processors in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per processor to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $165,000. These figures are based on the assumption that none of the operators of the airplanes equipped with the affected TCAS II processors have accomplished the actions specified in this AD.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act. A copy of the final 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.

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 AD:

93–01–05 Allied Signal Aerospace Company, Air Transport Avionics (formerly Bendix/King Air Transport Avionics Division): Amendment 39–8787; Docket No. 93–CE–46–AD.

Applicability: Traffic Alert and Collision Avoidance System II processors that are installed on, but not limited to the following airplanes (all serial numbers), certificated in any category:

Aerospatiale ATR–42;
Airbus Industries A–340;
Beech Model 65–A90 airplanes;
Boeing 727–100, 727–200, 737–200, 737–300, 737–400, 737–500, 747–100, 747–200, 747–300, 747–400, 747SP, 757–200, 767–200, and 767–300 Series airplanes;
de Havilland DHC–7 series and Model DHC–8–100 airplanes;
Fokker Models F 28 Mark 1000 and Mark 4000 airplanes;
General Dynamics Models Convair 340 and 440 airplanes;
Gulfstream Models G–159 and G–IV airplanes;
Lockheed L1011 series airplanes;
McDonnell Douglas—DC–8–60, DC–9–31, DC–9–51, DC–10–10 DC–10–30, DC–13–30F, MD–11, and MD–80 series airplanes; and
Rockwell International NA–265–65 airplanes.

Compliance: Prior to December 31, 1994, unless already accomplished.

To prevent collisions or near misses caused by incompatibility between the traffic alert and collision avoidance system (TCAS) II processors and the current air traffic control system, accomplish the following:

(a) Remove any TCAS II processor with a part number (P/N) suffix listed in the "Existing P/N Suffix" column of the table below, and install a corresponding TCAS II processor with a P/N listed in the "New P/N Suffix" column of the table below:

Existing P/N suffix	New P/N suffix
–0102 or –0107	–0108
–0203 or –0207	–0208
–0301, –0302, or –0307	–0308
–0402, –0405, or –0407	–0408
–0504 or –0507	–0508
–0606 or –0607	–0608
–8101	–0108

(b) 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.

(c) 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 (ACO).

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

(d) Information that relates to the proposed AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) This amendment (39–8787) becomes effective on February 4, 1994.

Issued in Kansas City, Missouri, on December 29, 1993.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–32113 Filed 12–30–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–68–AD; Amendment 39–8786; AD 94–01–04]

Airworthiness Directives; Honeywell Traffic Alert and Collision Avoidance System II Computer Units, as Installed on Various Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Honeywell Traffic Alert and Collision Avoidance System II (TCAS II) computer units installed on various transport category airplanes, that requires replacing certain TCAS II computer units with new units that incorporate updated collision avoidance system (CAS) logic, and modifying the computer surveillance logic. This amendment is prompted by the development of candidate enhancements to TCAS II logic that will improve its utility and increase its overall operational acceptance. The actions specified by this AD are intended to prevent collisions or near misses caused by incompatibility between the TCAS II processors and the current air traffic control system.

DATES: Effective February 4, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 4, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Honeywell Inc., Commercial Flight Systems Group, Air Transport Systems Division, P.O. Box 21111, Phoenix, Arizona 85036. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Abby Malmir, Aerospace Engineer, Systems and Equipment Branch, ANM–132L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5351; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all Honeywell Traffic Alert and Collision Avoidance System II (TCAS II) computer units installed on various transport category airplanes was published in the **Federal Register** on September 9, 1993 (58 FR 47407). That action proposed to require replacing certain TCAS II computer units with new units that incorporate updated collision avoidance system (CAS) logic, and modifying the computer surveillance logic.

Since the issuance of the notice, an additional change to Version 6.04A collision avoidance system (CAS) logic was recommended at a meeting held to discuss the progress made in implementing logic modification 6.04A.

Meeting attendees included representatives from the FAA and European civil aviation authorities, U.S. and European aviation industry, and U.S. operators. The logic change that was recommended involves reducing unnecessary crossing resolution advisories (RA). That change is included in a new enhanced software package (identified as Version 6.04A), specified in Mitre letter F046–L–0069, dated September 21, 1993.

Subsequently, Honeywell Inc. has issued Service Bulletin 4066010–34–SW16, dated December 20, 1993. The service bulletin describes procedures for converting certain TCAS II computer units to new units (Version 6.04A). The new units incorporate all of the logic changes specified in the preamble to the notice, including updating CAS logic, modifying the computer surveillance logic to ensure that these units accommodate Mode C altitude input of 100-foot increments, and ensuring that the system will be tracked and coordinated by intruding aircraft when the Mode S transponder CA field is set at CA=7. The conversion is onboard-loadable, or it may be accomplished at a field repair shop. The first method involves data loading the TCAS II computer unit in the aircraft equipment bay using an ARINC 615 or 603 data loader. The second method entails performing a final test, and then programming the TCAS II computer unit to convert it to the latest enhanced version at a field repair shop.

The notice proposed that operators accomplish the modification requirements of this AD in accordance with a method approved by the FAA. However, the FAA has reviewed and approved the Honeywell service bulletin discussed previously, and has determined that accomplishment of this service bulletin is an appropriate method of compliance. Consequently, the FAA has revised paragraph (a) of the final rule to cite the Honeywell service bulletin as the appropriate source of service information, and has removed the language referring to accomplishing the actions "in accordance with a method approved by the FAA." Even though this language has been deleted from paragraph (a), operators may still be permitted to accomplish the actions in accordance with an FAA-approved method under the provisions of paragraph (c) of the final rule.

In light of this new data and software developement, the FAA has revised the final rule by changing the reference to Mitre letter F046–L–0056, dated July 20, 1993, which appeared in paragraph (a)(1) of the NPRM, to Mitre letter F046–L–0069, dated September 21, 1993, since the latter identifies the enhanced software package. Since the original Version 6.04A software was never issued, no operator could have installed that version. Therefore, no redundant actions would be required on the part of any operator as a result of this change.

Since the enhanced Version 6.04A software introduces a change in the operation of the aircraft, the FAA also finds that a revision to the Airplane Flight Manual (AFM) is necessary as a conforming change to correspond with that new software configuration. The AFM revision is advisory only, and will ensure that the flight crew is aware of the changes associated with the new software installation. Consequently, paragraph (b) has been added to the final rule to reflect this informational AFM revision.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received in response to the notice:

One commenter, Honeywell, objects to the proposed compliance date of December 30, 1993, and states that December 31, 1994, represents a more realistic compliance timeframe. Honeywell indicates that operators vary in their ability to load the updated software due to maintenance and aircraft schedules and data-load/test resources. Honeywell states that, although it has been working aggressively to implement the latest change, that change has resulted in a delay in the date operators will be able to implement the latest change.

Several other commenters also request that the FAA extend the proposed compliance date from 3 to 18 months after the date specified in the proposal in order to accommodate implementation, verification, certification, and incorporation of the proposed software change into existing installations. One commenter, the Air Transport Association (ATA) of America, supports implementation of the latest enhanced Version 6.04A, and requests that the FAA issue a supplemental notice of proposed rulemaking (NPRM) to propose that this revised software be retrofitted by June 30, 1995. ATA contends that significant differences exist between Version 6.04A and the latest enhanced version. Another commenter requests that the FAA solicit comments from foreign agencies participating in TCAS evaluation and simulations to help ensure that the proposed Version 6.04A revision will be compatible and acceptable.

The FAA concurs partially with these requests to extend the compliance time. The FAA has considered the safety implications, the time necessary for approval of the enhanced Version 6.04A software, the size of the fleet, and normal maintenance schedules for timely accomplishment of implementation of the modification. In light of these considerations, the FAA has determined that a compliance date of December 31, 1994, is appropriate. Paragraph (a) of the final rule has been revised to specify the revised compliance date.

However, in response to the requests that a supplemental NPRM be issued and that further public comments be solicited, the FAA submits the following. Comments received in response to the proposal reflect unanimous support for implementation of the latest enhanced Version 6.04A software. The FAA considers the logic change (reduction of unnecessary crossing RA's) incorporated in the enhanced software to be a minor change. The intent of this AD is to require that the addressed unsafe condition be corrected by installing modified TCAS II computer units that incorporate updated CAS logic. The FAA has determined that a requirement to implement Version 6.04A software, including the latest enhancement, will meet that intent, will not alter the substance of the rule, and will impose no additional burden on any member of the public. Additionally, issuance of a supplemental NPRM would necessitate (under the provisions of the Administrative Procedure Act) reissuing the notice, reopening the period for public comment, considering additional comments received, and eventually issuing a final rule; the time required for that procedure may be as long as four additional months. In light of this, and in consideration of the amount of time that has already elapsed since issuance of the original NPRM, the FAA concludes that solicitation of further public comment is not necessary and that further delay of this final rule action is not appropriate.

One commenter requests that the FAA require Honeywell TCAS II processors that are already installed be operated in the "traffic advisory (TA) only" mode until the updated software package is installed. The commenter indicates that "possible hidden problems" could exist between the different versions of logic that are installed currently in the TCAS II processors.

The FAA does not concur with the commenter's request. Operation of currently installed TCAS II processors in the "TA only" mode would impair

the capability of those processors to alert the flight crew of appropriate aircraft maneuvers that must be taken to prevent mid-air collisions. Further, the FAA is unaware of any "possible hidden problems" between the different versions of logic installed currently in the TCAS II processors, as suggested by the commenter. Therefore, the FAA concludes that currently installed TCAS II processors should not be operated in the "TA only" mode until the updated software packaged is installed.

One commenter requests clarification of the unsafe condition specified in the proposed rule. This commenter points out differences in the wording of the unsafe condition between this proposed rule and two existing proposals that address the same CAS logic change for Rockwell International/Collins Air Transport Division (Collins), and Allied Signal Aerospace Company/Air Transport Avionics (Allied Signal), TCAS II processors. From this comment, the FAA infers that the commenter requests that the proposed statement of unsafe condition more closely parallels the statement of unsafe condition in the other two proposals addressing the same subject.

The FAA concurs. The FAA has revised the unsafe condition specified in this final rule to coincide with the proposals that address Collins and Allied Signal TCAS II processors to more explicitly reference safety considerations, as follows: "* * * to prevent collisions or near misses caused by incompatibility between the TCAS II processors and the current air traffic control system."

One commenter, Falcon Jet Corporation, indicates that Honeywell TCAS II processors are installed on Mystere-Falcon Model 50 and 900 series airplanes, and requests that these airplanes be included in the portion of the applicability of the AD that lists airplanes on which this TCAS II processor may be installed. The FAA concurs with the commenter's request and has revised the final rule accordingly. In addition, the FAA has become aware of other airplane models affected by this AD and has included those models in that portion of the applicability statement of the final rule. The FAA clarifies that, as stated in the preamble and the applicability of the proposal, the affected Honeywell TCAS II processors are installed on various transport category airplanes and are not limited only to those airplanes listed in the applicability of this AD.

Several commenters request that the FAA revise the economic impact information specified in the proposal to reflect costs borne by suppliers, installers, and airline operators associated with development, testing, and certification of the modified processor.

The FAA does not concur with the commenters' request to revise the economic impact information contained in this AD. The appropriate number of hours required to accomplish the required actions, specified as 3 in the economic impact information, below, was provided to the FAA by the processor manufacturer based on the best data available to date. This number represents the time required to gain access, remove the existing processor, install a diskette containing the revised software, and close up. The cost analysis in AD rulemaking actions typically does not include costs associated with development, testing, and certification of a modified processor, as suggested by the commenter.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 2,700 transport category airplanes in the worldwide fleet on which the Honeywell TCAS II computer units may be installed. The FAA estimates that 1,150 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $189,750, or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it 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:

94–01–04 Honeywell: Amendment 39–8786. Docket 93–NM–68–AD.

Applicability: Traffic Alert and Collision Avoidance System (TCAS) II computer units; part numbers 4066010–901, –902, and –903; as installed on, but not limited to, the following airplanes, certificated in any category:

Airbus Industrie Model A300–600, A310–200, A310–300, A320–200, and A340 series airplanes;

Boeing Model 727–100 and –200; 737–100, –200, –300, and –400; 747–100, –200, –300, –400 and 747SP; 757–200 and –500; and 767–200 and –300 series airplanes;

Cessna Citation Model C550 and C560 series airplanes, and Cessna Citation III and VII series airplanes;

Canadair Challenger Model CL–600–2B16 and –2A12 series airplanes;

British Aerospace Model 125–800A;

Gulfstream Model GII, GIIB, GIII, and GIV series airplanes;

Lockheed Model L–1011 series airplanes;

McDonnell Douglas Model DC–9–10, –20, –30–, –40, and –50; DC–10–10, –15, –30, and –40; MD–11; and DC–9–80 series airplanes; and Model MD–88 airplanes;

Dassault Aviation Model Mystere-Falcon 50 and 900 series airplanes;

Short Brothers Model SD3–60 series airplanes;

de Havilland Model DHC–8–100 and DHC–7 series airplanes;
Fokker Model F27 series airplanes; and
Corporate Jets Limited Model BAe 125–800A and BAe 125–1000A series airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent collisions or near misses caused by incompatibility between the TCAS II processors and the current air traffic control system, accomplish the following:

(a) Before December 31, 1994, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with Honeywell Service Bulletin 4066010–34–SW16, dated December 20, 1993.

(1) Remove existing Honeywell TCAS II computer units, part numbers 4066010–901, –902, and –903, and replace those units with new units that incorporate updated collision avoidance system (CAS) logic, identified as Version 6.04A in Mitre letter F046–L–0069, dated September 21, 1993.

(2) Modify the computer surveillance logic on Honeywell TCAS II computer units, part numbers 4066010–901, –902, and –903, to ensure that these units accommodate Mode C altitude input of 100-foot increments and that the system will be tracked and coordinated by intruding aircraft when the Mode S transponder CA field is set at CA=7.

(b) Prior to further flight after accomplishing the requirements of paragraph (a) of this AD, revise the Airplane Flight Manual (AFM) or AFM Supplement by accomplishing either paragraph (b)(1) or (b)(2) of this AD.

(1) Revise the Normal Procedures Section of the AFM to include the appropriate TCAS operating characteristic relative to the modifications required by paragraph (a) of this AD, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or

(2) Revise the Normal Procedures Section of the AFM to include the following TCAS operating characteristic relative to the modification required by paragraph (a) of this AD. This may be accomplished by inserting a copy of this AD in the AFM or AFM Supplement.

"All Resolution Advisory (RA) and Traffic Advisory (TA) aural messages are inhibited at a radio altitude of less than 1,100 feet above ground level (AGL) climbing, and less than 900 feel AGL descending."

(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, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Avionics Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles 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.

(e) The replacement and modification shall be done in accordance with Honeywell Service Bulletin 4066010–34–SW16, dated December 20, 1993. 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 Honeywell Inc., Commercial Flight Systems Group, Air Transport Systems Division, P.O. Box 21111, Phoenix, Arizona 85036. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 4, 1994.

Issued in Renton, Washington, on December 29, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–32115 Filed 12–30–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–CE–47–AD; Amendment 39–8788; AD 94–01–06]

Airworthiness Directives: Rockwell International, Collins Air Transport Division, Traffic Alert and Collision Avoidance System II Processors

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Rockwell International, Collins Air Transport Division (Collins), Traffic Alert and Collision Avoidance System (TCAS) II processors that are installed on aircraft. This action requires replacing the existing TCAS II processor with a new processor that incorporates updated computer logic or reprogramming certain processors while they are still on board the aircraft. The development of candidate enhancements to TCAS II logic that improves its utility and increases its overall operational acceptance prompted the proposed action. The actions specified by this AD are intended to prevent collisions or near misses caused by incompatibility between the TCAS II processors and the current air traffic control system.

EFFECTIVE DATE: February 4, 1994.

ADDRESSES: Service information that is referenced in this AD may be obtained from Rockwell International/Collins Air Transport Division, 400 Collins Road, NE; Cedar Rapids, Iowa 52498. Information that relates to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Roger A. Souter, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4134; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that applies to certain Collins TCAS II processors that are installed on aircraft was published in the **Federal Register** on September 9, 1993 (58 FR 47409). The action proposed to require (1) removing from service all processors that do not have computer logic "Change 6.04A" incorporated; and (2) mandatory incorporation of "Change 6.04A" into the TCAS II computer system.

The affected TCAS II processors are not designed for a specific aircraft type. The Collins TCAS II processors are installed on, but not limited to the following:

General Aviation Airplanes

Astra Model 1125 airplanes
BAC Model 1–11 airplanes
British Aerospace Model 125–800 airplanes
Beech Models C90A, B200, 300, 350, and 400A airplanes
Canadair Models CL–600, CL–600–2B16, CL–601, CL–601–1A, and CL–601–3A airplanes
Learjet Models 31, 55, and 60 airplanes
Falcon Models 20, 50, 200, and 900 airplanes
Gulfstream Models G2 and G3 airplanes
British Aerospace Models HS–125–700 airplanes and
Sabreliner Model 60 airplanes

Air Transport Airplanes

Aerospatiale Models ATR–42 and ATR–72 airplanes
Airbus Industries Models A300B2, A–300B, and A–320 airplanes
British Aerospace Models ATP and 146 airplanes
Boeing Models 707, 727, 737, 747, 757, and 767 airplanes
British Aerospace/Aerospatiale Model Concorde SST airplanes
de Havilland DHC–7 and DHC–8 series airplanes
McDonnell Douglas Models DC–8, DC–9, DC–10, MD–80, and MD–11 airplanes
Ilyushin Model IL–86 airplanes
Lockheed Model L–1011 airplanes
SAAB Models SF340A and SF340B airplanes and
Shorts Models SD3–60–300 airplanes

Interested persons have been afforded an opportunity to participate in the

making of this amendment. Due consideration has been given to the comments received from 31 different owners, operators, manufacturers, and organizations.

All commenters express their concern of the FAA's compliance date of December 30, 1993. The following summarizes the compliance times that the commenters recommended:

- 21 recommended one year or less;
- 3 recommended longer than one year; and
- 7 recommended an extension without a proposed time.

The National Air Traffic Controllers Association and the Airline Pilots Association both recommend an "aggressive implementation" of "Change 6.04A". The FAA has re-evaluated the December 30, 1993, compliance time and has determined that the compliance time should be changed to December 31, 1994. In addition, "Change 6.04A" has been upgraded to "Change 6.04A Enhanced", which eliminates unnecessary non-crossing resolution advisories (RA's) included in "Change 6.04A". Collins has assured the FAA that (1) the upgrade to "Change 6.04A Enhanced" is minor and will be incorporated in the logic change for the TCAS II processor upgrades; and (2) this compliance time correlates with their schedule for disseminating service information and kits necessary to accomplish the incorporation of "Change 6.04A Enhanced". The proposed AD has been changed to reflect the compliance time change and logic change described above.

One commenter states that the affected aircraft operators should operate their TCAS II units in the "TA Mode Only" until the new logic is incorporated because of possible hidden problems that could exist between different logic versions currently installed. The FAA does not concur that these TCAS II units should be operated in the "TA Mode Only". The information provided by an RA may prove to be useful to the pilot. The pilot has the option of whether to utilize the RA information. The proposed AD is unchanged as a result of this comment.

A commenter recommends referencing Collins Service Bulletin (SB) No. 16, TTR–920–34–16, dated December 9, 1993, as a way of complying with the proposed AD. The FAA concurs that this service information is a way of complying with the proposed action, and has included a note in the final rule that so indicates this.

Another commenter proposes a change to the proposed AD that would allow reprogramming the existing unit on board the aircraft as a method of compliance with the proposed action. The FAA concurs that certain existing TCAS II part numbers may be reprogrammed with the unit on board the aircraft. The proposed AD has been modified to include this method on the applicable TCAS II processor part numbers.

One commenter states that reference to the SAAB 340B airplanes in the General Aviation Airplanes list should be deleted. This commenter also recommends that reference to the Aerospatiale ATR–42 and ATR–72 airplanes be moved from the General Aviation Airplanes list to the Air Transport Airplanes list. The FAA concurs and has revised the proposed AD accordingly.

One commenter, who supports the implementation of "Change 6.04A Enhanced", requests that the FAA issue a supplementary notice of proposed rulemaking (NPRM) to propose installing this revised software by June 30, 1995. This commenter states that significant differences exist between "Change 6.04A" and "Change 6.04A Enhanced". The FAA does not concur. Comments received in response to the proposed AD reflect unanimous support for implementing "Change 6.04A Enhanced". The FAA considers the logic change (which reduces non-crossing RA's) to be minor. The intent is to correct the unsafe condition by installing modified TCAS II computer units that incorporate updated logic. The FAA has determined that the requirement to implement Version 6.04A software, including the latest enhancement, will (1) correct the unsafe condition; (2) maintain the same intent originally proposed without altering the substance of the proposed rule; and (3) impose no additional burden on the public than was previously proposed.

In addition, issuing a supplemental NPRM would necessitate (under the provisions of the Administrative Procedures Act) reissuing the notice, reopening the public comment period, considering any additional comments received, and eventually issuing a final rule. The time required for these procedures could take as long as four additional months. In light of this, and in consideration of the amount of time that has already elapsed since issuance of the original NPRM, the FAA concludes that soliciting further public comment is not necessary and that further delay of the final rule action is not appropriate.

Several commenters request that the FAA revise the economic impact specified in the proposed AD to reflect costs associated with the development, testing prior to certification, and certification of the modified processor. These costs would be absorbed by suppliers, installers, and airline operators. The FAA does not concur that the economic impact statement include this information. The 5 workhours necessary to accomplish the proposed action was provided to the FAA by the TCAS II processor manufacturer based on the best data available to date. This number represents the time required to install the revised software and test for proper operation after installation. The cost analysis in AD rulemaking actions typically does not include costs associated with development, testing prior to certification, and certification of a modified processor. The proposed action remains unchanged as a result of these comments.

After careful review of all available information including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the change in compliance time, the logic reference change, the option of reprogramming certain units on board the aircraft, reference to Collins SB No. 16, TTR–920–34–16, dated December 9, 1993, and minor editorial corrections. The FAA has determined that these changes and corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 1,995 TCAS II processors in the U.S. registry will be affected by this AD, that it will take approximately 5 workhours per processor (1 workhour for installation and 4 workhours for operational testing) to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $548,625. These figures are based on the assumption that none of the operators of the airplanes equipped with the affected TCAS II processors have accomplished the actions specified in this AD.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final 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.

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 AD:

94–01–06 Rockwell International, Collins Air Transport Division: Amendment 39–8788; Docket No. 93–CE–47–AD.

Applicability: Traffic Alert and Collision Avoidance System II processors that are installed on, but not limited to the following airplanes (all serial numbers), certificated in any category:

General Aviation Airplanes

Astra Model 1125 airplanes
BAC Model 1–11 airplanes
British Aerospace Model 125–800 airplanes
Beech Models C90A, B200, 300, 350, and 400A airplanes
Canadair Models CL–600, CL–600–2B16, CL–601, CL–601–1A, and CL–601–3A airplanes
Learjet Models 31, 55, and 60 airplanes
Falcon Models 20, 50, 200, and 900 airplanes
Gulfstream Models G2 and G3 airplanes
British Aerospace Models HS–125–700 airplanes and
Sabreliner Model 60 airplanes

Air Transport Airplanes

Aerospatiale Models ATR–42 and ATR–72 airplanes
Airbus Industries Models A300B2, A–300B, and A–320 airplanes
British Aerospace Models ATP and 146 airplanes
Boeing Models 707, 727, 737, 747, 757, and 767 airplanes
British Aerospace/Aerospatiale Model Concorde SST airplanes
de Havilland DHC–7 and DHC–8 series airplanes
McDonnell Douglas Models DC–8, DC–9, and DC–10, MD–80, and MD–11 airplanes
Ilyushin Model IL–86 airplanes
Lockheed Model L–1011 airplanes
SAAB Models SF340A and SF340B airplanes and
Shorts Models SD3–60–300 airplanes.

Compliance: Prior to December 31, 1994, unless already accomplished.

To prevent collisions or near misses caused by incompatibility between the traffic alert and collision avoidance system (TCAS) II processors and the current air traffic control system, accomplish the following:

(a) Incorporate "Change 6.04A Enhanced" by accomplishing either (1) or (2) below, as applicable:

(1) Remove any TCAS II processor with a part number (P/N) suffix listed in the "Existing P/N Suffix" column of the table below, and install a corresponding TCAS II processor with a P/N listed in the "New P/N Suffix" column of the table below:

Existing P/N suffix	New P/N suffix
–001, –002, –011, –012, or –612	–020
–102, –111, or –112	–120
–014	–320

Note 1: Collins SB No. 16, TTR–920–34–16, dated December 9, 1993, specifies procedures for incorporating the referenced New P/N suffixes.

(2) Change the part number of the TCAS II unit on board the aircraft by reprogramming the software with a data loader in order to obtain the New P/N Suffix as specified in the following table:

Existing P/N suffix	New P/N suffix
–012	–020
–112	–120
–014	–320

Note 2: Units with P/N suffix of –001, –002, –011, –102, –11, and –612 cannot be reprogrammed on board the aircraft.

Note 3: Operators are encouraged to update the Airplane Flight Manual (AFM) or AFM Supplement. Collins TTR–920 TCAS II Transmitter Receiver Service Information Letter 2–93, titled "CAS Logic Change 6.04A" specifies the information needed for this update.

(b) 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.

(c) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office (ACO).

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) Service information that is referenced in this AD may be obtained from Rockwell International/Collins Air Transport Division, 400 Collins Road, NE; Cedar Rapids, Iowa 52498. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) This amendment (39–8788) becomes effective on February 4, 1994.

Issued in Kansas City, Missouri, on December 29, 1993.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–32114 Filed 12–30–93; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–4–000; Order No. 563]

Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

Issued December 23, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing a final rule adopting regulations to standardize the content of, and procedures for accessing, information relevant to the availability of service on interstate pipelines. The Commission's standards will require pipelines to make this information available on Electronic Bulletin Boards (EBBs) and through downloadable files and will detail procedures and protocols for EBB operation and file transfers.

DATES: February 4, 1994. Pipelines must implement the requirements of this rule by June 1, 1994, except where the procedures and protocols specify otherwise.

ADDRESSES: Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:
Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2294.
Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–1283.
Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0666.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington DC 20426.

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I. Introduction

In Order No. 636,[1] the Commission created a new operating environment for interstate pipelines and shippers on those pipelines by requiring pipelines to unbundle the sale of gas from the transportation of that gas and by introducing a mechanism permitting shippers to trade unneeded capacity through Electronic Bulletin Boards (EBBs) maintained by the pipelines. Because shippers will now be transporting gas over multiple pipelines, the Commission concluded that the development of uniform standards covering the content of, and methods for accessing, information relating to transportation would improve the efficiency of gas movement across the interstate pipeline grid. To begin the process of developing the needed standards, the Commission directed its staff to convene a series of informal conferences with all facets of the gas industry to consider standards relating to capacity allocation. As a result of these conferences, the industry reached consensus agreements on the information about available capacity that should be included on EBBs and the procedures and protocols for making that information available.

The Commission is adopting a final rule reflecting the consensus agreements reached by the industry. The rule amends the Commission's open access regulations by requiring pipelines to provide standardized information about the availability of service on their systems. This information will be provided both on the pipelines' EBBs and through files which users can download from the pipelines' computers to their own computers. The rule further requires pipelines to provide this information according to standardized procedures and protocols, which will be maintained in a document entitled "Standardized Data Sets and Communication Protocols" that can be obtained at the Commission. Pipelines must implement the requirements of this rule by June 1, 1994.

The Commission also recognizes the standards and protocols it is adopting will need to be updated as more experience with capacity release and the transportation environment under Order No. 636 is obtained. The Commission, therefore, is proposing to continue the industry conferences to consider and propose modifications when needed.

II. Reporting Requirements

The Commission estimates the public burden for the information requirement under this final rule—including the one-time start-up burden related to pipeline EBBs—will average 6,770 hours per company. The burden estimate includes the time required to review and implement the standards, develop the necessary software, search existing data sources, gather and maintain the data needed, create/validate common and proprietary codes/information and complete and review the information. The information/data elements required to be maintained on pipeline EBBs will be under a new information requirement, FERC–549(B), Gas Pipeline Rates: Capacity Release Information. The annual burden associated with the new FERC–549(B) information requirement will be 528,060 hours based on the estimated initial EBB development burden and daily EBB informational updates by an anticipated 78 pipeline respondents.

Included in the annual burden estimate are 40,560 hours (520 hours per company) attributable to the creation of

[1] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13267 (Apr. 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (Apr. 8, 1992), order on reh'g, Order No. 636–A, 57 FR 36128 (August 12, 1992), III FERC Stats. & Regs. Preambles ¶ 30,950 (August 3, 1992), order on reh'g, Order No. 636–B, 57 FR 57911 (Dec. 8, 1992), 61 FERC ¶ 61,272 (1992), appeal pending sub nom., *Atlanta Gas Light Co. and Chattanooga Gas Co.* v. *FERC*, No. 92–8782 (11th Cir. Aug. 13, 1992).

common/proprietary codes to identify pipelines and common transaction points. The codification requirements were not part of the burden estimates contained in the Commission's Notice of Proposed Rulemaking (NOPR) issued July 29, 1993.

Because the final rule contains new information and EBB requirements, many of which are one-time start-up activities, it is anticipated that FERC–549(B) burden will be reduced by 2,250 hours per respondent (for a total reduction of 175,500 hours for all respondents) the year following the implementation of the EBB systems.

Arkla Energy Resources Company and Mississippi River Transmission Corporation state that providing comments on the burden estimate in the NOPR is difficult until final resolution of EBB issues. Interstate Natural Gas Association of American states the burden estimate in the NOPR is reasonable for the items included in the proposed rule, but would be too low if additional items, such as common codes are included. No party has submitted contrary data on a revised burden estimate for the requirements proposed in the NOPR. The only significant change from the NOPR is the requirement to create a common code data base and the Commission has revised its estimate to include the additional burden of this effort. Accordingly, the Commission finds its burden estimates reasonable.

Interested persons may send comments regarding these burden estimates or any other aspect of this information requirement, including suggestions for reductions of the burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415, FAX (202) 208–2425]; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for Federal Energy Regulatory Commission].

III. Background

In Order No. 636, the Commission required pipelines to establish EBBs to provide shippers with equal and timely access to relevant information about the availability of service on their systems, including service available through capacity release transactions and firm and interruptible capacity available directly from the pipeline.[2] The Commission recognized the efficiency of capacity allocation would be enhanced by standardizing both the content of capacity release information and the methods by which shippers could access that information.[3] On February 26, 1993, the Commission held a technical conference to examine the industry's efforts in standardizing information content and communication procedures. The participants at the conference expressed a willingness to establish a broad industry-wide working group to reach consensus on standards governing capacity release transactions. The Commission subsequently established informal conferences with Commission staff and all interested members of the gas industry to facilitate the development of consensus standards.[4]

A broad spectrum of firms and organizations participated in these Working Groups, including representatives from the major segments of the gas industry and other interested parties, such as computer and software firms. The participants at the conferences divided their efforts into five working groups covering different areas of standardization and, on July 1 and July 6, 1993, the Working Groups submitted reports on their deliberations. Working Groups 1 and 2 reached consensus on proposed standardized data sets setting forth the information concerning available capacity. Working Group 4 agreed on a set of communication protocols governing the dissemination of the information. Working Group 5 proposed methods for developing codes to identify companies and common transaction points, but had not finalized standards in these areas. Working Group 3 reported on its progress in considering standards relating to business practices other than capacity release, but did not propose any standards. The Working Group reports included minority positions on several items. The Commission also provided an additional period for the public to comment on the Working Group proposals.

On July 29, 1993, the Commission issued a Notice Of Proposed Rulemaking (NOPR) proposing to adopt standards reflecting the consensus agreements reached by the industry working groups.[5] The NOPR also provided for the continuation of the Working Groups and set a number of items for further consideration, with reports generally due by February 1, 1994.[6]

Forty comments were received on the NOPR.[7] In addition, on October 12, 1993, Working Group 5 filed its report containing a finalized proposal for providing common transaction point codes, and on November 3, 1993, Working Groups 1 and 2 filed revisions to the proposed capacity availability data sets. The Commission noticed both filings and provided the industry with an opportunity to submit comments on the filings and to discuss them at an informal conference.[8]

IV. Summary of the Final Rule

The final rule adopts the regulation and standards as proposed in the NOPR, with only slight modifications. The final rule adopts § 284.8(b)(5) requiring pipelines to provide standardized information relevant to the availability of service on their systems. Under the rule, pipelines must provide the standardized information on their EBBs and provide users with the ability to download the standardized information in compliance with standardized procedures and protocols. The rule provides that the details of the required information, procedures, and protocols will be made available in a document entitled "Standardized Data Sets and Communication Protocols," which would be available from the Commission's Public Reference and Files Maintenance Branch.[9] Because the standardized information includes information relevant to the availability of interruptible transportation, the rule also revises § 284.9(b)(4), which governs interruptible transportation, to cross-reference the standardization requirements in § 284.8(b)(5).

In summary, the standardized data sets set forth the information concerning capacity availability that pipelines must provide both on their on-line EBBs and through downloadable files.[10] This

[2] 18 CFR 284.8(b)(3)(4), 284.9(3)(4).

[3] Order No. 636–A, III FERC Stats. & Regs. Preambles at 30,549.

[4] Notice Of Informal Conferences (March 10, 1993), 54 FR 14530 (Mar. 18, 1993).

[5] Notice Of Proposed Rulemaking, 58 FR 41647 (Aug. 5, 1993), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,500 (July 29, 1993).

[6] Working Group 5 was given an October 1, 1993 report date for its proposal dealing with common transaction point codes.

[7] The commenters, and the abbreviations used for each, are listed in Appendix A. Con Edison and PSCW filed comments late. The Commission will consider these comments.

[8] AER/MRT, IPAA, Gaslantic, National Registry, NYMEX/EnerSoft, Process Gas Consumers Group, and Transco submitted comments on the common code proposal. ANR submitted comments on the revised data sets.

[9] This document will not be published in the **Federal Register**.

[10] On-line EBB refers to a continuous computer connection between a pipeline EBB and a user's computer in which the information from the pipeline's computer is displayed visually on the user's computer and the user can enter data directly to the pipeline's computer. File downloading refers to the transfer in computerized format of a file from

information includes offers to sell firm capacity (either by the pipeline or releasing shippers), bids for capacity, awards of capacity, withdrawals of capacity offers and bids, operationally available (i.e., interruptible) capacity, and system-wide notices. The protocols establish principles and procedures relating to the operation of pipeline EBBs and the provision of downloadable files to users. Under these protocols, pipelines will provide for file downloads in two formats: one that complies with standards for Electronic Data Interchange (EDI) promulgated by the American National Standards Institute (ANSI) Accredited Standards Committee (ASC) X12 and a second format that does not comply with ASC X12, but which provides files in standard flat ASCII format.[11] The Commission is changing the implementation of the regulation from the April 1, 1994 date proposed in the NOPR to June 1, 1994, unless the standards and protocols specify a different compliance date.[12]

The comments addressed issues relating to the proposed regulation, the standards and protocols that were proposed for inclusion in the Standardized Data Sets and Communication Protocols, and the items which the Commission proposed not to include in the data sets and protocols. The Commission will address the issues raised in each area in turn.

V. Discussion of the Proposed Regulation

A. Need for a Flexible Mechanism To Make Revisions to the Standards and Protocols

In the NOPR, the Commission proposed to proceed through rulemaking, rather than a policy statement, finding that the benefits of standardization can be achieved only when all pipelines provide the same information through the same procedures. The Commission concluded a rulemaking was the proper approach to issuing mandatory requirements.

Several commenters support the Commission's issuance of a rule to ensure full compliance, but urge the Commission to commit itself to a process for revising the requirements.[13] They maintain that once the industry obtains experience with capacity release, revisions may be needed. Natural supports the use of notice and comment rulemaking, but it requests clarification that, even though the referenced document of standards and protocols is not contained in the Code of Federal Regulations, any modifications to these standards or protocols will be made through rulemaking procedures. It maintains changes to this document could result in significant administrative burdens and costs and, therefore, contends the Administrative Procedure Act (APA) requires that such changes be made only through a notice and comment rulemaking. O&R and Williston urge the Commission to proceed using a policy statement to ensure the utmost flexibility for modifications.

The Commission adheres to its determination to proceed through rulemaking to ensure the uniformity standardization requires. Nevertheless, the Commission agrees with the commenters that revisions and modifications to the standards and protocols will need to be made on a regular basis as the industry obtains more experience with capacity release transactions and with the changed operating environment created by Order No. 636. For example, in the two months after issuance of the NOPR, Working Groups 1 and 2 already have proposed revisions to the standardized data sets to ensure that they function effectively and to clarify a number of items. The Commission proposes to continue the informal conferences and the Working Groups as the best means for monitoring the performance of the standards and proposing needed changes.

To facilitate the Commission's ability to respond to the need for changes, it adopted only a general regulation requiring the pipelines to standardize their provision of capacity information, while the standards and protocols themselves were to be provided in a separate document not contained in the Code of Federal Regulations. The Commission is committed to making needed modifications and revisions to the standards and protocols as quickly as possible. Determining the appropriate mechanism for making such changes is premature, because the method should vary depending on the type of change contemplated; maintenance of the standards to correct problems or improve their functioning should be handled differently than significant substantive changes in the means of providing the information.

In making changes to the data sets and protocols, the Commission intends to follow the APA and provide notice and an opportunity for comment, just as it has in the past with respect to proposed changes by the Working Groups. For example, when Working Groups 1 and 2 submitted their recent set of revisions, the Commission noticed the filing and provided an opportunity for written comments as well as for consideration of the revisions at one of the Commission's EBB conferences.

Although the Commission is issuing the current data sets along with this rule, the Commission realizes that as pipelines begin the process of correlating the downloadable data sets with the information provided by offerors and bidders through their on-line EBBs, difficulties with the data sets may be identified. All pipelines immediately must begin the correlation process, so they can report any significant difficulties to Working Groups 1 and 2. The Commission is committed to implementing the data sets by June 1, 1994, and Working Groups 1 and 2, therefore, should ensure that they provide the Commission with any additional changes they believe are essential in sufficient time to permit implementation of the data sets, including ASC X12 downloadability, by that date. The Commission recognizes that the data sets may not be perfect when implemented, but, as discussed above, the Commission is committed to a process for revising the data sets on a regular basis after implementation.

B. Exemptions for Small Pipelines

Sabine maintains small pipelines may not be able to comply with the requirements outlined in the NOPR. It does not suggest a blanket exemption for small pipelines, but instead recommends they be afforded an opportunity to demonstrate that the costs of implementing the standards would outweigh the benefits of compliance.[14]

The Commission recognizes small pipeline compliance with some of the requirements of the standards and protocols may not be cost justified or essential to obtain the benefits the Commission sought to achieve through

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the pipeline's computer to the user's computer. The user can use its own internal computer programs to manipulate the data.

[11] ASCII refers to the American Standard Code for Information Interchange, a code for character representation. The Commission recognizes the ASC X12 files also use ASCII characters. The Commission is using the term ASCII download to refer to standard flat file downloads that do not necessarily meet the requirements of the ASC X12 standards.

[12] The June 1, 1994 date will not apply to the requirement that pipelines provide a common code system. The date for implementation of this requirement is November 1, 1994.

[13] Power Generators, AGA, Columbia Distribution, Destec Energy, FMA, and UDC.

[14] It points out the Commission exempted it from compliance with the interactive EBB requirement in its restructuring order. Sabine Pipe Line Company, 63 FERC ¶ 61,010 (1993).

standardization. The Commission cannot make a generic determination of the particular standards and protocols with which small pipelines should not have to comply; compliance with some of the standards may not involve as much added cost as compliance with others and partial compliance may still be of benefit to users.[15] Small pipelines desiring an exemption should file a petition under Rule 207 of the Commission's Rules of Practice and Procedure listing the specific requirements for which they seek exemption and explaining why the exemption is justified.[16] Users will then be given an opportunity to comment on the proposed application.

C. Implementation Date

In the NOPR, the Commission proposed an April 1, 1994 implementation date, finding this date would provide pipelines with sufficient time to program their computers to incorporate the changes required and would permit final testing of the system during the off-peak summer season. Many commenters support the April 1, 1994 implementation date, some suggesting no extension be given.[17] Peoples Gas, et al., and UDC state this date should not result in delay in implementing the on-line EBBs already required by Order No. 636. Some commenters contend the April 1, 1994 date is sufficient for the items included in the NOPR, but would not give sufficient time for implementation of additional requirements resulting from the Working Groups' February 1, 1994 reports on those items which the Commission set for further consideration.[18] Other commenters contend the April 1, 1994 date is too ambitious for all items and assert the Commission should not set an interim date, but should require full implementation by the fall of 1994.[19] AER/MRT contends an April 1, 1994 implementation date for the ASC X12 requirement, in particular, is unreasonably ambitious.

The Commission will agree to delay the implementation date to June 1, 1994, to allow the Working Groups and the pipelines to make final revisions that will improve the functioning of the EBBs and the downloadable data sets. But, given this extension, the Commission expects the pipelines to have an operational set of standards fully implemented by June 1, 1994. At the same time, the June 1, 1994 date will permit capacity release transactions, which may be significant in the off-peak season, to benefit from the standards. The June 1, 1994 date applies to the implementation of EDI, but not to the implementation of common codes, as discussed later.[20] The Commission clarifies that this date applies only to the items included in this rule, not to further items resulting from the February 1, 1994 reports. The June 1, 1994 date also does not delay pipelines' compliance with the EBB requirements of Order No. 636; pipelines must comply with these requirements by the date specified in their restructuring orders.

The June 1 date is not an interim date, but the final date for compliance with these requirements. The reference in the NOPR to final testing during the off-peak season meant only that full scale operation would operate as the final check to uncover lacunae in operation not detected during routine small scale (or beta) testing of the system.[21] As stated earlier, the Commission expects full implementation of the data sets and communication protocols by no later than the June 1, 1994 date.

Williston Basin asserts the February 1, 1994 date for the Working Group reports is premature since the industry will not have sufficient experience with capacity release by then to make additional modifications. The Commission is not persuaded to change the February 1 date for the Working Group reports. These reports are intended to cover the items on which the parties did not have the time to reach consensus in time for their July reports, but which the Commission found were susceptible to resolution given more time. As discussed earlier, the Commission is committed to updating these standards when necessary in light of experience. The timing of additional meetings or reports to consider further revisions are better made at a later point.

D. Modifications to the Regulatory Provisions

NGSA and Process Gas Consumers Group suggest the rule should be revised to require each pipeline to submit a compliance filing specifying in its tariff the details of how it will supply the services required by the rule. UDC suggests the imposition of reporting requirements to permit the Commission and the public to monitor the initial operation of EBBs.

The Commission perceives no need at this point for requiring compliance filings by pipelines or the submission of periodic reports. The requirements of the rule are straight-forward. The communication protocols require pipelines to provide users with scripts detailing the procedures for accessing (logging-on to) the pipelines' computer systems, and providing further detail through tariff filings seems unnecessary. Monitoring of the system can be better accomplished through Commission oversight of pipelines' compliance by accessing their EBBs and through the use of industry conferences than through tariff filings or inflexible periodic reporting requirements.

Process Gas Consumers Group suggests the deletion of the phrase "on its Electronic Bulletin Board" from the opening clause of the rule. It contends this phrase suggests the rule may not cover EDI access to data, may not apply to pipelines using third-party vendors to provide EBB services, and appears to require pipelines to provide information about accessing their EBB solely through their EBB, thereby creating a Catch-22 in which shippers can obtain information on how to access a pipeline's EBB only by knowing how to access the EBB.

The Commission will not delete the reference to Electronic Bulletin Boards because pipelines must provide the required information on their EBBs as well as through downloadable files. The Commission, however, will modify the regulation slightly to make even more explicit that both modes of communication must be provided. The Commission expects pipelines to provide users with instructions for accessing their EBBs or using EDI transfers without having the user first access the pipelines' EBB.

VI. Discussion of Items Included in the Standardized Data Sets and Communication Protocols

The Commission proposed to set forth the information on capacity availability and the protocols governing the dissemination of that information in a separate document entitled

[15] For example, provision of the data contained in the standardized data sets may not be unduly costly and would permit users to obtain the same information from all pipelines.

[16] 18 CFR 385.207.

[17] Power Generators, Con Edison, WEV, Destec Energy, NGSA, NYMEX/EnerSoft, O&R, Peoples Gas, et al., UDC, Process Gas Consumers Group (noting that capacity release transactions may be heaviest in the off-season), Transco (if development of ASC X12 not unduly delayed).

[18] INGAA, Natural.

[19] AER/MRT, Columbia Gas, Enron, KGPL.

[20] *See* text accompanying notes 36 and 51, infra.

[21] By beginning full-scale operation during the summer, the standards will be in effect during the period when capacity release transactions may be significant, but, at the same time, any final problems with the system can be resolved when obtaining gas supplies is not as crucial as during the peak winter heating season.

Standardized Data Sets and Communication Protocols that would be available at the Commission. The Commission included this document in the NOPR and commenters raised issues with respect to the proposed provisions.

A. Standardized Data Sets

1. Operation of the Data Sets

El Paso requests clarification that a pipeline can leave fields in the data sets blank if the pipeline's tariff does not require the information to be provided. It cites, as an example, differences in pipelines' tariffs as to whether volumetric releases are subject to minimum quantity requirements.

ANR contends the definitions of the terms mandatory and optional, as used for some fields in the data sets, are confusing. It submits mandatory refers to data fields that every pipeline must support, while optional refers to data fields pipelines may offer at their discretion, unless their individual tariffs require that those fields be supported. If optional means that all pipelines must support the field, thereby permitting releasing shippers or bidders with the option of including information in the field, ANR asserts it would have to incur added expense to redesign its EBB to include these fields.[22]

In general, the Commission understands that El Paso's and ANR's interpretation of the manner in which the data sets are designed to operate accords with the intent of the Working Groups, and the Commission agrees with that approach. The Commission, however, sees a need to provide further clarification of the operation of the data sets and the mandatory and optional characterization of certain fields. At the outset, it is important to recognize that these data sets must apply to all pipelines, and, therefore, the Working Groups had to design them to be flexible enough to accommodate the different operational characteristics and information requirements of different pipelines. Implementation of the data sets perforce will differ across pipelines.

The data sets are organized along the following lines. First, they are divided into generic groups for offers, bids, awards, withdrawals, operationally available capacity, and system wide notices. Some of these groups are then divided into specialized data sets, for example for receipt and delivery point information or for storage releases. Each of these subsets contain mandatory, optional, or contingent fields.

All pipelines must support the six broad categories of data sets. Pipeline support of the subsets within each category, however, may depend on the operational characteristics of individual pipelines.[23] For example, data sets are included for receipt and delivery point information and for segment information although not all pipelines are segment systems. Pipelines will choose from among the combination of these data sets the ones that best present the relevant information for their systems.

All pipelines choosing a particular data set will be required to support the mandatory fields in that data set. Pipelines are not required by this rule to support the optional fields. Some pipelines, however, may be required by their tariffs or other requirements, to support some of the optional fields.[24] Moreover, pipelines must display all information, whether mandatory or optional, on their on-line EBBs. For example, if a pipeline is not now displaying mandatory information on its on-line EBB, it must revise its display format to accommodate that information.

As mentioned earlier, the Working Groups are continuing to make refinements in the data sets. In making these refinements, they should make a further effort to clarify how pipelines must implement these requirements, such as which fields pipelines must support and which are optional.

Enron suggests the standardized data sets should be minimum requirements that pipelines can supplement to accommodate tariff provisions. As an example, it claims the data sets do not accommodate Florida Gas' proposal to permit several shippers temporarily to combine their capacity rights to facilitate release transactions.

The Commission is not sure what flexibility Enron is requesting. Pipelines cannot add or delete fields from the capacity data sets because standardization requires that all pipelines use the same structure for downloading, so shippers can process that information using the same computer software. For example, if pipelines could add new data fields, shippers' ASC X12 software might be unable to interpret the information because the software is keyed to the specific fields on the implementation guide. Moreover, the Working Groups anticipated the need to accommodate special release offers or unique circumstances and included special terms and miscellaneous note fields for providing such details.[25] As discussed previously, the Commission recognizes that pipelines may uncover difficulties in correlating their information requirements with the downloadable data sets and the Commission anticipated possibly having to make corrections to the data sets. The best way for pipelines to avoid problems is to begin the implementation process immediately so they can report difficulties to the Working Groups for resolution prior to implementation.

2. Date and Time Stamps

The proposal put forward by Working Groups 1 and 2 included fields identifying the date and time when release offers, bids, withdrawals of bids or offers, and capacity awards are posted on pipelines' EBBs. No consensus was reached over whether fields should be included to identify when pipelines actually received offers, bids, or withdrawals or made the determination to award capacity.

The NOPR proposed to require the inclusion of fields for bid receipt date and time, but not for the date and time offers and withdrawals were received or capacity awarded. Since releasing shippers and pipelines may choose the first come, first served method to break ties, the Commission found that routine posting of the bid receipt date and time would permit shippers to verify the award of capacity without having to contact the pipeline. The Commission did not propose to include the date and time fields for receipt of offers and withdrawals or capacity awards, concluding this information was not as important to capacity release transactions as the bid information. The Commission stated, however, that information about the date and time offers and withdrawals were received and capacity awards determined must be provided by the pipelines upon request.

Several commenters support the Commission's decision to include only the information about bid receipt in the standardized data sets.[26] Some request

[22] As an example of the difference in definition, an optional field is releaser contract number. Data Set I.1, line 6. Under ANR's definition, pipelines would have the discretion to include this field. Under the second interpretation, pipelines must provide the field so releasing shippers have the ability to include the information.

[23] The easiest example is the storage data sets which obviously will not have to be supported by pipelines without storage fields.

[24] The contingent fields are filled only when a condition in another field is met.

[25] Enron did not describe the specific problem created by combination offers, and the Commission cannot discern why it could not be accommodated within the prescribed data sets. For example, the combination offer could be assigned a single offer number (Data Set I.1, line 3) with any special circumstances described in the miscellaneous field (Data Set I.1, line 52).

[26] Power Generators, AER/MRT, Columbia Gas, Enron.

clarification as to whether pipelines must include both the date and time bids are received and posted as mandatory fields.[27] Process Gas Consumers Group contends the Commission should require inclusion of all the contested items. It contends the date and time for receipt of capacity withdrawals is particularly important because releasing shippers have only a limited right to withdraw offers; it maintains the date and time information is needed so bidders can determine whether that right has been exercised validly. It contends pipelines easily can make all the contested information available in electronic form. The National Registry requests that even if pipelines are not required to post information concerning the receipt of offers and withdrawals and determination of capacity awards, they should be required to provide this information in electronic form when requested.

The Commission adheres to its decision not to require pipelines routinely to post the receipt date and time for capacity offers and withdrawals and the date and time capacity awards are made. The Working Groups could not reach agreement on providing the additional information, and, as stated in the NOPR, the Commission does not find that this information is as crucial to capacity release, or will be needed as frequently, as the bid information. The Commission will not require pipelines to provide the additional information in electronic form, because such a requirement would not be significantly different than requiring the routine, electronic posting of this information, which the Commission has determined is not necessary. The ability of users to obtain the information for offers, withdrawals, and awards upon request appears sufficient. The Commission clarifies that both the bid receipt and bid posting data fields are mandatory.

PEC Pipeline Group contends the date and time for bids should be the posting time, arguing if receipt date and time is used, the information would be unreliable because the bids would not have been verified for accuracy. It maintains only the date and time of verified bids should be used to break ties.

The Commission agrees, in principle, that the appropriate information to include is the date and time used to break ties. However, in most instances, that will be the date and time bids are received, not when they are verified. For example, when bids are submitted near the end of bidding periods, the pipeline may not verify the bids until after the bid window closes. Under a first come, first served tie breaking system, capacity would be awarded to the highest bid received first in time even if the bid was not verified until later.

3. Operationally Available Capacity

The Commission proposed to adopt the Working Group's consensus agreement that pipelines provide information on the amount of unscheduled capacity available at specific locations, such as receipt and delivery points, mainline, or mainline segments. This field serves to identify the capacity that would be available as interruptible service from the pipeline. Edison contends this definition would not allow shippers to determine whether firm or interruptible capacity is available. It suggests operationally available capacity be defined as the capacity a firm shipper can nominate at a point, asserting this definition would include interruptible capacity that can be displaced by a firm shipper. Transco contends the amount of unscheduled capacity is proprietary information that would not be provided in the free market. Williston Basin does not oppose this requirement, but states shippers may be able to use this information only for trend analysis, not for making decisions on a daily basis.

The Commission finds the requirement to provide information on operationally available or unscheduled capacity is necessary to comply with the requirement that pipelines identify the interruptible capacity available on their systems.[28] The unscheduled capacity at a point reveals the capacity available as interruptible service. In response to Edison's comment, the Commission finds that the consensus approach is adequate at this point to disclose both the firm and interruptible capacity available to potential shippers. The operationally available capacity reveals interruptible service and pipelines also are required to post the firm service they have available.[29] The Working Groups still are considering issues relating to operationally available capacity, and the Commission will be open to modification of this definition if needed.[30]

ANR asserts that the data field for operationally available capacity should indicate that the data may be estimates. It also suggests an additional data field to enable the pipeline to qualify the accuracy of any information. The Commission agrees with ANR that the information in this field may be estimates and leaves to the Working Groups the decision on whether another field is necessary to convey information about how the estimates are provided.

As discussed earlier, NGSA suggested pipelines be required to make compliance filings and it submits that these filings include information on the locations at which operationally available information will be provided, the manner of display, and the timeliness of the data. WEV suggests generally that the information provided under the data sets be as current as the pipeline can provide. While pipelines will not be required to make compliance filings to implement this rule, they should provide users with adequate information about the locations at which they are reporting the information and the timeliness of the information, which should be as current as is possible. Since the Commission will have access to the pipelines' EBBs, it can monitor the adequacy of the information pipelines provide.

4. Disclosure of Minimum Conditions

Hadson contends the Commission should eliminate the field providing for disclosure of minimum price terms (Data Set I.1, lines 23 and 24). It contends disclosure of this information while the market is open facilitates collusion among releasing shippers to maintain higher prices in a falling market. The Commission will not eliminate this field because it comports with the Commission's policy of providing releasing shippers with the option of having their minimum conditions posted on the EBB.[31] This technical proceeding is not the proper forum to reexamine the Commission's policy in this regard. The Commission notes, however, that, in a free market, sellers can choose to disclose minimum price conditions if they find such disclosure beneficial. For example,

[27] KGPL (posting date and time should not be mandatory), NGSA (both should be required).

[28] See 18 CFR 284.9(b)(3).

[29] See 18 CFR 284.8(b)(3). Pipelines would post this information under the capacity offer data set I.1.

[30] For example, the Commission is not certain whether Edison and Transco principally are concerned with the definition of operationally available (or unscheduled) capacity or with the different, albeit somewhat related, issue of whether additional fields are required to divide scheduled (or nominated) capacity into firm and interruptible components. The issue of identifying the firm and interruptible components of nominated capacity is still under deliberation by the Working Groups, and Edison and Transco will have a further opportunity to address these issues in the Working Group meetings.

[31] See El Paso Natural Gas Company, 62 FERC ¶ 61,311 at 62,999–4 (1993). Releasing shippers choosing not to post their minimum conditions disclose those conditions only to the pipeline which then uses those conditions in evaluating bids.

stating a minimum price protects against the possibility a deal will fail simply because a buyer submits a bid lower than the minimum price even though it is willing to pay the minimum price if it had known this condition. Moreover, since minimum price terms are public, the Commission can monitor the situation, and eliminate this field, if experience shows it does facilitate collusion.

B. Communication Protocols

1. Electronic Data Interchange

The Commission proposed to adopt the recommendation of Working Group 4 by requiring EBB operators[32] to provide for electronic file downloading of the standardized data sets in compliance with ASC X12 EDI standards and an implementation guide to be developed by the Gas*Flow group.[33] ASC X12 standards provides an electronic data submission capability that allows computers to exchange information over communication lines using standardized formats. To facilitate these transfers, the ASC X12 standards provide standardized transaction sets for different types of transactions, such as requests for quotations and responses to such requests.[34] Since the ASC X12 transaction sets provide generic data groups applicable to a range of potential applications, the transaction sets must be customized to individual applications by correlating or "mapping" the specific information to an ASC X12 transaction set through an implementation guide.

The Commission anticipated Gas*Flow would be able to receive industry input and submit a final implementation guide to the Commission within a month after promulgation of the final data sets. The Commission also proposed to require file downloads in a flat ASCII format in accordance with documentation developed by Gas*Flow, but requested comments on whether requiring downloads in ASCII format was needed to supplement the downloads in ASC X12 format.[35]

a. ASC X12. A few comments address the proposed implementation date for ASC X12. Tenneco asserts the April 1, 1994 implementation date should not include EDI compliance, because EDI should be implemented only when trading partners agree. AER/MRT suggest the date is too ambitious for ASC X12 implementation. PEC Pipeline Group maintains ANSI must approve the implementation guide developed by Gas*Flow and asserts obtaining this approval could affect the timing of ASC X12 implementation as well as the commitment of ASC X12 software vendors to guarantee the use of their software with these data sets. Despite these concerns, PEC Pipeline Group is willing to go forward and implement ASC X12 based on Gas*Flow's recommendations.

Working Group 4 found that ANSI approval of the data sets was not necessary to go forward with ASC X12 implementation, because the information could be mapped to an existing ASC X12 data set.[36] This is the task Gas*Flow will perform. Only one comment suggested that the April 1, 1994, date was too ambitious for ASC X12 implementation. Since the Commission has now extended the implementation date to June 1, 1994, EBB operators should have sufficient time to program their computer systems to make ASC X12 downloads available by that date.[37]

Tenneco argues no implementation date for ASC X12 be set, contending implementation should occur when trading partners agree. As the comments suggest, EBB operators need lead time to modify their system to incorporate ASC X12 downloads. The Commission, therefore, concludes it needs to set a date by which ASC X12 downloads will be available to ensure that users wanting this service can obtain it expeditiously. As specified by Working Group 4, the details of any special arrangements for access to ASC X12 data between the pipeline and a trading partner would be worked out between those parties.

Other commenters address the Commission's proposal to use Gas*Flow to prepare the implementation guide. UDC and Tenneco support the use of Gas*Flow, but Tenneco suggests the Gas*Flow documentation should be submitted to the Working Groups prior to submission to the Commission. Columbia Gas believes the Commission's estimate of one month for Gas*Flow to prepare the implementation guide is overly optimistic and provides too little opportunity for the industry to participate in development.

The Commission expects Gas*Flow to continue its current procedure of receiving industry comment on its proposed implementation guide and to submit the guide to the Working Groups for their final approval. The extension of the implementation date until June 1, 1994, provides Gas*Flow with sufficient time to obtain industry input and still finalize the implementation guide in time for the industry to meet the June 1, 1994 date. Working Groups 1 and 2 and Gas*Flow should coordinate their efforts to ensure that any additional revisions made by the Working Groups in the data sets are made in sufficient time to ensure that EBB operators can implement the ASC X12 downloads by June 1, 1994. Once the implementation guide is completed, the Commission will include the guide with its data sets.

b. ASCII downloads. A number of commenters contend ASCII downloads are not needed to supplement ASC X12.[38] They generally argue mandating a second download in ASCII format is not worth the increased expense and maintain the resources could be better devoted to development of ASC X12. They recommend ASCII downloads should remain a pipeline option, as proposed by Working Group 4. AER/MRT and Northwest, on the other hand, recommend ASCII downloads replace ASC X12, contending that ASCII is less costly, and faster and more efficient to implement than ASC X12 and that their customers prefer ASCII to ASC X12. Others support the Commission's proposal of maintaining ASCII as an adjunct to ASC X12 since some users may not have ASC X12 capability and ASCII would ensure those users could download the data.[39]

The Commission will not substitute ASCII downloads for ASC X12 as suggested by Northwest and AER/MRT. Even if ASCII downloads would be less

[32] The Commission is adopting Working Group 4's use of the phrase "EBB operator" in the protocols. An EBB operator is either a pipeline or a third-party vendor providing EBB services for a pipeline, and pipelines relying on third-party vendors must ensure they comply with these standards.

[33] Gas*Flow was organized to promote the acceptance of ASC X12 EDI in the gas industry. It is composed of representatives from the gas industry, including local distribution companies, marketers, producers, shippers, and pipelines, and operates under guidance from the Natural Gas Review Committee.

[34] Because the ASC X12 transaction sets have been standardized, commercial software and consulting services are available to assist users in translating data from standard program files to the standardized ASC X12 formats and vice versa.

[35] The flat ASCII files also could be transmitted electronically over communication lines.

[36] Working Group 4 Report at 9.

[37] ASC X12 downloads must be made available to any party, including a value added network (VAN). A VAN is a communications or information system providing an aggregation, routing, and delivery service. In effect, a VAN provides a user with an electronic mailbox for receiving information.

[38] Columbia Gas, El Paso (noting software can translate between ASCII and ASC X12); Enron, INGAA (ASC X12 is more comprehensive and ASCII might not be demanded after ASC X12); National (contending EDI software costs only $500), Natural, WEV, and NGSA (customers wanting ASCII should have to pay the costs).

[39] Brooklyn Union and Process Gas Consumers Group (but noting ASCII may be of limited value unless software developers or the users themselves develop programs to extract the needed information).

expensive to prepare initially, as Northwest and AER/MRT contend, the consensus of the industry was to provide for download capability using ASC X12 because it provided significant benefits when compared with downloads using ASCII format. Some of these benefits include the availability of already standardized and well-accepted procedures and the concomitant software and businesses available to implement the technology. The Commission anticipates that, as ASC X12 is more widely used in the gas industry, users will recognize the advantages to using ASC X12, as they have in other industries, and it will become the industry standard for communication. Nevertheless, to ease the transition to ASC X12 for those customers not yet familiar with the ASC X12 technology, the Commission will require EBB operators to provide for downloading capability in a flat ASCII format as well.

2. Protocols for Communications Software and Hardware, Access Requirements, and Log-On Procedures

Commenters raise questions about the Commission's proposed protocols relating to the software and modem speeds used to access EBBs, the requirements for obtaining access to EBBs, and the procedures and principles for logging-on to computers. Columbia Distribution argues the Commission's proposed protocols fail to reflect two principles to which the pipelines agreed: the pipelines' recognition of the need to develop a mechanism under which users can log-on to multiple EBBs with one phone call; and their commitment to work in good faith to address other customer concerns, such as log-on procedures, additional file transfer options, and other logistical concerns. IPAA suggests a standardized basic user interface must be developed, as opposed to each pipeline specifying a different communications package.

Because the statements mentioned by Columbia Distribution reflected a goal for future discussions, rather than a consensus on specific procedures or principles, the Commission did not include them in its current protocols. The Commission recognizes that further standardization of access requirements could reduce the burden on users which have to access many pipeline EBBs. But Working Group 4 concluded, from its review of pipeline EBBs, that adoption of one standard communication package for accessing EBBs was made impracticable at this time by the proliferation of different hardware and other operating considerations used by the various pipeline EBBs.[40] Instead, it reached consensus on the principle that each EBB operator must provide a script detailing its log-on procedures which is compatible with the software package used to access the EBB and must provide for file downloads through VANs.[41] The Commission, therefore, will not require further standardization in this area at this time, but will leave any such modifications to the continuing Working Group deliberations.

Columbia Distribution also asserts some pipelines are proposing to make electronic contracting mandatory for certain transactions; it contends electronic contracting raises legal and business practice issues that should be addressed by the Working Groups. Issues regarding electronic contracting are legal and policy concerns that have been addressed in restructuring or other proceedings[42] and are beyond the scope of this rulemaking, which focuses on technical issues of how to exchange information. The Working Groups have more than enough technical issues to consider, and the expertise of these groups lies in the technical, not policy, arena.

Northwest contends the Commission should not require pipelines to support the 2400 baud modem speed because any speed slower than 9600 baud will place too great a burden on the EBB communication network. It recommends each pipeline be able to choose the appropriate modem speed so long as it identifies the hardware necessary to access the EBB. Working Group 4 reached consensus on the principle that pipelines must support a minimum modem speed so all potential users will have reasonable access to the EBBs.[43] The Commission will not disturb the consensus, since Working Group 4's rationale is reasonable and the Commission has no data on the impact on user access of permitting pipelines to require higher modem speeds.

The Commission recognizes that modem speeds higher than 9600 are in use. The Commission is amending the protocols to provide that EBB operators supporting such higher modem speeds must comply with the recognized national or international standards governing modem communication.

Transco recommends changes to three of the communication protocols. First, it argues the Commission should clarify that the requirement for 24-hour EDI access (protocol ID) is subject to two separate contingencies, required periodic maintenance and unpredicted downtime. The Commission sees no need to change this language from what was proposed by Working Group 4; the possibility of unforseen events causing computer problems is well understood and need not be addressed separately. Second, Transco contends the Commission's proposed language on advance authorization for third-party access to commercially sensitive data (protocol IIIA) is unclear because it does not specify that the pipeline's customer must provide the authorization.[44] The Commission agrees that the customer must authorize access to commercially sensitive data and will modify this principle accordingly. Third, Transco asserts the Commission's proposed language for log-on scripts (protocol IVB) does not reflect the principle put forward by Working Group 4, because it fails to make clear that the script for customized software packages is part of the customized package, not a separate software code. The Commission will modify this protocol to reflect this principle.

C. Common Codes

1. Introduction

In the NOPR, the Commission found the post-Order No. 636 business environment and the computerization of capacity release transactions required the development of common, standardized codes in two areas: Codes to identify companies; and common transaction point codes to enable shippers to use a single coding structure to identify pipeline points, particularly interconnect points between pipelines. Working Group 5 had identified, but had not finalized, a process for developing both sets of codes. In the NOPR, the Commission stated that it expected Working Group 5 to finalize its proposal for common company codes by February 1, 1994.

For common transaction points, Working Group 5 proposed an approach in which a third-party (code assignor) would prepare a computerized cross-reference table correlating pipelines' proprietary codes (as verified and updated by the pipelines) to a common code. Those wanting to use the common code would maintain the cross-reference

[40] Working Group 4 Report at 6.

[41] By using a VAN, a user could have files from multiple pipelines delivered to its electronic mailbox, obviating the need to log-on to each of the pipelines' EBBs individually.

[42] See Questar Pipeline Company, 62 FERC ¶ 61,192 at 62,307–08, aff'd, 64 FERC ¶ 61,157 at 62,283–84 (1993); Transcontinental Gas Pipe Line Corporation, 65 FERC ¶ 61,023 slip op. at 90–93 (1993).

[43] Working Group 4 Report at 15.

[44] A pipeline customer might want to authorize an agent to obtain commercially sensitive information about the customer, such as the customer's nominations, from the EBB.

table on their computers and could convert proprietary pipeline codes to the common code, and *vice versa*. The Commission was concerned about the feasibility of this process, at least in the short term, because Working Group 5 had not worked out the details of the approach (such as how to select a code assignor, pay for the costs of the initial assignment and continued maintenance, or distribute the code) and had suggested this process be undertaken by a yet undeveloped gas industry standards board. Due to the importance of this issue, the Commission gave the Working Group until October 1, 1993, to finalize this approach or reach another consensus approach. If no consensus was reached, the Commission proposed to select a common code and require the pipelines to make the translation to the common code. The Commission requested comments on whether it should adopt the PI–GRID code developed by the Petroleum Information Corporation or another common code.

Many commenters support the development of a common code and the selection of the PI–GRID code if consensus on an alternative is not reached.[45] Columbia Distribution and Exxon contend the pipelines, not the users, should make the translation. Pipelines contend that requiring them to make the translation to the common code would increase costs significantly, because it would affect all their computer operations, such as those for accounting, scheduling, and management, which are based on the use of proprietary codes.[46] They assert Commission selection of the common code could impede the cooperative efforts of the industry to date and recommend the Commission permit Working Group 5 to continue its efforts.

On October 12, 1993, Working Group 5 filed its report which detailed its consensus agreement on a code assignor process along the lines of its previous proposal. As discussed below, the Commission is adopting the Working Group's proposal.

2. The Proposal

The common code structure proposed by the Working Group would consist of two components. The first would be the code number itself, a 16 digit number, which according to the Working Group, would provide the user with some information about each point.[47] The second is a common code data base consisting of data elements that will be associated with each common code. These data elements include such information as the name of the point, the owner operator of the point, a flow indicator showing the direction of gas flow at the point, and a point locator (e.g., geographic coordinates, survey coordinates, or line number or mile marker) to be provided when the information is available.

Under the proposal, PI–GRID will be the code assignor and will provide a copy of the data base to any requestor at a price reflecting only its distribution and handling costs. The Working Group also proposes that various Code Distributors will enter into agreements with PI–GRID to distribute the code. These agreements would provide that the Code Distributors would not be able to charge for the data base itself, but would be able to charge for other "value added" services, such as selective extraction of information from the data base.[48]

Based on discussions with PI-GRID, the Working Group anticipates six months will be required to establish and validate the common codes for a large majority of interstate pipelines. If the industry begins the coding process this winter, the Working Group expects the creation of a complete common code data base by the 1994–95 winter heating season.

Under the proposal, all business will be transacted with pipelines using proprietary codes. Those wanting to use the common code will have to program their computers to translate between common and proprietary codes to communicate with pipelines. Pipelines will be required to verify and validate their proprietary code information to PI-GRID. The proposal also provides for ongoing assignment of new transaction points and modifications to existing points. The information for these revisions must be provided at least ten days before a new or modified code goes into effect.

The Working Group states that, at this point, the demand for common codes is unknown; some parties using only one or a small number of pipelines may prefer to continue using proprietary codes. Given this level of uncertainty, the Working Group contends the code assignor process provides a number of benefits compared to a requirement that all pipelines adopt a common code. It provides a verified and validated common code system to those who need it, while ensuring that the costs of using common codes are borne by the users, not those still preferring to use proprietary codes. It will provide consistent communication between pipelines and customers using proprietary codes, avoiding the difficulties that would be created if business transactions and other customer contacts employed different coding systems. And, it will provide an initial first test of the level of demand for, and efficiency of using, a common code. Should a common code prove efficient, the Working Group expects the market to evolve to the point where common codes will be used for all communications.

3. Comments on the Working Group Filing

Process Gas Consumers Group and NYMEX/Enersoft raise objections to the code assignor process. Process Gas Consumers Group objects to the shipper having the responsibility for maintaining a rather large data set on its computer and having to develop, or acquire from others, the "intelligence" needed to compare capacity release offers among pipelines to identify possible alternative transportation paths.[49] It maintains that the most burdensome task facing pipelines is verifying their proprietary codes and that including the common code in the capacity release data sets would not be particularly burdensome. It emphasizes that including such codes in the data sets would be for informational purposes only, and would not require the pipelines to conduct business using the common codes.

NYMEX/EnerSoft contend pipelines should not be able to require customers to communicate using proprietary codes, because users will then have to obtain translation software to convert the common codes to the proprietary codes. It maintains that having the pipelines perform the translation is preferable since there are fewer pipelines than market participants.

[45] Power Generators, NYMEX/EnerSoft, WEV, IPAA, Destec Energy, FMA, NGSA, Edison, WEV.

[46] Columbia Gas, Enron, INGAA, KGPL, Natural, Transco, Tenneco.

[47] For example, for each non-well facility point, the first two numbers indicate the state; the second three, the county; the next five a surface location within the state; the next two, the facility code; the next two, a sub number identifying components of certain types of facilities (e.g., gas plant inlets from tailgates); and the final two, a detail number identifying multiple facilities at the same location.

[48] The Working Group envisions a series of contracts, beginning with a master agreement between PI–GRID and a consortium of the gas industry. If a gas industry standards board eventually is developed, it would then take over this contract. PI–GRID would enter into contracts based on the master agreement with Code Distributors, and the Code Distributors would enter into agreements with users specifying the services Distributor will provide.

[49] It also suggests that a common code system could include mile markers or other geographic location information so software could identify delivery points either upstream or downstream of a location.

The other commenters support the code assignor process. AER/MRT supports the use of proprietary codes for communication between pipelines and users, because use of one code will minimize the likelihood of miscommunication. It also argues requiring shippers to perform the translation appropriately requires those using common codes to bear the costs of that use. Gaslantic contends the Commission should ensure that initial and updated common codes are distributed on an open-access basis, and IPAA similarly supports the provision of the data base without cost.

The National Registry suggests two clarifications. It is concerned about the possibility that PI-GRID, as code assignor, might delay distribution of the code in order to degrade the value of services provided by competitors. It suggests PI-GRID should be required to file a letter with the Commission when it has completed more than 90% of the cross-referencing for each pipeline and provide the code to distributors at that point. It further contends that information on the location of points (such as geographic coordinates or pipeline line number of mile marker) is critical, but that the proposed data sets requires this information to be included only when available. It maintains the Commission should clarify when this information must be provided, suggesting it should be supplied for path pipelines, but not for point-to-point or network pipelines.[50] In line with this request, it suggests the Commission require pipelines to include in their next Form 567 filing an identification of the proprietary point code associated with the points in the flow diagrams.[51]

4. Commission Adoption of the Working Group Proposal

Given the level of support for the code assignor process, the Commission accepts the Working Group proposal and will implement it by requiring pipelines to provide a mechanism through which any person can obtain a validated computerized data base that will provide the ability to convert from pipeline proprietary codes to a common code. The Working Group stated the code assignment process could be completed by the start of the 1994–95 winter heating season, and the Commission, therefore, will require the implementation of this approach by November 1, 1994. The Commission also will require pipelines to ensure that the common codes and data base, and any updates, will be provided without charge, except for reasonable distribution and handling fees.

The Commission will adopt the data sets as proposed by the Working Group with one modification. The Commission will require that the point locator information be mandatory. The Commission agrees with the commenters that the ability to locate pipeline points in relation to other points on the system is important if users are to use the common code data base to determine if a package of released capacity fits their needs. When pipelines verify their proprietary codes to PI-GRID, they must include information sufficient to enable users to locate a point on one pipeline in relation to other points. At this point, the pipelines can choose the method of locating the points, such as geographic coordinates, line number or line marker, but the Commission envisions that eventually all pipelines should move to using geographic coordinates so that points on different pipelines can be related to each other.

Gaslantic and IPAA support the provision of the data base and updates at no cost to the user. The Working Group report states distributors cannot charge more than postage and handling costs for providing the code itself, but can charge for value added services. The Commission is requiring the pipelines to ensure that users can obtain the data base and any updates at a price that reflects only reasonable costs of distribution and handling. Additional charges, however, may be assessed for other value added services relating to updates.

The requirement that point locator information be mandatory for all pipelines obviates the requests by the National Registry for a further definition of the term "available" to describe when point locator information will be provided and for requiring point location disclosure in Form 567 filings. The provision of point locator information also should satisfy Process Gas Consumers Group's request for geographic location points.

The National Registry suggests that the Commission require PI-GRID to file a statement with the Commission when it has completed more than 90% of the cross-referencing for each pipeline and provide the code to distributors at that point. The Commission has set a deadline for final dissemination of the common code data base and finds no reason to require filings as the data are compiled or piecemeal implementation.

NYMEX/Enersoft contend pipelines should be required to conduct business using common codes. The Commission will not impose this requirement at this time, since it goes beyond the consensus agreement reached by Working Group 5. Shippers will be able to use the cross-reference table to convert electronically from the common codes to the proprietary codes for communication with the pipeline.

Process Gas Consumers Group maintains that including the common codes in the capacity release data sets would be more efficient, although they do not suggest pipelines be required to conduct business using the common code. This suggestion too goes beyond the consensus agreement reached by the Working Groups, and the Commission will not impose it.

Moreover, even if the common code (consisting of 16 digits) was included in the capacity release data sets, the efficiency of the process might not be enhanced to a significant degree. The extensive data base that goes along with the common code would not be on the EBBs, and users may very well need the underlying data base to provide the information they require to perform an analysis of capacity paths. As described earlier, the sequence of numbers in the code itself provides users only with limited information, such as identifying the state and county of the point. But the entire common code data base provides additional information about points, such as the point locator information, that users may well need to use the common code effectively in comparing capacity releases over multiple pipelines. The Commission further notes that Working Groups 1 and 2 have included an optional field for common codes which pipelines may make available to their users. Use of this field may provide a test of whether bidders would derive value from access to the common code numbers, without also having the underlying data base available.

In conclusion, the Commission finds that the industry has taken a positive step forward by designing a process that will ensure that those wanting to use common codes can do so effectively within a reasonable period of time. The Commission expects use of this system will prove to enhance efficiency by better enabling shippers to manage the transportation of gas supplies across the nationwide pipeline grid. As pipelines review and update their computer and financial systems in light of the changed business environment created by Order No. 636, the Commission expects them to incorporate the use of common codes. Ultimately, the Commission anticipates

[50] It similarly seeks clarification that available information will be validated and become part of the cross-reference table.

[51] Form No. 567 is diagram of the operating conditions on the pipeline's main transmission system for the prior year. 18 CFR 260.8.

that the common codes ultimately will become the standard used for all transactions and communications between pipelines and their customers.

VII. Issues not Addressed in the Standardized Data Sets and Communication Protocols

The Working Group reports included minority positions on some issues, and these issues also were addressed in the comments on the Working Group reports. On several issues, the Commission recommended that the Working Groups continue their efforts to seek resolution, with reports to be made by February 1, 1994. Others involved policy questions which the Commission found were beyond the scope of this proceeding and would be better examined in other fora.

A. Proposed Additions to the Standardized Data Sets

1. Index of Purchasers

The National Registry proposed that an Index of Purchasers (Index), which would disclose a variety of information about the capacity rights of firm capacity holders, be available on EBBs and through downloadable files.[52] It asserted this index could be used to establish the baseline contractual rights of current holders of pipeline capacity, information which it believed was needed so potential purchasers could determine the releasable rights of firm capacity holders. In the NOPR, the Commission did not propose to include the proposed Index because the proposal appeared too burdensome and costly. But the Commission stated it considered a more limited Index to have value in identifying firm shippers with releasable capacity. It suggested the Working Groups work on a cost-effective method of presenting such information.

Many commenters contend the benefits of an Index do not warrant the cost, since shippers willing to release capacity are free to post offers to sell and potential purchasers can post so-called want ads, advertising the capacity they want to acquire.[53] INGAA suggests the Commission not prejudge the outcome of this issue, but instead permit the Working Group process to determine whether an Index in any form is appropriate.

Others contend an Index would be valuable in providing convenient access to baseline information on those holding firm service so buyers could determine whom to approach to negotiate prearranged deals for capacity.[54] They contend the Index would replace the index of sales customers pipelines previously maintained and should not be difficult for pipelines to provide.

The Commission will not decide this issue now because it is still being considered by the Working Groups. But the Commission continues to find merit in the concept of providing a cost-effective electronic Index of purchasers and expects the participants in the Working Groups to consider this issue in the same open-minded and conciliatory manner they used to build consensus on other issues in this proceeding.

The Commission also did not propose to make data items for contract number and replacement contract number mandatory fields, finding that these items were tied to the proposed Index.[55] The National Registry contends its request to make contract and replacement contract numbers mandatory fields is independent of the Index. It asserts these data are needed by the Commission, state commissions, and others to create an audit trail to verify the ownership of capacity being released and acquired.

Although the Commission will not require the inclusion of contract and replacement contract number in the data sets at this time, it does recognize that pipelines will need to maintain a correlation between release transactions and the contracts resulting from those transactions for Commission audit requirements if not also for the pipelines' own purposes. Since pipelines must maintain this information in any event, the Working Groups should consider making this information mandatory in the downloadable data sets to make access easier.

2. Nominations for Firm and Interruptible Capacity

No consensus was reached in the Working Groups whether to include fields showing confirmed firm and interruptible nominations and a field showing whether no-notice service is available at a location. Proponents of providing this information contended it was needed for releasing shippers and bidders to assess the value of released capacity, while opponents maintained it is not needed to bid on capacity, but would unfairly tilt the market in favor of bidders. The parties also disagreed on the availability, and costs, of providing the information.

In the NOPR, the Commission found that the available information did not permit it to resolve the issue. Moreover, the Commission recognized the Working Groups had little time to consider this matter fully and, therefore, strongly encouraged them to continue their discussions and to explore alternatives for providing information relevant to the purchasing of capacity that is operationally feasible to provide at reasonable cost.

The comments on the NOPR essentially parallel the previous positions: proponents state the information is needed to make business judgments and is information that would be available in a free market;[56] opponents contend it would undermine capacity release, is too costly to provide, would not be provided in a free market, and unfairly requires shippers to divulge competitive information that would be used against them.[57] NGSA and Destec Energy comment that the Commission must be prepared to judge the merits of disputes, like this one, which are based on competing economic interests. FMA asserts that for unresolved disputes, special consideration should be given to the views of end-users, because they are the ones paying for natural gas and transportation.

The Commission finds that the Working Groups should continue to examine and explore means of reaching a compromise on this issue. The Commission does not agree that the views of any one group should predominate over others. The parties should seek to accommodate each other's interests, as they have on other issues, a process more likely to produce a resolution preferable to both sides than if the Commission decides. Should agreement on whether to provide the information prove elusive, the parties should, at a minimum, seek to agree upon a cost effective method of providing the information if the Commission determines it is necessary.

[52] The Commission requires pipeline tariffs to include an index of firm capacity holders, with less detail than what was proposed by the National Registry. Tennessee Gas Pipeline Company, 65 FERC ¶61,224 slip op. at 182 (1993); 18 CFR 154.41.

[53] AER/MRT, Columbia Distribution, Con Edison (if Index is adopted, it should be operated independently and funded by subscribers), Enron (too costly and burdensome); KGPL, Natural, UDC, Williston Basin.

[54] FMA, IPAA, NGSA.

[55] The releaser's contract number is an optional field and so may be included by pipelines when they deem such information to be necessary for operation of their systems.

[56] Power Generators, Destec Energy, FMA, Edison.

[57] Columbia Distribution, Con Edison, Enron, KGPL, National, Natural, Transco, and UDC.

B. Communication Protocols for Uploading Files and Downloading Subsets of Files

In the NOPR, the Commission stated that development of standards permitting users to transmit (upload) files to the pipelines' computers as well as to download subsets of files could increase the efficiency of the capacity allocation mechanism. File upload capability, for example, would permit bidders to submit their bids electronically without having to sign-on to the pipelines' on-line EBBs. The ability to download a subset of a capacity release file, such as release information received after a certain date, would permit users to eliminate unneeded information from the files they download and also increase the efficiency of the communication process. The Commission endorsed Working Group 4's plan to continue its efforts to develop these capabilities.

Many commenters support file uploading to provide efficient communication.[58] Others, principally pipelines, raise questions about file uploading. They contend file uploading is not as well suited as on-line EBBs to handling bids submitted near the close of bidding periods, because, unlike EBBs, uploading is not an interactive system permitting immediate notification to bidders of errors in their bids.[59]

Edison states downloading of file subsets should be a priority. Columbia Gas maintains downloads of subsets based on dates is reasonable, but adding other criteria could be burdensome, while Williston Basin contends any subset downloads would be too expensive. UDC suggests the Commission should not mandate file uploading or downloading of file subsets, but should trust the market to develop these capabilities if they are needed.

The Commission is convinced that the development of effective file uploading and subset downloading capability would markedly enhance communication efficiency related to capacity release. Working Group 4 should continue to assign a high priority to developing standards in this area. The Commission recognizes the concerns with uploads submitted close to the end of the bidding period, but is confident the Working Groups can develop the necessary standards to deal with this issue.[60]

C. Standardization of Non-Capacity Release Business Transactions

The industry established Working Group 3 to consider the development of standards relating to business practices, other than capacity release, resulting from the business changes fostered by pipeline restructuring under Order No. 636. In its report, the Working Group did not propose any standards; it outlined the areas of highest priority and its process for continuing to examine these issues. Several commenters support the continuation of these efforts, maintaining standardization of these business data is critically important to the industry.[61] Vesta contends the Commission should require the pipelines now to provide the 16 data items tentatively established by Working Group 3 as being the most critical. Others oppose the continuation of Working Group 3's deliberations, arguing standards in these areas are not required by Order No. 636 and the Commission should limit its promulgation of standards to those essential for capacity release.[62]

The Commission has recognized the restructuring occasioned by Order No. 636 likely will result in changes to business practices, apart from capacity release, which could require further standardization.[63] Standardizing capacity release information was the first step in this process, but now the Working Groups should turn their attention to standards for these other business transactions.

From over 66 items proposed for review, Working Group 3 found 33 to be of high priority, and of those 33, focused its initial review on ten elements.[64] In the Commission's view, standardization of these ten, or most of them, would provide a good departure point for this effort. The Commission realizes all facets of the industry may not have equal need for all these elements, but these elements would appear to have wide enough coverage that the benefits from standardization will be widespread. Moreover, once standards are in place, those who may not now perceive a need for standards, may come to realize the standards will make their business more efficient, and even those who do not need the standards themselves, stand to benefit if other segments of the industry become more efficient.[65] The Working Group should propose an appropriate implementation schedule for the ten identified data elements. The Working Group also should continue its efforts to identify which of the remaining 23 high priority data elements, as well as any others, require standardization and propose a schedule for implementation of standards for these elements as well.

D. Policy Issues

The minority reports and initial comments raised questions about three policy issues: the method of recovering the costs of standardization, pipeline disclaimers of liability for EBB operation, and the disclosure of non-price considerations underlying capacity release transactions. The Commission stated in the NOPR that such substantive policy issues are beyond the scope of this proceeding and are more appropriately considered in individual proceedings.

1. Costs of Standardization

In the NOPR, the Commission recognized the concern of firm shippers that the costs of compliance with the EBB standards should be spread equitably across all those benefitting from the standards. The Commission encouraged the industry to consider methods for ensuring equitable sharing of such costs, such as user or access fees.

Many commenters support development of a fair and equitable method of allocating costs.[66] Transco and Williston Basin maintain EDI, in particular, is not suitable for all customers and suggest the costs of implementing this technology should be borne by those benefitting from it. PSCW contends LDCs should not have to subsidize the costs of providing information benefitting other parties

[58] Power Generators, Columbia Distribution, Con Edison, NYMEX/EnerSoft, Edison, Tenneco (noting effort should not be oversimplified), WEV, and Williston Basin (noting uploads must be coordinated with interactive EBBs, especially at the end of bidding periods when quick action is needed).

[59] El Paso, Natural, Transco, Northwest, KGPL, National (also may expose pipelines' computers to security risks, such as viruses).

[60] For example, one possible approach the Working Groups could consider is whether all bids received within some time period prior to the close of the bidding period should be treated as having been received at the same time.

[61] Exxon, NGSA, O&R.

[62] PEC Pipeline Group, UDC, Tenneco.

[63] See Order No. 636–A, III FERC Stats. & Regs. Preambles at 30,459 (standards may be needed to ensure efficient movement of gas across pipelines); March 10, 1993, Notice (capacity release standards first step in standardization).

[64] The ten elements were: timely flowing volume; timely volume allocation reports; predetermined allocations and shipper ranking; imbalance status; customer scheduled receipts and deliveries; customer specific curtailment/interruption information; customer specific operational flow orders; daily nominated volume acknowledgement; customer penalty status; and input and modify gas nominations. Working Group 3 Report at 5–6.

[65] For example, if standards reduce producers' costs or result in making gas a more viable option for fuel switchable users, all will benefit from lower prices and greater use of the gas transportation system.

[66] AGA. UDC, WEV.

and suggests an incremental pricing system for all information beyond a basic level. A number of commenters are concerned about leaving the issue solely to rate cases.[67] They maintain the policy needs to be consistent across pipelines and urge the Commission to decide on the method for allocating costs in this proceeding or in another generic proceeding, leaving implementation to individual rate cases. Power Generators opposes inclusion of this issue in the Working Groups, because the success of the Groups was due to their focus on technical issues.

El Paso, Tenneco, and INGAA contend user or access fees are not appropriate for recovery of upfront costs, and Natural expresses concern that access fees may not be sufficient to compensate pipelines.[68] FMA suggests, in the absence of consensus on a new approach, the proper approach is to continue with the Order No. 636 policy of recovering fixed costs through reservation charges and only variable costs through usage charges.

In general, the Commission finds that its previous policy of permitting the pipelines to recover fixed costs through a reservation charge and only variable costs through a usage charge is appropriate for the basic EBB service. This basic service includes, at a minimum, the downloadable data sets and communication protocols established in this rule, which the Commission finds are necessary to promote a viable capacity release market and should provide generalized system-wide benefits to all users of the pipeline grid. Until additional standards are presented, the Commission cannot determine whether they provide sufficient benefits to the industry as a whole to warrant inclusion in the basic EBB package.

For enhancements to the basic EBB service, which are not of general benefit, the Commission is open to considering cost recovery approaches that will recover fixed costs from the limited number of users deriving benefit from the service. The Commission encourages the industry to pursue such approaches.

As an example, pipelines could consider using a process for recovering the costs of enhancements to the standard EBB package from only those customers that subscribe to the enhancements. The pipeline could explore with the users of its EBB the costs of providing a particular service or group of services and methods of recovering these costs from the subscribing users, such as through access fees, reservation charges, or direct charges. The pipeline and the users also could establish mechanisms for reimbursing the initial subscribers if additional users later evince an interest in obtaining the services. Once having obtained agreement from those customers desiring the service, the pipeline could make a tariff filing to establish the method of recovery or submit an application or petition for a declaratory order requesting advance Commission review of the proposed costs and charges.[69]

2. Liability

Several commenters suggest the liability standard for EBB operations should be the same across all pipelines and, therefore, should be resolved either in this proceeding or in another generic proceeding.[70] Peoples Gas, *et al.*, supports consideration of the issue in individual proceedings, but suggests the Commission restate here its standard that pipeline liability for EBB operations should be no different than for other operations. UDC asks the Commission to state that it will enforce its standard. Some parties contend the Commission should adopt a new standard, arguing EBBs are not like other pipeline operations since parties other than the pipeline are responsible for providing information.[71] Because verification of such information is time consuming, they recommend each party ensure the accuracy of the information it provides. Con Edison, in contrast, argues that pipeline tariff provisions regarding EBB user indemnification of the pipeline are too onerous and hold the EBB user to a higher standard of responsibility than applies to the pipeline. Enron contends the issue is beyond the scope of this proceeding.

The Commission agrees that this issue goes beyond the technical concerns with standards development which were the focus of this proceeding. The Commission can determine policy related issues in individual cases without having to establish a new generic proceeding and already has addressed this issue in restructuring orders. The Commission has adopted the principle that a pipeline's liability for EBB operations should be the same as for its other operations.[72] The Commission also has addressed user liability standards in individual restructuring orders based upon the specific pipeline EBB agreement.[73] In general, the Commission has determined that a user's liability for unauthorized use of a customer identification number is limited to negligence or a wrongful act.

3. Non-Price Considerations

O&R contends standards are needed to guard against capacity releases involving deals for indirect consideration, such as capacity release transactions tied to gas supply arrangements. It asserts this issue is not better addressed in individual proceedings, but requires a definitive policy statement. The Commission adheres to its conclusion that this issue is outside the scope of this technical rulemaking and should not be an issue considered by the continuing Working Group sessions. The Commission has addressed this concern in individual restructuring proceedings based on the facts and circumstances in each case.[74] As pointed out previously, should the Commission decide a general policy in this area is required in the future, the Commission need not articulate its policy through a generic proceeding, but can do so in individual proceedings.

E. Gas Industry Standards Board

Several of the Working Group reports, and initial comments, endorsed the development of a Gas Industry Standards Board (GISB) which ultimately would replace the Working Groups and continue the development and maintenance of industry-wide standards. In the NOPR, the Commission stated it was interested in this concept and invited submission of a proposal as to how it would operate.

Many commenters support an industry standards board in concept as long as all industry segments are represented, but noted the concept is still in the planning phase so any detailed comments would be premature.[75] A number of commenters

[67] AER/MRT, Brooklyn Union, Columbia Distribution, UDC.

[68] INGAA suggests direct charges may be appropriate for additional services and features that go beyond the standards to be adopted by the Commission.

[69] 18 CFR 385.204, 385.207. This process would be similar to the advance approval for research, development, and demonstration projects. 18 CFR 154.38(d)(5).

[70] Columbia Distribution, Con Edison, NGSA, NYMEX/EnerSoft.

[71] Tenneco, Con Edison, NYSEG, WEV (knowingly providing false information should subject provider to damages).

[72] Algonquin Gas Transmission Company, 65 FERC ¶ 61,019 slip op. at 23–24 (1993); Great Lakes Gas Transmission Limited Partnership, 65 FERC ¶ 61,004 slip op. at 29–30 (1993).

[73] South Georgia Natural Gas Company, 64 FERC ¶ 61,251 slip op. 11–12 (1993); East Tennessee Natural Gas Company, 65 FERC ¶ 61,223 (1993).

[74] *See* Northwest Pipeline Corporation, 63 FERC ¶ 61,124 at 61,803 (1993); Pacific Gas Transmission Company, 64 FERC ¶ 61,052 at 61,455–56 (1993).

[75] See Power Generators, Northwest, Tenneco, Williston Basin, AGA, AER/MRT, AGD, Brooklyn Union, Columbia Distribution, Columbia Gas,

Continued

emphasized that the GISB concept should not interfere with the on-going efforts of the Working Groups. El Paso did not support an industry standards board unless it was limited to communication format standards, and O&R contended such a board should be an advisory panel only. Con Edison, in contrast, contends the scope of the board should be extended beyond electronic communication to include standardization relating to pipeline operations, imbalances, and nominations.

On November 2, 1993, the Commission met with representatives from the Natural Gas Council to hear a report on the progress of GISB. The Commission remains interested in this concept and looks forward to a detailed proposal. When the Commission receives a proposal, it will give close consideration to the effects of such an independent industry standardization effort on all facets of the gas industry, Commission regulation, and state regulation.

In the meantime, the Working Group efforts should continue apace. The Working Groups should not defer or delay the development of standards in anticipation of the formation of a standards board. Moreover, they should ensure their proposals can stand alone and should not rely upon the eventual existence of a standards board as the means to administer the standards.

VIII. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[76] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[77] The action taken here falls within the categorical exclusions in the Commission's regulations for rules that are clarifying or procedural and that relate to information gathering, analysis, and dissemination.[78] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

Destec Energy, Exxon, NGSA, Process Gas Consumers Group , IPAA, KGPL, Transco, UDC, Natural, Peoples Gas, et al., Edison, Texaco, PEC Pipeline Group.

[76] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30 (1987).

[77] 18 CFR 380.4.

[78] See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5).

IX. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[79] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant impact on a substantial number of small entities.

X. Information Collection Requirement

Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency rules.[80] The information/EBB requirements of this final rule are under FERC–549(B), Gas Pipeline Rates: Capacity Release Information, (OMB Control No. 1902–0169).

The required information under FERC–549(A) enables the Commission to carry out its legislative mandate under the NGA and NGPA and will ensure a viable capacity release market under Commission Order No. 636. Specifically, the required information allows the Commission to review/monitor capacity release transactions and firm and interruptible capacity made available directly from pipelines and to take appropriate action, where and when necessary.

The Commission is submitting notification of these information/EBB requirements to OMB for its review and approval. Interested persons may send comments regarding the burden estimates or any other aspect of these EBB standards/information requirements, including suggestions for reducing the estimated burden, by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]. Comments on the requirements of the subject final rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for Federal Energy Regulatory Commission].

XI. Effective Date

This final rule shall take effect February 4, 1994.

[79] 5 U.S.C. 601–612.

[80] 5 CFR 1320.14.

List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, part 284, chapter I, title 18, Code of Federal Regulations, is amended as set forth below.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

2. In § 284.8, paragraph (b)(5) is redesignated paragraph (b)(6) and new paragraph 284.8(b)(5) is added to read as follows:

§ 284.8 Firm transportation service.

* * * * *

(b) * * *

(5) *Standardization of information provided on Electronic Bulletin Boards.*

(i) An interstate pipeline must provide access to standardized information relevant to the availability of service on its system on its Electronic Bulletin Board and through downloadable files in compliance with standardized communication protocols. The standardized information and the communication protocols are found in "Standardized Data Sets And Communication Protocols," which can be obtained from the Public Reference and Files Maintenance Branch, Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington DC 20426.

(ii) An interstate pipeline must implement these standards, procedures, and protocols by June 1, 1994, unless the Standardized Data Sets And Communication Protocols specify an implementation date.

* * * * *

3. In § 284.9, paragraph (b)(4) is revised to read as follows:

§ 284.9 Interruptible transportation service.

* * * * *

(b) * * *

(4) The requirement of paragraph (b)(3) of this section must be implemented through the use of an Electronic Bulletin Board with the

features required under § 284.8(b)(4) and complying with § 284.8(b)(5).

* * * * *

Note: This Appendix will not appear in the Code of Federal Regulations.

Appendix A—Parties Filing Comments on the Notice of Proposed Rulemaking

Docket No. RM93–4–000

Commenter	Abbreviation
Ad Hoc Group of Power Generators[81] and Edison Electric Institute.	Power Generators.
American Gas Association .	AGA.
ANR Pipeline Company and Colorado Interstate Gas Company.	ANR/CIG.
Arkla Energy Resources Company and Mississippi River Transmission Corporation.	AER/MRT.
Associated Gas Distributors	AGD.
Brooklyn Union Gas Company.	Brooklyn Union.
Columbia Gas Distribution Companies[82].	Columbia Distribution.
Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company.	Columbia Gas.
Consolidated Edison Company of New York, Inc..	Con Edison.
Destec Energy, Inc.	Destec Energy.
El Paso Natural Gas Company.	El Paso.
Enron Interstate Pipelines (Northern Natural Gas Company, Transwestern Pipeline Company, and Florida Gas Transmission Company).	Enron.
Exxon Corporation	Exxon.
Fuel Managers Association	FMA.
Hadson Gas Systems, Inc. .	Hadson.
Independent Petroleum Association of America.	IPAA.
Interstate Natural Gas Association of America.	INGAA.
Koch Gateway Pipeline Company.	KGPL.
National Fuel Gas Supply Corporation.	National.
National Registry of Capacity Rights.	National Registry.
Natural Gas Pipeline Company of America.	Natural.
Natural Gas Supply Association.	NGSA.
New York Mercantile Exchange and Enersoft Corporation.	NYMEX/ EnerSoft.
New York State Electric & Gas Corporation.	NYSEG.
Northwest Pipeline Corporation.	Northwest.
O&R Energy, Inc.	O&R.
Peoples Gas Light and Coke Company, North Shore Gas Company, and Northern Illinois Gas Company.	Peoples Gas, *et al.*
Process Gas Consumers Group, American Iron and Steel Institute, and Georgia Industrial Group.	Process Gas Consumers Group.
Public Service Commission of Wisconsin.	PSCW.
Sabine Pipe Line Company	Sabine.
Southern California Edison Company.	Edison.
Tenneco Gas	Tenneco.
Texaco, Inc.	Texaco.
Texas Eastern Transmission Corporation, Panhandle Eastern Pipe Line Company, Trunkline Gas Company, and Algonquin Gas Transmission Company.	PEC Pipeline Group.
Transcontinental Gas Pipe Line Corporation.	Transco.
UGI Utilities, Inc.	UGI.
United Distribution Companies.	UDC.
Vesta Energy Company	Vesta.
Williams Energy Ventures, Inc.	WEV.
Williston Basin Interstate Pipeline Company.	Williston Basin.

[81] This group includes American Electric Power Service Corporation, Atlantic City Electric Company, Boston Edison Company, Energy Service, Inc., Fuel Managers Association, New England Power Service Company, Northern States Power Company, Northeast Utilities, Potomac Electric Power Company, Southern Company Services, Virginia Electric and Power Company, West Texas Utilities Company, and Wisconsin Electric Power Company.

[82] Columbia Gas of Kentucky, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc., and Commonwealth Gas Services, Inc.

[FR Doc. 94–45 Filed 1–4–94; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. 92N–0244]

Freedom of Information Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its public information regulations to reflect changes already adopted by the agency as a result of the 1986 amendments to the Freedom of Information Act (the FOIA), executive branch directives, and judicial standards governing disclosure of agency records under the FOIA. In practice, FDA modified its policies and procedures to comply with these changes as they became effective. The regulations are being updated to reflect these changes. The agency is also adding clarifying language to certain of its public information regulations and making technical changes necessary to update citations and cross-references.

DATES: Effective January 5, 1994. Written comments by March 7, 1994. As provided in § 10.40(e) (21 CFR 10.40(e)), FDA is providing an opportunity for public comment on whether the regulations should subsequently be modified or revoked.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gerald H. Deighton, Freedom of Information Staff (HFI–30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6310.

SUPPLEMENTARY INFORMATION:

I. Background

FDA's practice and policy under the FOIA have undergone a number of changes as a result of legislation, executive directives, and judicial precedents over the past years. FDA modified and updated its practices and policies to comply with these changes as they became effective. FDA is now formally amending its public information regulations to reflect changes that were required by law and which have already been put into effect. Specifically, FDA is updating its public information regulations to reflect provisions of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), the Freedom of Information Reform Act of 1986 (Pub. L. 99–570), Executive Order 12600 (June 23, 1987) establishing predisclosure notification procedures, guidelines promulgated by the Office of Management and Budget (OMB) (52 FR 10012 at 10018, March 27, 1987), the revised Department of Health and Human Services (DHHS) regulations at 45 CFR part 5, and the widely adopted District of Columbia (D.C.) Circuit Court of Appeals opinion in *Public Citizen Health Research Group* v. *FDA*, 704 F.2d 1280 (D.C. Cir. 1983). The agency is also adding language to §§ 20.53 and 20.85 (21 CFR 20.53 and 20.83) in order to clarify particular aspects of those regulations that have been the subject of some confusion. In addition, FDA is making technical revisions to certain public information regulations to update citations to cross-

references that have changed since the last revision of part 20 (21 CFR part 20).

II. Procedural Amendments

A. Investigatory Records Compiled for Law Enforcement Purposes

The language of § 20.64, regarding records compiled for law enforcement purposes, is being changed to conform to the 1986 amendments to the FOIA, which broadened the FOIA exemption 5 U.S.C. 552(b)(7) that protects certain law enforcement records from mandatory public disclosure.

B. Disclosure to Congress

Section 20.87 is being revised to reflect the provision of the Omnibus Budget Reconciliation Act of 1990 that removed the statutory barrier that previously prohibited FDA from disclosing certain trade secret information to Congress, (Pub. L. 101–508). Section 4755(c)(2) of the Omnibus Budget Reconciliation Act of 1990 amended section 301(j) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 331(j)) in order to permit FDA to disclose to Congress certain trade secret information that is otherwise prohibited from disclosure except to employees of DHHS or to the courts in relevant judicial proceedings. Such disclosures to Congress may only be pursuant to a request from the Senate, the House of Representatives, any committee or subcommittee with jurisdiction over the matter being investigated, or any joint committee of Congress or any subcommittee of such joint committee.

C. Trade Secret and Confidential Commercial Information

Executive Order 12600, issued June 23, 1987, requires Federal agencies to establish predisclosure notification procedures in certain circumstances before releasing commercial information submitted by businesses. FDA has complied with the terms of the Executive Order since it became effective, and has followed the procedures adopted by DHHS in the regulations published in the **Federal Register** of November 25, 1988 (53 FR 47697). To clarify these practices and for the convenience of the public, FDA is incorporating DHHS' regulations concerning predisclosure notification into FDA's regulations governing the disclosure of trade secret and confidential commercial information at § 20.61. Accordingly, the standards and procedures promulgated by DHHS at 45 CFR 5.65(c), (d), and (e) are being added to FDA's public information regulations in § 20.61(d), (e), and (f).

Section 20.61 also is being amended to reflect the narrow definition of "trade secret" that was adopted by the D.C. Circuit Court of Appeals in *Public Citizen Health Research Group* v. *FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). That definition requires a direct relationship between the information being protected and the productive process. The definition adopted by the D.C. Circuit in that case has become the most widely adopted judicial test for defining trade secret information under the FOIA and is already codified in the DHHS FOIA regulations at 45 CFR 5.65(a). This amendment to § 20.61 will not affect agency practice because FDA has distinguished between trade secret and confidential commercial information in accordance with the definition in the *Public Citizen Health Research Group* v. *FDA* case since that case was decided.

D. Fees and Fee Waivers

Sections 20.42 and 20.43 are being amended to reflect changes required by the 1986 amendments to the FOIA concerning fees and fee waivers and the OMB guidelines promulgated to implement those changes. FDA is adopting the standards and procedures promulgated by DHHS at 45 CFR 5.41 through 5.45, except that 45 CFR 5.42(g) is excluded from § 20.42 because 45 CFR 5.42(g) pertains only to the Social Security Administration. In general, the regulations being adopted codify the descriptions of categories of requesters, the new fee structure and fee limitations, and the revised standards for fee waivers or reductions established by the 1986 amendments to the FOIA.

Section 20.41 is being amended to remove the paragraphs that refer to $25 as the amount that triggers a requirement for prepayment of FOIA fees. The guidelines promulgated by OMB and the DHHS regulations include an advance payment provision for fees that exceed $250. That requirement is being included in revised § 20.42.

III. Clarifications

A. Indexing Trade Secrets and Confidential Commercial or Financial Information

A recent report by the General Accounting Office (GAO) criticized FDA's regulation concerning § 20.53 Indexing trade secrets and confidential or financial information. GAO believed that it would be an abrogation of the agency's responsibilities to disclose information in those circumstances when a submitter failed to intervene to defend against the release of its records. The report hypothesized circumstances in which a firm could suffer severe financial loss because it could not afford legal representation to defend the competitive value of its commercial information.

Although the regulation has been in effect for almost two decades, such a situation has never materialized. The agency continues to believe that the burden of defending business related records should be borne by the owner and submitter of such information, who is in the best position to explain the competitive harm that may result from disclosure. A company's unwillingness to take steps to protect the information it has submitted to the agency and to index the records at issue is ordinarily evidence to FDA that disclosure of the information is not likely to cause the submitter substantial competitive harm.

However, the agency has never and would not at any time abandon its responsibilities to protect information that is truly prohibited from release. Although the situation has never previously arisen, there may be exceptional circumstances that would make it unreasonable for FDA to expect a submitter to participate as an intervenor in defending the proprietary value of its records. Accordingly, the language of the regulation is being amended to clarify that a company's failure to intervene to defend the exempt status of its information and to itemize and index the disputed records is not treated as an automatic waiver of the submitter's interest in protection of the information.

B. Disclosure to Other Federal Agencies

A 1991 contract report "FDA Safeguards Against Improper Disclosure of Financially Sensitive Information," which was undertaken as part of the FDA Commissioner's integrity initiative, recommended that FDA obtain written pledges of confidentiality when it provides nonpublic information to other Federal agencies, such as the Securities Exchange Commission (SEC), as part of cooperative law enforcement efforts. FDA's regulations governing the disclosure of information to other Federal agencies, § 20.85, is intended to require written commitments of confidentiality, and staff manual guides and internal agency guidance have consistently instructed personnel to obtain such written commitments. However, because the 1991 report named above suggested some confusion among FDA and other Department and Federal employees, FDA is adding the word "written" to § 20.85 so that the regulation clearly states that such disclosures can only be made pursuant to a "written" agreement.

IV. Technical Changes

Section 20.100 is being revised to update cross-references that have changed because agency regulations have been amended or new regulations have been promulgated since the last revision of part 20.

Because the agency's current practice with respect to disclosure of records will not change as a result of any of these amendments, and because the amendments set forth in section I. of this document are required either by statute, executive branch directives, or judicial decisions, FDA finds for good cause under § 10.40(e) that notice and public procedure are unnecessary (5 U.S.C. 553(b)(3)(B) and (d)). However, under § 10.40(e), FDA is providing an opportunity for comment to determine whether the regulations should subsequently be modified or revoked.

V. Request for Comments

Interested persons may, on or before March 7, 1994 submit to the Dockets Management Branch (address above) written comments regarding this final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Economic Impact

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The Regulatory Flexibility Act (Pub. L. 96–354) requires analyzing options for regulatory relief for small businesses.

This rule amends the regulations for FDA's practice and policy under the FOIA. Because the amendments merely update the regulations to reflect procedural changes already adopted by the agency as a result of legislation, executive branch directives, or legal precedents, no additional impact is anticipated. Accordingly, FDA finds that this final rule is not a significant regulatory action as defined by Executive Order 12866. In compliance with the Regulatory Flexibility Act, the agency certifies that the final rule will not have a significant impact on a substantial number of small businesses.

List of Subjects in 21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and the Freedom of Information Act, and under the authority delegated to the Commissioner of Food and Drugs, 21 CFR part 20 is amended as follows:

PART 20—PUBLIC INFORMATION

1. The authority citation for 21 CFR part 20 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); secs. 301, 302, 303, 307, 310, 311, 351, 352, 354–360F, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1); 5 U.S.C. 552; 18 U.S.C. 1905.

§ 20.41 [Amended]

2. Section 20.41 Time limitations is amended by removing paragraphs (b)(5), (c), and (d).

3. Section 20.42 is revised to read as follows:

§ 20.42 Fees to be charged.

(a) *Categories of requests.* Paragraphs (a)(1) through (3) of this section state, for each category of request, the type of fees that the Food and Drug Administration will generally charge. However, for each of these categories, the fees may be limited, waived, or reduced for the reasons given in paragraphs (b) and (c) of this section and in § 20.43 or for other reasons.

(1) *Commercial use request.* If the request is for a commercial use, the Food and Drug Administration will charge for the costs of search, review, and duplication.

(2) *Educational and scientific institutions and news media.* If the request is from an educational institution or a noncommercial scientific institution, operated primarily for scholarly or scientific research, or a representative of the news media, and the request is not for a commercial use, the Food and Drug Administration will charge only for the duplication of documents. Also, the Food and Drug Administration will not charge the copying costs for the first 100 pages of duplication.

(3) *Other requests.* If the request is not the kind described in paragraph (a)(1) or (a)(2) of this section, then the Food and Drug Administration will charge only for the search and the duplication. Also, the Food and Drug Administration will not charge for the first 2 hours of search time or for the copying costs of the first 100 pages of duplication.

(b) *General provisions.* (1) The Food and Drug Administration may charge search fees even if the records found are exempt from disclosure or if no records are found.

(2) If, under paragraph (a)(3) of this section, there is no charge for the first 2 hours of search time, and those 2 hours are spent on a computer search, then the 2 free hours are the first 2 hours of the operator's own operation. If the operator spends less than 2 hours on the search, the total search fees will be reduced by the average hourly rate for the operator's time, multiplied by 2.

(3) If, under paragraph (a)(2) or (a)(3) of this section, there is no charge for the first 100 pages of duplication, then those 100 pages are the first 100 pages of photocopies of standard size pages, or the first 100 pages of computer printout. If this method to calculate the fee reduction cannot be used, then the total duplication fee will be reduced by the normal charge for photocopying a standard size page, multiplied by 100.

(4) No charge will be made if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee.

(5) If it is determined that a requester (acting either alone or together with others) is breaking down a single request into a series of requests in order to avoid (or reduce) the fees charged, all these requests may be aggregated for purposes of calculating the fees charged.

(6) Interest will be charged on unpaid bills beginning on the 31st day following the day the bill was sent. Provisions in 45 CFR part 30, the Department of Health and Human Services regulations governing claims collection, will be used in assessing interest, administrative costs, and penalties, and in taking actions to encourage payment.

(c) *Fee schedule.* The Food and Drug Administration charges the following fees:

(1) *Manual searching for or reviewing of records.* When the search or review is performed by employees at grade GS–1 through GS–8, an hourly rate based on the salary of a GS–5, step 7, employee; when done by a GS–9 through GS–14, an hourly rate based on the salary of a

GS–12, step 4, employee; and when done by a GS–15 or above, an hourly rate based on the salary of a GS–15, step 7, employee. In each case, the hourly rate will be computed by taking the current hourly rate for the specified grade and step, adding 16 percent of that rate to cover benefits, and rounding to the nearest whole dollar. As of January 1, 1993, these rates were $12, $24, and $43 respectively. When a search involves employees at more than one of these levels, the Food and Drug Administration will charge the rate appropriate for each.

(2) *Computer searching and printing.* The actual cost of operating the computer plus charges for the time spent by the operator, at the rates given in paragraph (c)(1) of this section.

(3) *Photocopying standard size pages.* $0.10 per page. Freedom of Information Officers may charge lower fees for particular documents where:

(i) The document has already been printed in large numbers;

(ii) The program office determines that using existing stock to answer this request, and any other anticipated Freedom of Information requests, will not interfere with program requirements; and

(iii) The Freedom of Information Officer determines that the lower fee is adequate to recover the prorated share of the original printing costs.

(4) *Photocopying odd-size documents (such as punchcards or blueprints), or reproducing other records (such as tapes).* The actual costs of operating the machine, plus the actual cost of the materials used, plus charges for the time spent by the operator, at the rates given in paragraph (c)(1) of this section.

(5) *Certifying that records are true copies.* This service is not required by the Freedom of Information Act. If the Food and Drug Administration agrees to provide certification, there is a $10 charge per certification.

(6) *Sending records by express mail, certified mail, or other special methods.* This service is not required by the Freedom of Information Act. If the Food and Drug Administration agrees to provide this service, actual costs will be charged.

(7) *Performing any other special service in connection with a request to which the Food and Drug Administration has agreed.* Actual costs of operating any machinery, plus actual cost of any materials used, plus charges for the time of the Food and Drug Administration's employees, at the rates given in paragraph (c)(1) of this section.

(d) *Procedures for assessing and collecting fees.* (1) *Agreement to pay.* The Food and Drug Administration generally assumes that a requester is willing to pay the fees charged for services associated with the request. The requester may specify a limit on the amount to be spent. If it appears that the fees will exceed the limit, the Food and Drug Administration will consult the requester to determine whether to proceed with the search.

(2) *Advance payment.* If a requester has failed to pay previous bills in a timely fashion, or if the Food and Drug Administration's initial review of the request indicates that the charges will exceed $250, the requester will be required to pay past due fees and/or the estimated fees, or a deposit, before the search for the requested records begins. In such cases, the requester will be notified promptly upon receipt of the request, and the administrative time limits prescribed in § 20.41 will begin only after there is an agreement with the requester over payment of fees, or a decision that fee waiver or reduction is appropriate.

(3) *Billing and payment.* Ordinarily, the requester will be required to pay all fees before the Food and Drug Administration will furnish the records. At its discretion, the Food and Drug Administration may send the requester a bill along with or following the records. For example, the Food and Drug Administration may do this if the requester has a history of prompt payment. The Food and Drug Administration may also, at its discretion, aggregate the charges for certain time periods in order to avoid sending numerous small bills to frequent requesters, or to businesses or agents representing requesters. For example, the Food and Drug Administration might send a bill to such a requester once a month. Fees should be paid in accordance with the instructions furnished by the person who responds to the request.

4. Section 20.43 is revised to read as follows:

§ 20.43 Waiver or reduction of fees.

(a) *Standard.* The Associate Commissioner for Public Affairs will waive or reduce the fees that would otherwise be charged if disclosure of the information meets both of the following tests:

(1) Is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government; and

(2) It is not primarily in the commercial interest of the requester. These two tests are explained in paragraphs (b) and (c) of this section.

(b) *Public interest.* Disclosure of information satisfies the first test only if it furthers the specific public interest of being likely to contribute significantly to public understanding of Government operations or activities, regardless of any other public interest it may further. In analyzing this question, the Food and Drug Administration will consider the following factors:

(1) Whether the records to be disclosed pertain to the operations or activities of the Federal Government;

(2) Whether disclosure of the records would reveal any meaningful information about Government operations or activities that is not already public knowledge;

(3) Whether disclosure will advance the understanding of the general public as distinguished from a narrow segment of interested persons. Under this factor, the Food and Drug Administration may consider whether the requester is in a position to contribute to public understanding. For example, the Food and Drug Administration may consider whether the requester has such knowledge or expertise as may be necessary to understand the information, and whether the requester's intended use of the information would be likely to disseminate the information to the public. An unsupported claim to be doing research for a book or article does not demonstrate that likelihood, while such a claim by a representative of the news media is better evidence; and

(4) Whether the contribution to public understanding will be a significant one, i.e., will the public's understanding of the Government's operations be substantially greater as a result of the disclosure.

(c) *Not primarily in the requester's commercial interest.* If disclosure passes the test of furthering the specific public interest described in paragraph (b) of this section, the Food and Drug Administration will determine whether disclosure also furthers the requester's commercial interest and, if so, whether this effect outweighs the advancement of that public interest. In applying this second test, the Food and Drug Administration will consider the following factors:

(1) Whether disclosure would further a commercial interest of the requester, or of someone on whose behalf the requester is acting. Commercial interests include interests relating to business, trade, and profit. Both profit and nonprofit-making corporations have commercial interests, as well as individuals, unions, and other associations. The interest of a representative of the news media in using the information for news

dissemination purposes will not be considered a commercial interest.

(2) If disclosure would further a commercial interest of the requester, whether that effect outweighs the advancement of the public interest as defined in paragraph (b) of this section.

(d) *Deciding between waiver and reduction.* If the disclosure of the information requested passes both tests described in paragraphs (b) and (c) of this section, the Food and Drug Administration will normally waive fees. However, in some cases the Food and Drug Administration may decide only to reduce the fees. For example, the Food and Drug Administration may do this when disclosure of some but not all of the requested records passes the tests.

(e) *Procedure for requesting a waiver or reduction.* A requester must request a waiver or reduction of fees at the same time as the request for records. The requester should explain why a waiver or reduction is proper under the factors set forth in paragraphs (a) through (d) of this section. Only the Associate Commissioner for Public Affairs may make the decision whether to waive or reduce the fees. If the Food and Drug Administration does not completely grant the request for a waiver or reduction, the denial letter will designate a review official. The requester may appeal the denial to that official. The appeal letter should address reasons for the Associate Commissioner's decision that are set forth in the denial letter.

5. Section 20.53 is amended by revising the last sentence to read as follows:

§ 20.53 Indexing trade secrets and confidential commercial or financial information.

* * * If the affected person fails to intervene to defend the exempt status of the records and to itemize and index the disputed records, the Food and Drug Administration will take this failure into consideration in deciding whether that person has waived such exemption so as to require the Food and Drug Administration to promptly make the records available for public disclosure.

6. Section 20.61 is amended by revising paragraph (a) and by adding new paragraphs (d), (e), and (f) to read as follows:

§ 20.61 Trade secrets and commercial or financial information which is privileged or confidential.

(a) A trade secret may consist of any commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. There must be a direct relationship between the trade secret and the productive process.

* * * * *

(d) A person who submits records to the Government may designate part or all of the information in such records as exempt from disclosure under exemption 4 of the Freedom of Information Act. The person may make this designation either at the time the records are submitted to the Government or within a reasonable time thereafter. The designation must be in writing. Where a legend is required by a request for proposals or request for quotations, pursuant to 48 CFR 352.215–12, then that legend is necessary for this purpose. Any such designation will expire 10 years after the records were submitted to the Government.

(e) The procedures in this paragraph apply to records on which the submitter has designated information as provided in paragraph (d) of this section. These procedures also apply to records that were submitted to the Food and Drug Administration when the agency has substantial reason to believe that information in the records could reasonably be considered exempt under exemption 4 of the Freedom of Information Act. Certain exceptions to these procedures are set forth in paragraph (f) of this section.

(1) When the Food and Drug Administration receives a request for such records and determines that disclosure may be required, the Food and Drug Administration will make reasonable efforts to notify the submitter about these facts. The notice will include a copy of the request, and it will inform the submitter about the procedures and time limits for submission and consideration of objections to disclosure. If the Food and Drug Administration must notify a large number of submitters, notification may be done by posting or publishing a notice in a place where the submitters are reasonably likely to become aware of it.

(2) The submitter has 5 working days from receipt of the notice to object to disclosure of any part of the records and to state all bases for its objections.

(3) The Food and Drug Administration will give consideration to all bases that have been stated in a timely manner by the submitter. If the Food and Drug Administration decides to disclose the records, the Food and Drug Administration will notify the submitter in writing. This notice will briefly explain why the agency did not sustain the submitter's objections. The Food and Drug Administration will include with the notice a copy of the records about which the submitter objected, as the agency proposes to disclose them. The notice will state that the Food and Drug Administration intends to disclose the records 5 working days after the submitter receives the notice unless a U.S. District Court orders the agency not to release them.

(4) If a requester files suit under the Freedom of Information Act to obtain records covered by this paragraph, the Food and Drug Administration will promptly notify the submitter.

(5) Whenever the Food and Drug Administration sends a notice to a submitter under paragraph (e)(1) of this section, the Food and Drug Administration will notify the requester that the Food and Drug Administration is giving the submitter a notice and an opportunity to object. Whenever the Food and Drug Administration sends a notice to a submitter under paragraph (e)(3) of this section, the Food and Drug Administration will notify the requester of this fact.

(f) The notice requirements in paragraph (e) of this section do not apply in the following situations:

(1) The Food and Drug Administration decided not to disclose the records;

(2) The information has previously been published or made generally available;

(3) Disclosure is required by a regulation issued after notice and opportunity for public comment, that specifies narrow categories of records that are to be disclosed under the Freedom of Information Act, but in this case a submitter may still designate records as described in paragraph (d) of this section, and in exceptional cases, the Food and Drug Administration may, at its discretion, follow the notice procedures in paragraph (e) of this section;

(4) The information requested has not been designated by the submitter as exempt from disclosure when the submitter had an opportunity to do so at the time of submission of the information or within a reasonable time thereafter, unless the Food and Drug Administration has substantial reason to believe that disclosure of the information would result in competitive harm; or

(5) The designation appears to be obviously frivolous, but in this case the Food and Drug Administration will still give the submitter the written notice required by paragraph (e)(3) of this

section (although this notice need not explain our decision or include a copy of the records), and the Food and Drug Administration will notify the requester as described in paragraph (e)(5) of this section.

7. Section 20.64 is amended by revising the section heading and paragraph (a), and by removing the word "investigatory" in paragraphs (b), (c) introductory text, (d) introductory text, and (e) to read as follows:

§ 20.64 Records or information compiled for law enforcement purposes.

(a) Records or information compiled for law enforcement purposes may be withheld from public disclosure pursuant to the provisions of this section to the extent that disclosure of such records or information:

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

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

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

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

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

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

* * * * *

§ 20.81 [Amended]

8. Section 20.81 *Data and information previously disclosed to the public* is amended in paragraph (a)(3) by removing the phrase "part 312 of this chapter or other".

§ 20.85 [Amended]

9. Section 20.85 *Disclosure to other Federal government departments and agencies* is amended in the last sentence by removing the words "an agreement" and adding in their place the words "a written agreement".

10. Section 20.87 is amended by revising paragraph (a) to read as follows:

§ 20.87 Disclosure to Congress.

(a) All records of the Food and Drug Administration shall be disclosed to Congress upon an authorized request.

* * * * *

11. Section 20.100 is amended by revising paragraphs (c)(7), (c)(14), (c)(16), and (c)(17) and by adding new paragraphs (c)(35) through (c)(40) to read as follows:

§ 20.100 Applicability; cross-reference to other regulations.

* * * * *

(c) * * *

* * * * *

(7) Food additive petitions, in §§ 171.1(h) and 571.1(h) of this chapter.

* * * * *

(14) Investigational new drug notice, in § 312.130 of this chapter.

* * * * *

(16) Master file for a new drug application, in § 312.420 of this chapter.

(17) New drug application file, in § 314.430 of this chapter.

* * * * *

(35) Premarket approval application, in § 814.9 of this chapter.

(36) Report of certain adverse experiences with a medical device, in § 803.9 of this chapter.

(37) Disqualification determination of an institutional review board, in § 56.122 of this chapter.

(38) Disqualification determination of a nonclinical laboratory, in § 58.213 of this chapter.

(39) Minutes or records regarding a public advisory committee, in § 14.65(c) of this chapter.

(40) Data submitted regarding persons receiving an implanted pacemaker device or lead, in § 805.25 of this chapter.

Dated: December 23, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–98 Filed 1–4–94; 8:45 am]

BILLING CODE 4160–01–P

[Docket No. 93N–0439]

21 CFR Part 100

Misleading Containers; Nonfunctional Slack-Fill

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revoking a regulation that implements section 403(d) of the Federal Food, Drug, and Cosmetic Act (the act) by defining the circumstances in which a food is misbranded, and that became final by operation of law on May 10, 1993. In addition, the agency is replacing this revoked regulation with one that was included in a final rule that published in the **Federal Register** of December 6, 1993 (58 FR 64123).

EFFECTIVE DATE: January 5, 1994.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION: The Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101–535) became law on November 8, 1990. Section 6 of the 1990 amendments established a procedure under which FDA was given 30 months from the date of their enactment to promulgate final rules implementing that section. Pursuant to that procedure, FDA published a proposal on January 6, 1993 (58 FR 2957) (the misleading container proposal), to amend its regulations by implementing new § 100.100 (21 CFR 100.100) to define the circumstances in which a food is misbranded under section 403(d) of the act (21 U.S.C. 343(d)).

Section 6(b)(3)(D)(ii) of the 1990 amendments provides that, if the final rule to implement section 403(d) of the act is not promulgated within 30 months of the date of passage of the 1990 amendments (November 8, 1990), then the regulation proposed to implement that section is to be considered a final regulation. Further, section 6 provides that States and their political subdivisions shall be preempted with respect to section 403(d) of the act at that time.

The 30-month period established by the 1990 amendments expired on May 9, 1993. Because FDA was unable to publish a final rule, in the proceeding instituted in January 1993, by May 9, 1993, FDA published a document in the **Federal Register** of May 12, 1993 (58 FR 27932) (the May 12, 1993, regulation), announcing that the regulation that FDA had proposed in the misleading container proposal was considered to be a final regulation by operation of law, effective May 10, 1993. This document did not conclude the rulemaking begun in January, 1993, however. Rather, the May 12, 1993, regulation was part of a separate proceeding that is compelled under section 6(b)(3)(D)(ii) of the 1990 amendments (see H. Rept. 101–538, 101st Cong., 2d sess. 18 and 136

Congressional Record 5842 on the effect of this "hammer" provision).

In the **Federal Register** of December 6, 1993 (58 FR 64123), FDA published a final rule on the circumstances in which containers are misleading and thus would misbrand the food under section 403(d) of the act. This final rule concluded the proceeding that the agency instituted with the misleading container proposal. In the May 12, 1993, document, FDA stated that when it issued such a final rule, it would act to supersede the regulation that had become final by operation of law. Thus, the agency proposed to withdraw the May 10, 1993, regulation in the **Federal Register** of December 6, 1993 (58 FR 64208).

FDA explained that it was proposing to do so for two reasons. First, the May 10, 1993, regulation did not have the benefit of public comment. Thus, the regulation included in the December 6, 1993, final rule (the December 6, 1993 regulation), which was the product of notice and comment rulemaking, is better able than the May 10, 1993, regulation to ensure adequate implementation of section 403(d) of the act and to facilitate compliance. Second, FDA tentatively found that because of the minor differences between the May 10, 1993, regulation and the December 6, 1993, regulation, replacing the former with the latter will not result in any hardship to manufacturers who have relied on the May 10, 1993, regulation.

FDA gave interested persons 10 days to comment on its proposal to withdraw the May 10, 1993, regulation. It also proposed to make any final rule that issues in this proceeding effective on the date of its publication in order to ensure that the supersession of the May 10, 1993, regulation proceeded as expeditiously as possible and with a minimum of confusion or ambiguity.

The comment period on the proposal to withdraw the May 10, 1993, regulation closed on December 17, 1993. FDA received no comments on this proposed action. Therefore, FDA advises that the May 10, 1993, regulation, which became final by operation of law, is withdrawn. FDA advises that it is replacing that regulation with the December 6, 1993, regulation.

Environmental Impact

In the December 6, 1993, proposal (58 FR 64208 at 64209), FDA stated that it had determined under 21 CFR 25.24(a)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment, and that as a result, neither an environmental assessment nor an environmental impact statement is required. FDA received no comments on the conclusion; therefore FDA restates it here.

Economic Impact

In the December 6, 1993, proposal (58 FR 64208 at 64209), FDA incorporated the conclusion from the December 6, 1993, final rule on slack-fill that the agency's action in replacing the May 10, 1993, regulation would not have any significant economic effects. The agency received no comments on this conclusion and consequently is restating it here.

List of Subject in 21 CFR Part 100

Administrative practice and procedure, Food labeling, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 100 is amended as follows:

PART 100—GENERAL

1. The authority citation for 21 CFR part 100 continues to read as follows:

Authority: Secs. 201, 301, 307, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 337, 342, 343, 348, 371).

§ 100.100 [Removed]

2. Subpart F consisting of § 100.100 *Misleading containers* (as published in the **Federal Register** of May 12, 1993 (58 FR 27932), is removed.

3. For the convenience of the reader, FDA is republishing without change new subpart F, consisting of § 100.100 (as published in the **Federal Register** of December 6, 1993 (58 FR 64136) to read as follows:

Subpart F—Misbranding for Reasons Other Than Labeling

§ 100.100 Misleading containers.

In accordance with section 403(d) of the act, a food shall be deemed to be misbranded if its container is so made, formed, or filled as to be misleading.

(a) A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack-fill. Slack-fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack-fill is the empty space in a package that is filled to less than its capacity for reasons other than:

(1) Protection of the contents of the package;

(2) The requirements of the machines used for enclosing the contents in such package;

(3) Unavoidable product settling during shipping and handling;

(4) The need for the package to perform a specific function (e.g., where packaging plays a role in the preparation or consumption of a food), where such function is inherent to the nature of the food and is clearly communicated to consumers;

(5) The fact that the product consists of a food packaged in a reusable container where the container is part of the presentation of the food and has value which is both significant in proportion to the value of the product and independent of its function to hold the food, e.g., a gift product consisting of a food or foods combined with a container that is intended for further use after the food is consumed; or durable commemorative or promotional packages; or

(6) Inability to increase level of fill or to further reduce the size of the package (e.g., where some minimum package size is necessary to accommodate required food labeling (excluding any vignettes or other nonmandatory designs or label information), discourage pilfering, facilitate handling, or accommodate tamper-resistant devices).

(b) [Reserved]

Dated: December 30, 1993.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 93–32112 Filed 12–30–93; 2:40 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF–352; RE: Notice No. 781]

RIN 1512–AA07

Lake Wisconsin Viticultural Area (92F–017P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in Columbia and Dane Counties, Wisconsin, to be known as Lake Wisconsin. The petition was submitted by Mr. Charles W. Dean, Viticultural Area Consultant, on behalf of Wollersheim Winery located near Prairie-du-Sac, Wisconsin. The establishment of viticultural areas and

the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify the wines they may purchase, and will help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: February 4, 1994.

FOR FURTHER INFORMATION CONTACT: Robert White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of American viticultural areas. Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

ATF received a petition from Mr. Charles W. Dean, Viticultural Area Consultant, on behalf of Robert P. Wollersheim and JoAnn I. Wollersheim, proprietors and landowners of Wollersheim Winery near Prairie-du-Sac, Wisconsin, to establish a viticultural area in south-central Wisconsin to be known as "Lake Wisconsin." The viticultural area is bounded by the shoreline of Lake Wisconsin and the Wisconsin River on the north and west. Wollersheim Winery is the sole winery located in the 28,000 acre viticultural area and there are currently twenty-three acres planted to wine grapes.

Notice of Proposed Rulemaking

In response to Mr. Wollersheim's petition, ATF published a notice of proposed rulemaking, Notice No. 781, in the **Federal Register** on September 24, 1993 (58 FR 49949), proposing the establishment of the Lake Wisconsin viticultural area. The notice requested comments from all interested persons by October 25, 1993.

Comments to Notice of Proposed Rulemaking

Seven comments were received concerning the proposal to establish the Lake Wisconsin viticultural area. All seven commenters stated that they fully support the proposed area as delineated in Notice No. 781. One of the commenters was under the mistaken impression that this area had been proposed to be called the Roxbury Viticultural District. However, despite the misunderstanding about the name, this commenter stated in his letter that he heartily supports the establishment of a new viticultural area in this part of Wisconsin which includes the Wollersheim Winery.

Viticultural Area Name

The place-name "Lake Wisconsin" was first used ca. 1917 to describe a widened section of the Wisconsin River that was submerged when the Baraboo hydroelectric dam was constructed one mile upriver from the town of Prairie-du-Sac. A travel brochure and map produced by the Lake Wisconsin Chamber of Commerce in 1989, entitled Lake Wisconsin Chamber Recreation Area Vacationland, shows various recreational and tourist facilities in the Lake Wisconsin viticultural area. The viticultural area has a long history of wine grape growing and wine making activity. Agoston Haraszthy, an immigrant from Hungary well known as an early pioneer in the American wine industry, first planted wine grapes on Wollersheim Winery property in 1847. Cold winter temperatures frustrated this early attempt to establish grapevines and two years later Haraszthy moved to California. However, wine grape growing and wine making continued in this area until 1900. Because of its role in the early history of Wisconsin, Wollersheim Winery and the adjacent homestead were listed on the National Register of Historic Places in 1976.

Evidence of Boundaries

The boundaries of the Lake Wisconsin viticultural area are clearly shown on two U.S.G.S. quadrangle maps, Sauk City, Wisc. and Lodi, Wisc. The Sauk City, Wisc. quadrangle map shows the viticultural area to be bounded by the shoreline of Lake Wisconsin and the Wisconsin River on the north and west. The southern boundary is defined by Mack Road and State Highway Y, and the eastern boundary, shown on the Lodi, Wisc. quadrangle map, follows State Highway Y, State Highway 60, State Highway 113, and Spring Creek. The petitioner states that some of the natural boundary features, which closely approximate some of the roads and highways used as boundaries for this viticultural area, can be found on county maps, plat maps and county atlases dating back to 1861.

Geographical Features

The Wisconsin River (of which Lake Wisconsin is a part) is a major natural feature of the State and of the region. It is the largest river in the State after the Mississippi River, of which it is a major tributary. Roads and highways define the southern boundary of the Lake Wisconsin viticultural area. The landscape of the viticultural area is comprised of discontinuous end moraines interspersed with ground moraines and occasional outwash plains. The landscape outside the southern boundary is of higher elevation and is comprised of rolling, hummocky upland with some outwash material. The eastern boundary, which closely approximates Spring Creek, identifies an area of low relief, continuous and intermittent stream drainage, and marsh. To the east of Spring Creek and outside the viticultural area is a glaciated upland plain where the landscape is generally of higher elevations and comprised of end moraines with little or no outwash material.

Topography and Elevation

The vineyards in the viticultural area are located at an elevation of 800–900 feet along south and southwest facing slopes of 10–40 percent gradient. This

combination of elevation, aspect, and relief contributes to the well-drained quality of the vineyard soils, the free circulation of air in summer and winter, and the locally longer growing season. Outside the viticultural area to the north and west, higher elevations of 900–1,200 feet increase the risk of wind damage to grapevines, or the soils become too shallow for successful grape cultivation where bedrock is nearer the surface or exposed. Outside the viticultural area to the east, elevations between 720 feet (Wisconsin River level) and 800 feet are generally less well drained or are saturated during periods of rainfall or snowmelt.

Climate

The Lake Wisconsin viticultural area benefits from the microclimate effects of the lower Wisconsin River valley. The river moderates winter temperatures in the viticultural area several degrees higher than areas north and west of the river or further south. Air circulation within the river valley helps prevent cold air accumulation and frost pockets from forming in the vineyards. In summer, the river valley and limestone bluffs along the river's edge serve to channel air currents and increase localized air circulation, protecting the vineyards from mildew and rot in hot, humid weather.

The viticultural area has a mean precipitation of twenty-nine inches, one inch less than the average rainfall in the area north and east, three inches less than the average rainfall in the area to the west, and two inches less than the State average. The petitioner describes the viticultural area as an "island" of locally below-average rainfall and drier soils conducive to the grapevines concentrating their vigor in ripening fruit. The viticultural area has a growing season of 140–160 days, ten to twenty days longer than across the river to the west and to the north. The additional frost-free period allows the grapes to reach maturity before the onset of winter cold.

Soil

The Wisconsin River forms an approximate dividing line between the glaciated and unglaciated regions of south-central Wisconsin. Soils primarily of glacial till and outwash material are found east of the river valley and characterize the soils in the viticultural area. The unglaciated "driftless" soils west of the valley result from significant differences in soil parent materials, microrelief, and drainage. The soils that support viticulture within the viticultural area are Typic Hapludalfs of mixed mineral material and silty or loamy texture. All are underlain by gravelly or sandy loam glacial till or by dolomitic bedrock. The soils are typically well drained and about 36–60 inches deep on slopes and rolling areas of 2–45 percent gradient. The soils outside the viticultural area to the north and west are predominately unglaciated, and so are not underlain by glacial till and contain less outwash material. The soils outside the area to the south and east, although glacially derived, are found on topography of rolling upland with fewer limestone outcrops and no outwash plains. The soils there have formed on slightly higher elevations over discontinuous end and ground moraines.

Viticultural Area Boundary

The boundary of the Lake Wisconsin viticultural area may be found on two United States Geological Survey (U.S.G.S.) maps with a scale of 1:24,000. The boundary is described in § 9.146.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action, because

(1) It will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. This process merely allows wineries to more accurately describe the origin of their wines to the consumers, and helps consumers identify the wines they purchase. Designation of a viticultural area itself has no significant economic impact because any commercial advantage can come only from consumer acceptance of wines made from grapes grown within the area. In addition, no new recordkeeping or reporting requirements are imposed. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Robert White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Accordingly, Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Subpart C is amended by adding § 9.146 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.146 Lake Wisconsin.

(a) *Name.* The name of the viticultural area described in this section is "Lake Wisconsin."

(b) *Approved maps.* The appropriate maps for determining the boundary of the "Lake Wisconsin" viticultural area are two U.S.G.S. 7.5 minute series topographical maps of the 1:24,000 scale. They are titled:

(1) "Sauk City, Wis.," 1975; and

(2) "Lodi, Wis.," 1975.

(c) *Boundary.* The Lake Wisconsin viticultural area is located in Columbia and Dane Counties, Wisconsin. The boundary is as follows:

(1) The point of beginning is on the "Lodi, Wisc." U.S.G.S. map in the northeast quarter-section of section 17, Lodi Township, Columbia County, where Spring Creek enters Lake Wisconsin;

(2) From the point of beginning, follow the southern shoreline of Lake Wisconsin northwest to where Lake

Wisconsin narrows and becomes the Wisconsin River on the map, in the vicinity of the town of Merrimac, Sauk County;

(3) Then continue along the southern shoreline of the Wisconsin River, west and south past Goose Egg Hill, Columbia County, on the "Sauk City, Wisc." quadrangle map, and then west to a southwest bend in the shoreline opposite Wiegands Bay, Sauk County, where the Wisconsin River becomes Lake Wisconsin again on the map;

(4) Then southwest and south along the eastern shoreline of Lake Wisconsin, to the powerplant that defines where Lake Wisconsin ends and the Wisconsin River begins again;

(5) Then continuing south along the Wisconsin River shoreline to where it intersects with U.S. Highway 12 opposite Sauk City, Sauk County;

(6) Then in a southeasterly direction on U.S. Highway 12 to the intersection at State Highway 188, just over one-half a mile;

(7) Then in a northeasterly direction about 1,000 feet on State Highway 188, to the intersection of Mack Road;

(8) Then east on Mack Road to the intersection of State Highway Y, about 3 miles;

(9) Then follow State Highway Y in a generally northeasterly direction onto the "Lodi, Wisc." quadrangle map and continue in a northeasterly direction to the intersection with State Highway 60;

(10) Then in a northeasterly direction on State Highway 60 to the intersection with State Highway 113 in the town of Lodi;

(11) Then in a northwesterly direction on State Highway 113 to where it crosses Spring Creek the second time just before Chrislaw Road;

(12) Then follow Spring Creek in a northwesterly direction to where it enters Lake Wisconsin, the point of beginning.

Dated: November 24, 1993.

Daniel R. Black,

Acting Director.

Approved: December 17, 1993.

John P. Simpson,

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 94–147 Filed 1–4–94; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Arkansas' Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Arkansas abandoned mine land reclamation plan (hereinafter referred to as the "Arkansas plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to the Arkansas statute pertaining to the eligibility of project sites for abandoned mined land (AML) funds. The amendment is intended to revise the Arkansas plan to be in compliance with SMCRA.

EFFECTIVE DATE: January 5, 1994.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Plan
II. Submission of Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Arkansas Plan

On May 2, 1983, the Secretary of the Interior approved the Arkansas plan. General background information on the Arkansas plan, including the Secretary's findings, the disposition of comments, and the approval of the Arkansas plan can be found in the May 2, 1983, **Federal Register** (48 FR 19710).

II. Submission of Amendment

By letter dated October 6, 1993 (Administrative Record No. AAML–18), Arkansas submitted a proposed amendment to its plan pursuant to SMCRA. Arkansas submitted the proposed amendment in response to a required program amendment at 30 CFR 904.26(a) that was placed on the Arkansas plan when OSM approved Arkansas' March 31, 1993, plan amendment (58 FR 38532, July 19, 1993; Administrative Record No. AAML–17). Arkansas intended that this amendment be in compliance with section 402 of SMCRA.

Arkansas proposed to amend Arkansas Code Annotated (ACA) 15–58–401(b)(2) that provides criteria for the determination of the eligibility of certain project sites for AML funding. Specifically, Arkansas proposed to require at ACA 15–58–401(b)(2) a finding that the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on November 5, 1990.

OSM announced receipt of the proposed amendment in the November 1, 1993, **Federal Register** (58 FR 58313; Administrative Record No. AAML–25) and in the same notice opened the public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendment. The public comment period closed on December 1, 1993. No substantive comments were received. The public hearing, scheduled for November 26, 1993, was not held because no one requested an opportunity to testify.

III. Director's Findings

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15, the Director finds, as discussed below, that Arkansas' October 6, 1993, proposed plan amendment is in compliance with SMCRA.

OSM required at 30 CFR 904.26(a) that Arkansas submit a revision to ACA 15–58–401(b)(2) to limit operations eligible for AML funds because of insolvency of a surety company to those operations whose surety became insolvent during the time frame provided by section 402(g)(4)(B)(ii) of SMCRA. Section 402(g)(4)(B)(ii) of SMCRA, as revised by the Abandoned Mine Land Reclamation Act of 1990 (Pub. L. 101–508), provided that the period of time during which such an operation would be eligible for AML funds because of the insolvency of the surety company would begin on August 4, 1977, and end on the date of enactment of the revision to SMCRA, which was November 5, 1990. Because Arkansas revised ACA 15–58–401(b)(2) to specify a period of time beginning on August 4, 1977, and ending on November 5, 1990, ACA 15–58–401(b)(2) is no less stringent than section 402(g)(4)(B)(ii) of SMCRA, as revised by the Abandoned Mine Land Reclamation Act of 1990.

Therefore, the Director approves ACA 15–58–401(b)(2) and removes the required amendment at 30 CFR 904.26(a).

IV. Summary and Disposition of Comments

1. Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to 30 CFR 884.14(a)(2) and 884.15(a), the Director solicited comments from the heads of various other Federal agencies with an actual or potential interest in the Arkansas plan.

By letter dated October 29, 1993, (Administrative Record No. AAML–22), the U.S. Bureau of Mines responded that it had no comments.

By letter dated October 29, 1993 (Administrative Record No. AAML–23), the U.S. National Park Service (NPS) responded that the proposed amendment would not impact NPS program responsibilities.

By letter dated November 8, 1993 (Administrative Record No. AAML–24), the U.S. Bureau of Land Management responded with a recommendation that Arkansas be required to revise ACA 15–58–401(c) so that it would read as follows:

> In determining which sites to reclaim pursuant to paragraph (b) of this section, the Director shall follow the priorities stated in paragraphs (1) and (2) of 15–58–402. The Director shall ensure that priority is given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a community [once coal mining sites and toxic mining material sites on federal or state surface tracts have been reclaimed].

BLM proposed the addition of the bracketed language and stated that its intent was to protect the public interest as a whole, particularly in the Ouachita National Forest, prior to focusing in on individual communities.

Referenced "paragraph (b) of this section" in ACA 15–58–401, as revised by the amendment that is the subject of this notice, allows the reclamation under Arkansas' plan of certain surface coal mining operations that operated on or after August 7, 1977, and were abandoned or left in an inadequate reclamation status.

Referenced "paragraphs (1) and (2) of 15–58–402" require that the expenditure of AML funds reflect the priorities of (1) the protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices and (2) the protection of public health, safety, and general welfare from adverse effects of coal mining practices. These State provisions are substantively identical to sections 403(a) (1) and (2) of SMCRA.

ACA 15–58–401(c) is substantively identical to section 402(g)(4)(C) of SMCRA. In addition, section 411 of SMCRA provides for the use of AML funds for lands affected by noncoal mining only after a State has certified that all abandoned coal mines have been reclaimed. Arkansas has not yet made this certification.

OSM cannot, as requested by BLM, require that Arkansas give higher priority to the reclamation of coal mining sites and toxic mining material sites on federal or state surface tracts because sections 403(a), 402(g)(4)(C), and 411 of SMCRA do not do so.

V. Director's Decision

Based on the above finding, the Director approves Arkansas' proposed plan amendment, as submitted on October 6, 1993.

The Federal regulations at 30 CFR part 904, codifying decisions concerning the Arkansas plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State plan amendment process and to encourage States to bring their plans into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This final rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and promulgated by a specific State, not by OSM. Decisions on proposed State AML reclamation plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 28, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 904—ARKANSAS

1. The authority citation for part 904 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 904.25 is amended by adding paragraph (b) to read as follows:

§ 904.25 Approval of abandoned mine land reclamation plan amendments.

* * * * *

(b) The following section of the Arkansas Code Annotated, title 15,

pertaining to the Arkansas abandoned mine land reclamation plan, as submitted to OSM on October 6, 1993, is approved effective January 5, 1994.

Section 15–58–401(b)(2) of Arkansas Code Annotated—Lands Eligible.

3. Section 904.26 is revised to read as follows:

§ 904.26 Required plan amendments.

Pursuant to 30 CFR 884.15, Arkansas is required to submit for OSM's approval the following proposed plan amendment by the date specified.

(a) [Reserved]

(b) [Reserved]

[FR Doc. 94–119 Filed 1–4–94; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL–4821–7]

Asbestos NESHAP Clarification Regarding Analysis of Multi-layered Systems

AGENCY: Environmental Protection Agency.

ACTION: Notice of clarification to the final rule.

SUMMARY: This document provides clarification regarding the requirements of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos. It is intended to address common questions regarding situations where one or more layers which may contain asbestos are present.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Oh at (703) 308–8732 or Mr. Jeffery KenKnight at (703) 308–8728.

SUPPLEMENTARY INFORMATION: On November 20, 1990, the **Federal Register** published the Environmental Protection Agency's (the Agency's) revision of the National Emission Standards for Hazardous Air Pollutants for Asbestos (asbestos NESHAP), 40 CFR part 61, subpart M, 55 FR 48406. The asbestos NESHAP applies to any facility as defined in 40 CFR 61.141. The Agency has learned that some of the regulated community have questions concerning the analysis of samples which may contain multiple layers, any or all of which may be asbestos containing materials (ACM) under the asbestos NESHAP. Because these questions are frequently asked, EPA is making this clarification.

This clarification does not supersede, alter, or in any way replace the existing asbestos NESHAP. This notice is intended solely as guidance and does not represent an action subject to judicial review under the section 307(b) of the Clean Air Act or section 704 of the Administrative Procedure Act.

I. Clarification of Multi-layered ACM System

The Environmental Protection Agency has received many questions about analyzing multi-layered systems for asbestos content to determine the applicability of the asbestos NESHAP. This clarification reiterates EPA's position for analysis of multi-layered samples for applicability of the asbestos NESHAP.

In general, when a sample consists of two or more distinct layers or materials, each layer should be treated separately and the results reported by layer (discrete stratum). Specific examples are given below.

Plaster/Stucco Systems

If plaster and stucco wall or ceiling systems are layered, and the layers can be distinguished, then the layers must be analyzed separately. Where a plaster or stucco wall system is constructed in layers, and the asbestos-containing layer becomes a distinguishable but "non-separable" component of the wall system, the results of the analysis of the individual layer(s) may include a small amount of the other layers when analyzed (e.g. a skim coat layer may contain a small amount of the base coat layer in the analysis of the skim coat layer).

Add-on Materials

All materials "added" to wallboard or other base materials (e.g., sprayed-on materials, paint, ceiling or wall texture, etc.) must be analyzed separately, if possible. The results of the analysis of those individual layers of "add-on" material may not be averaged with the result of the analysis of wallboard for a composite result, but must be analyzed and reported separately. Where a thin coating of one material is applied over another material and the materials cannot be separated without compromising the layers, the analysis may include a small amount of the base layer. If for example, a paint layer containing asbestos is spread over a wallboard layer, and the paint layer cannot be separated from the wallboard, then a small amount of the wallboard layer may be included in the sample of the paint.

If any of the "add-on" materials meet the definition of regulated asbestos-containing material (as defined in 40 CFR 61.141), and if at least 160 square feet of the material(s) are involved in demolition or renovation (whether planned or unplanned during a calendar year), then the project would be subject to the asbestos NESHAP.

Joint Compound/Wallboard

When joint compound and/or tape is applied to wallboard it becomes an integral part of the wallboard and in effect becomes one material forming a wall system. Therefore, where a demolition or renovation impacts such a wall system, a composite analysis of the wall system (percent of asbestos in the joint compound, tape and wallboard) should be conducted. If the analysis shows an asbestos content of greater than one percent and at least 160 square feet of the wall system is involved in the demolition or renovation activities (whether planned or unplanned, during a calendar year), then the activities would be subject to the asbestos NESHAP.

Dated: December 3, 1993.

John Rasnic,

Director, Stationary Source Compliance Division, Office of Air Quality Planning and Standards.

[FR Doc. 94–74 Filed 1–4–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, and 97

[FCC 93–546]

Station Call Sign Administrators for Club and Military Recreation Stations

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This action vacates the rule provisions that established private entity club call sign administrators and reinstates prior rules. A new proposal regarding call signs will meet the need for persons interested in obtaining a club station license. Hence, it is not necessary to retain the club call sign administrator rules adopted in an earlier action.

EFFECTIVE DATE: February 4, 1994.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, adopted December 13, 1993, and released December 29, 1993. The complete text of this Commission

action, including the rule amendments, is available for inspection and copying during normal business hours in the FCC Reference Center (room 230), 1919 M Street, NW., Washington, DC. The complete text of this Memorandum Opinion and Order, including the rule amendments, may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (ITS, Inc.), 2100 M Street, NW., suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. On May 11, 1993, final rules were adopted that established call sign administrators for club and military recreation stations in the amateur service. Subsequently, a petition for reconsideration was filed in which it was argued that the establishment of such administrators was not minor and non-controversial and that a notice and comment proceeding should have been held before final rules were adopted.

2. Further, the Commission is activating a new automated licensing system that will enable it to perform, with minimal burden, the function that administrators in the private sector were going to perform without reimbursement. Also, a new proposal by the Commission regarding call signs will meet the need of persons interested in obtaining a club station license.

3. Because there appears to be merit in the argument that the establishment of administrators is controversial, and because the new proposal will meet the need of persons interested in the club station licenses, the rule provisions that established private entity club call sign administrators can be vacated.

4. Accordingly, by this action, the rules establishing administrators are vacated, the prior rules are reinstated, and the petition for reconsideration is granted.

5. The amended rules are set forth at the end of this document.

6. The amended rules have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, and found to contain no new or modified form, information collection and/or record retention requirements, and will not increase or decrease burden hours imposed on the public.

7. This Memorandum Opinion and Order and the rule amendments are issued under the authority of 47 U.S.C. 154(i), 303(r), and 405(a).

List of Subjects

47 CFR Part 0

Organization and functions.

47 CFR Part 1

Radio.

47 CFR Part 97

Applications, Club stations, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amended Rules

Parts 0, 1, and 97 of chapter 1 of title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, unless otherwise noted.

§ 0.131 [Amended]

2. Section 0.131 is amended by removing paragraph (k).

§ 0.331 [Amended]

3. Section 0.331 is amended by removing paragraph (d).

§ 0.486 [Removed]

4. Section 0.486 is removed.

PART 1—PRACTICE AND PROCEDURE

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

1. Section 1.912(a) is revised to read as follows:

§ 1.912 Where applications are to be filed.

(a) Each application for a new amateur service operator/primary station license and each application involving a change in operator class must be submitted to the volunteer examiners (VEs) administering the qualifying examination. See § 97.17(c) of this chapter. The VEs are required to submit the applications of persons passing their respective examinations for amateur operator licenses to the Volunteer-Examiner Coordinator (VEC). All other applications for amateur service licenses must be submitted to FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

* * * * *

PART 97—AMATEUR RADIO SERVICE

The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

1. Section 97.17 is amended by revising paragraph (b) to read as follows. In addition, paragraph (g) is removed.

§ 97.17 Application for new license.

* * * * *

(b) Each application for a new operator/primary station license must be made on FCC Form 610. Each application for a reciprocal permit for alien amateur licensee must be made on FCC Form 610–A. No new license for a club, military recreation, or RACES station will be issued.

* * * * *

2. Paragraphs (a) and (b) of § 97.19 are revised to read as follows:

§ 97.19 Application for a renewed or modified license.

(a) Each application for a renewed or modified operator/primary station license must be made on FCC Form 610. Each application for a renewed or modified club, military recreation, or RACES station license must be made on FCC Form 610–B. A reciprocal permit for alien amateur licensee is not renewable. A new reciprocal permit may be issued upon proper application.

(b) Each application for a renewed or modified amateur service license must be accompanied by a photocopy of the license document or the original document, unless it has been lost, mutilated, or destroyed. Each application for a modified operator license involving a change in operator class must be submitted to the VEs administering the qualifying examination. All other applications must be submitted to: FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

* * * * *

§ 97.29 [Removed]

3. Section 97.29 is removed in its entirety.

[FR Doc. 94–29 Filed 1–4–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 14, 15, 17, 25, and 52

[FAC 90–19; FAR Case 93–310]

Federal Acquisition Regulation; Implementation of the North American Free Trade Agreement Implementation Act

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Department of Defense, General Services Administration, and National Aeronautics and Space Administration have agreed to an interim rule implementing the North American Free Trade Agreement (NAFTA) Implementation Act.

DATES: *Effective Date*: January 1, 1994. This rule applies to solicitations issued on or after January 1, 1994.

Comment Date: Comments should be submitted to the FAR Secretariat on or before March 7, 1994, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4037, Washington, DC 20405. Please cite FAC 90–19, FAR case 93–310 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such at (202) 501–1759 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GSA Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–19, FAR case 93–310.

SUPPLEMENTARY INFORMATION:

A. Background

Chapter Ten of NAFTA requires the three NAFTA countries (the United States, Canada, and Mexico) to eliminate "buy national" restrictions on non-defense related purchases, by their responsible Federal Governments, of goods and services provided by firms in North America. NAFTA applies to most United States Government agencies. The Canadian Free Trade Agreement is suspended while NAFTA remains in effect.

As required by NAFTA, specified agencies must evaluate certain NAFTA country end products offers without regard to the restrictions of the Buy American Act or the Balance of Payments Program. This evaluation method will apply to offers of Canadian end products under supply contracts with an estimated value above $25,000 and Mexican end products under supply contracts with an estimated value of $50,000 or more, except for the Department of Energy's Power Marketing Administrations, where the estimated acquisition value is $250,000 or more. This evaluation method also will apply to construction contracts with an estimated acquisition value of $6,500,000 or more, except for the Department of Energy's Power Marketing Administration, where the estimated acquisition value is $8,000,000 or more.

The applicable rule of origin for NAFTA country end products under the agreement is that of "substantial transformation", which means an article that is wholly the growth, product, or manufacture of a NAFTA country or has been substantially transformed in a NAFTA country into a new and different article may be offered.

This rule also—

(1) Designates NAFTA country end products as eligible products under the Trade Agreements Act, as implemented in Trade Agreements under the FAR;

(2) Adds language to require that, when an overseas procurement for performance overseas is subject to NAFTA, it will be synopsized in accordance with agency procedures;

(3) Revises the prescriptions for the provisions, Submission of Offers in the English Language, and Submission of Offers in U.S. Currency, to clarify and include NAFTA;

(4) Updates the list of designated countries in FAR 25.401 to add "Portugal" and revise "Upper Volta" to "Burkina Faso";

(5) Includes the new threshold of $182,000 for application of the Trade Agreements Act and the European Community (EC) Agreement, which is effective January 1, 1994;

(6) Updates FAR 25.407 list of agencies covered by the Agreements on EC and NAFTA; and

(7) Makes clarifications to the interim rule published in FAC 90–18 (58 FR 31140), at FAR 25.407, to implement the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement and NAFTA.

B. Regulatory Flexibility Act

The interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule waives the Buy American Act for certain Mexican and Canadian products. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR Case 93–310), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the new provision at 52.225–20 requires offerors to list the line item number and country of origin for any end product other than a domestic end product. Accordingly, a request for clearance of a new information collection requirement concerning the NAFTA Act is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this requirement are invited through an OMB clearance request appearing in the **Federal Register** at 58 FR 68636, December 28, 1993.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the NAFTA Implementation Act, signed into law on December 8, 1993, becomes effective on January 1, 1994. However, pursuant to Public Law 98–577 and Federal Acquisition Regulation 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 5, 14, 15, 17, 25, and 52

Government procurement.

Dated: December 30, 1993.

Shirley Scott,

Acting Director, Office of Federal Acquisition Policy.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–19 is effective January 1, 1994.

Dated: December 21, 1993.

Eleanor R. Spector,

Director, Defense Procurement, Department of Defense (DOD).

Dated: December 20, 1993.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy, General Services Administration.

Dated: December 21, 1993.

Deidre A. Lee,

Associate Administrator for Procurement, NASA.

Therefore, 48 CFR parts 5, 14, 15, 17, 25, and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 5, 14, 15, 17, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

2. Section 5.202 is amended in paragraph (a)(12) by adding a third sentence to read as follows:

5.202 Exceptions.

(a) * * *

(12) * * * This exception also does not apply to North American Free Trade Agreement contract actions, which will be synopsized in accordance with agency regulations.

* * * * *

PART 14—SEALED BIDDING

3. Section 14.201–6 is amended by revising paragraphs (x) and (y) to read as follows:

14.201–6 Solicitation provisions.

* * * * *

(x) The provision at 52.214–34, Submission of Offers in the English Language, is required in solicitations subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see 25.408(d)). It may be included in other solicitations when the contracting officer decides that it is necessary.

(y) The provision at 52.214–35, Submission of Offers in U.S. Currency, is required in solicitations subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see 25.408(d)). It may be included in other solicitations when the contracting officer decides that it is necessary.

4. Section 14.408–1 is amended by revising the introductory text of paragraph (a)(2) to read as follows:

14.408–1 Award of unclassified contracts.

(a) * * *

(2) For acquisitions subject to the Trade Agreements Act or the North American Free Trade Agreement (NAFTA) Implementation Act (see 25.405(e)), agencies shall promptly, but in no event later than 7 working days after award, give unsuccessful offerors from designated or NAFTA countries written notice stating—

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

5. Section 15.407 is amended by revising paragraphs (l) and (m) to read as follows:

15.407 Solicitation provisions.

* * * * *

(l) The provision at 52.214–34, Submission of Offers in the English Language, is required in solicitations subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see 25.408(d)). It may be included in other solicitations when the contracting officer decides that it is necessary.

(m) The provision at 52.214–35, Submission of Offers in U.S. Currency, is required in solicitations subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see 25.408(d)). It may be included in other solicitations when the contracting officer decides that it is necessary.

6. Section 15.1001 is amended by revising paragraph (c)(2) to read as follows:

15.1001 Notifications to unsuccessful offerors.

* * * * *

(c) * * *

(2) For acquisitions subject to the Trade Agreements Act or the North American Free Trade Agreement (NAFTA) Implementation Act (see 25.405(e)), the information in paragraph (c)(1) of this section shall be provided to unsuccessful offerors from designated or NAFTA countries promptly, but in no event later than seven working days after contract award.

* * * * *

PART 17—SPECIAL CONTRACTING METHODS

7. Section 17.203 is amended by revising paragraph (h) to read as follows:

17.203 Solicitations.

* * * * *

(h) See 25.402(a)(5) regarding use of options in calculating the estimated contract amount for application of the Trade Agreements Act and North American Free Trade Agreement thresholds.

PART 25—FOREIGN ACQUISITION

25.101 [Amended]

8. Section 25.101 is amended in the definition *Domestic end product* by removing the last sentence.

9. Section 25.109 is amended by revising paragraphs (d) and (f), redesignating paragraph (g)(2) as (g)(3), and adding a new paragraph (g)(2) to read as follows:

25.109 Solicitation provisions and contract clauses.

* * * * *

(d) Except as provided in paragraph (g) of this section, or when the clause prescribed by paragraph (f) is used, or when the clause prescribed in 25.408(a)(4) is used, the contracting officer shall insert the clause at 52.225–3, Buy American Act-Supplies, in solicitations and contracts for the acquisition of supplies, or for services involving the furnishing of supplies, for use within the United States.

* * * * *

(f) Except as provided in paragraph (g) of this section, the contracting officer shall insert the clause at 52.225–17, Buy American Act-Supplies under European Community Agreement, in solicitations and contracts for the acquisition of supplies, or for services involving the furnishing of supplies when the estimated acquisition value meets or exceeds $182,000 for the agencies listed at FAR 25.407, except for the Power Marketing Administrations' segment of the Department of Energy, where the estimated acquisition value is $450,000 of more.

(g) * * *

(2) The acquisition is made under the Trade Agreements Act (see subpart 25.4); or

* * * * *

25.202 [Amended]

10. Section 25.202 is amended in paragraph (c) by removing "25.402(a)(4)" and inserting "25.402(a)(3) and (4)".

11. Section 25.205 is amended by revising paragraph (b) to read as follows:

25.205 Solicitation provision and contract clause.

* * * * *

(b) For construction contracts with an estimated acquisition value of $6,500,000 ($8,000,000 for the Power Marketing Administrations) or more, to be awarded by agencies listed in 25.407, insert the clause at 52.225–15, Buy American Act-Construction Materials under European Community and North American Free Trade Agreements, in solicitations and contracts for construction.

12. Section 25.300 is amended by revising the second sentence to read as follows:

25.300 Scope of subpart.

* * * The Balance of Payments Program restrictions have been waived, with respect to the acquisition, in accordance with subpart 25.4, of certain products under the Trade Agreements Act of 1979 and the North American Free Trade Agreement (NAFTA) Implementation Act.

25.305 [Amended]

13. Section 25.305 is amended in paragraphs (a) and (c) by adding "or NAFTA" after "1979".

14. Section 25.400 is amended by revising paragraph (c) to read as follows:

25.400 Scope of subpart.

* * * * *

(c) Acquisitions involving offers of Canadian or Mexican end products under the North American Free Trade Agreement (NAFTA), as approved by Congress in the NAFTA Implementation Act (Pub. L. 103–182, 107 Stat. 2057);

* * * * *

15. Section 25.401 is amended by revising the definitions for "Canadian end product" and "Eligible product"; amending the "designated country" list by removing "Upper Volta" and adding in alphabetical order "Burkina Faso" and "Portugal"; and adding in alphabetical order the definitions "Mexican end product", "North American Free Trade Agreement (NAFTA) country", "NAFTA country construction material", and "NAFTA country end product" to read as follows:

25.401 Definitions.

Canadian end product, as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of Canada, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term includes services (except transportation services) incidental to its supply; *provided*, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

* * * * *

Eligible product, as used in this subpart, means a designated, North American Free Trade Agreement (NAFTA), or Caribbean Basin country end product.

* * * * *

Mexican end product, as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of Mexico, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Mexico into a new and different article of commerce with a name, character, or use distinct from, that of the article or articles from which it was transformed. The term includes services (except transportation services) incidental to its supply; *provided*, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

North American Free Trade Agreement (NAFTA) country, as used in this subpart, means Canada or Mexico.

NAFTA country construction material, means a construction material that (a) is wholly the growth, product, or manufacture of a NAFTA country or (b) in the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different construction material distinct form the materials from which it was transformed.

NAFTA country end product, as used in this subpart, means a Canadian end product or a Mexican end product.

16. Section 25.402 is amended—

(a) In paragraph (a)(1) by inserting a new sentence after the first sentence;

(b) By revising paragraph (a)(3);

(c) In the introductory text of paragraph (a)(4) by inserting "(European Community Agreement)" after "Procurement"; in (a)(4)(i) by revising "25.406 or" to read "25.407"; and in (a)(4)(ii) by revising "$176,000" to read "$182,000";

(d) In paragraphs (a)(5) introductory text and (a)(6) by inserting "or NAFTA" after "Act"; and

(e) By removing "country" the first time it appears in the introductory text of paragraph (f) and the second time it appears in paragraph (f)(2) and inserting", North American Free Trade Agreement," in their places.

The revised text reads as follows:

25.402 Policy.

(a)(1) * * * The current threshold is $182,000. * * *

* * * * *

(3) As required by the North American Free Trade Agreement (NAFTA) Implementation Act (Pub. L. 103–182, 107 Stat. 2057), agencies shall evaluate offers of the following NAFTA country end products without regard to the restrictions of the Buy American Act (see subpart 25.1) or the Balance of Payments Program (see subpart 25.3):

(i) NAFTA country construction materials under construction contracts with an estimated acquisition value of $6,500,000 or more for the agencies in 25.407, except for the Power Marketing Administration segments of the Department of Energy where the estimated acquisition value is $8,000,000 or more.

(ii) Canadian end products under supply contracts with an estimated value above $25,000 and Mexican end products under supply contracts with an estimated value of $50,000 or more for the agencies in 25.407, except for the Power Marketing Administrations' segment of the Department of Energy, where the estimated acquisition value is $250,000 or more.

* * * * *

17. Section 25.403 is amended in paragraph (a) by removing "Trade Agreements Act"; by revising paragraph (b); in paragraph (e) by inserting "(3) and" after "25.402(a)"; in paragraph (h) by revising "25.402(a)(4)(ii)" to read "25.402(a)(3) and (4)"; and revising paragraph (l) to read as follows:

25.403 Exceptions.

* * * * *

(b) Products of countries (1) not identified in 25.401 as designated, Caribbean Basin, or North American Free Trade Agreement countries, or (2) barred by 25.402(c);

* * * * *

(l)(1) For purchases subject to North American Free Trade Agreement or the European Community Agreement, agencies not listed at 25.407;

(2) For other purchases under this subpart, agencies not listed at 25.406; or

* * * * *

25.405 [Amended]

18. Section 25.405 is amended in the introductory text by inserting "or North American Free Trade Agreement

(NAFTA)" after "Act"; in paragraph (d) by removing "countries" the first time it appears and inserting ", NAFTA," in its place; and in paragraph (e) by inserting "or NAFTA" after "designated".

19. Section 25.406 is amended by revising the "General Services Administration" entry and adding in alphabetical order "National Archives and Records Administration" to read as follows:

25.406 Agencies covered by the Agreement on Government Procurement.

* * * * *

General Services Administration (except Federal Supply Groups 51 and 52 and Federal Supply Class 7340).

* * * * *

National Archives and Records Administration.

* * * * *

20. Section 25.407 is amended by revising the section heading; removing the introductory paragraph; redesignating paragraphs (a) thru (d) as (b) thru (e), and adding a new paragraph (a); changing "is" to "are" in newly redesignated (d); and adding paragraphs (f) and (g) to read as follows:

25.407 Agencies covered by the European Community and North American Free Trade Agreements.

(a) The agencies listed in 25.406.

* * * * *

(f) Federal Housing Finance Board.

(g) Office of Thrift Supervision.

21. Section 25.408 is amended by removing "Act" following "Agreements" from paragraph (a)(1) and (a)(2) the first time it appears; by removing "and" at the end of paragraph (a)(1); by removing the period at the end of paragraph (a)(2) and inserting a semicolon in its place; by adding new paragraphs (a)(3) and (a)(4); by revising paragraph (c); and in paragraph (d) by inserting "or NAFTA" following "Act" to read as follows:

25.408 Solicitation provision and contract clause.

(a) * * *

(3) The provision at 52.225–20, Buy American Act-North American Free Trade Agreement (NAFTA) Implementation Act-Balance of Payments Program Certificate, in solicitations containing the clause at 52.225–21; and

(4) The clause at 52.225–21, Buy American Act-North American Free Trade Agreement (NAFTA) Implementation Act-Balance of Payments Program, where the contracting officer has determined that the acquisition is not subject to the Trade Agreements Act but is subject to NAFTA.

* * * * *

(c) The clause prescriptions at paragraph (a) of this section shall apply where any item under a multiple item solicitation is determined to be subject to the Trade Agreements Act or North American Free Trade Agreement Implementation Act. If the Acts do not apply to all of the items being solicited, the contracting officer shall indicate, in the schedule, those items that are exempt.

* * * * *

25.1003 [Amended]

22. Section 25.1003 is amended in paragraphs (a)(2) and (b)(2) by revising "$176,000" to read "$182,000".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.225–3 [Amended]

23. Section 52.225–3 is amended by revising the date of the clause to read "(JAN 1994)"; by removing the last sentence from the definition "Domestic end product"; and removing the parenthetical following paragraph (b)(4).

24. Section 52.225–8 is amended in the section and clause headings by removing "Act" following "Agreements", and revising the date of the clause heading to read "(JAN 1994)"; in paragraph (a) by removing "Act" following "Agreements", and inserting "a North American Free Trade Agreement (NAFTA) country," following "designated country,"; by revising the introductory text of paragraph (c) and paragraph (c)(1); and in paragraph (c)(2) by removing "Act" following "Agreements". The revised text reads as follows:

§ 52.225–8 Buy American Act—Trade Agreements—Balance of Payments Program Certificate.

* * * * *

Buy American Act—Trade Agreements—Balance of Payments Program Certificate (Jan 1994)

* * * * *

(c) Offers will be evaluated by giving certain preferences to domestic end products, designated country end products, NAFTA country end products, and Caribbean Basin country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are designated or NAFTA country end products, or Caribbean Basin country end products. Products that are not identified and certified below will not be deemed designated country end products, NAFTA country end products, or Caribbean Basin country end products. Offerors must certify by inserting the applicable line item numbers in the following:

(1) The offeror certifies that the following supplies qualify as "designated or NAFTA country end products" as those terms are defined in the clause entitled "Buy American Act—Trade Agreements—Balance of Payments Program:"

(Insert line item numbers)

* * * * *

25. Section 52.225–9 is amended in the section and clause headings by removing "Act" following "Agreements", and revising the date of the clause heading to read "(JAN 1994)"; by revising the introductory text of paragraph (a) and adding in alphabetical order the definitions "NAFTA country", and "NAFTA country end product"; and revising paragraph (b) to read as follows:

§ 52.225–9 Buy American Act—Trade Agreements—Balance of Payments Program.

* * * * *

Buy American Act—Trade Agreements—Balance of Payments Program (Jan 1994)

(a) This clause implements the Buy American Act (41 U.S.C. 10), the Trade Agreements Act of 1979 (19 U.S.C. 2501–2582), the North American Free Trade Agreement (NAFTA) Implementation Act (Pub. L. 103–182, 107 Stat. 2057) and the Balance of Payments Program by providing a preference for domestic end products over foreign end products, except for certain foreign end products which meet the requirements for classification as designated, NAFTA, or Caribbean Basin country end products.

* * * * *

NAFTA country, as used in this clause, means Canada or Mexico.

NAFTA country end product, as used in this clause, means an article that (1) is wholly the growth, product, or manufacture of a NAFTA country, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term includes services (except transportation services) incidental to its supply; *provided*, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

(b) The Contracting Officer has determined that the Trade Agreements Act and NAFTA apply to this acquisition. Unless otherwise specified, the Acts apply to all items in the schedule. The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specifies delivery of foreign end products in the

provision entitled "Buy American Act—Trade Agreements—Balance of Payments Program Certificate." An offer certifying that a designated, NAFTA, or Caribbean Basin country end product will be supplied requires the Contractor to supply a designated, NAFTA, or Caribbean Basin country end product or, at the Contractor's option, a domestic end product. Contractors may not supply a foreign end product for line items subject to the Trade Agreements Act unless the foreign end product is a designated, NAFTA, or Caribbean end product (see FAR 25.401), or unless a waiver is granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(c)).

* * * * *

26. Section 52.225–15 is amended in the section and clause headings by removing "Agreement" and inserting "and North American Free Trade Agreements"; by revising the date of the clause heading to read "(JAN 1994)"; in paragraph (a) by adding in alphabetical order the definitions "North American Free Trade Agreement (NAFTA) country", and "NAFTA country construction material"; and by revising paragraphs (b) and (c) to read as follows:

52.225–15 Buy American Act—Construction Materials under European Community and North American Free Trade Agreements.

* * * * *

Buy American Act—Construction Materials Under European Community and North American Free Trade Agreements (Jan 1994)

* * * * *

North American Free Trade Agreement (NAFTA) country means Canada or Mexico.

NAFTA country construction material means a construction material that (1) is wholly the growth, product, or manufacture of a NAFTA country, or (2) in the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different construction material distinct from the materials from which it was transformed.

(b) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic material. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EC and NAFTA construction materials are exempted from application of the Buy American Act.

(c) The Contractor agrees that only domestic construction materials, NAFTA country construction materials or EC construction materials will be used by the Contractor, subcontractors, materialmen and suppliers in the performance of this contract, except for other foreign construction materials, if any, listed in this contract.

(End of clause)

27. Section 52.225–17 is amended in the clause heading by revising the date to read "(JAN 1994)"; in the definition "Domestic end product" by removing the last sentence; by removing the parenthetical following paragraph (c)(4); and by adding paragraph (d) to read as follows:

52.225–17 Buy American Act—Supplies under European Community Agreement.

* * * * *

Buy American Act—Supplies Under European Community Agreement (Jan 1994)

* * * * *

(d) If this contract contains the clause at 52.225–21, Buy American Act—North American Free Trade Agreement (NAFTA) Implementation Act—Balance of Payments Program, the Contractor may deliver NAFTA country end products, notwithstanding the prohibition in paragraph (c).

(End of clause)

28. Section 52.225–19 is amended in the clause heading by revising the date to read "(JAN 1994)"; and by revising paragraph (b) to read as follows:

52.225–19 European Community Sanction for Services.

* * * * * *

European Community Sanction for Services (Jan 1994)

* * * * *

(b) *Agreement.* The Contractor agrees not to perform services under this contract in a sanctioned member state of the EC. This does not apply to subcontracts.

(End of clause)

29. Sections 52.225–20 and 52.225–21 are added to read as follows:

52.225–20 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.

As prescribed in 25.408(a)(3), insert the following provision:

Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate (Jan 1994)

(a) The offeror hereby certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product (as defined in the clause entitled "Buy American Act—North American Free Trade Agreement (NAFTA) Implementation Act—Balance of Payments Program") and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

(b) Excluded End Products:

Line item No.	Country of origin
(List as necessary)	

(c) Offers will be evaluated by giving certain preferences to domestic end products or NAFTA country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are NAFTA country end products. Products that are not identified and certified below will not be deemed NAFTA country end products. Offerors must certify by inserting the applicable line item numbers in the following:

(1) The offeror certifies that the following supplies qualify as "NAFTA country end products" as that term is defined in the clause entitled "Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program:"

(Insert line item numbers)

(d) Offers will be evaluated in accordance with FAR part 25.

(End of provision)

52.225–21 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

As prescribed in 25.408(a)(4), insert the following clause:

Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (Jan 1994)

(a) *Definitions.* As used in this clause—

Components means those articles, materials, and supplies incorporated directly into the end products.

Domestic end product means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (i) determined by the Government, to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality, or (ii) to which the agency head concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

End products means those articles, materials, and supplies to be acquired under this contract for public use.

Foreign end product means an end product other than a domestic end product.

North American Free Trade Agreement (NAFTA) country means Canada or Mexico.

NAFTA country end product means an article that (1) is wholly the growth, product, or manufacture of a NAFTA country, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term includes services (except transportation services) incidental to its supply; *provided*, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

(b) This clause implements the Buy American Act (41 U.S.C. 10), the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), and the Balance of Payments Program by providing a preference for domestic end products over foreign end products, except for certain foreign end products which meet the requirements for classification as NAFTA country end products.

(c) The Contracting Officer has determined that the NAFTA applies to this acquisition. Unless otherwise specified, the Act applies to all items in the schedule. The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specifies delivery of foreign end products in the provision entitled "Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate." An offer certifying that a NAFTA country end product will be supplied requires the Contractor to supply a NAFTA country end product or, at the Contractor's option, a domestic end product.

(d) If the contract contains the clause at 52.225–17, Buy American Act—Supplies under European Community Agreement, the Contractor may deliver EC country end products notwithstanding the provisions of paragraph (c).

(e) Offers will be evaluated in accordance with the policies and procedures of subpart 25.4 of the Federal Acquisition Regulation.

(End of clause)

[FR Doc. 94–177 Filed 1–4–94; 8:45 am]

BILLING CODE 6820–34–M

Proposed Rules

Federal Register
Vol. 59, No. 3
Wednesday, January 5, 1994

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

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 92-029P]

RIN 0583-AB66

Sodium Citrate as a Tripe Denuding Agent

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations to permit the use of sodium citrate in solution to denude beef stomachs of mucous membranes. In 1990, a manufacturer of processing aids and other direct food ingredients petitioned the Food and Drug Administration and FSIS to approve the use of several compounds, including sodium citrate, for use in denuding tripe. FSIS has reviewed the data and other information submitted by the petitioner and has determined that the proposed use of sodium citrate would not result in product adulteration or misbranding. The proposed regulation would make available to meat processors an additional, alternative tripe-denuding formulation that would contain sodium citrate as an ingredient. The sodium citrate solution would be as effective as existing tripe-denuding agents, but would be less objectionable to workers than the agents now in use. The sodium citrate-containing formulation would contribute to improved tripe production.

DATES: Comments must be submitted on or before March 7, 1994.

ADDRESSES: Written comments to: Policy Office, Attn. Diane Moore, FSIS Hearing Clerk, room 3171 South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Dr. Bill James, Director, Slaughter Inspection Standards and Procedures Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720-3219.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is in conformance with Executive Order 12866, and the Assistant Secretary has determined that it is not a "significant regulatory action." This proposed rule: (1) Would have an effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health and safety, or State, local or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights or obligations or recipients thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing requirements with respect to premises, facilities, and operations of federally inspected meat or poultry products, and any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA and PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or in the case of imported articles, which are not at such an establishment, after their entry into the United States. The States may, however, impose more stringent requirements on such State inspected products and establishments.

This proposed rule is not intended to have retroactive effect, and no applicable administrative procedures must be exhausted before any judicial challenge to the provisions of this rule. However, the applicable administrative procedures specified in 9 CFR 306.5 must be exhausted prior to any judicial challenge to the application of the provisions of this rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA. The applicable administrative procedures specified in 9 CFR part 335 must be exhausted prior to any judicial challenge to the application of the provisions of this rule with respect to labeling decisions.

Effect on Small Entities

The Administrator has determined that this proposed rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The proposed regulation would make available to meat processors an additional, alternative tripe-denuding formulation that would contain sodium citrate as an ingredient. The sodium citrate formulation could be manufactured and sold in liquid form and used in existing or newly developed tripe denuding equipment. The sodium citrate-containing formulation could be used most efficiently in the new equipment and contribute to improved tripe production. Small establishments could benefit from the use of the sodium citrate product.

Background

Under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), FSIS provides for mandatory inspection of meat and meat food products shipped in interstate and foreign commerce. The Act prohibits the addition of any substance to any meat or meat food product that may render the product adulterated (21 U.S.C. 601). Section 318.7(a)(1) of the Federal meat inspection regulations (9 CFR 318.7) prohibits the use of any substance in the preparation of any product unless its use is approved in § 318.7(c)(4) of the Federal meat inspection regulations (9 CFR 318.7), which is the chart of substances acceptable for use in the preparation of products, or unless it is

approved elsewhere in the regulations or it is approved by the Administrator.

In 1990, a manufacturer of processing aids and other direct food ingredients petitioned the Food and Drug Administration (FDA) and FSIS to approve the use of several compounds, including sodium citrate, for use in denuding tripe. Tripe denudation—the removal of mucous membranes from beef stomachs—is a necessary step in the cleaning and preparation of tripe for use as human food. FSIS has reviewed the data and other information submitted by the petitioner and has determined that the proposed use of sodium citrate would not result in product adulteration or misbranding.

FDA lists sodium citrate as generally recognized as safe when used in accordance with good manufacturing practice in an amount not in excess of that required to achieve its intended effect (21 CFR 182.1751). In an August 24, 1992, letter to the petitioner, FDA reported this fact and stated that it would have "no objection to [sodium citrate's] addition to the tripe-denuding mixture [contemplated by the petitioner] providing that it is used in accordance with good manufacturing practice." [1] FDA further stipulated that the sodium citrate used be of food-grade quality and that the quantity used not be in excess of the amount reasonably required to accomplish its intended effect.

FSIS is proposing to amend § 318.7(c)(4) of the Federal meat inspection regulations to permit the use of sodium citrate as a tripe denuding agent in combination with other approved agents, in an amount sufficient to accomplish the intended effect. Use of sodium citrate for this purpose would be subject to the condition that the substance be removed from the denuded tripe by rinsing with potable water.

List of Subjects in 9 CFR Part 318

Food additives, Meat inspection.

For the reasons set out in the preamble, 9 CFR part 318 is proposed to be amended as follows:

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 318.7(c)(4) would be amended by adding to the chart of substances, under the Class of substance "Denuding agents; may be used in combination. Must be removed from tripe by rinsing with potable water." the substance sodium citrate in alphabetical order as follows:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substances	Substances	Purpose	Products	Amount
* * *	*	*	*	*
Denuding Agents; may be used in combination. Must be removed from tripe by rinsing with potable water.	Sodium Citrate	.....do	.....do	Do.
* * *	*	*	*	*

Done at Washington, DC, on December 27, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–105 Filed 1–4–94; 8:45 am]

BILLING CODE 3410–DM–M

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9 CFR Part 381

[Docket No. 92–026P]

RIN 0583–AB65

Use of Trisodium Phosphate on Raw, Chilled Poultry Carcasses

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: FSIS is proposing to amend the poultry products inspection regulations to permit the application of trisodium phosphate (TSP) on raw, chilled poultry carcasses passed for wholesomeness. TSP would be permitted as an antimicrobial agent on such poultry carcasses at a level of 8 to 12 percent. The TSP treatment solution would be maintained at a temperature of 45° F. to 55° F. and applied by spraying or dipping carcasses for up to 15 seconds. Tests conducted by industry have shown that the use of TSP at a level of 8 to 12 percent reduces microbial populations on raw, chilled poultry surfaces. This proposed rule is in response to a petition filed by Rhone-Poulenc, Inc., Cranbury, New Jersey.

DATES: Comments must be received on or before March 7, 1994.

ADDRESSES: Written comments to: Policy Office, Attn: Diane Moore, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments, as provided under the Poultry Products Inspection Act (PPIA), should be directed to Dr. William O. James at (202) 720–3219. (See also "Comments" under SUPPLEMENTARY INFORMATION.)

FOR FURTHER INFORMATION CONTACT: Dr. William O. James, Director, Slaughter Inspection Standards and Procedures Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 720–3219.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

FSIS has determined that this regulatory action is not a significant rule under Executive Order 12866. It would not likely result in a rule that may (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

[1] A copy of this letter is available from the FSIS Hearing Clerk, USDA, 14th & Independence Avenue, SW., room 3175, South Agriculture Building, Washington, DC 20250.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule would provide for the use of TSP as an antimicrobial treatment on raw, chilled poultry carcasses passed for wholesomeness.

States and local jurisdictions are preempted under the Poultry Products Inspection Act (PPIA) from imposing any requirements with respect to federally inspected premises and facilities, and operations of such establishments, that are in addition to, or different than, those imposed under the PPIA. States and local jurisdictions are also preempted under the PPIA from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected poultry products that are in addition to, or different than, those imposed under the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over poultry products that are outside official establishments for the purpose of preventing the distribution of poultry products that are misbranded or adulterated under the PPIA or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. States and local jurisdictions may also make requirements or take other actions that are consistent with the PPIA, with respect to any other matters regulated under the PPIA.

Under the PPIA, States that maintain poultry inspection programs must impose requirements on State-inspected products and establishments that are at least equal to those required under the PPIA. These States may, however, impose more stringent requirements on such State-inspected products and establishments.

In the event of its adoption, no retroactive effect would be given to this proposed rule, and applicable administrative procedures must be exhausted before any judicial challenge to the application of these provisions. Those administrative procedures are set forth in 9 CFR 381.35.

Effect on Small Entities

The Administrator, FSIS, has determined that the proposed rule would not have a significant impact on a substantial number of small entities. The proposed rule would permit the use of TSP at the establishment's option.

Establishments that decide to use TSP as an antimicrobial agent on their products would incur a one-time expense for the necessary equipment and an ongoing cost for purchasing TSP. The cost for the treatment equipment would be approximately $45,000 per processing line. The cost for the TSP would average about ½ cent per bird.

The production of ready-to-cook poultry containing lower amounts of bacteria than such poultry now available would contribute to the national effort to reduce the incidence of pathogenic bacteria in foods. Most consumers are willing to pay more for poultry products that are raised or processed in a way that reduces the levels of *Salmonella* on such products.[1] Therefore, the market for TSP-treated poultry carcasses would likely attract most consumers who desire additional protection from harmful microorganisms. In turn, poultry establishments that market TSP-treated poultry carcasses could benefit from increased sales.

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments should be sent to the Policy Office at the address shown above and should refer to Docket Number 92–026P. Any person desiring opportunity for oral presentation of views, as provided under the PPIA, should make such request to Dr. James at (202) 720–3219 so that arrangements may be made for such views to be presented. A record will be made of all such oral comments. Copies of all comments submitted in response to this proposal will be available for public inspection in the Policy Office between 9 a.m. and 12:30 p.m. and between 1:30 and 4 p.m., Monday through Friday.

Background

FSIS is responsible for assuring that poultry products distributed in commerce are wholesome, not adulterated, and properly marked, labeled, and packaged. Under the PPIA (21 U.S.C. 451–470), FSIS provides mandatory inspection of poultry and poultry products shipped in interstate and foreign commerce, as well as in designated States. Continuous inspection of poultry slaughtering establishments is intended to assure that fresh, ready-to-cook poultry carcasses and parts are free of visible signs of disease and contamination. FSIS inspectors examine the outside, inside, and viscera of all birds presented for inspection.

Because raw poultry furnish a rich medium for the potential growth of both beneficial and harmful microorganisms, it has been assumed traditionally that a certain level of microbial activity on the surface tissues of raw poultry was unavoidable. Consequently, poultry slaughter inspection activities have focused on the organoleptic detection of poultry diseases or other abnormalities in carcasses and parts that would render the products adulterated or unwholesome.

Over the years, scientific and public concern about microbiological contamination of poultry products has expanded from the processing of such products to conditions under which poultry are slaughtered, and even to preslaughter poultry production. FSIS has encouraged the scientific community and the regulated industry to develop slaughtering and processing methods and treatments that would yield raw poultry products that are as free as practicable of pathogenic bacteria. The control of miscrooganisms on raw poultry has been given a high priority on FSIS's research agenda.

Researchers estimate that from 6.5 million to 33 million Americans, or 3 to 14 percent of the population, become ill each year from consumption of foods containing microorganisms. An estimated 9,000 of these illnesses result in death, or 4 in 100,000 people. Chapter 4 of a 1985 report by the National Research Council/National Academy of Sciences, Meat and Poultry Inspection: The Scientific Basis of the Nation's Program, recommended, in part, that the poultry inspection program be refocused to place greater emphasis on microbiological and chemical testing.[2] Since the issuance of that report, FSIS has given greater priority to microbiological and chemical testing.

Among the diseases caused by foodborne microorganisms, the one receiving the most publicity in recent years has been salmonellosis. This common human intestinal disorder was estimated to cost Americans approximately $1 billion in 1987.

Much of the concern about *Salmonella* in the food supply has focused on chicken. FSIS has encouraged and permitted the industry to use technologies such as counterflow scalders, chlorinated inplant water, and ionizing radiation to reduce *Salmonella* and other pathogenic bacteria.

Rhone-Poulenc, Inc., Petition

FSIS has been petitioned by Rhone-Poulenc, Inc., Cranbury, New Jersey, to

[1] Rhone-Poulenc Food Buyer Telephone Survey, January 1993. A copy of this survey is available for public inspection in the office of the FSIS Hearing Clerk.

[2] A copy of Chapter 4 of this report is available for public inspection in the office of the FSIS Hearing Clerk. Page 53 contains the referenced recommendation.

permit the use of food-grade TSP as a processing aid in post-chill poultry slaughter operations.[3] The petitioner requested the use of a treatment solution consisting of TSP dissolved in water to a concentration of 10 percent, plus or minus 2 percent (8 to 12 percent). The petitioner requested exposure of the poultry to the TSP treatment solution for no more than 15 seconds, with the TSP treatment solution being maintained at 50° F., plus or minus 5° F. (45° F. to 55° F.).

The petitioner supplied data demonstrating that the use of TSP, under the parameters addressed above, is effective in reducing the levels of bacteria, including pathogenic bacteria, found on raw, chilled poultry carcasses. Immediately after chilling, poultry carcasses that have been passed for wholesomeness enter the TSP treatment system. Chilled poultry carcasses are either sprayed with or dipped in the TSP treatment solution for no more than 15 seconds. The concentration of TSP used in various studies conducted by or for the petitioner ranged from 8 to 12 percent in water, at temperatures ranging from 45° F. to 55° F.

Data from the petitioner included results of studies conducted by the Pennsylvania State Sensory Laboratory for Rhone-Poulenc, Inc., on consumer acceptability of cooked poultry derived from TSP-treated poultry carcasses. These studies show no significant difference in taste or appearance between cooked poultry from TSP-treated poultry carcasses and cooked poultry from untreated poultry.

The petitioner also provided study results concerning moisture pickup and residue findings in poultry carcasses treated with TSP. According to these study results, the moisture pickup in TSP-treated poultry carcasses does not exceed regulatory limits for moisture absorption as prescribed in 9 CFR 381.66(d)(5). Residue findings ranged from −0.25 percent to 0.11 percent, showing that virtually no residue of the TSP solution remains on or in the treated poultry carcasses.

FSIS Studies on TSP

FSIS also conducted studies to determine the efficacy of TSP on raw, chilled poultry carcasses.[4] These studies show that the use of TSP on raw, chilled poultry carcasses results in statistically significant reductions in the levels of bacteria. Summary statistics of bacterial plate counts were used in all statistical analyses based on the arithmetic average and statistical significance was determined through nonparametric procedures using the relative rank of values. Analyses of 256 carcass-rinse samples collected at a federally inspected establishment over 4 days indicated that carcasses had average aerobe plate counts of 328 before TSP application, and 78 after application; Enterobacteriaceae counts of 25.5 before TSP application, and 2.7 after application; and *Escherichia coli* counts of 10.1 before TSP application, and 0.2 after treatment. Although these particular studies found no salmonellae in untreated or treated carcasses, preliminary results from industry group testing show that TSP is also effective in reducing salmonellae on raw poultry. Studies on moisture absorption resulting from the use of TSP found no inconsistencies with data furnished by the petitioner.

Food Additive Status

TSP is listed in the Food and Drug Administrated (FDA) regulations as generally recognized as safe (GRAS) for multiple purpose use in accordance with good manufacturing practice (21 CFR 182.1778).

FDA evaluated the petitioner's request for the use of TSP as a processing aid in poultry and concluded that the treatment leaves no residues on the product that could be harmful to consumers. Therefore, in an August 25, 1992, letter, FDA approved the use of TSP as a processing aid on raw poultry, under conditions to be established by FSIS.[5]

The Proposal

The Administrator has determined that (1) the use of TSP on raw, chilled poultry carcasses is in compliance with applicable FDA requirements, (2) its use is functional and suitable for the intended purpose, (3) the substance is used at the lowest acceptable level to consistently achieve the desired reduction of pathogenic bacteria as determined in specific cases, and (4) the use of this substance on raw, chilled poultry carcasses at the stated level will not render the treated product adulterated, misbranded, or otherwise not in accordance with the requirements of the PPIA.

Therefore, FSIS is proposing to amend the poultry products inspection regulations at 9 CFR 381.147(f)(4) to add antimicrobial agents as a new class of substance for use on poultry products, and to add TSP as an approved antimicrobial agent. As requested by the petitioner, TSP would be permitted for use on raw, chilled poultry carcasses passed for wholesomeness at a level of 8 to 12 percent. The TSP treatment solution would be maintained at 45 °F. to 55 °F., and would be applied either by spraying or dipping the raw, chilled poultry carcasses for no more than 15 seconds. FSIS has determined, through review of the petitioner's data and its own study results, that 15 seconds is the maximum time necessary to coat all surfaces of the poultry carcasses with the TSP solution. FSIS is proposing the application of TSP by spraying, as well as by dipping, to permit the use of any existing spraying equipment in establishments, and thus reduce the costs incurred by establishments to set up the TSP treatment system.

Although the use of TSP would not eliminate the need for continuing careful handling of raw poultry products, TSP treatment on raw, chilled poultry carcasses would reduce the levels of bacteria that may be present on raw poultry carcasses.

TSP leaves virtually no residue on or in the carcass of treated poultry that would require the labels of such treated product to show the presence of TSP. Therefore, poultry producers opting to use TSP would not be required to revise their product labels.

List of Subjects in 9 CFR Part 381

Poultry and poultry products.

For the reasons set forth in the preamble, FSIS is proposing to amend the poultry products inspection regulations as follows:

PART 381—MANDATORY POULTRY PRODUCTS INSPECTION

1. The authority citation for part 381 would continue to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470, 7 CFR 2.17, 2.55.

2. In Table I of § 371,147(f)(4), a new class of substance titled "Antimicrobial agents" would be added and the substance "Trisodium phosphate" would be added to the new class of substance to read as follows:

§ 381.147 Restrictions on the use of substances in poultry products.

* * * * *

(f) * * *

(4) * * *

[3] A copy of this petition is available for public inspection in the office of the FSIS Hearing Clerk.

[4] A copy of the study results is available for public inspection the office of the FSIS Hearing Clerk. After carcasses had been chilled and hung on a moving shackle line, they were dipped for 15 seconds in an 8 percent) plus or minus 2 percent) TSP solution at a temperature of 7.7 °C. (plus or minus 2 °C.) (42 °F. to 49.5 °F.).

[5] A copy of FDA's approval letter is available for public inspection in the office of the FSIS Hearing Clerk.

Class of substance	Substance	Purpose	Products	Amount
*	*	*	*	*
Anti-microbial agents	Trisodium phosphate	To reduce microbial levels	Raw, chilled poultry carcasses.	8 to 12 percent; solution to be maintained at 45° F. to 55° F. and applied by spraying or dipping carcasses for up to 15 seconds in accordance with 21 CFR 182.1778.
*	*	*	*	*

Done at Washington, DC, on December 27, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–104 Filed 1–4–94; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–93–21]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received by March 7, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on December 28, 1993.

Joseph Conte,

Acting Assistant Chief Counsel.

Petitions for Rulemaking

Docket No.: 27542.

Petitioner: Ms. Debra Russi.

Regulations Affected: 14 CFR 105.

Description of Rulechange Sought: To require all parachute training be performed in accordance with the United States Parachute Association (USPA) training program or in accordance with a plan approved by the Federal Aviation Administration (FAA); incorporated by reference the USPA training program in part 105; and require that the operator of an aircraft immediately, and by the most expeditions means available, notify the nearest FAA Air Traffic Facility when a sport parachute accident/incident occurs involving a person who made an intentional jump from that aircraft.

Petitioner's Reason for the Request: The petitioner feels that this amendment is needed to protect the citizens of the United States of America, who wish to participate in sport parachuting, by providing participants the assurance of a training course which adheres to approved specifications; and, in the event of a parachute accident, the proposed changes would facilitate prompt notification of the nearest FAA field office, enabling timely investigative procedures.

[FR Doc. 94–134 Filed 1–4–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 27 and 29

Future Harmonized Rotorcraft Rulemaking; Normal Category Maximum Weight; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: The FAA is announcing a public meeting to discuss the use of Aviation Rulemaking Advisory Commission procedures in future harmonized rulemaking. Once specific rulemaking topic that will be discussed is a proposed increase in the current maximum gross weight limitation of 6,000 pounds for certification as a normal category rotorcraft.

DATES: The meeting will begin at 9 a.m. PDT on February 2, 1994.

ADDRESSES: The meeting will be held at the Anaheim Marriott, Ballrooms E and G, 700 West Convention Way, Anaheim, California 92802, telephone 714–750–8000 (headquarters hotel for the Helicopter Association International Heli Expo '94).

FOR FURTHER INFORMATION CONTACT: Mr. Eric Bries, Manager, Rotorcraft Standards Staff, ASW–110, FAA, Rotorcraft Directorate, Fort Worth, Texas 76193–0110, telephone (817) 222–5110 or fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA), Rotorcraft Directorate, has recently completed a series of harmonization meetings with the Helicopter Airworthiness Study Group (HASG) of the European Joint Airworthiness Authorities (JAA). The meetings were supplemented with joint authorities and industry meetings. These meetings resulted in the issuance of European

Joint Airworthiness Requirements 27 (September 1993) and 29 (November 1993), which are in basic harmonization with Federal Aviation Regulations parts 27 and 29 (FAR 27 and 29). Current rulemaking using the Aviation Rulemaking Advisory Committee (ARAC) is intended to amend FAR 27 and 29 to complete the harmonization process for existing rules.

To assure future rotorcraft rulemaking is harmonized to the greatest extent practical and to provide information on rulemaking using the ARAC, the FAA believes that a public meeting is warranted.

The public meeting will also be used to discuss draft revisions for Advisory Circular (AC) 27–1, Change 3, and AC 29–2A, Change 2 (58 FR 67893, December 22, 1993).

Future Harmonized Rotorcraft Rulemaking—General

Status reports on the current harmonization efforts will be made by American and European authorities and industry representatives. A presentation on the ARAC will be made. Discussion will follow the presentation and will focus on the following items:

—ARAC
—International Harmonization of rulemaking
—Future rotorcraft rulemaking—general

Normal Category Maximum Gross Weight of 6,000 Pounds

Since 1956 the FAA has based the primary and obvious distinction between normal and transport category rotorcraft certification requirements on the maximum certificated gross weight of the aircraft. The upper gross weight limit for normal category rotorcraft was set at 6,000 pounds, based on existing and anticipated designs. All rotorcraft above the 6,000 pounds maximum certificated gross weight are required to be certificated in the transport category.

Recently the FAA received two requests for exemptions from this criteria and numerous recommendations for varying degrees of changes to the airworthiness standards. The FAA recognizes that helicopters, and their operational roles, have evolved since the 6,000-pound rule was established in 1956, and therefore some changes may be warranted. Based on this recognition, the FAA developed an issue paper entitled "Certification Categories for Civil Rotorcraft." This paper will be used to facilitate discussion at the public meeting. Copies of the paper have been mailed to interested parties. Additional interested parties who have not received a copy of the paper by January 1, 1994, may obtain a copy by contacting the person listed under "FOR FURTHER INFORMATION CONTACT."

Meeting Procedures

The meeting is being chaired by the Rotorcraft Directorate. Participants will include FAA representatives from Flight Standards, Legal Counsel, and the Office of International Aviation; JAA representatives from engineering and operations; and industry groups from the U.S. and Europe.

The following procedures will be used to conduct the meeting:

1. Registration will be from 8–9 a.m. PDT on February 2, 1994. There will be no registration fee. Preregistration is recommended and may be accomplished by contacting the person listed under the caption "FOR FURTHER INFORMATION CONTACT."
2. The meeting will be recorded by a court reporter, and transcripts will be available for purchase directly from the court reporter.
3. Statements by the FAA will be made to facilitate discussion and should not be taken as expressing a final FAA position.
4. The FAA will consider all material presented at the meeting by participants. Handouts will be accepted at the discretion of the chairperson; however, enough copies should be provided for distribution to all participants.

Issued in Fort Worth, Texas, on December 20, 1993.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–224 Filed 1–4–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 93–SW–17–AD]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 205A, 205A–1, 205B, 212, and 412 Series Helicopters

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 Bell Helicopter Textron, Inc. Model 205A, 205A–1, 205B, 212, and 412 series helicopters. This proposal would require removal and replacement of a certain design main transmission lower planetary spider (spider) and would establish a 2,500 hours' time-in-service retirement life for the spider. This proposal is prompted by five failures of the spider that occurred during the manufacturer's fatigue tests. The actions specified by the proposed AD are intended to prevent fatigue failure of the spider, failure of the main transmission, and subsequent loss of control of the helicopter.

DATES: Comments must be received by February 22, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–17–AD, 2601 Meacham Boulevard, Fort Worth, Texas 76137. 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 Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Boulevard, room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Horn, Aerospace Engineer, Rotorcraft Certification Office, FAA, Rotorcraft Directorate, Fort Worth, Texas 76193–0170, telephone (817) 222–5159, fax (817) 222–5959.

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 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, 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 93–SW–17–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, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–17–AD, 2601 Meacham Boulevard, Fort Worth, Texas 76137.

Discussion

This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. (BHTI) Model 205A, 205A–1, 205B, 212, and 412 series helicopters, equipped with a main transmission lower planetary spider (spider), part number (P/N) 412–040–785–101. During recent BHTI fatigue tests, five spiders failed due to structural fatigue. Previously, there was no retirement life established for the spider. However, based on these test results, the FAA proposes to establish a 2,500 hours' time-in-service (TIS) retirement life for this design spider. This condition, if not corrected, could result in fatigue failure of the spider, failure of the main transmission, and subsequent loss of control of the helicopter.

The FAA has reviewed and approved (1) BHTI Alert Service Bulletin (ASB) 205–93–54, dated June 18, 1993, applicable to Model 205A–1 helicopters; (2) ASB 205B–93–16, dated June 18, 1993, applicable to Model 205B helicopters; (3) ASB 212–93–83, dated June 18, 1993, applicable to Model 212 helicopters; and (4) ASB 412–93–72, Revision A, dated June 18, 1993, applicable to Model 412 helicopters. These ASBs describe procedures for the removal, retirement, and replacement of certain spiders when they reach 2,500 hours' TIS.

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 removal and replacement of spiders with less than 2,400 hours' TIS, prior to or upon attaining 2,500 hours' TIS or, for spiders with 2,400 hours' or more TIS, within the next 100 hours' TIS. This AD also establishes a retirement life of 2,500 hours' TIS. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 40 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 26 workhours per helicopter to accomplish the proposed actions, and that the average labor rate is $55 per workhour. Required parts would cost approximately $8,929 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $414,360.

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 "significant regulatory action" under Executive Order 12866; (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:

Bell Helicopter Textron, Inc.: Docket No. 93–SW–17–AD.

Applicability: Model 205A, 205A–1, 205B, 212, and 412 series helicopters, with main transmission lower planetary spider (spider), part number (P/N) 412–040–785–101, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of the spider, that could result in failure of the main transmission and subsequent loss of control of the helicopter, accomplish the following:

(a) For spiders with 2,400 hours' or more time-in-service (TIS) on the effective date of this airworthiness directive (AD), within the next 100 hours' TIS remove and replace the spider with an airworthy spider in accordance with the Accomplishment Instructions of Bell Helicopter Textron, Inc. Alert Service Bulletin (ASB) 205–93–54, dated June 18, 1993, for the Models 205A and 205A–1; ASB 205B–93–16, dated June 18, 1993, for the Model 205B; ASB 212–93–83, dated June 18, 1993, for the Model 212; and ASB 412–93–72, Revision A, dated June 18, 1993, for the Model 412 helicopters.

(b) For spiders with less than 2,400 hours' TIS on the effective date of this AD, prior to or upon attaining 2,500 hours' TIS, remove and replace the spider with an airworthy spider in accordance with the accomplishment instructions of the appropriate ASB referred to in paragraph (a).

(c) This AD revises the Airworthiness Limitations Section of the applicable helicopter maintenance manuals by establishing a retirement life of 2,500 hours' TIS for the spider.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate. Operators should submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

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

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

Issued in Fort Worth, Texas, on December 3, 1993.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–140 Filed 1–4–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–SW–20–AD]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 214B, 214B–1, and 214ST Helicopters

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 Bell Helicopter Textron, Inc. Model 214B, 214B–1, and 214ST helicopters. This proposal would establish a mandatory retirement life of 60,000 high-power events for the main rotor trunnion (trunnion), which is currently not a life-limited part. This proposal is prompted by the manufacturer's analysis and retesting that has shown that the trunnion is sensitive to high-power events. The actions specified by the proposed AD are intended to prevent fatigue failure of the trunnion, that could result in loss of the main rotor and subsequent loss of control of the helicopter.

DATES: Comments must be received by February 22, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–20–AD, 4400 Blue Mound Road, bldg 3B, room 158, Fort Worth, Texas 76106. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Horn, Aerospace Engineer, Rotorcraft Certification Office, FAA, Rotorcraft Directorate, ASW–170, Fort Worth, Texas 76193–0170, telephone (817) 624–5177, fax (817) 740–3394.

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 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, 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 93–SW–20–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, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–20–AD, 4400 Blue Mound Road, bldg. 3B, room 158, Fort Worth, Texas 76106.

Discussion

This document proposes to adopt a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. Model 214B, 214B–1, and 214ST helicopters. Recent retesting and analysis has shown that the main rotor trunnion (trunnion), part number 214–010–230–101, is sensitive to high-power events. High power events are takeoffs and external load lifts. This condition, if not corrected, could result in fatigue failure of the trunnion, loss of the main rotor, and subsequent loss of the control of the helicopter.

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 for the trunnion, within the next 25 hours' time-in-service after the effective date of this AD, (1) creation of a component history card; (2) accumulation of the historical high-power events; and (3) thereafter, recording of the high-power events as they occur. Additionally, the proposed AD would establish a trunnion retirement life of 60,000 high-power events.

The FAA estimates that 15 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 16 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $10,929 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $29,523, assuming inspection and modification of one-sixth of the fleet is required each year.

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 "significant regulatory action" under Executive Order 12866; (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:

Bell Helicopter Textron, Inc.: Docket No. 93–SW–20–AD.

Applicability: Model 214B, 214B–1, and 214ST helicopters, equipped with main rotor trunnion (trunnion), part number 214–010–230–101, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of the trunnion as a result of takeoffs and external loads lifts (high-power events), that could result in loss of the main rotor and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 25 hours' time-in-service after the effective date of this airworthiness directive (AD), accomplish the following:

(1) Create a historical service record or component history card for the trunnion.

(2) Determine the actual time-in-service of the trunnion from maintenance records, if possible. If the actual time-in-service cannot be determined, use a time-in-service of 900 hours per year. Prorate the hours for a partial year.

(3) For Model 214B and 214B–1 helicopters, determine and record the accumulated high-power events on the trunnion as follows:

(i) If the number of high-power events is unknown, assign 12 high-power events for each hour time-in-service obtained in accordance with paragraph (a)(2).

(ii) If the number of high-power events is known, divide that number by 2 and record the resulting number as the total accumulated high-power events.

(4) For Model 214ST helicopters, determine and record the accumulated high-power events on the trunnion as follows:

(i) If the number of events is unknown, assign 11 high-power events for each hour time-in-service obtained in accordance with paragraph (a)(2).

(ii) If the number of high-power events is known, record that number as the total accumulated high-power events.

(b) After the effective date of this AD, continue to record high-power events in the aircraft maintenance record. For Model 214B and 214B–1 helicopters, divide the number of high-power events by 2 and add the resulting number to the previously recorded sum. For Model 214ST helicopters, add the high-power events to the previously recorded sum.

(c) Remove the trunnion and replace it with an airworthy trunnion in accordance with the following:

(1) For each trunnion with 59,400 or more high-power events on the effective date of this AD, remove and replace the trunnion on or before the accumulation of an additional 600 high-power events.

(2) For each trunnion with less than 59,400 high-power events on the effective date of this AD, remove and replace the trunnion on or before attaining 60,000 high-power events.

(d) This AD revises the helicopter Airworthiness Limitations Section of the maintenance manual by establishing a new retirement life for the trunnion.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate, Fort Worth, Texas 76193–0170. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

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

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

Issued in Fort Worth, Texas, on November 5, 1993.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–143 Filed 1–4–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

28 CFR Part 65

[INS No. 1449–92]

RIN 1115–AD40

Emergency Federal Law Enforcement Assistance; Comment Period Extended

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This notice extends the comment period for the Immigration Emergency Fund regulation published on November 5, 1993, at 58 FR 58994. The original comment period expired on December 6, 1993, but the Immigration and Naturalization Service received several requests from the public to extend this period.

DATES: Written comments must bear a postmark dated on or before January 26, 1994.

ADDRESSES: Please submit written comments, in triplicate, to Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5307, Washington, DC 20536. To ensure proper handling, the letters should refer to INS No. 1449–92.

FOR FURTHER INFORMATION CONTACT: Michael J. Coster, Associate General Counsel, Immigration and Naturalization Service, 425 I Street, NW., room 6100, Washington, DC 20536, telephone (202) 514–2895.

Dated: December 22, 1993.

Doris Meissner,

Commissioner.

[FR Doc. 94–176 Filed 1–4–94; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 93–305; FCC 93–545]

Vanity Call Sign System

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This action proposes to authorize the use of vanity call signs in the amateur service. The proposed rules are necessary so that amateur operators can request specific call signs with letters that signify something of importance to them such as their initials or their nicknames. This proposal would give better service to members of the amateur community because it would allow them to choose their own calls signs provided the call sign chosen is unassigned and within the framework of the license class held.

DATES: Comments are due on or before March 7, 1994. Reply comments are due on or before April 7, 1994.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, adopted December 13, 1993, and released December 29, 1993. The complete text of this Commission action, including the proposed rule amendments, is available for inspection and copying during normal business hours in the FCC Reference center (room 230), 1919 M Street, NW., Washington, DC. The complete text of this Notice of Proposed Rule Making, including the proposed rule amendments, may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (ITS, Inc.), 2100 M Street, NW., suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. The Licensing Division of the Private Radio Bureau is installing a new automated licensing process that will give it the capability to administer a vanity call sign system. The Commission, therefore, on its own motion, is proposing to amend the amateur service rules to implement a system wherein amateur station licensees can select call signs of their own choice, provided they are not already assigned and are within the framework of the operator license class held by the applicant.

2. The vanity call sign system would be in addition to the current sequential call sign system that would be continued to be used for those applicants who do not want a vanity call sign.

3. The proposed rules would allow the licensee of an existing primary station to request a modification of the

licensee to show a call sign selected by the licensee. This privilege would also be extended to the license trustee of an existing club station.

4. It is also proposed to administer a club and military recreation station sequential call sign system under our new automated licensing process.

5. An applicant could list ten call signs on the application form in order of preference. The first available call sign from the applicant's list would be assigned. If none of the call signs listed are available, the automated process would reassign the call sign that the applicant had vacated.

6. The proposed vanity call sign system is designed to be practicable to administer and simple for the amateur community to use. Comments are invited on the entire proposal and specifically on the following matters. Could other means, such as magnetic computer disks, be used to apply directly to the Commission for a vanity call sign in lieu of the traditional paper application form? Could some type of access be made available to the public to check with the Commission for call sign availability? What options are available so that the public could apply for a license electronically and receive authorization to begin operation by the same means?

7. In addition, commenters may wish to submit alternatives suggesting ways that military recreation and RACES stations might be able to be brought into a system that would afford them call signs of choice.

8. The proposed rules are set forth at the end of this document.

9. This is a non-restricted notice and comment rule making proceeding.

Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as specified in the Commission's Rules. See generally 47 CFR 1.1202, 12.1203, and 1.1206(a).

10. In accordance with section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that the proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small business entities because the amateur stations that are the subject of this proceeding would not be authorized to transmit any communications where the station licensee or control operator has a pecuniary interest. See § 97.113(a)(3).

11. This Notice of Proposed Rule Making and the proposed rule amendments are issued under the authority of sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

12. A copy of this Notice of Proposed Rule Making will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 97

Club stations, Radio, Vanity call signs.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Proposed Rules

Part 97 of chapter I of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 97—AMATEUR RADIO SERVICE

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. In § 97.17, paragraphs (b), (c), (f), are revised and a new paragraph (g) is added to read as follows:

§ 97.17 Application for new license.

* * * * *

(b) Each application for a new amateur service license must be made on the proper FCC form:

(1) FCC Form 610 for a new operator/primary station license;

(2) FCC Form 610–A for a reciprocal permit for alien amateur licensee; and

(3) FCC Form 610–B for a new amateur service club or military recreation station license.

(c) Each application for a new operator/primary station license must be submitted to the VEs administering the qualifying examination.

* * * * *

(f) One unique call sign will be assigned to each new primary, club, and military recreation station using the sequential call sign system (call sign is selected sequentially by the FCC from an alphabetized list corresponding to the geographic region of the licensee's mailing address and class of operator license.) The FCC will issue public announcements detailing the procedures of the sequential call sign system.

(g) Each application for a new club or military recreation station license must be submitted to the FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. No new license for a RACES station will be issued.

3. Section 97.19 is revised to read as follows:

§ 97.19 Application for a vanity call sign.

(a) A person holding an operator/primary or club station license may request a modification of the license to show a call sign assigned under the vanity call sign system (licensee selects the call sign.)

(b) Each request for a modification of an operator/primary or club station license to show a new call sign assigned under the vanity call sign system must be made on FCC Form 610–V. The form must be submitted with the proper fee to the address specified in the Private Radio Services Fee Filing Guide.

(c) Each request for a renewal of an operator/primary or club station license retaining a call sign assigned under the vanity call sign system must be made on FCC Form 610–V. The form must be submitted with the proper fee to the address specified in the Private Radio Services Fee Filing Guide. To renew the license without retaining a vanity call sign, the applicant must use FCC Form 610 as specified in § 97.21.

(d) The following persons are eligible to apply for a new vanity call sign:

(1) The holder of a valid operator/primary station license; and

(2) The license trustee holding a club station license.

(e) RACES and military recreation stations are not eligible for a vanity call sign.

(f) Only unassigned call signs are available to the vanity call sign system.

(1) A call sign that was previously assigned to a station whose license has lapsed is not available to the vanity call sign system for 2 years following expiration of the license.

(2) A call sign assigned to a station of a deceased licensee is not available to the vanity call sign system for 2 years following the licensee's death, or for 2 years following the expiration of the license, whichever is sooner.

(3) A call sign that is vacated by the licensee is available immediately to the vanity call sign system.

(g) Each vanity call sign requested must be selected from the groups of call signs designated under the sequential call sign system for the class of operator license held by the applicant or for a lower class.

(1) The applicant must request that the call sign held be cancelled and provide a list of up to 10 call signs in order of preference. The list will automatically end with the call sign vacated as the eleventh choice.

(2) The first available call sign from the applicant's list will be assigned. When none of those call signs are available, the call sign vacated by the applicant will be reassigned.

(3) Vanity call signs will be assigned from those call signs available at the time the application is processed by the FCC.

(4) The FCC will issue public announcements detailing the procedures of the vanity call sign system.

4. Current §§ 97.21, 97.23, 97.25 and 97.27 are redesignated as §§ 97.23, 97.25, 97.27 and 97.29, respectively.

5. Section 97.21 is added to read as follows:

§ 97.21 Application for renewal, reinstatement, or modification of a license.

(a) Each application for renewal, reinstatement, or modification of an amateur service license must be made on the proper FCC form(s):

(1) FCC Form 610 to request renewal or reinstatement of an operator/primary station license. The form must be submitted to the FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. When the applicant desires to retain a call sign that was assigned under the vanity call sign system, FCC Form 610–V must be used as specified in § 97.19.

(2) FCC Form 610 to request modification of an operator license showing a change in operator class. The form must be submitted to the VEs administering the qualifying examination. A request for a vanity call sign may *not* be filed with the administering VEs. When the applicant desires to retain a call sign that was assigned under the vanity call sign system, the license will bear the original expiration date.

(3) FCC Form 610 to request modification of an operator/primary station license showing a change of mailing address, change of name, or change of call sign to be assigned under the sequential call sign system. The form must be submitted to the FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. When the applicant desires to retain a call sign that was assigned under the vanity call sign system, the license will bear the original expiration date.

(4) FCC Form 610–B to request renewal of a club, military recreation, or RACES station license. The form must be submitted to the FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. If the station has a call sign that was assigned under vanity call sign system, FCC Form 610–V must be used as specified in § 97.19.

(5) FCC Form 610–B to request modification of a club, military recreation, or RACES station license showing a change of mailing address, change of license trustee or custodian, or change of call sign to be assigned under the sequential call sign system. The form must be submitted to the FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. When the applicant desires to retain a call sign that was assigned under the vanity call sign system, the license will bear the original expiration date.

(6) A reciprocal permit for alien amateur licensee is not renewable. A new reciprocal permit may be issued upon proper application.

(b) Each application for renewal, reinstatement, or modification of an amateur service license must be accompanied by a photocopy of the license document or the original document, unless it has been lost, mutilated, or destroyed.

(c) When the licensee has submitted a timely application for renewal of an unexpired license (between 60 and 90 days prior to the end of the license term is recommended), the licensee may continue to operate until the disposition of the application has been determined. If a license expires, application for reinstatement may be made during a grace period of 2 years after the expiration date. During this grace period, the expired license is not valid. A license reinstated during the grace period will be dated as of the date of the reinstatement.

(d) Under the sequential call sign system, unless the licensee requests a change, the same call sign will be assigned to the station upon renewal, reinstatement, or modification of a station license.

[FR Doc. 94–30 Filed 1–4–94; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register

Vol. 59, No. 3

Wednesday, January 5, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers To Be Used for Publication of Notice on Proposed Actions for Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Responsible Officials in the Southern Region will publish notice of proposed actions under 36 CFR part 215 in the newspapers that are listed in the Supplementary Information section of this notice. As provided in 36 CFR 215.5(a), the public shall be advised, through **Federal Register** notice, of the principal newspapers to be utilized for publishing notices on proposed actions.

DATES: Use of these newspapers for purposes of publishing notices of proposed actions under 36 CFR part 215 shall begin on or after January 5, 1994.

FOR FURTHER INFORMATION CONTACT: Jena Paul Kruglewicz, Regional Appeals Coordinator, Southern Region, Planning and Budget, 1720 Peachtree Road, NW, Atlanta, Georgia 30367–9102, Phone: 404–347–4867.

SUPPLEMENTARY INFORMATION: Responsible Officials in the Southern Region will give notice of proposed actions under 36 CFR part 215 in the following principal newspapers which are listed by Forest Service administrative unit. The timeframe for comment shall be based on the date of publication of the notice of the proposed action in the principal newspaper.

Southern Regional Forester decisions affecting National Forest System lands in more than one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico.

Atlanta Journal, published daily in Atlanta, GA

Southern Regional Forester decisions affecting National Forest System lands in only one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico will appear in the principal newspaper elected by the National Forest(s) of that state.

National Forests in Alabama, Alabama Forest Supervisor Decisions

Montgomery Advertiser, published daily in Montgomery, AL

District Rangers Decisions

Bankhead Ranger District: Northwest Alabamian, published weekly (Monday & Thursday) in Haleyville, AL

Conecuh Ranger District: The Andalusia Star, published daily (Tuesday through Saturday) in Andalusia, AL

Oakmulgee Ranger District, The Tuscaloosa News, published daily in Tuscaloosa, AL

Shoal Creek Ranger District: The Anniston Star, published daily in Anniston, AL

Talladega Ranger District: The Daily Home, published daily in Talladega, AL

Tuskegee Ranger District: Tuskegee News, published weekly (Thursday) in Tuskegee, AL

Caribbean National Forest, Puerto Rico Forest Supervisor Decisions

El Nuevo Dia, published daily in Spanish in San Juan, PR

District Ranger Decisions

El Horizonte, published weekly (Wednesday) in Fajardo, PR

Chattahoochee-Oconee National Forest, Georgia Forest Supervisor Decisions

The Times, published daily in Gainesville, GA

District Ranger Decisions

Armuchee Ranger District: Walker County Messenger, published bi-weekly (Wednesday & Friday) in LaFayette, GA

Toccoa Ranger District: The News Observer published weekly (Wednesday) in Blue Ridge, GA

Chestatee Ranger District: Dahlonega Nugget, published weekly (Thursday) in Dahlonega, GA

Brasstown Ranger District: North Georgia News, published weekly (Wednesday) in Blairsville, GA

Tallulah Ranger District: Clayton Tribune, published weekly (Wednesday) in Clayton, GA

Chattooga Ranger District: Northeast Georgian, published weekly (Wednesday) in Clarksville, GA

Cohutta Ranger District: Chatsworth Times, published weekly (Tuesday) in Chatsworth, GA

Oconee Ranger District: Monticello News, published weekly (Thursday) in Monticello, GA

Cherokee National Forest, Tennessee Forest Supervisor Decisions

Knoxville News Sentinel, published daily in Knoxville, TN (covering McMinn, Monroe, and Polk Counties)

Johnson City Press, published daily in Johnson City, TN (covering Carter, Cocke, Greene, Johnson, Sullivan, Unicoi and Washington Counties)

District Rangers Decisions

Ocoee Ranger District: Polk County News, published weekly (Wednesday) in Benton, TN

Hiwassee Ranger District: Daily Post-Athenian, published daily (Monday-Friday) in Athens, TN

Tellico Ranger District: Monroe County Advocate, published weekly (Thursday) in Sweetwater, TN

Nolichucky Ranger District: Greeneville Sun, published daily (Monday-Saturday) in Greeneville, TN

Unaka Ranger District: Johnson City Press, published daily in Johnson City, TN

Watauga Ranger District: Elizabethton Star, published daily (Sunday-Friday) in Elizabethton, TN

Daniel Boone National Forest, Kentucky Forest Supervisor Decisions

Lexington Herald-Leader, published daily in Lexington, KY

District Rangers Decisions

Morehead Ranger District: Morehead News, published bi-weekly (Tuesday and Friday) in Morehead, KY

Stanton Ranger District: The Clay City Times, published weekly (Thursday) in Clay City, KY

Berea Ranger District: Jackson County Sun, published weekly (Thursday) in McKee, KY

London Ranger District: The Sentinel-Echo, published tri-weekly (Monday,

Wednesday, and Friday) in London, KY
Somerset Ranger District: Commonwealth-Journal, published daily (Sunday through Friday) in Somerset, KY
Stearns Ranger District: McCreary County Record, published weekly (Tuesday) in Whitley City, KY
Redbird Ranger District: Manchester Enterprise, published weekly (Thursday) in Manchester, KY

National Forests in Florida, Florida Forest Supervisor Decisions

The Tallahassee Democrat, published daily in Tallahassee, FL

District Rangers Decisions

Apalachicola Ranger District: The Weekly Journal, published weekly (Wednesday) in Bristol, FL
Lake George Ranger District: The Ocala Star Banner, published daily in Ocala, FL
Osceola Ranger District: The Lake City Reporter, published daily (Monday-Saturday) in Lake City, FL
Seminole Ranger District: The Daily Commercial, published daily in Leesburg, FL
Wakulla Ranger District: The Tallahassee Democrat, published daily in Tallahassee, FL

Francis Marion & Sumter National Forest, South Carolina Forest Supervisor Decisions

The State, published daily in Columbia, SC

District Rangers Decisions

Enoree Ranger District: Newberry Observer, published tri-weekly (Monday, Wednesday, and Friday) Newberry, SC
Andrew Pickens Ranger District: Seneca Journal and Tribune, published bi-weekly (Wednesday and Friday) in Seneca, SC
Long Cane Ranger District: Index-Journal, published daily (Sunday through Friday) in Greenwood, SC
Wambaw Ranger District: News and Courier, published daily in Charleston, SC
Witherbee Ranger District: News and Courier, published daily in Charleston, SC
Tyger Ranger District: The State, published daily in Columbia, SC
Edgefield Ranger District: Augusta Chronicle, published daily in Augusta, GA

George Washington National Forest, Virginia Forest Supervisor Decisions

Daily News Record, published daily in Harrisonburg, VA

District Rangers Decisions

Lee Ranger District: Shenandoah Valley Herald, published weekly (Wednesday) in Woodstock, VA
Warm Springs Ranger District: The Recorder, published weekly (Thursday) in Monterey, VA
Pedlar Ranger District: News-Gazette, published weekly (Wednesday) in Lexington, VA
James River Ranger District: Virginian Review, published daily in Covington, VA
Deerfield Ranger District: Daily News Leader, published daily in Staunton, VA
Dry River Ranger District: Daily News Record, published daily in Harrisonburg, VA

Jefferson National Forest, Virginia Forest Supervisor Decisions

Roanoke Times & World-News, published daily in Roanoke, VA

District Rangers Decisions

Blacksburg Ranger District: Roanoke Times & World-News, published daily in Roanoke, VA
Glenwood Ranger District: Roanoke Times & World-News, published daily in Roanoke, VA
New Castle Ranger District: Roanoke Time & World-News, published daily in Roanoke, VA
Mount Rogers National Recreation Area: Bristol Herald Courier, published daily in Bristol, VA
Clinch Ranger District: Kingsport-Times News, published daily in Kingsport, TN
Wythe Ranger District: Southwest Virginia Enterprise, published bi-weekly (Wednesday and Saturday) in Wytheville, VA

Kisatchie National Forest, Louisiana Forest Supervisor Decisions

Alexandria Daily Town Talk, published daily in Alexandria, LA

District Ranger Decisions

Caney Ranger District: Minden Press Herald, published daily in Minden, LA
Catahoula Ranger District: Alexandria Daily Town Talk, published daily in Alexandria, LA
Evangeline Ranger District: Alexandria Daily Town Talk, published daily in Alexandria, LA
Kisatchie Ranger District: Natchitoches Times, published bi-weekly (Sunday and Wednesday) in Natchitoches, LA
Vernon Ranger District: Leesville Leader, published daily in Leesville, LA
Winn Ranger District: Winn Parish Enterprise, published weekly (Wednesday) in Winnfield, LA

National Forests in Mississippi, Mississippi Forest Supervisor Decisions

Clarion-Ledger, published daily in Jackson, MS

District Ranger Decisions

Bienville Ranger District: Clarion-Ledger, published daily in Jackson, MS
Biloxi Ranger District: Clarion-Ledger, published daily in Jackson, MS
Black Creek Ranger District: Clarion-Ledger, published daily in Jackson, MS
Bude Ranger District: Clarion-Ledger, published daily in Jackson, MS
Chickasawhay Ranger District: Clarion-Ledger, published daily in Jackson, MS
Delta Ranger District: Clarion-Ledger, published daily in Jackson, MS
Holly Springs Ranger District: Clarion-Ledger, published daily in Jackson, MS
Homochitto Ranger District: Clarion-Ledger, published daily in Jackson, MS
Strong River Ranger District: Clarion-Ledger, published daily in Jackson, MS
Tombigbee Ranger District; Clarion-Ledger, published daily in Jackson, MS
Ashe-Erambert Project: Clarion-Ledger, published daily in Jackson, MS

National Forests in North Carolina, North Carolina Forest Supervisor Decisions

The Asheville Citizen-Times, published daily in Asheville, NC

District Ranger Decisions

Cheoah Ranger District: Graham Star, published weekly (Thursday) in Robbinsville, NC
Croatan Ranger District: The Sun Journal, published weekly (Sunday through Friday) in New Bern, NC
French Broad District: The Asheville Citizen-Times, published daily in Asheville NC
Grandfather District; McDowell News, published daily in Marion, NC
Highlands Ranger District: The Highlander, published weekly (May-Oct Tues & Fri; Oct-April Tues only) in Highlands, NC
Pisgah Ranger District: The Asheville Citizen-Times, published daily in Asheville, NC
Toecane Ranger District: The Asheville Citizen-Times, published daily in Asheville, NC
Tusquitee Ranger District: Cherokee Scout, published weekly (Wednesday) in Murphy, NC
Uwharrie Ranger District: Montgomery Herald, published weekly (Wednesday) in Troy, NC

Wayah Ranger District: The Franklin Press, published tri-weekly (Monday, Wednesday, and Friday) in Franklin, NC

Ouachita National Forest, Arkansas, Oklahoma Forest Supervisor Decisions

Arkansas Democrat-Gazette, published daily in Little Rock, AR

District Ranger Decisions

Caddo Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Cold Springs Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Fourche Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Jessieville Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Mena Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Oden Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Poteau Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Winona Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Womble Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Choctaw Ranger District: Tulsa World, published daily in Tulsa, OK
Kiamichi Ranger District: Tulsa World, published daily in Tulsa, OK
Tiak Ranger District: Tulsa World, published daily in Tulsa, OK

Ozark-St. Francis National Forest: Arkansas Forest Supervisor Decisions

Courier-Democrat, published daily (Sunday through Friday) in Russellville, AR

District Ranger Decisions

Sylamore Ranger District: Stone County Leader, published weekly (Tuesday) in Mountain View, AR
Buffalo Ranger District: Newton County Times, published weekly (Wednesday) in Jasper, AR
Bayou Ranger District: Courier-Democrat, published daily (Sunday through Friday) in Russellville, AR
Pleasant Hill Ranger District: Johnson County Graphic, published weekly (Wednesday) in Clarksville, AR
Boston Mountain Ranger District: Southwest Times Record, published daily in Fort Smith, AR
Magazine Ranger District: Southwest Times Record, published daily in Fort Smith, AR
St. Francis Ranger District: The Daily World, published daily (Sunday through Friday) in Helena, AR

National Forests in Texas, Texas Forest Supervisor Decisions

The Lufkin Daily News, published daily in Lufkin, TX

District Rangers Decisions

Angelina Ranger District: The Lufkin Daily News, published daily in Lufkin, TX
San Jacinto Ranger District: The Houston Post, published daily in Houston, TX
Neches Ranger District: The Lufkin Daily News, published daily in Lufkin, TX
Raven Ranger District: The Courier, published daily in Conroe, TX
Tenaha Ranger District: The Lufkin Daily News, published daily in Lufkin, TX
Trinity Ranger District: The Lufkin Daily News, published daily in Lufkin, TX
Yellowpine Ranger District: The Beaumont Enterprise, published daily in Beaumont, TX
Caddo-LBJ Ranger District—Caddo-LBJ National Grassland: Denton Record-Chronicle, published daily in Denton, TX

Dated: December 28, 1993.

R.B. Erickson,

Deputy Regional Forester.

[FR Doc. 94–113 Filed 1–4–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Electronics Technical Advisory Committee; Meeting

A meeting of the Electronics Technical Advisory Committee will be held January 20, 1994, 9 a.m., Herbert C. Hoover Building, room 1617–M–2, 14th Street and Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to electronics equipment or technology.

Agenda

1. Opening Remarks and Introductions
2. Election of New Chair
3. Review of Calendar of Events
4. Discussion of New Issues
5. Presentations by the Public
6. Review of Export Control Policy Issues

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials or comments at least one week before the meeting to the address listed below: Ms. Lee Ann Carpenter, TAC Unit/OAS–EA, room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

For further information or copies of the minutes call Lee Ann Carpenter, 202–482–2583.

Dated: December 30, 1993.

Betty Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 94–159 Filed 1–4–94; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Order No. 673]

Dril-Quip, Inc., Houston, Texas; Grant of Authority for Subzone Status

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Grant of authority for subzone status, Dril-Quip, Inc. (Oil Field Equipment), Houston, Texas

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Port of Houston Authority, grantee of Foreign-Trade Zone 84, for authority to establish a special-purpose subzone for export activity at the oil field equipment manufacturing facilities of Dril-Quip, Inc., in Houston, Texas, was filed by the Board on May 10, 1993, and notice inviting public comment was given in

the Federal Register (FTZ Docket 17–93, 58 FR 28952, 03–18–93); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application for export manufacturing activity is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 84K) at the Dril-Quip, Inc., facilities in Houston, Texas, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to a restriction requiring that privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone.

Signed at Washington, DC, this 23rd day of December 1993.

Barbara R. Stafford,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–163 Filed 1–4–94; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 672]

Wisconsin Dairies Cooperatives, Preston, Minnesota; Grant of Authority for Subzone Status

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Grant of authority for subzone status: Wisconsin Dairies Cooperative (Infant Formula/Dairy Products), Preston, Minnesota.

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Greater Metropolitan Area Foreign Trade Zone Commission, grantee of Foreign-Trade Zone No. 119, Minneapolis/St. Paul, Minnesota, area, for authority to establish a special-purpose subzone for export activity at the infant formula/dairy products manufacturing plant of Wisconsin Dairies Cooperative in Preston, Minnesota, was filed by the Board on February 17, 1993, and notice inviting public comment was given in the Federal Register (FTZ Docket 6–93, 58 FR 11834, 3–1–93); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application for export processing is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 119D) at the Wisconsin Dairies Cooperative plant in Preston, Minnesota, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the further requirement that all foreign-origin dairy products admitted to the subzone shall be reexported.

Signed at Washington, DC, this 23rd day of December 1993.

Barbara R. Stafford,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–162 Filed 1–4–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than January 31, 1994, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in January for the following periods:

	Period
Antidumping duty proceedings:	
Brazil: Brass Sheet & Strip (A–351–603)	01/01/93–12/31/93
Canada: Brass Sheet & Strip (A–122–601)	01/01/93–12/31/93
Canada: Color Picture Tubes (A–122–605)	01/01/93–12/31/93
France: Anhydrous Sodium Metasilicate (A–427–098)	01/01/93–12/31/93
Japan: Color Picture Tubes (A–588–609)	01/01/93–12/31/93
Singapore: Color Picture Tubes (A–559–601)	01/01/93–12/31/93
Spain: Potassium Permanganate (A–469–007)	01/01/93–12/31/93
South Africa: Low-Fuming Brazing Copper Wire and Rod (A–791–502)	01/01/93–12/31/93
Taiwan: Certain Stainless Steel Cooking Ware (A–583–603)	01/01/93–12/31/93
The People's Republic of China: Potassium Permanganate (A–570–001)	01/01/93–12/31/93
The Republic of Korea: Brass Sheet & Strip (A–580–603)	01/01/93–12/31/93
The Republic of Korea: Color Picture Tubes (A–580–605)	01/01/93–12/31/93
The Republic of Korea: Stainless Steel Cooking Ware (A–580–601)	01/01/93–12/31/93
Suspension agreements:	
Canada: Potassium Chloride (A–122–701)	01/01/93–12/31/93
Colombia: Miniature Carnations (C–301–601)	01/01/93–12/31/93
Colombia: Roses and Other Fresh Cut Flowers (C–301–003)	01/01/93–12/31/93
Costa Rica: Fresh Cut Flowers (C–223–601)	01/01/93–12/31/93

	Period
Hungary: Truck Trailer Axle and Brake Assemblies (A–437–001)	01/01/93–12/31/93
Countervailing duty proceedings:	
Argentina: Non-Rubber Footwear (C–357–052)	01/01/93–12/31/93
Brazil: Brass Sheet & Strip (C–351–604)	01/01/93–12/31/93
Ecuador: Fresh Cut Flowers (C–331–601)	01/01/93–12/31/93
The Republic of Korea: Stainless Steel Cookware (C–580–502)	01/01/93–12/31/93
Spain: Stainless Steel Wire Rod (C–469–004)	01/01/93–12/31/93
Taiwan: Stainless Steel Cookware (C–583–604)	01/01/93–12/31/93
Thailand: Butt-Weld Pipe Fittings (C–549–804)	01/01/93–12/31/93

In accordance with §§ 353.22(a) and 355.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review. For antidumping reviews, the interested party must specify for which individual producers or resellers covered by an antidumping finding or order it is requesting a review, and the requesting party must state why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: Pamela Woods, in room 3069–A of the main Commerce Building. Further, in accordance with § 353.31(g) or 355.31(g) of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list. The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by January 31, 1994.

If the Department does not receive, by January 31, 1994, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: December 22, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 94–164 Filed 1–4–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–825]

Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Sebacic Acid From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 5, 1994.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1766.

Preliminary Determination

We preliminarily determine that sebacic acid from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation (58 FR 43339, August 16, 1993), the following events have occurred.

On August 16, 1993, the Department of Commerce (the Department) sent the PRC's Ministry of Foreign Trade and Economic Cooperation (MOFTEC) a mini-Section A questionnaire (i.e., the section regarding sales volume and value).

On September 2, 1993, the U.S. International Trade Commission (ITC) notified the Department of its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of sebacic acid from the PRC that are allegedly sold at less than fair value.

On September 27, 1993, MOFTEC submitted its mini-Section A response and on September 30, 1993, the Department sent MOFTEC the antidumping questionnaire. (This antidumping questionnaire is divided into three sections and two attachments: (1) Section A requests general information on each company; (2) Section C requests information on, and a listing of, U.S. sales made during the period of the investigation (POI); (3) Section D requests information on the production process; (4) Attachment I requests information for a market-oriented industry (MOI) claim; and (5) Attachment II requests information for a separate rates claim.) As a courtesy, we sent a copy of the questionnaire to those companies identified as possible exporters of sebacic acid to the United States.

On September 30, 1993, we requested that the petitioner, four exporters ("respondents") who had entered a notice of appearance before the Department (Sinochem International Chemicals Company (Sinochem International), Sinochem Jiangsu Import & Export Corporation, Tianjin Chemicals Import & Export Corporation (Tianjin), and Guangdong Chemicals Import & Export Corporation (Guangdong)), and MOFTEC submit any publicly available published information that they wished the Department to consider when valuing the factors of production in this investigation.

On October 22, 1993, the same four exporters who had entered a notice of appearance submitted responses to Section A of the questionnaire. On October 29, 1993, we sent each

company a Section A deficiency questionnaire.

On November 1, 1993, the four exporters submitted responses to Sections C and D and Attachments I and II of the questionnaire. On November 9, 1993, we sent MOFTEC an Attachment I supplemental questionnaire. Also on November 9, 1993, we sent the four exporters deficiency questionnaires on Sections C and D and Attachment I.

On November 12, 1993, we received Section A deficiency responses from the four exporters.

On November 16, 1993, the petitioner and the four exporters submitted publicly available published information.

On November 16, 1993, we sent a letter to each of the 13 non-responding PRC exporters to whom we had sent a copy of the questionnaire. We again requested that they respond to the Department's questionnaire or provide a certification that they did not export or sell subject merchandise during the POI.

Also on November 16, 1993, we sent supplemental Attachment II questionnaires to MOFTEC and the four responding exporters.

On November 19, 1993, the Department sent to the petitioner and the four exporters a publicly available published information deficiency questionnaire. On November 23, 1993, the petitioner provided comments on the information submitted by the four exporters.

On November 26, 1993, we sent a letter to the Guangdong and Jiangsu provincial governments and the Beijing municipal government requesting information in order to more completely evaluate the issue of whether the four exporters should receive separate antidumping duty rates.

On November 29, 1993, we received Sections C and D deficiency responses from the four exporters.

From November 29, 1993, through December 3, 1993, we received certifications from three Chinese exporters (Sinochem China National Chemicals Import & Export Corporation, Yunnan Minmetals & Chemicals Import & Export (Group) Corporation, and Shanghai Chemicals Import and Export Corporation) which state that each entity did not ship sebacic acid to the United States during the POI.

On December 3, 1993, the four exporters provided a response to the Department's publicly available published information deficiency questionnaire.

On December 13, 1993, we received a letter from MOFTEC objecting to the November 26, 1993, questionnaires we sent to the provincial and municipal governments. On December 17, 1993, we received a response to our November 26, 1993, separate rates clarification questionnaire from the Guangdong Commission of Foreign Economic Relations and Trade. On December 20, 1993, we received a response from the Jiangsu provincial government.

Also, on December 20, respondents requested that, in the event of an affirmative determination in this investigation, the Department postpone the final determination an additional 60 days from the date of publication of the affirmative preliminary determination. See the "Postponement of Final Determination" section of this notice. On December 23, 1993, we received a response from the Beijing municipal government but we did not receive a response to our supplemental Attachment II questionnaire from MOFTEC or from the four responding exporters.

Scope of Investigation

The products covered by this investigation are all grades of sebacic acid, a dicarboxylic acid with the formula $(CH_2)_8(COOH)_2$, which include but are not limited to CP Grade (500ppm maximum ash, 25 maximum APHA color), Purified Grade (1000ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500ppm maximum ash, 70 maximum APHA color). The principal difference between the grades is the quantity of undesirable ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C_{10} dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.00, of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The POI is January 1, 1993, through June 30, 1993.

Market-Oriented Industry

All of the respondents in this investigation have claimed that the sebacic acid industry is an MOI. In their November 1, 1993, responses, the respondents claim that all of the manufacturers' material and non-material inputs used to produce sebacic acid were purchased at market-driven prices during the POI and that none of the factories or the factories' suppliers produced any of the inputs for sebacic acid for in-plan production. Accordingly, these respondents state that it is appropriate for the Department to use the PRC prices for material and non-material inputs for valuing the inputs used to produce sebacic acid.

In the Preliminary Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's Republic of China (57 FR 9409, 9411; March 18, 1992) (Sulfanilic Acid), the Department set forth the following criteria to be used in determining whether an MOI exists in an economy which would otherwise be considered non-market:

- For merchandise under investigation, there must be virtually no government involvement in setting prices or amounts to be produced. For example, state-required production of the merchandise, whether for export or domestic consumption in the non-market economy country would be an almost insuperable barrier to finding a market-oriented industry.
- The industry producing the merchandise under investigation should be characterized by private or collective ownership. There may be state-owned enterprises in the industry but substantial state ownership would weigh heavily against finding a market-oriented industry.
- Market-determined prices must be paid for all significant inputs, whether material or non-material, and for an all but insignificant proportion of all the inputs accounting for the total value of the merchandise under investigation. For example, an input price will not be considered market-determined if the producers of the merchandise under investigation pay a state-set price for the input or if the input is supplied to the producers at government direction. Moreover, if there is any state-required production in the industry producing the input, the share of state-required production must be insignificant.

If these conditions are not met, then, pursuant to 19 CFR 353.52, the producers of the merchandise under investigation will be treated as non-market economy (NME) producers, and the foreign market value will be calculated by using prices and costs from a surrogate country, in accordance with sections 773(c)(3) and (4) of the Act.

On November 9, we issued an MOI deficiency questionnaire to the respondents and sent a supplemental MOI questionnaire to MOFTEC. This questionnaire contained questions concerning the identity of the entire sebacic acid industry, the ownership of all entities which produce sebacic acid or supply inputs used to produce sebacic acid, and whether any inputs were subject to in-plan production. Since we did not receive the responses to our questionnaire on December 23, 1993, we did not have sufficient information on the record for our preliminary determination to determine whether the sebacic acid industry during the POI was an MOI. Therefore, we will address the respondents' MOI claim in our final determination.

Separate Rates

To determine whether an NME exporter is eligible for a separate antidumping duty rate, the Department first analyzes ownership. If an exporter is owned by the central government, the Department will not issue a separate rate for that exporter. Instead, the Department assigns to all exporters owned by the central government a single, weighted-average margin.

In the 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 (58 FR 37908; July 14, 1993), the Department determined that NME exporters owned by the central government are not eligible for antidumping duty rates separate from each other because ownership by the central government enables the government to manipulate prices, whether or not it takes advantage of its opportunity to do so during the POI. Accordingly, entities owned by the central government cannot be eligible for rates different or separate from each other. To calculate a rate for exporters owned by the central government, the Department requires that all potential respondents that are owned by the central government reply to the antidumping questionnaire. Only complete responses from all the entities owned by the central government could enable the Department to calculate a weighted-average antidumping margin for the central government-controlled entities.

In the Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China (58 FR 48833; September 20, 1993) (Lock Washers), the Department determined that if an exporter is not owned by the central government the Department will consider issuing a separate rate. This is because the opportunity for the central government to manipulate the exporter's prices is less than its opportunity to control the prices of enterprises owned by the central government. However, as in the case of exporters owned by the central government, it would still be possible for enterprises under common ownership (e.g., provincial governments, local governments, collectives, etc.) to have their prices manipulated by the common owner. All firms under common ownership which produce or sell subject merchandise during the POI must cooperate in the investigation to enable the Department to calculate a weighted-average dumping margin for them.

In this investigation, MOFTEC has informed the Department that the central government does not own any of the responding exporters of sebacic acid. Furthermore, the responding exporters stated for the record that they do not share ownership with each other or with any other exporter of sebacic acid. Because non-responding exporters of sebacic acid are located in the same municipality as Sinochem International and in the same province as Guangdong, we requested separate rates information from the Beijing municipal government and Guangdong provincial government. We also requested similar information from the Jiangsu provincial government. Though we have received a response from the Guangdong and Jiangsu provincial governments, we received a response from the Beijing municipal government too late to consider for the preliminary determination. After examining the responses submitted by the Guangdong and Jiangsu provincial governments, we are concerned that the PRC government agencies have not provided information requested by the Department in an NME investigation. Because the responding companies have stated on the record that they are not owned by the central government or any other jurisdiction or entity that owns other exporters of sebacic acid, the lack of information in the two local government responses to our questionnaire should not control our separate rates decision for the preliminary determination. However, we encourage provincial and municipal government entities to respond, with the assistance of MOFTEC if appropriate, because this issue will be reconsidered before making the final separate rates determination in this investigation.

Given that each of the four responding exporters states that it is neither owned by the central government nor owned by another jurisdiction or entity that also owns other exporters of the subject merchandise, we have determined that these respondents are eligible to be considered for separate rates. The criteria the Department relies upon to establish whether or not separate rates are appropriate are those put forward in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China (56 FR 20588; May 6, 1991) (Sparklers). Under the Sparklers criteria, the Department issues separate rates where respondents can demonstrate both *a de jure* and *de facto* absence of central government control over export activities.

In this investigation, each of the four cooperative exporters has documented that its business license provides that its ownership is distinguished from central-government ownership. In addition, MOFTEC has stated that it does not own or control the exporters or producers of sebacic acid. This information indicates that there is a de jure absence of central government control.

Each of the four cooperating respondents has asserted and provided evidence such as sales contracts that it establishes its own export prices and keeps the proceeds of its export sales and that its management operates with complete autonomy. This information indicates the de facto absence of central government control with respect to exports. Consequently, we have determined that these four cooperating exporters have met the criteria set forth in Sparklers and we have used their information to calculate a separate rate for each of them.

Surrogate Country

Section 773(c) of the Act requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the non-market economy country, and that are significant producers of comparable merchandise. The Department has determined that India and Pakistan are the most comparable to the PRC in terms of overall economic development, based on per capita gross national product (GNP), the national distribution of labor, and growth rate in per capita GNP. (See memorandum from the Office of Policy to David L. Binder, dated September 29, 1993.) The Department has also determined that India is a producer of the subject merchandise. Because India fulfills both requirements outlined in the statute, India is the preferred surrogate country for purposes of valuing the factors of production used in producing the subject merchandise. In cases where we were unable to obtain

surrogate values from India, we have used values obtained in Pakistan. Specifically, we have resorted to Pakistan for two surrogate values, where publicly available published values in India were either significantly outdated or not obtainable. We have obtained and relied upon publicly available published information wherever possible.

Fair Value Comparisons

To determine whether sales of sebacic from the PRC to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because exporter's sales price methodology was not otherwise indicated.

For those exporters that responded to the Department's questionnaire, we calculated purchase price based on packed, CIF prices to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, marine insurance, and foreign brokerage.

We based the deduction for foreign inland freight on freight rates in India, as the respondents reported the use of PRC transportation services in incurring this charge. The respondents also reported the use of PRC-based providers for ocean freight and marine insurance. We based ocean freight on the current tariff rate in the Asia North America Eastbound Rate Agreement.

For foreign brokerage and handling and marine insurance, we used publicly summarized versions of these two expenses reported in the antidumping duty investigation of sulfur dyes, including sulfur vat dyes, from India (see memorandum to the file dated December 27, 1993).

Foreign Market Value

We calculated FMV based on factors of production reported by the factories which produced the subject merchandise for these respondents. The factors used to produce sebacic acid include materials, labor, and energy. To calculate FMV, the reported factors of production were multiplied by the appropriate surrogate values for the different inputs. (For a complete analysis of the surrogate values used, see our preliminary concurrence memorandum, dated December 27, 1993.)

In determining which surrogate value to use for valuing each factor of production, we selected, where possible, the publicly available published value which was: (1) An average non-export value; (2) within the POI; (3) product-specific; and (4) tax-exclusive.

We used surrogate transportation rates to value inland freight from the factories to ports. In the case of material inputs, we also used surrogate transportation rates to value the transportation of inputs to the factories. In those cases where a respondent failed to provide transportation distances, we applied the longest truck rate from our surrogate data as best information available (BIA).

To value castor oil, we used publicly available published information from The Times of India. This source provided a non-export price during the POI.

To value caustic soda, sodium chloride, zinc oxide, phenal, and glycerine, we used publicly available published information from Chemical Business. This source provided a non-export price during the POI which did not appear to include Indian excise or provincial sales taxes.

To value sulfuric acid, cresol, and caproyl alcohol, we used publicly available published information from Chemical Weekly. This source provided a non-export price during the POI which was inclusive of taxes. However, because we did not have the necessary information to deduct taxes, we did not remove the taxes from these prices.

To value activated carbon and fatty acid, we used publicly available published information from the Monthly Statistics of the Foreign Trade of India. In addition, to value macropore resin we used a comparable product's price from Monthly Statistics of the Foreign Trade of India. This source was the only one we found which provided publicly available published price information for these material inputs. Because these prices were prior to the POI, we adjusted the factor values to account for inflation between the time period in question and the POI using wholesale price indices (WPIs) published in International Financial Statistics (IFS) by the International Monetary Fund (IMF).

To value steam coal, we used publicly available published information from the 1993 OECD IEA Statistics. This was the most current publicly available published information we found that provided a price for steam coal. Because the price quoted was prior to the POI, we adjusted the factor values to account for inflation between the time period in question and the POI using WPIs published in IFS by the IMF.

To value electricity, we used publicly available published information from the Monthly Statistical Bulletin published by the Pakistani Federal Bureau of Statistics. This source provided an electricity rate for industrial use in the POI. We found that the published information for Indian electricity rates was either outdated or appeared to be non-specific.

To value water, we used a cable from the U.S. consulate in Pakistan. We used this cable because we could not locate a value for water in any Indian or Pakistani publication. Because the price contained in the cable was for a period prior to the POI, we adjusted the factor values to account for inflation between the time period in question and the POI using WPIs published in IFS by the IMF.

To value labor costs, we used the International Labor Office's 1992 Yearbook of Labor Statistics. To determine the number of hours in an Indian workday, we used the Country Reports: Human Rights Practices for 1990. Because the published labor rate was prior to the POI, we adjusted the factor values to account for inflation between the time period in question and the POI using the consumer price index published in IFS by the IMF.

To value factory overhead, selling, general and administrative expenses, and profit, we calculated percentages based on elements of industry group income statements from The Reserve Bank of India Bulletin. We did not include an amount for energy in our factory overhead calculation.

To calculate FMV for one ton of sebacic acid, we added each of the costs derived above. We also added to FMV, where appropriate, an amount for packing labor based on the appropriate Indian wage rate, and an amount for packing materials based on Indian prices from the Monthly Statistics of the Foreign Trade of India. We made no adjustments for selling expenses. Finally, we added surrogate freight costs for the delivery of inputs and packing materials to the factories producing sebacic acid.

In this investigation, respondents stated that the factories produce three valuable by-products (glycerine, fatty acid, and caproyl alcohol) in the course of producing sebacic acid. Respondents maintain that the Department should deduct the value of these three by-products from the cost of manufacture. We disagree with the respondents that the products are all by-products, and

that the value of each should be deducted from the cost of manufacture of sebacic acid. Rather, as discussed below, we agree that fatty acid is a by-product but determine that glycerine and caproyl alcohol should not be considered by-products in this case.

The three products in question are all yielded during the production of sebacic acid and the products are an unavoidable consequence of the production of sebacic acid. These products are produced from the same raw materials, by the same equipment, during the same manufacturing operations, as those used for sebacic acid.

In accordance with generally accepted accounting principles, by-products are treated differently from other types of products (i.e. joint or co-products) for purposes of determining a product's costs. The distinction between by-products and these other products is based on relative sales value. By-products are identified by their relatively insignificant sales value, whereas these other products, regardless how they are referred to, generally have significant sales value relative to the product under investigation. In this case, we determined whether the value of a product was significant or insignificant based on the quantity yielded and the value assigned to each product.

To determine the relative values of all subsidiary products and the subject merchandise, we took into account the fact that: (1) The factories generally sell the subsidiary products in the domestic market; (2) the factories sell sebacic acid in the domestic market; (3) the PRC renminbi is a non-convertible currency; and (4) the factories' costs and profits have not been considered because we have not yet addressed respondents' MOI claim. In accordance with the hierarchy for preferred input values as set forth in the Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China, 57 FR 21058 (May 18, 1992) (Comment 4) and the publicly available published information selection methodology noted above, we used surrogate values from India for sebacic acid, glycerine, caproyl alcohol, and fatty acid to determine the relative value of each product based on the production of one metric ton of sebacic acid, as well as to determine the total value of one metric ton of sebacic acid.

In this case, we determine that fatty acid is a by-product because the overall value of fatty acid is insignificant compared to the relative value among all of the "subsidiary" products and the subject merchandise. As a by-product, we subtracted the sales revenue of fatty acid from the production costs of the other products.

For purposes of the preliminary determination, we determine that glycerine and caproyl alcohol are not by-products. The value of glycerine for two of the four factories and the value of caproyl alcohol for all four factories is significant compared to the relative value of all of the products manufactured as a result of or during, the process of manufacturing sebacic acid. The reason why we find that glycerine should not be considered as a by-product is because we conclude that the quantity of production of this product appears subject to manipulation by management based on the variation in the quantity yield among the four factories.

Therefore, we allocated the factor inputs, e.g., materials, used to produce glycerine and caproyl alcohol, by the relative quantity of output of these two products and sebacic acid. We did not allocate the amount of labor, energy usage or factory overhead among the products because we did not have the information to allow us to make accurate adjustments (*See* concurrence memorandum, dated December 27, 1993, for further discussion).

Best Information Available

The Department's policy, as set forth in Lock Washers, is that all potential exporters owned by a given entity must cooperate in our investigation in order for the response to be considered complete.

MOFTEC did not submit a consolidated questionnaire response on behalf of all PRC exporters of sebacic acid. As noted above, the list of PRC exporters of sebacic acid submitted by MOFTEC contained the names of firms which have not responded to the Department's antidumping questionnaire. Since the Department must receive an adequate questionnaire response from each entity to which a separate dumping rate can be applied, all non-responding entities must receive a PRC country-wide rate. In the absence of adequate questionnaire responses from the other exporters of sebacic acid, we have based PRC country-wide rate on BIA. Section 776(c) of the Act provides that whenever a party refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, the Department shall use BIA. We have done so in this investigation.

In determining what to use as BIA, the Department follows a two-tiered methodology based on the degree of respondents' cooperation. According to the Department's two-tiered BIA methodology, when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. This methodology for assigning BIA has been upheld by the U.S. Court of Appeals for the Federal Circuit. (*See Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d 1185 (Fed. Cir. 1993); see also *Krupp Stahl AG et al.* v. *United States*, 822 F. Supp. 789 (CIT 1993).) Because some PRC exporters refused to answer the Department's questionnaire, we find that they have been uncooperative in this investigation. As BIA for these exporters, we are assigning the highest margin provided in the petition (243.40) as the PRC country-wide rate, in accordance with the two-tiered BIA methodology under which the Department imposes the most adverse rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding. No adjustments were made to petitioner's calculations.

No "All Others" rate will be established for the PRC. Instead, a country-wide rate is applied to all imports of sebacic acid from the PRC for those PRC exporters which were unable to demonstrate that they were entitled to a separate rate. Because we are assigning a country-wide rate in this situation, there is no need to assign an "All Others" case deposit rate for PRC entities.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of sebacic acid from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows. The PRC

country-wide rate applies only to PRC companies not specifically listed below.

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Sinochem International Chemicals Company	28.04
Sinochem Jiangsu Import & Export Corporation	39.24
Tianjin Chemicals Import & Export Corporation	20.01
Guangdong Chemicals Import & Export Corporation	40.25
PRC country-wide rate	243.40

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Postponement of Final Determination

As stated above, in accordance with 19 CFR 353.20(b), respondents, which account for a significant portion of the merchandise covered in this proceeding, have requested in writing that, in the event of an affirmative determination, the Department postpone the final determination an additional 60 days from the publication of the preliminary determination. Accordingly, because we find no compelling reason to deny the request, we are postponing the date of the final determination until not later than 135 days after the date of publication of this notice.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than April 8, 1994, and rebuttal briefs, no later than April 13, 1994. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on April 15, 1994, at 10 a.m. at the U.S. Department of Commerce, room 3708, 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.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In addition, an executive summary of no more than two pages on the major issues to be addressed should be submitted with case briefs. Briefs should contain a table of authorities. Citations to the Department's determinations and court decisions should include the page number where the cited information appears. In preparing the briefs, please begin each issue on a separate page. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination on or about May 23, 1994.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: December 27, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–160 Filed 1–4–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–824]

Postponement of Final Antidumping Duty Determination and Correction of Ministerial Errors: Silicon Carbide From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice.

EFFECTIVE DATE: January 5, 1994.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Steve Alley, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1777 or (202) 482–5288, respectively.

Postponement of Final Determination

Hainan Feitian Electrontech Co., Ltd. (Hainan), Shaanxi Minmetals (Shaanxi), Xiamen Abrasive Co. (Xiamen), 7th Grinding Wheel Factory Import and Export Corp., Qinghai Metals and Minerals Import & Export Corp., and The Import and Export Corporation of Inner Mongolia Autonomous Region, responding exporters in this proceeding, account for a significant proportion of exports of merchandise covered by this investigation. On December 1 and 3, 1993, these exporters requested that the Department of Commerce (the "Department") postpone its final determination until not later than 135 days after the date of publication of the preliminary determination.

Our November 29, 1993, preliminary determination (58 FR 64549, December 8, 1993) in this proceeding was affirmative. In accordance with section 735(a)(2) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 353.20(b), when, subsequent to an affirmative preliminary determination, we receive a request for postponement of the final determination from exporters who account for a significant proportion of the merchandise under investigation, we are required, absent compelling reasons for denial, to grant the request. Accordingly, we are postponing our final determination as to whether sales of silicon carbide from the PRC have been made at less than fair value until not later than April 22, 1994.

Amended Preliminary Determination

On December 2, 1993, we disclosed our calculations for the preliminary determination to counsel for Hainan, Shaanxi, and Xiamen. On December 7, 1993, we received timely submissions from each of these three exporters alleging ministerial errors in the Department's preliminary determination calculations. (For specific details of these allegations and our analysis of them, see Memorandum from Richard W. Moreland to Barbara R. Stafford of December 20, 1993).

One of these exporters, Hainan, alleged that the Department made certain errors with respect to the valuation of freight rates and packing materials. We agree, and in accordance with procedures set forth in the proposed regulations, we are amending Hainan's preliminary dumping margin because the corrections represent a change of more than five absolute percentage points and more than 25 percent of the dumping margin calculated in the original (erroneous) preliminary determination. See § 353.15(g)(4)(ii) of the Department's proposed regulations, 57 FR 1131 (January 10, 1992). The corrected dumping margin for Hainan is 50.42 percent.

The rest of the alleged ministerial errors were either not ministerial in nature or could not be considered a "significant ministerial error." See § 353.15(g)(4) of the Department's proposed regulations.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must now be submitted to the Assistant Secretary for Import Administration no later than March 30, 1994, and rebuttal briefs, no later than April 4, 1994. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will now be held on April 6, 1994, at 10 a.m. at the U.S. Department of Commerce, room 3708, 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 CFR 353.20(b)(2) and in accordance with procedures set forth in the Department's proposed regulations, § 353.15(g)(3), 57 FR 1131 (January 10, 1992).

Dated: December 23, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–161 Filed 1–4–94; 8:45 am]

BILLING CODE 3510–DS–P

United States Travel and Tourism Administration

[Docket No. 931219–3319]

Financial Assistance To Support Tourism Trade Development in Midwest States Affected by the Widespread Flooding of 1993

AGENCY: United States Travel and Tourism Administration (USTTA), Commerce.

ACTION: Notice.

SUMMARY: Financial assistance funding in the amount of $3 million is available from the USTTA to the nine States of the midwest affected by the major, widespread flooding of 1993, to assist in promoting tourism within the United States and from the contiguous Canadian market. These funds are intended to defray the costs of increased tourism promotion needs resulting from the flooding. This notice invites applications for an award of such funds and sets forth application and award procedures, award criteria, and certain limitations.

DATES: Applications for an award of these funds will be accepted from January 5, 1994 until February 4, 1994. Applications postmarked after February 4, 1994, will not be considered. Awards are anticipated by April 15, 1994.

ADDRESSES: Application kits including application forms (Standard Forms 424, 424A, and 424B) are available from, and completed applications should be submitted to, the Office of Tourism Trade Development, United States Travel and Tourism Administration, room 1860, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Applicants must submit an original of their application and two copies.

FOR FURTHER INFORMATION CONTACT: Ms. Karen M. Cardran, Director, Marketing Programs (202) 482–1904.

SUPPLEMENTARY INFORMATION: Notice is hereby given to the States of Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin, their political subdivisions and combinations thereof, and to private or public nonprofit organizations and associations that, pursuant to Title III of Pub. L. No. 103–75, sections 202 (a)(5) and (c) of the International Travel Act of 1961, as amended, and 42 U.S.C. 3151, a total of $3 million is available from the USTTA to the States affected by the major, widespread flooding of 1993, to assist projects to promote tourism within the United States and from the contiguous Canadian market. As used in this notice, "private or public non-profit organization or association" means an institution, organization, or association, either private or public, which has tax exempt status as defined in section 501(a) of the Internal Revenue Code.

These funds are intended to defray the costs of increased tourism promotion needs resulting from the flooding. An applicant may receive no more than one award for this disaster.

Only eligible applicants from the nine eligible States whose applications receive a final evaluation score of 80 or greater will be considered for an award. No applicant will be awarded funds unless the application includes a project or projects from at least two of the six project areas set forth in section IV.C., below. No applicant will be awarded funds unless the application includes: (1) Documentation demonstrating that all programs set forth in the application are or will be effectively coordinated with other affected entities in the State; and (2) a marketing plan that contains clearly stated objectives for a time period of one year and procedures for credible evaluation and tracking, and that is integrated (in terms of multiple activities) with a generally cohesive approach. Further, no applicant will be awarded funds unless the projects for which funding is sought are aimed at market(s) which have potential for mitigating the tourism-related negative effects of the disaster. The application must include credible market research to support this potential.

The maximum amount an applicant from the States of Missouri, Iowa and Illinois, whose tourism industries have been most severely affected by the floods, shall be awarded is $400,000 and cannot exceed an aggregate of $400,000 annually for such projects for each State. Applicants from the States of Nebraska, Minnesota, North Dakota, South Dakota, Kansas and Wisconsin shall be eligible to receive up to $300,000 and cannot exceed an aggregate of $300,000 annually for such projects for each State. The minimum amount for which an applicant may apply is $200,000.

Based on individual State funding limitations, applicants will be awarded assistance in descending order starting with the applicant whose proposal has the highest final evaluation score. Subject to the availability of funds, grants will be awarded on a state-by-state basis according to final evaluation scores, State funding limitations, and broad geographic distribution.

The funding instrument will be a grant unless it is anticipated that the USTTA will be substantially involved in the implementation of the project for which an award is to be made, in which case the funding instrument will be a cooperative agreement.

In the event that all funds have not been obligated after the first competition, a second competition will be announced. Applicants from the eligible States that have not reached their maximum limitation, as noted above, will be invited to apply.

To support the tourism promotional effort financed by this program, a comprehensive national public relations campaign will be developed to encourage recovery of visitation to the affected region. Components of the campaign may include, but are not limited to, public service announcements (broadcast or print), development of a "1–800" number for tourist information, and endorsements by celebrity spokespersons. Applicants are encouraged to utilize the umbrella campaign in their overall effort.

I. Selection Procedures

All applications will be reviewed and judged individually, independent from all other applications, by each of four qualified evaluators acting without consultation among themselves. Each evaluator will score each application by awarding points for each of the three (3)

evaluation criteria set forth in IV, below. Scores awarded for each evaluation criterion will be multiplied by the weight assigned to that criterion. A maximum score of 100 points may be awarded to an application. Once scores have been determined individually by each evaluator, a final score for each application will be determined by averaging the scores provided by each of the four evaluators.

II. Matching Requirements

The recipient is required to provide 25 per cent matching funds for the total project cost.

In determining the amount of the non-Federal share, due consideration will be given to all contributions both in cash and in-kind. In-kind contributions shall be made in accordance with OMB Circular A–110 (non- or for-profits) or 15 CFR part 24 (state and local governments).

A waiver of the match may be requested if the non-Federal share is not reasonably available and the applicant provides documentation clearly demonstrating the lack of resources due to the disaster.

III. Award Period

Financial assistance shall be awarded on a one-year basis.

IV. Evaluation Criteria

The three evaluation criteria and the weight assigned each criterion are:

A. Needs and Effect Criterion (assigned weight—0.4)

Application demonstrates the need of affected area and the ability of the project to counteract directly the negative impact of the 1993 floods on tourism.

(1) Application clearly reflects the ability of project to offset negative impacts of the disaster which have not been substantially mitigated by other aid. (40 points)

(2) Application includes documentation from Federal, State, or local sources demonstrating the current degree of need. This must include documentation showing the: (a) Current loss of and tourism-related employment; (b) level of tourism prior to the disaster; (c) current level of tourism; (d) impact in terms of employment and income of tourism on the area economy versus other industries; and (e) extent to which the negative impact of the disaster on tourism has been mitigated. (60 points)

B. General Criterion (assigned weight—0.2)

Application clearly states objectives that respond directly to the specialized tourism promotion needs of the affected area.

(1) Application states clear and achievable objectives to be carried out over an appropriate length of time. (25 points)

(2) Application demonstrates that project is aimed at markets that have been identified using credible market research. (25 points)

(3) Application demonstrates that project is fully integrated (in terms of multiple activities) with a generally cohesive approach. (25 points)

(4) Application demonstrates that applicant has the organizational quality and competence to effectively carry out the project. The application must include an organizational chart and a biographical sketch of the program director with the following information: name, address, phone number, background and other qualifying experience for the project; and a list of other key personnel, consultants, etc. engaged in the project, which includes names, training and background. Applications by non-profit organizations must include a copy of the articles of incorporation, charter, trust statement, or other similar documentation which sets forth the authorizing powers and purposes of the organization, together with bylaws or other code of regulations; a brief description of organizational arrangements for fiscal and managerial control, including the extent to which these overlap or are integrated with other organizations; a copy of a current financial statement of the organization; and a copy of the current Internal Revenue Service tax exemption letter which certifies the organization's not-for-profit status. (25 points)

C. Project Criterion (assigned weight—0.4)

Each application must include a project or projects from at least two of the six project areas set forth below. The project evaluation component score will be determined by adding the points awarded for the applicable project areas divided by the number of project areas prepared by the applicant.

1. Media Product Information

Media product information projects are those that include the development of media familiarization tours and dissemination of product information on the destination.

The applicable criteria are:

a. Correlation of media programs with applicant's overall tourism marketing strategy. (20 points)

b. Correlation with USTTA national public relations program. (20 points)

c. Program timing and content, and potential acceptance by the target media. (15 points)

d. Project cost versus media space/time return (a minimum 10 to 1 return on investment is suggested). (20 points)

e. Measurement plan to assess program effectiveness, *i.e.*, methodology to track readership or viewer response. (25 points)

2. Market Development

Market development projects are those designed to generate increased travel to the impacted area from primary markets of opportunity. Criteria are set forth for the following three types of such projects:

a. Operator/Agent Familiarization Tours.

1. Preliminary planning (*i.e.*, proposed itinerary) of the familiarization tour(s) to cities, State(s) or regions for operators/agents to introduce the tourism product to support tour development or marketing. (30 points)

2. Plans for subsequent follow-up with participants to ensure continued awareness and potential sale of product. (45 points)

3. Measurement plan to assess project return versus outlay. (25 points)

b. Tour Package Development.

1. Preliminary planning for and packaging of tour programs, *i.e.*, selection of receptive/wholesale operators and program components. (30 points)

2. Plans for subsequent implementation and promotion of the program in conjunction with tour wholesalers, retailers, etc. (45 points)

3. Measurement to assess program effectiveness. (25 points)

c. Consumer Travel Shows/Workshops.

1. Preliminary planning and packaging of product for information delivery to consumer. (30 points)

2. Plans for subsequent follow-up with trade contacts or potential consumers. (45 points)

3. Measurement of project effectiveness. (25 points)

An applicant may choose to implement only one of the three designated types of market development programs to be considered as having satisfied the Market Development project criterion.

3. Advertising

Applications for advertising projects should include a planned campaign outline, including the message to be conveyed (visually and written), and an outline of proposed media plans. If layouts, copy and media schedules are

available at the time application is made, they should be submitted with application. If they are not, specific campaign details must be submitted to the Office of Tourism Trade Development prior to the actual placement of the advertising in the media.

The applicable criteria are:

a. Basic approach and objectives. (20 points)

b. Correlation with USTTA national public relations program. (20 points)

c. Evidence that customer demographic, psychographic and statistical data necessary to develop marketing and advertising strategy is available. (10 points)

d. Creative interpretation of the proposed strategy. (20 points)

e. Expected reach of the advertising campaign in relation to its cost and short-term impact on the market. (15 points)

f. Measurement plan to assess program cost/return effectiveness. (15 points)

4. Trade Development

Trade development projects are those which complement ongoing programs directed toward the members of the travel trade. For application purposes, trade development projects are not concerned with either the development or promotion of tour packages (which are covered in the "Tour Package Development" criterion).

Such projects may include: Trade-oriented product workshops or seminars, trade advertising, familiarization tours for retail travel agents, and participation in travel trade shows.

The applicable criteria are:

a. Techniques used to create awareness and encourage selling of the destination by the travel trade. (25 points)

b. Implementation time and anticipated project benefits derived after grant expiration. (25 points)

c. Goals of project and methods used to measure program results. (50 points)

5. Consumer and Trade Literature

Consumer and trade literature must be designed specifically for use in the United States. Special attention should be devoted to designing literature to meet the needs of the target market. An applicant may choose to implement only one of the two designated types of consumer and trade literature project criterion set forth below:

a. Consumer and trade literature development and production.

1. Preliminary planning for design and content of brochures. (15 points)

2. Evidence that market planning research has been utilized to identify visitor preferences and information needs. (15 points)

3. Correlation between literature program and overall marketing plan. (15 points)

4. Correlation with USTTA national public relations program. (15 points)

5. Information adequately covers flood affected area. (20 points)

6. Measurement plan to assess program effectiveness. (20 points)

b. Consumer and Trade Literature Distribution.

1. Soundness of strategy for distribution of literature. (25 points)

2. Timeliness of proposed response mechanism. (25 points)

3. Adequacy of response mechanism to meet anticipated demand. (20 points)

4. Evidence of strategy to allow follow-up after initial response. (15 points)

5. Measurement plan to assess program effectiveness. (15 points)

6. Special Events/Festivals

This category includes the development, promotion and implementation of participatory events that draw visitation and attention to the area.

a. Preliminary plan for development of event. (20 points)

b. Appropriate program timing and content, and potential acceptance by the target media. (20 points)

c. Proposed promotion plan adequately reaches potential trade and consumer audiences. (15 points)

d. Event plan includes adequate service facilities, *i.e.*, parking, security, traffic flows, restrooms, food service, to accommodate projected audience. (20 points)

e. Correlation to USTTA national public relations program, *i.e.*, use of logo or theme, etc. (15 points)

f. Measurement plan to determine effectiveness. (10 points)

V. Other Requirements

1. Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

2. Indirect costs are allowable; however, "the total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less."

3. No Federal funds will be awarded to an applicant who has an outstanding delinquent Federal debt until either: (a) The delinquent account is paid in full; (b) a negotiated repayment schedule is established and at least one payment is received; or (c) other arrangements satisfactory to the Department of Commerce are made.

4. Awards of financial assistance are subject to the requirements of Executive Order No. 12372, "Intergovernmental Review of Federal Programs."

5. A false statement on an application is grounds for denial or termination of funds and for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

6. All primary applicants must submit a completed CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of CD–511 applies. Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of CD–511 applies. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain federal contracting and financial transactions," and the lobbying section of CD–511 applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

7. 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 CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and a completed SF–LLL, "Disclosure of Lobbying Activities." CD–512's are intended for the use of recipients and should not be transmitted to the Department of Commerce. SF–LLL's submitted by any tier recipients or subrecipient should be submitted to the Department of Commerce in accordance

with the instructions contained in the award document.

8. Unsatisfactory performance of an applicant under prior Federal awards may result in an application not being considered for funding.

9. Costs incurred by an applicant prior to an award being made are incurred solely at the applicant's own risk. Applicants are advised that notwithstanding any verbal assurance that they may receive, there is no obligation on the part of the Department of Commerce to reimburse pre-award costs.

10. If an applicant is selected for an award, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

11. All applicants who are private or public non-profit organizations or associations are subject to a name check review process. Name checks are intended to reveal whether any key individuals associated with the applicant have been convicted of, or are presently facing, criminal charges such as fraud, theft, or perjury, or are involved in other matters which significantly reflect on the applicant's management honesty or financial integrity.

Classification

This notice of availability of financial assistance is issued under the authority of title I of Public Law No. 103–75, section 202(a)(5) and (c) of the International Travel Act of 1961, as amended, and 42 U.S.C. 3151.

Because this notice relates to grants, benefits, or contracts, section 553 of the Administrative Procedure Act (APA)(5 U.S.C. 553) does not require that notice and an opportunity for comment be given for this rule or that its effective date be delayed for 30 days. Since notice and an opportunity to comment is not required by the APA or by any other law, a Regulatory Flexibility Analysis is not required under the Regulatory Flexibility Act and none was prepared.

The Department of Commerce has determined that the Federal assistance covered by this notice will not significantly affect the quality of the human environment. Therefore, no draft or final Environmental Impact Statement has been or will be prepared.

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

All information collection requirements under this notice are consistent with those covered in Office of Management and Budget Circular A–110.

Leslie R. Doggett,

Acting Under Secretary of Commerce for Travel and Tourism.

[FR Doc. 94–208 Filed 1–4–94; 8:45 am]

BILLING CODE 3510–11–1

National Oceanic and Atmospheric Administration

Marine Mammals

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

ACTION: Issuance of modifications to permit Nos. 657 (P77#31), 707 (P77#40) and 711 (P77#43).

SUMMARY: Notice is hereby given that on December 28, 1993, Permit Nos. 657, 707, and 711, issued to the Southwest Fisheries Science Center, NMFS, P.O. Box 271, La Jolla, California, were modified.

ADDRESSES: The modifications and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, suite 13130, Silver Spring, MD 20910 (301/712–3389);

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802, (310/980–4016); and

Marine Mammal Coordinator, Pacific Area Office, NMFS, 2570 Dole Street, room 106, Honolulu, HI 96822 (808/955–8831).

SUPPLEMENTARY INFORMATION: The subject modifications have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1351 *et seq.*), the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit Nos. 657, 707, and 711 were modified to extend the effective dates through December 31, 1994.

Dated: December 28, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–112 Filed 1–4–94; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Extension of the Visa and Exempt Certification Arrangement Between the United States and India

December 30, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Announcing the extension of the visa and exempt certification arrangement with India.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The existing export visa and exempt certification arrangement between the Governments of the United States and India has been extended through January 31, 1994, as agreed in an exchange of letters between the two Governments dated December 23 and 27, 1993. This notice is to remind the public that the U.S. Customs Service must continue to require visas and exempt certifications as previously published, for textiles and textile products produced or manufctured in India, and exported to the United States. Any cancellation of those requirements will be announced in the **Federal Register**.

See 44 FR 68504 published on November 29, 1979.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–32116 Filed 12–30–93; 4:35 pm]

BILLING CODE 3510–DR–F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP94–149–000]

Transcontinental Gas Pipe Line Corp.; Application

December 29, 1993.

Take notice that on December 20, 1993, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251, filed in Docket

No. CP94–149–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a 652 horsepower compressor unit and appurtenant facilities in Nueces County, Texas, all as more fully set forth in the application on file with the Commission and open to public inspection.

TGPL proposes to abandon by sale the compressor, which is located at the interconnection between TGPL's Petronilla Lateral and the pipeline system of Texas Eastern Transmission Corporation (Texas Eastern) in Nueces County. It is stated that the compressor was installed under Commission authorization in Docket No. CP80–533–000 by order issued March 23, 1981. It is asserted that the compressor was installed to alleviate capacity constraints on TGPL's Petronilla Lateral so that TGPL could take delivery of up to 30,000 Mcf of gas per day which was imported from Mexico at an existing delivery point with Texas Eastern. It is explained that TGPL was purchasing gas from Border Gas, Inc. for system supply purposes, but that TGPL has not purchased gas under the gas purchase contract since December 1984 and does not plan to resume such purchases. It is stated that the proposed abandonment would have no impact on the daily design capacity or operating conditions on TGPL's system. It is further stated that no customers would lose service as a result of the proposed abandonment.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 7, 1994, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for TGPL to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–106 Filed 1–4–94; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Licensee Order to Show Cause

The Chief, Audio Service Division, Mass Media Bureau, has before him the following matter:

Licensee	City/state	MM docket No.
Keyboard Broadcasting Communication, Licensee of WCSA (AM).	Ripley, MS ...	93–317

(Regarding the silent status of Station WCSA (AM))

Pursuant to section 312(a)(3) and (4) of the Communications Act of 1934, as amended, Keyboard Broadcasting Communication has been directed to show cause why the license for Station WCSA (AM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

1. To determine whether Keyboard Broadcasting Communication has the capability and intent to expeditiously resume broadcast operations of WCSA(AM) consistent with the Commission's Rules.

2. To determine whether Keyboard Broadcasting Communication has violated §§ 73.1740 and/or 73.1750 of the Commission's Rules.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Keyboard Broadcasting Communication is qualified to be and remain the licensee of Station WCSA (AM).

A copy of the complete Show Cause Order and HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 320), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037 (telephone 202–857–3800).

Federal Communications Commission.

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 94–100 Filed 1–4–94; 8:45 am]

BILLING CODE 6712–01–M

Licensee Order To Show Cause

The Chief, Audio Service Division, Mass Media Bureau, has before him the following matter:

Licensee	City/state	MM docket No.
Wesley College, Licensee of WCSP (AM).	Crystal Springs, MS.	93–306

(Regarding the silent status of Station WCSP(Am))

Pursuant to section 312(a) (3) and (4) of the Communications Act of 1934, as amended, Wesley College has been directed to show cause why the license for Station WCSP(AM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

1. To determine whether Wesley College has the capability and intent to expeditiously resume broadcast operations of WCSP(AM) consistent with the Commission's Rules.

2. To determine whether Wesley College has violated §§ 73.1740 and/or 73.1750 of the Commission's Rules.

3. To determine, in light of the evidence adduced pursuant to the forgoing issues, whether Wesley College is qualified to be and remain the licensee of Station WCSP(AM).

A copy of the complete Show Cause Order and HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 320), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037 (telephone 202–857–3800).

Federal Communications Commission.

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 94–101 Filed 1–4–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Bridgeville Financial Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 28, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Bridgeville Financial Corp., Bridgeville, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Bridgeville Savings Bank, Bridgeville, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. D/W Bankshares, Inc., Dalton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Dalton/Whitfield Bank & Trust, Dalton, Georgia.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Home Bancorp, Fort Wayne, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Home Loan Bank, S.B., Fort Wayne, Indiana.

2. Orangeville Bancorp, Inc., Orangeville, Illinois; to acquire 100 percent of the voting shares of State Bank of Winslow, Winslow, Illinois.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Community First Bankshares, Inc., Fargo, North Dakota; to acquire 100 percent of the voting shares of Grand National Bank of Colorado, Fraser, Colorado.

2. Sentry Bancorp, Inc., Edina, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Cannon Valley Bank, Dundas, Minnesota.

3. Michigan Financial Corporation, Marquette, Michigan; to merge with Houghton Financial Inc., Houghton, Michigan, and thereby indirectly acquire Houghton National Bank, Houghton, Michigan.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Missouri Bancshares, Inc., Brookfield, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of First Missouri National Bank, Brookfield, Missouri.

2. Huckabay Enterprises A Limited Partnership, Mustang, Oklahoma; to become a bank holding company by acquiring 48.54 percent of Wichita Bancshares, Inc., Snyder, Oklahoma, and thereby indirectly acquire Bank of the Wichitas, Snyder, Oklahoma; to acquire 50 percent of the voting shares of Southwest State Corporation, Sentinel, Oklahoma, and thereby indirectly acquire Southwest State Bank, Sentinel, Oklahoma; and to acquire 60.70 percent of the voting shares of First Mustang Corporation, Mustang, Oklahoma, and thereby indirectly acquire The First Mustang State Bank, Mustang, Oklahoma.

3. Meadows Enterprises A Limited Partnership, Burns Flat, Oklahoma; to become a bank holding company by acquiring 43.92 percent of the voting shares of Wichita Bancshares, Inc., Snyder, Oklahoma, and thereby indirectly acquire Bank of the Wichitas, Snyder, Oklahoma; to acquire 50 percent of the voting shares of Southwest State Corporation, Sentinel, Oklahoma, and thereby indirectly acquire Southwest State Bank, Sentinel, Oklahoma; and to acquire 62.23 percent of the voting shares of Washita Bancshares, Inc., Burns Flat, Oklahoma, and thereby indirectly acquire Washita State Bank, Burns Flat, Oklahoma.

4. FIAB Holdings, Inc., San Francisco, California; to become a bank holding company by acquiring 100 percent of the voting shares of First Indo-American Bank, San Francisco, California.

Board of Governors of the Federal Reserve System, December 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–122 Filed 1–4–94; 8:45 am]

BILLING CODE 6210–01–F

First Chicago Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 19, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Chicago Corporation, Chicago, Illinois; to engage *de novo* through its subsidiary, First Chicago Capital Markets, Inc., Chicago, Illinois, in underwriting and dealing in, to a limited extent, all types of debt securities; acting as agent in the private placement of all types of securities, including providing related advisory services; buying and selling all types of securities on the order of investors as a riskless principal; providing financial and transactional advice in connection with the structuring and arranging of swaps, caps, and similar transactions; and providing, to institutional customers, full service securities brokerage services in combination with permissible investment advisory services, pursuant to § 4 of the Bank Holding Company Act.

2. Quad City Holdings, Inc., Bettendorf, Iowa; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted within a 120 mile radius of the Quad City, Iowa, area.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Manistique Corporation, Manistique, Michigan; to engage *de novo* through its subsidiary, First Rural Relending Company, Manistique, Michigan, in making, acquiring, and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the Upper Peninsula of the State of Michigan.

2. U.S. Bancorp, Portland, Oregon; to engage *de novo* in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–123 Filed 1–4–94; 8:45 am]

BILLING CODE 6210–01–F

FNB Financial Services, Inc., ESOP; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 28, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. FNB Financial Services, Inc., ESOP, Durant, Oklahoma; to acquire FNB Capital Corporation, Inc., Durant, Oklahoma, and thereby engage in direct lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–121 Filed 1–4–94; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 922 3262]

The Hairbow Company, et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the California-based corporations and officers, who purported to hairbows, from making any material misrepresentations regarding earnings or profits of participants in any work opportunity and from making misrepresentations about the marketplace demand for any product or service. In addition, the proposed settlement would require the respondents to pay $1.9 million to the Commission for consumer redress or disgorgement.

DATES: Comments must be received on or before March 7, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Gerald Wright, San Francisco Regional Office, Federal Trade Commission, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of RUSSELL J. OSBORN, a/k/a Russell J. Osborne and Russell J. Osbourne, individually, trading and doing business as THE HAIRBOW COMPANY, and as an officer of Rainbow Productions, Inc.,

and RAINBOW PRODUCTIONS, INC., a corporation.

The Federal Trade Commission having initiated an investigation of Russell J. Osborn, a/k/a Russell J. Osborne and Russell J. Osbourne (hereafter "Russell J. Osborn"), individually, trading and doing business as The Hairbow Company, and as an officer of Rainbow Productions, Inc., and Rainbow Productions, Inc., a corporation ("proposed respondents" or "respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Russell Osborn, individually, trading and doing business as The Hairbow Company, and as an officer of Rainbow Productions, Inc., and Rainbow Productions, Inc., a corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Respondent The Hairbow Company is an unincorporated association, with its principal office and place of business located at 19 Front Street, Danville, California 94526.

Respondent Rainbow Productions, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 19 Front Street, Danville, California 94526.

Respondent Russell Osborn is an individual, is the owner of The Hairbow Company, and is the owner and president of Rainbow Productions, Inc. Individually or in concert with others, he formulates, directs and controls the policies, acts and practices of The Hairbow Company and Rainbow Productions, Inc. His address is 19 Front Street, Danville, California 94526.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of this proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this order, the following definitions shall apply:

"Work Opportunity" means any offer to a person to earn income by producing goods or providing services, where (1) the offeree must pay to the offeror, or a person identified by the offeror, any amount of money, whether in the form of a registration, application or other fee, a payment for initial inventory or supplies, or in any other form, as a condition of participating; and (2) the offeror represents that the offeree will or could be compensated in any manner by the offeror or by a person identified by the offeror.

"Participant" means any person who pays the offeror of a work opportunity, or a person identified by such offeror, any amount of money, whether in the form of a registration, application or other fee, a payment for initial inventory or supplies, or in any other form, as a condition of participating in a work opportunity.

"Net Earnings or Profits" means the compensation paid to a participant in a work opportunity, less the costs to a participant of materials, supplies and shipping.

I

It is Ordered That respondents Russell J. Osborn, individually, trading and doing business as The Hairbow Company, and as an officer of Rainbow Productions, Inc., and Rainbow Productions, Inc., a corporation, its successors and assigns, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the marketing, advertising promotion, offering, or sale of any work opportunity, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any material misrepresentation, including but not limited to:

1. Misrepresenting the past, present or potential future earnings or profits of participants in any work opportunity; or

2. Misrepresenting the marketplace demand for any product or service for which respondents are offering a work opportunity.

B. Making any earnings-related or profit-related claim which uses the phrase "up to" or words of similar import or which states any dollar amount, unless the stated level of earnings or profits constitutes the net earnings or profits which can be achieved by an appreciable number of

participants; and further, in any instances where consumers could not reasonably foresee the major factors or conditions affecting the ability to achieve the stated level of earnings or profits, cease and desist from failing to disclose clearly and prominently the class of consumers who can achieve the stated level.

II

It is further ordered That for three (3) years after the last date of dissemination of any representation covered by this Order, respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. Specimen copies of all materials disseminated which contain such representation;

B. All materials that were relied upon as substantiation in disseminating such representation;

C. The names, addresses and telephone numbers of all work opportunity participants who paid any money to respondents within the previous three years; and

D. The names, addresses and telephone numbers of all work opportunity participants who earned any income or profits from respondents during the previous three years, and for each such participant: All written agreements between respondents and each participant during the previous three years; and the dates and amounts of all payments paid to each participant for work completed pursuant to the work opportunity during the previous three years.

III

It is further ordered:

A. That respondent Russell J. Osborn shall pay to the FTC as consumer redress the sum of one million nine hundred thousand dollars ($1,900,000); *provided however,* that this liability will be suspended, subject to the provisions of subpart B below.

B. That the Commission's acceptance of this Order is expressly premised upon the representations regarding the financial condition of the respective respondents made to the FTC in a "Financial Statement of Debtor" executed by Russell J. Osborn on September 22, 1992, and appended "Statement of Assets and Liabilities" executed by Russell J. Osborn on September 14, 1992; a "Financial Statement of Corporate Defendant" relating to Rainbow Productions, Inc. executed by Russell J. Osborn on September 22, 1992; and on the federal and California tax returns of Russell J. Osborn for 1990. After service upon respondents of an order to show cause, the FTC may reopen this proceeding to make a determination whether there are any material misrepresentations or omissions in said representations regarding the financial condition of the respective respondents. Respondents shall be given an opportunity to present evidence on this issue. If, upon consideration of respondents' evidence and other information before it, the FTC determines that there are any material misrepresentations or omissions in the financial statements and related documents, that determination shall cause the entire amount of monetary liability of one million nine hundred thousand dollars ($1,900,000) to become immediately due and payable to the Federal Trade Commission, and interest computed at the rate prescribed in 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance. Proceedings initiated under part III are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any proceedings the Federal Trade Commission may initiate to enforce this Order.

IV

It is further ordered That the corporate respondent shall notify the Commission at least thirty (30) days prior to any dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of the Order.

V

It is further ordered That the individual respondent shall promptly notify the Commission of the discontinuance of his present business or employment and, for a period of five (5) years after the date of service of this order, and shall promptly notify the Commission of each affiliation with a new business or employment.

VI

It is further ordered That respondents shall, within sixty (60) days after service of this Order on them, and on the first through the fifth anniversaries of the effective date of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from The Hairbow Company, Inc., Rainbow Productions, Inc., and Russell J. Osborne ("proposed respondents"). All of the proposed respondents are located in Danville, California.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

The Hairbow Company and Rainbow Productions disseminate advertising seeking individuals to assemble craft items at home. The Hairbow Company sells instructional kits and craft materials, and/or charges registration fees, to individuals wanting to perform such assembly work.

The complaint alleges that proposed respondents have misrepresented the weekly earnings that are regularly realized by The Hairbow Company's home assemblers, through performing such assembly work and submitting it to The Hairbow Company for compensation. The complaint further alleges that proposed respondents have misrepresented that there is a significant marketplace demand for the demand for the products they offer for assembly. The complaint alleges that these misrepresentations violate Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. § 45(a)(1)).

The proposed order requires proposed respondents to cease making any material misrepresentations, including specifically misrepresentations regarding past, present or future earnings or profits of participants in any work opportunity. The order further prohibits misrepresentations regarding the marketplace demand for any product or service for which proposed respondents are offering a work opportunity.

The proposed order also prohibits proposed respondents from making any earnings-related or profit-related claims through using phrases such as "up to," or through stating any dollar amount, unless the stated earnings or profit figures can be achieved by an appreciable number of participants. The latter prohibition also requires disclosure of the class of consumers who can achieve stated earnings or profit levels, where factors or conditions affecting earnings or profits are not reasonably foreseeable by prospective workers.

The proposed order additionally requires proposed respondents to retain specified records relating to their advertising of work opportunities, the persons who paid money to participate in any work opportunity, and the earnings or profits of participants.

Additionally, the proposed order requires the corporate respondent to notify the Commission of changes in corporate structure, the individual respondent to notify the Commission of his discontinuance his present business or employment and each new business or employment affiliation, and all proposed respondent to file compliance reports with the Commission. Proposed respondents would be subject to civil penalties if they did not comply with any of the above order provisions.

The proposed order also requires proposed respondents to pay to the Federal Trade Commission $1,900,000 for consumer redress or disgorgement. This liability is suspended, however, on the basis of financial disclosures made by proposed respondents to the FTC, with the proviso that the Commission can reopen the proceeding if it subsequently determines that there are material misrepresentations or omissions in the financial disclosures.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94–157 Filed 1–4–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 922 3264]

Homespun Products, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the California-based corporations and an officer, who purported to market pillows and Christmas ornaments, from making any material misrepresentations regarding earnings or profits of participants in any work opportunity and from making misrepresentations about the marketplace demand for any product or service. In addition, the proposed settlement would require the respondents to pay $1.04 million to the Commission for consumer redress or disgorgement.

DATES: Comments must be received on or before March 7, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Gerald Wright, San Francisco Regional Office, Federal Trade Commission, 901 Market St., Suite 570, San Francisco, CA 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of HOMESPUN PRODUCTS, INC., a corporation, G & S MARKETING, INC. a corporation, and GREGORY A. STRAW, individually and as an officer of said corporations.

The Federal Trade Commission having initiated an investigation of Homespun Products, Inc., a corporation, G & S Marketing, Inc., a corporation, and Gregory A. Straw, individually and as an officer of said corporations ("proposed respondents" or "respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Homespun Products, Inc. by its duly authorized officer, G & S Marketing, Inc., by its duly authorized officer, and Gregory A. Straw, individually and as an officer of said corporations, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Homespun Products, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 201 Benton Court, Suisun, California 94585.

Proposed respondent G & S Marketing, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office or place of business located at 201 Benton Court, Suisun, California 94585.

Proposed respondent Gregory A. Straw is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of the corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of this proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here

attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this order, the following definitions shall apply:

"Work Opportunity" means any offer to a person to earn income by producing goods or providing services, where (1) the offeree must pay to the offeror, or a person identified by the offeror, any amount of money, whether in the form of a registration, application or other fee, a payment for initial inventory or supplies, or in any other form, as a condition of participating; and (2) the offeror represents that the offeree will or could be compensated in any manner by the offeror or by a person identified by the offeror.

"Participant" means any person who pays the offeror of a work opportunity, or a person identified by such offeror, any amount of money, whether in the form of a registration, application or other fee, a payment for initial inventory or supplies, or in any other form, as a condition of participating in a work opportunity.

"Net Earnings or Profits" means the compensation paid to a participant in a work opportunity, less the costs to a participant of materials, supplies and shipping.

I

It is ordered That respondents Homespun Products, Inc., a corporation, G & S Marketing, Inc., a corporation, their successors and assigns, and their officers, and Gregory A. Straw, individually and as an officer of Homespun Products, Inc. and G & S Marketing, Inc., and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the marketing, advertising, promotion, offering, or sale of any work opportunity, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any material misrepresentation, including but not limited to:

1. Misrepresenting the past, present or potential future earnings or profits of participants in any work opportunity; or

2. Misrepresenting the marketplace demand for any product or service for which respondents are offering a work opportunity.

B. Making any earnings-related or profit-related claim which uses the phrase "up to" or words of similar import or which states any dollar amount, unless the stated level of earnings or profits constitutes the net earnings or profits which can be achieved by an appreciable number of participants; and further, in any instances where consumers could not reasonably foresee the major factors or conditions affecting the ability to achieve the stated level of earnings or profits, cease and desist from failing to disclose clearly and prominently the class of consumers who can achieve the stated level.

II

It is further ordered That for three (3) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. Specimen copies of all materials disseminated which contain such representation;

B. All materials that were relied upon as substantiation in disseminating such representation;

C. The names, addresses and telephone numbers of all work opportunity participants who paid any money to respondents within the previous three years; and

D. The names, addresses and telephone numbers of all work opportunity participants who earned any income or profits from respondents during the previous three years, and for each such participant: all written agreements between respondents and each participant during the previous three years; and the dates and amounts of all payments paid to each participant for work completed pursuant to the work opportunity during the previous three years.

III

It is further ordered:

A. That respondents Homespun Products, Inc., G & S Marketing, Inc. and Gregory A. Straw shall pay to the FTC as consumer redress the sum of one million and forty thousand dollars ($1,040,000); provided, however, that this liability will be suspended, subject to the provisions of subpart B below.

B. That the Commission's acceptance of this Order is expressly premised upon the representations regarding the financial condition of the respective respondents made to the FTC in a "Financial Statement of Corporate Defendant" relating to Homespun Products, Inc., dated February 12, 1993; a "Financial Statement of Corporate Defendant" relating to G & S Marketing, Inc., dated February 12, 1993; a "Financial Statement of Debtor" executed by Gregory A. Straw, dated February 8, 1993; the federal income tax returns of Homespun Products, Inc. for 1990, 1991 and 1992; the federal income tax returns for G & S Marketing, Inc. for 1991 and 1992; and the federal income tax returns for Gregory A. Straw and Susan M. Straw for 1991 and 1992. After service upon respondents of an order to show cause, the FTC may reopen this proceeding to make a determination whether there are any material misrepresentations or omissions in said representations regarding the financial condition of the respective respondents. Respondents shall be given an opportunity to present evidence on this issue. If, upon consideration of respondents' evidence and other information before it, the FTC determines that there are any material misrepresentations or omissions in the financial statements and related documents, that determination shall cause the entire amount of monetary liability of one million and forty thousand dollars ($1,040,000) to become immediately due and payable to the Federal Trade Commission, and interest computed at the rate prescribed in 28 U.S.C. 1961, as amended, shall immediately begin to accrue on the unpaid balance. Proceedings initiated under Part III are in addition to, and not in lieu of, any other civil or criminal

remedies as may be provided by law, including any proceedings the Federal Trade Commission may initiate to enforce this Order.

IV

It is further ordered That the corporate respondents shall notify the Commission at least thirty (30) days prior to any dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporations that may affect compliance obligations arising out of the Order.

V

It is further ordered That the individual respondent shall promptly notify the Commission of the discontinuance of his present business or employment and, for a period of five (5) years after the date of service of this Order, shall promptly notify the Commission of each affiliation with a new business or employment.

It is further ordered That respondents shall, within sixty (60) days after service of this Order on them, and on the first through the fifth anniversaries of the effective date of this Order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Homespun Products, Inc., G & S Marketing, Inc., and Gregory A. Straw ("proposed respondents"). All of the Proposed respondents are located in Suisun, California.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

Homespun Products and G & S Marketing disseminate advertising seeking individuals to assemble craft items at home. Homespun Products sells instructional kits and craft materials, and/or charges registration fees, to individuals wanting to perform such assembly work.

The complaint alleges that proposed respondents have misrepresented the weekly earnings that are regularly realized by Homespun Products' home assemblers, through performing such assembly work and submitting it to Homespun Products for compensation. The complaint further alleges that proposed respondents have misrepresented that there is a significant marketplace demand for the products they offer for assembly. The complaint alleges that these misrepresentations violate Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)).

The proposed order requires proposed respondents to cease making any material misrepresentations, including specifically misrepresentations regarding past, present or future earnings or profits of participants in any work opportunity. The order further prohibits misrepresentations regarding the marketplace demand for any product or service for which proposed respondents are offering a work opportunity.

The proposed order also prohibits proposed respondents from making any earnings-related or profit-related claims through using phrases such as "up to," or through stating any dollar amount, unless the stated earnings or profit figures can be achieved by an appreciable number of participants. The latter prohibition also requires disclosure of the class of consumers who can achieve stated earnings or profit levels, where factors or conditions affecting earnings or profits are not reasonably foreseeable by prospective workers.

The proposed order additionally requires proposed respondents to retain specified records relating to their advertising of work opportunities, the persons who paid money to participate in any work opportunity, and the earnings or profits of participants.

Additionally, the proposed order requires the corporate respondents to notify the Commission of changes in corporate structure, the individual respondent to notify the Commission of his discontinuance of his present business or employment and each new business or employment affiliation, and all proposed respondents to file compliance reports with the Commission. Proposed respondents would be subject to civil penalties if they did not comply with any of the above order provisions.

The proposed order also requires proposed respondents to pay to the Federal Trade Commission $1,040,000 for consumer redress or disgorgement. This liability is suspended, however, on the basis of financial disclosures made by proposed respondents to the FTC, with the proviso that the Commission can reopen the proceeding if it subsequently determines that there are material misrepresentations or omissions in the financial disclosures.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94–158 Filed 1–4–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 922 3266]

New Mexico Custom Designs, Inc., et al; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the New Mexico-based corporation and its officer, who claimed to sell beaded earrings, from making any material misrepresentations regarding earnings or profits of participants in any work opportunity and from making misrepresentations about the marketplace demand for any product or service. In addition, the proposed settlement would require the respondents to pay $1.2 million to the Commission for consumer redress or disgorgement.

DATES: Comments must be received on or before March 7, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Gerald Wright, San Francisco Regional Office, Federal Trade Commission, 901 Market St., suite 570, San Francisco, CA 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with an accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited.

Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of New Mexico Custom Designs, Inc., a corporation, and Anthony L. Ingram, individually and as an officer of said corporation.

The Federal Trade Commission having initiated an investigation of New Mexico Custom Designs, Inc., a corporation, and Anthony L. Ingram, individually and as an officer of said corporation ("proposed respondents" or "respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between New Mexico Custom Designs, Inc. by its duly authorized officer, and Anthony L. Ingram, individually and as an officer of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent New Mexico Custom Designs, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Mexico, with its principal office and place of business located at 8415 Washington Place, NE., suite D, Albuquerque, New Mexico 87113.

Proposed respondent Anthony L. Ingram is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of the corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of this proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they well be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this order, the following definitions shall apply:

"Work Opportunity" means any offer to a person to earn income by producing goods or providing services, where (1) the offeree must pay to the offeror, or a person identified by the offeror, any amount of money, whether in the form of a registration, application or other fee, a payment for initial inventory or supplies, or in any other form, as a condition of participating; and (2) the offeror represents that the offeree will or could be compensated in any manner by the offeror or by a person identified by the offeror.

"Participant" means any person who pays the offeror of a work opportunity, or a person identified by such offeror, any amount of money, whether in the form of a registration, application or other fee, a payment for initial inventory or supplies, or in any other form, as a condition of participating in a work opportunity.

"Net Earnings or Profits" means the compensation paid to a participant in a work opportunity, less the costs to a participant of materials, supplies and shipping.

I

It is ordered that, Respondents New Mexico Custom Designs, Inc., a corporation, its successors and assigns, and its officers, and Anthony L. Ingram, individually and as an officer of New Mexico Custom Designs, Inc., a corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the marketing, advertising, promotion, offering, or sale of any work opportunity, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any material misrepresentation, including but not limited to:

1. Misrepresenting the past, present or potential future earnings or profits of participants in any work opportunity; or

2. Misrepresenting the marketplace demand for any product or service for which respondents are offering a work opportunity.

B. Making any earnings-related or profit-related claim which uses the phrase "up to" or words of similar import or which states any dollar amount, unless the stated level of earnings or profits constitutes the net earnings or profits which can be achieved by an appreciable number of participants; and further, in any

instances where consumers could not reasonably foresee the major factors or conditions affecting the ability to achieve the stated level of earnings or profits, cease and desist from failing to disclose clearly and prominently the class of consumers who can achieve the stated level.

It is further ordered that, For three (3) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. Specimen copies of all materials disseminated which contain such representation;

B. All materials that were relied upon as substantiation in disseminating such representation;

C. The names, addresses and telephone numbers of all work opportunity participants who paid any money to respondents within the previous three years; and

D. The names, addresses and telephone numbers of all work opportunity participants who earned any income or profits from respondents during the previous three years, and for each such participant: All written agreements between respondents and each participant during the previous three years; and the dates and amounts of all payments paid to each participant for work completed pursuant to the work opportunity during the previous three years.

III

It is further ordered:

A. That respondent Anthony L. Ingram shall pay to the FTC as consumer redress the sum of one million two hundred thousand dollars ($1,200,000); provided however, that this liability will be suspended, subject to the provisions of subpart B below.

B. That the Commission's acceptance of this Order is expressly premised upon the representations regarding the financial condition of the respective respondents made to the FTC in: A "Financial Statement of Debtor" executed by Anthony L. Ingram on October 20, 1992; a "Financial Statement of Corporate Defendant" relating to New Mexico Custom Designs, Inc. executed by Anthony L. Ingram, as president, on October 20, 1992; the Federal income tax returns of New Mexico Custom Designs, Inc., for 1989, 1990 and 1991; the federal income tax returns of Anthony L. Ingram for 1990 and 1991; accounting statements for 1990, 1991 and 1992, referred to in, and enclosed with, a letter from Gary Harrell, Esq., to the Federal Trade Commission, dated 22 march 1993; and a letter from Gary Harrell, Esq., to the Federal Trade Commission, dated 3 May 1993, After service upon respondents of an order to show cause, the FTC may reopen this proceeding to make a determination whether there are any material misrepresentations for omissions in said representations regarding the financial condition of the respective respondents. Respondents shall be given an opportunity to present evidence on this issue. If, upon consideration of respondents' evidence and other information before it, the FTC determines that there are any material misrepresentations or omissions in the financial statements and related documents, that determination shall cause the entire amount of monetary liability of one million two hundred thousand dollars ($1,200,000) to become immediately due and payable to the Federal Trade Commission, and interest computed at the rate prescribed in 28 U.S.C. 1961, as amended, shall immediately begin to accrue on the unpaid balance. Proceedings initiated under Part III are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any proceedings the Federal Trade Commission may initiate to enforce this Order.

IV

It is further ordered, That the corporate respondent shall notify the Commission at least thirty (30) days prior to any dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of the Order.

V

It is further ordered that, The individual respondent shall promptly notify the Commission of the discontinuance of his present business or employment and, for a period of five (5) years after the date of service of this order, shall promptly notify the Commission of each affiliation with a new business or employment.

VI

It is further ordered that, Respondents shall, within sixty (60) days after service of this Order on them, and on the first through the fifth anniversaries of the effective date of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from New Mexico Custom Designs, Inc. and Anthony L. Ingram ("proposed respondents"). Both of the proposed respondents are located in Albuquerque, New Mexico.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

New Mexico Custom Designs, Inc. and Anthony L. Ingram disseminate advertising seeking individuals to assemble craft items at home. They sell instructional kits and craft materials, and/or charge registration fees, to individuals wanting to perform such assembly work.

The complaint alleges that proposed respondents have misrepresented the weekly earnings that are regularly realized by New Mexico Custom Designs' home assemblers, through performing such assembly work and submitting it to New Mexico Custom Designs for compensation. The complaint further alleges that proposed respondents have misrepresented that there is a significant marketplace demand for the products they offer for assembly. The complaint alleges that these misrepresentations violate section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)).

The proposed order requires proposed respondents to cease making any material misrepresentations, including specifically misrepresentations regarding past, present or future earnings or profits of participants in any work opportunity. The order further prohibits misrepresentations regarding the marketplace demand for any product or service for which proposed respondents are offering a work opportunity.

The proposed order also prohibits proposed respondents from making any earnings-related or profit-related claims through using phrases such as "up to," or through stating any dollar amount, unless the stated earnings or profit figures can be achieved by an appreciable number of participants. The latter prohibition also requires

disclosure of the class of consumers who can achieve stated earnings or profit levels, where factors or conditions affecting earnings or profits are not reasonably foreseeable by prospective workers.

The proposed order additionally requires proposed respondents to retain specified records relating to their advertising of work opportunities, the persons who paid money to participate in any work opportunity, and the earnings or profits of participants.

Additionally, the proposed order requires the corporate respondent to notify the Commission of changes cn Corporate structure, the individual respondent to notify the Commission of his discontinuance of his present business or employment and each new business or employment affiliation, and all proposed respondents to file compliance reports with the Commission. Proposed respondents would be subject to civil penalties if they did not comply with any of the above other provisions.

The proposed order also requires proposed respondents to pay to the Federal Trade Commission $1,200,000 for consumer redress or disgorgement. This liability is suspended, however, on the basis of financial disclosures made by proposed respondents to the FTC, with the proviso that the Commission can reopen the proceeding if it subsequently determines that there are material misrepresentations or omissions in the financial disclosures.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94–155 Filed 1–4–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 921–0070]

Personal Protective Armor Association, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Baltimore-based association for manufacturers of body armor in North America from restricting its members from engaging in comparative advertising or offering product-liability insurance, guarantees or warranties on soft body armor, and from placing any restraints on member advertising, including price disclosure, product liability, and body armor performance characteristics.

DATES: Comments must be received on or before March 7, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Paul Nolan, FTC/S–2624, Washington, DC 20580. (202) 326–2770.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Personal Protective Armor Association, Inc., and it now appearing that Personal Protective Armor Association, Inc., hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an Order to cease and desist from engaging in the acts and practices being investigated,

It is hereby agreed by and between the proposed respondent and its attorney and counsel for the Federal Trade Commission that:

1. Proposed respondent Personal Protective Armor Association, Inc. ("PPAA") is a corporation organized, existing and transacting business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located at 3623 Falls Road, Baltimore, Maryland 21222.

2. PPAA admits all of the jurisdictional facts set forth in the draft of Complaint here attached.

3. PPAA waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered into pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of Complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of Complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules of Practice, the Commission may, without further notice to proposed respondent, (1) Issue its Complaint corresponding in form and substance with the draft of Complaint here attached and its decision containing the following Order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time as provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the Complaint and decision containing the agreed-to-order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to

vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed draft of Complaint and Order contemplated hereby. It understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

For the purposes of this order, the following definitions shall apply:

A. "Respondent" means the Personal Protective Armor Association, its directors, trustees, councils, committees, officers, representatives, delegates, agents, employees, successors, or assigns.

B. "Soft body armor" means concealable bullet-resistant vests generally worn by civilians and law enforcement personnel.

II

It is ordered, That Respondent, directly, indirectly, or through any device, in connection with activities in or affecting commerce, as "commerce" is defined by the Federal Trade Commission Act, as amended, cease and desist from:

A. Entering into, attempting to enter into, organizing, continuing, or acting in furtherance of any agreement or combination, or carrying out any agreement between or among Respondent's members, either express or implied, that prohibits, restricts, impedes, interferes with, restrains, places limitations on, or advises against:

1. Engaging in comparative advertising, including, but not limited to prohibiting any member from advertising that any type of soft body armor meets or fails to meet any ballistic resistance standard; or

2. Offering or providing products liability insurance, guarantees, or warranties on softly body armor.

B. Restricting, regulating, impeding, declaring unethical, interfering with, restraining, or advising against the advertising, publishing, or dissemination by any person of the prices, terms, availability, characteristics, or conditions of sale of soft body armor through any means, including, but not limited to, adopting or maintaining any rule or policy that restricts or prohibits a member from:

1. Engaging in comparative advertising, including, but not limited to prohibiting any member from advertising that any type of soft body armor meets or fails to meet any ballistic resistance standard; or

2. Offering or providing products liability insurance, guarantees, or warranties on soft body armor.

Provided, That nothing contained in this Paragraph II shall prohibit Respondent from formulating, adopting, disseminating to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to representations, including unsubstantiated representations, that Respondent reasonably believes would be false or deceptive within the meaning of section 5 of the Federal Trade Commission Act.

III

It is further ordered, That Respondent:

A. Distribute by first-class mail a copy of this Order and the Complaint to each of its members within thirty (30) days after the date this Order become final.

B. For a period of five (5) years after the date this Order becomes final, provide each new member who joins PPAA with a copy of the Order and Complaint within thirty (30) days of membership into PPAA.

C. File a verified, written report with the Commission within sixty (60) days after the date this Order becomes final, and annually thereafter for five (5) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may, by written notice to PPAA, require, setting forth in detail the manner and form in which it has complied and is complying with the Order.

D. For a period of five (5) years after the date this Order becomes final, maintain and make available to Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with any activity covered by Part II of this Order.

IV

It is further ordered, That PPAA shall notify the Commission at least thirty (30) days prior to any change in the corporation such as dissolution, assignment, or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, and any other change that may affect compliance with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Personal Protective Armor Association ("PPAA"), which is located in Baltimore, Maryland. The agreement would settle charges by the Commission that the proposed respondent violated section 5 of the Federal Trade Commission Act by engaging in practices that restricted competition among PPAA members.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

The complaint prepared for issuance by the Commission along with the proposed order alleges that PPAA and its members have engaged in acts and practices that have unreasonably restrained competition among manufacturers of soft body armor. The complaint alleges that PPAA members have maintained a policy against comparative advertising and have adopted a policy not to compete in offering products liability insurance to law enforcement agencies.

According to the complaint, advertising, including comparative advertising and advertising of warranties and products liability insurance, enables firms to inform consumers as to the quality, price, and terms of sale of the product. Consumers consider terms of sale such as products liability insurance and certification that the soft body armor passes applicable performance standards. Comparative advertising and advertising of warranties and products liability insurance enables firms to inform consumers about these factors and increases the information available to consumers.

The complaint states that, during some periods, from 1986 to the present, PPAA has maintained a policy against comparative advertising, including a policy which declares it unethical for any member to make any representation that another member's vests have failed certification testing. The complaint also states that, during some periods, from 1986 to the present, PPAA adopted a policy to respond uniformly to bids by not offering products liability insurance in competing for contracts from law enforcement agencies.

The complaint alleges that the purposes or effects of the challenged act or practice have been to restrain competition unreasonably:

a. By frustrating and restraining competition in the marketing and sale of soft body armor on the basis of price, service, and quality;

b. By depriving consumers of the benefits of truthful information about the performance of soft body armor;

c. By depriving consumers of the potential value of warranties, including products liability insurance, in the purchase of soft body armor.

The Proposed Consent Order

Part I of the order covers definitions. These definitions make clear that the consent order applies to directors, trustees, councils, committees, officers, representatives, delegates, agents, employees, successors, or assigns of PPAA. The order also defines "soft body armor" as concealable bullet-resistant vests generally worn by civilians and law enforcement personnel.

Part II of the order describes the conduct prohibited by the order. Part II prevents PPAA from entering into or carrying out any agreement between or among its members that restricts engaging in comparative advertising or restricts offering or providing products liability insurance. Part II also prevents PPAA from restricting or interfering with the advertising or dissemination of prices, terms, availability, characteristics, or conditions of sale of soft body armor by adopting a policy which restricts or prohibits a member from engaging in comparative advertising or offering or providing products liability insurance.

Part III of the order requires PPAA to furnish a copy of the Commission's order to each of its members; to provide each new member who joins PPAA with a copy of the Order and complaint; and to file compliance reports for five years.

Benjamin I. Berman,

Acting Secretary.

Concurring Statement of Commissioner Roscoe B. Starek, III

I concur in the Commission's decision to accept for public comment the Consent Order in this matter. The evidence demonstrates that ten companies, representing more than 90% of U.S. sales of protective body armor, engaged in unreasonable restraints of trade in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The agreements here restrain significant dimensions of competitive rivalry among body armor manufacturers. Therefore, they appear likely, absent an efficiency justification, to restrict output. The respondent has not proffered any efficiency justification for the restraints. Under the standards set forth in the Commission's decision in Massachusetts Board of Registration in Optometry,[1] and its progeny, this "inherently suspect" conduct is appropriately condemned without a full rule of reason analysis.

In my view, however, it may have been appropriate to name as respondents the members of the Personal Protective Armor Association ("PPAA"). This case is not typical of the Commission's cases challenging anticompetitive conduct of state licensing boards and trade associations. In most such cases, the board or association represents hundreds or thousands of competing entities.[2] Naming individual members as respondents in such cases is generally impracticable: It may unnecessarily complicate litigation or create intractable problems for settlement negotiations.[3] More importantly, naming members is often unnecessary: The respondent board or association is typically the only (or only effective) means by which the multitude of competitors can reach and enforce an agreement restraining competition.

By contrast, competitors in the relatively concentrated protective body armor industry may be able to collude effectively outside the auspices of the PPAA or any other formal trade association.[4] If so, the proposed Consent Order, which names only the PPAA as a respondent, may provide an insufficient remedy. So long as the PPAA is not involved,[5] the same body armor manufacturers could engage in collusive conduct falling squarely within the core cease and desist provisions of the Order without exposure to civil penalties under section 5(l) of the FTC Act, 15 U.S.C. 45(l).[6]

In determining the optimal scope of any future enforcement actions against anticompetitive restraints facilitated by a trade association, the necessity of the particular association to effective collusion among its members should be considered carefully.

[FR Doc. 94–154 Filed 1–4–94; 8:45 am]

BILLING CODE 6750–01–M

[1] 110 F.T.C. 549, 604 (1988).

[2] See, *e.g.*, American Medical Association, 94 F.T.C. 701, 702 (1979) (membership consisting of approximately 170,000 medical doctors); Mass. Board, 110 F.T.C. at 560 (more than 1350 optometrists subject to the Board's restraints); Detroit Auto Dealers Association, Inc., 111 F.T.C. 475, 419 (1989) (membership consisting of 231 automobile dealerships).

[3] But see Detroit Auto Dealers, 111 F.T.C. at 518–521 (addenda to final order) (naming as respondents the association, 17 constituent associations, 96 member dealerships, and 81 individuals).

[4] Thus, unlike many cases involving association restraints in which the respondent association itself is a critical first mover, the conduct at issue here constitutes archetypal cartel behavior in which this particular association's involvement may be merely detail.

[5] Under the Order, respondent PPAA is defined to include any association that can be held to be a legal successor. The evidence does not clearly indicate whether or not PPAA has any structural, legal, or historical advantage that would impede the creation of a new, non-successor body armor trade association.

[6] Of course, this conduct would expose these firms to private and state actions for damages under section 4 of the Clayton Act, 15 U.S.C. 15. Such exposure, however, apparently did not deter the conduct that led to the Commission's action in this matter.

[File No. 922 3265]

Sandcastle Creations; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Oregon-based respondents, who marketed potholders and mohair for use as doll's hair, from making any material misrepresentations regarding earnings or profits or participants in any work opportunity and from making misrepresentations about the marketplace demand for any product or service. In addition, the proposed settlement would require the respondents to pay $536,000 to the Commission for consumer redress or disgorgement.

DATES: Comments must be received on or before March 7, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Gerald Wright, San Francisco Regional Office, Federal Trade Commission, 901 Market St., suite 570, San Francisco, CA 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of William E. Taylor, and Susan L. Taylor, individually, and trading and doing business as Sandcastle Creations.

The Federal Trade Commission having initiated an investigation of William E. Taylor and Susan L. Taylor, individually, and trading and doing business as Sandcastle Creations

("proposed respondents" or "respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It is hereby agreed by and between William E. Taylor and Susan L. Taylor, individually, and trading and doing business as Sandcastle Creations, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondents William E. Taylor and Susan L. Taylor are individuals, trading and doing business as Sandcastle Creations, an unincorporated association, with its principal office and place of business located at 126 SE. 1st Street, Newport, Oregon 97365.

Proposed respondent William E. Taylor is a co-owner of Sandcastle Creations. Individually or in concert with others, he formulates, directs and controls the policies, acts and practices of Sandcastle Creations and his address is the same as that of Sandcastle Creations.

Proposed respondent Susan L. Taylor is a co-owner of Sandcastle Creations. Individually or in concert with others, she formulates, directs and controls the policies, acts and practices of Sandcastle Creations and her address is the same as that of Sandcastle Creations.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of this proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint an decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this order, the following definitions shall apply:

"Work Opportunity" means any offer to a person to earn income by producing goods or providing services, where (1) the offeree must pay to the offeror, or a person identified by the offeror, any amount of money, whether in the form of a registration, application or other fee, a payment for initial inventory or supplies, or in any other form, as a condition of participating; and (2) the offeror represents that the offeree will or could be compensated in any manner by the offeror or by a person identified by the offeror.

"Participant" means any person who pays the offeror of a work opportunity, or a person identified by such offeror, any amount of money, whether in the form of a registration, application or other fee, a payment for initial inventory or supplies, or in any other form, as a condition of participating in a work opportunity.

"Net Earnings or Profits" means the compensation paid to a participant in a work opportunity, less the costs to a participant of materials, supplies and shipping.

I

It is ordered that, Respondents William E. Taylor and Susan L. Taylor, individually and trading and doing business as Sandcastle Creations, an unincorporated association, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the marketing, advertising, promotion, offering, or sale of any work opportunity, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any material misrepresentation, including but not limited to:

1. Misrepresenting the past, present or potential future earnings or profits of participants in any work opportunity; or

2. Misrepresenting the marketplace demand for any product or service for which respondents are offering a work opportunity.

B. Making any earnings-related or profit-related claim which uses the phrase "up to" or words of similar import or which states any dollar amount, unless the stated level of earnings or profits constitutes the net earnings or profits which can be achieved by an appreciable number of participants; and further, in any instances where consumers could not reasonably foresee the major factors or conditions affecting the ability to achieve the stated level of earnings or profits, cease and desist from failing to disclose clearly and prominently the class of consumers who can achieve the stated level.

II

It is further ordered that, For three (3) years after the last date of dissemination of any representation covered by this

Order, respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. Specimen copies of all materials disseminated which contain such representation;

B. All materials that were relied upon as substantiation in disseminating such representation;

C. The names, addresses and telephone numbers of all work opportunity participants who paid any money to respondents within the previous three years; and

D. The names, addresses and telephone numbers of all work opportunity participants who earned any income or profits from respondents during the previous three years, and for each such participant: all written agreements between respondents and each participant during the previous three years; and the dates and amounts of all payments paid to each participant for work completed pursuant to the work opportunity during the previous three years.

III

It is further ordered:

A. That respondents shall jointly and severally pay to the FTC as consumer redress the sum of five hundred and thirty-six thousand dollars ($536,000); provided however, that this liability will be suspended, subject to the provisions of subparts B and D below, upon the payment of twenty-five thousand dollars ($25,000) no later than fifteen (15) days after the date of service of this Order. Such payment shall be made by cashier's check or certified check payable to the Federal Trade Commission and shall be delivered to the Federal Trade Commission, San Francisco Regional Office, 901 Market Street, suite 570, San Francisco, CA 94103.

B. That, in the event of respondents' default on the $25,000 payment set forth in subpart A above, the amount of five hundred and thirty-six thousand dollars ($536,000), less the sum of any payments made pursuant to subpart A above, shall become immediately due and payable without any notice required to be given to the respondents, and interest computed at the rate prescribed under 28 U.S.C. 1961, as amended, shall immediately begin to accrue on the unpaid balance.

C. That any funds paid by respondents pursuant to subparts A and B above shall be paid into a redress fund administered by the Federal Trade Commission and shall be used to provide direct redress to those purchasers of respondents' introductory kits (as described in the complaint) who have not previously been reimbursed by respondents for the cost of the kit through a refund or through the purchase of finished product. If the Federal Trade Commission determines, in its sole discretion, that the redress to purchasers (as defined above) is wholly or partially impracticable, any funds not so used shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein described shall be deemed a payment of any fine, penalty, or punitive assessment.

D. That the Commission's acceptance of this Order is expressly premised upon the financial statements and related documents previously provided by respondents to the FTC, signed and dated July 27, 1992. After service upon respondents of an order to show cause, the FTC may reopen this proceeding to make a determination whether there are any material misrepresentations or omissions in said financial statements and related documents. Respondents shall be given an opportunity to present evidence on this issue. If, upon consideration of respondents' evidence and other information before it, the FTC determines that there are any material misrepresentations or omissions in the financial statements and related documents, that determination shall cause the entire amount of monetary liability of five hundred and thirty-six thousand dollars ($536,000), less the sum of any payments made under subpart A above, to become immediately due and payable to the Federal Trade Commission, and interest computed at the rate prescribed in 28 U.S.C. 1961, as amended, shall immediately begin to accrue on the unpaid balance. Proceedings initiated under Part III are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any proceedings the Federal Trade Commission may initiate to enforce this Order.

IV

It is further ordered that, The individual respondents shall promptly notify the Commission of the discontinuance of their present business or employment and, for a period of five (5) years after the date of service of this order, shall promptly notify the Commission of each affiliation with a new business or employment.

V

It is further ordered that, Respondents shall, within sixty (60) days after service of this Order on them, and on the first through the fifth anniversaries of the effective date of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from William E. Taylor and Susan L. Taylor, who do business under the name Sandcastle Creations ("proposed respondents"). The proposed respondents are located in Newport, Oregon.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

Sandcastle Creations disseminates advertising seeking individuals to assemble craft items at home. It sells instructional kits and craft materials, and/or charges registration fees, to individuals wanting to perform such assembly work.

The complaint alleges that proposed respondents have misrepresented the weekly earnings that are regularly realized by Sandcastle Creations' home assemblers, through performing such assembly work and submitting it to Sandcastle Creations for Compensation. The complaint alleges that this misrepresentation violates section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)).

The proposed order requires proposed respondents to cease making any material misrepresentations, including specifically misrepresentations regarding past, present or future earnings or profits of participants in any work opportunity. The order further prohibits misrepresentations regarding the marketplace demand for any product or service for which proposed respondents are offering a work opportunity.

The proposed order also prohibits proposed respondents from making any earnings-related or profit-related claims through using phrases such as "up to,"

or through stating any dollar amount, unless the stated earnings or profit figures can be achieved by an appreciable number of participants. The latter prohibition also requires disclosure of the class of consumers who can achieve stated earnings or profit levels, where factors or conditions affecting earnings or profits are not reasonably foreseeable by prospective workers.

The proposed order additionally requires proposed respondents to retain specified records relating to their advertising of work opportunities, the persons who paid money to participate in any work opportunity, and the earnings or profits of participants.

Additionally, the proposed order requires the individual proposed respondents to notify the Commission of their discontinuance of their present business or employment and each new business or employment affiliation, and requires the proposed respondents to file compliance reports with the Commission. Proposed respondents would be subject to civil penalties if they did not comply with any of the above order provisions.

The proposed order also requires proposed respondents to pay to the Federal Trade Commission $536,000 for consumer redress or disgorgement. This liability is suspended, however, on the basis of financial disclosures made by proposed respondents to the FTC, and the payment to the Federal Trade Commission of $25,000, with the proviso that the Commission can reopen the proceeding if it subsequently determines that there are material misrepresentations or omissions in the financial disclosures.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94–156 Filed 1–4–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93F090428]

PPG Industries, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that PPG Industries, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of alpha-(dinonylphenyl)-omega-hydroxy-poly(oxy-1,2-ethanediyl) containing 7 to 24 moles of ethylene oxide per mole of dinonylphenol, as a defoaming agent used in the production of paper and paperboard coatings and paper and paperboard intended to contact food.

DATES: Written comments on the petitioner's environmental assessment by February 4, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA09305), Food and Drug Administration, rm. 10923, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFS09216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 20209254099500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 3B4363) has been filed by PPG Industries, Inc., 440 College Park Dr., Monroeville, PA 15146. The petition proposes to amend the food additive regulations in §1A176.200 *Defoaming agents used in coatings* (21 CFR 176.200) and §1A176.210 *Defoaming agents used in the manufacture of paper and paperboard* (21 CFR 176.210) to provide for the safe use of alpha-(dinonylphenyl)-omega-hydroxy-poly(oxy-1,2-ethanediyl) containing 7 to 24 moles of ethylene oxide per mole of dinonylphenol, as a defoaming agent used in the production of paper and paperboard coatings and paper and paperboard intended to contact food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act, (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before February 4, 1994, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the final regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 21, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–60 Filed 1–4–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Cancer Institute; Notice of Meeting of the Subcommittee To Evaluate the National Cancer Program, National Cancer Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Subcommittee to Evaluate the National Cancer Program, National Cancer Advisory Board, National Cancer Institute, National Institutes of Health on January 20–22, 1994 at the San Diego Hilton, 1175 East Mission Bay Drive, San Diego, California 92109.

The meeting will be open to the public from 3 p.m. to recess on January 20; from 9 a.m. to recess January 21, and from 9 a.m. until adjournment on January 22. Attendance by the public will be limited to space available. Discussions will address the evaluation and achievements of the National Cancer Program.

Ms. Carole Frank, Committee Management Specialist, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 630M, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708), will provide a summary of the meeting and a roster of the Subcommittee members upon request.

Ms. Cherie Nichols, Executive Secretary, Subcommittee to Evaluate the National Cancer Program, National Cancer Advisory Board, National Cancer Institute, National Institutes of Health, Building 31, room 11A23, Bethesda, Maryland 20892 (301/496–5515), will

furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Cherie Nichols on (301/496–5515) in advance of the meeting.

Dated: December 28, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–153 Filed 1–5–94; 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 Public Law 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:

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

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, (Outside OH) 800–338–0166/(Inside OH) 800–362–8913, (formerly Southgate Medical Laboratory; Southgate Medical Services, Inc.)

Damon/MetPath, 140 East Ryan Road, Oak Creek, WI 53154, 800–638–1100, (formerly: Damon Clinical Laboratories; Chem-Bio Corporation; CBC Clinilab)

Damon/MetPath, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535, (formerly: Damon Clinical Laboratories)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171

Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert Street, Norfolk, VA 23511–2597, 804–444–8089 ext. 317

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Drive, Valdosta, GA 31604, 912–244–4468

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

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 601–236–2609, (moved 6/16/93)

Employee Health Assurance Group, 405 Alderson Street, Schofield, WI 54476, 800–627–8200, (formerly: Alpha Medical Laboratory, Inc.)

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 606 N. Weatherford, P.O. Box 2788, Midland, TX 79702, 800–725–3784/915–687–6877, (formerly: Harrison & Associates Forensic Laboratories)

HealthCare/MetPath, 24451 Telegraph Road, Southfield, MI 48034, Inside MI: 800–328–4142/Outside MI: 800–225–9414, (formerly: HealthCare/Preferred Laboratories)

Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, Suite 354, Houston, TX 77030, 713–793–6080

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Avenue, Cincinnati, OH 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/Damon, 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200, (formerly: Med-Chek Laboratories, Inc.)
MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515
Medical Science Laboratories, 11020 W. Plank Court, Wauwatosa, WI 53226, 414–476–3400
MEDTOX Bio-Analytical, 8600 West Catalpa Avenue, Chicago, IL 60656, 800–872–5221/312–714–9191, (formerly: MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.; 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
Metropolitan Reference Laboratories, Inc., 2320 Schuetz Road, St. Louis, MO 63146, 800–288–7293
National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 410–536–1485, (formerly: Maryland Medical Laboratory, Inc.)
National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800–749–3784, (formerly: Med Arts Lab)
National Health Laboratories Incorporated, 5601 Oberlin Drive, Suite 100, San Diego, CA 92121, 619–455–1221
National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103–6710, Outside NC: 919–760–4620/800–334–8627/Inside NC: 800–642–0894
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
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, (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
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
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, 7800 West 110th Street, Overland Park, KS 66210, 913–338–4070/800–821–3627, (formerly: Physicians Reference Laboratory Toxicology Laboratory)
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, 210–493–3211
Puckett Laboratory, 4200 Mamie Street, Hattiesburgh, MS 39402, 601–264–3856/800–844–8378
Regional Toxicology Services, 15305 NE. 40th Street, Redmond, WA 98052, 206–882–3400
Resource One, Inc., Seven Pointe Circle, Greenville, SC 29615, 803–233–5639
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
Saint Joseph Hospital Toxicology Laboratory, 601 N. 30th Street, Omaha, NE 68131–2197, 402–449–4940
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 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010, (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, (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301, (formerly: SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Road, Suite 6, Tempe, AZ 85283, 602–438–8507
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 NW. 79th Avenue, Miami, FL 33166, 305–593–2260
TOXWORX Laboratories, Inc., 6160 Variel Avenue, Woodland Hills, CA 91367, 818–226–4373, (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.; moved 12/21/92)
UNILAB, 18408 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191, (formerly: MetWest-BPL Toxicology Laboratory).

The following laboratory withdrew from the National Laboratory Certification Program on November 19, 1993:

Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205–581–4170.

The following laboratory withdrew from the National Laboratory Certification Program, on December 31, 1993:

IHC Laboratory Services Forensic Toxicology, 930 North 500 West, Suite E, Provo, UT 84604, 800–967–9766.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94–190 Filed 1–4–94; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change.

SUMMARY: This notice sets forth that the discount rate to be used in Federal water resources planning for fiscal year 1994 is 8 percent. Water Resources Planning Act and Water Resources Development Act of 1974 requires an annual determination of a discount rate. Federal water resources planning for fiscal year 1994 is 8 percent. Discounting is to be used to convert future monetary values to present values.

DATES: This discount rate is to be used for the period October 1, 1993, through and including September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Norbert S. Ries, Special Programs Manager, Investigations and Oversight Branch, U.S. Bureau of Reclamation, Attention: D–5110, Building 67, Denver Federal Center, Denver CO 80225–0007; telephone: (303) 236–9336, extension 233.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 8 percent for fiscal year 1994.

This rate has been computed in accordance with section 80(a), Public Law 93–251 (88 Stat. 34) and 18 CFR 704.39, which: (1) Specify that the rate shall be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate shall not be raised or lowered more than one-quarter of 1 percent for any year. The Treasury Department calculated the specified average yield to be 7.08 percent. However, application of the above mentioned limitation to the fiscal year 1993 rate of 8.25 percent limits the change in the fiscal year 1994 rate to 8 percent.

The rate of 8 percent shall be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs, or otherwise converting benefits and costs to a common time basis.

Dated: December 28, 1993.

Donald R. Glaser,

Deputy Commissioner.

[FR Doc. 94–109 Filed 1–4–94; 8:45 am]

BILLING CODE 4310–94–M

National Park Service

General Management Plan/ Environmental Impact Statement for Fort Clatsop National Memorial, OR

ACTION: Notice of extension of public review period.

SUMMARY: The November 3, 1993 issue of the **Federal Register** contained a notice by the National Park Service that announced the availability of the draft General Management Plan/ Environmental Impact Statement (GMP/ EIS) for Fort Clatsop National Memorial, Oregon, and called for written comments to be submitted by January 7, 1994. This present notice announces a 31-day extension of the period available for public review of the draft GMP/EIS.

DATES: Comments on the draft GMP/EIS should be received no later than February 7, 1994.

ADDRESSES: Written comments on the draft GMP/EIS should be submitted to the Superintendent, Fort Clatsop National Memorial, Route 3, Box 604–FC, Astoria, Oregon 97103.

FOR FURTHER INFORMATION CONTACT: Superintendent, Fort Clatsop National Memorial, at the above address or at telephone number (503) 861–2471.

Dated: December 23, 1993.

William C. Walters,

Deputy Regional Director, Pacific Northwest Region, National Park Service.

[FR Doc. 94–173 Filed 1–4–94; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–669–670 (Preliminary)]

Certain Cased Pencils From the People's Republic of China and Thailand

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the People's Republic of China and Thailand[2] of certain cased pencils, provided for in subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On November 10, 1993, a petition was filed with the Commission and the Department of Commerce by the Pencil Makers Association, Inc., Marlton, NJ, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain cased pencils from the People's Republic of China and Thailand. Accordingly, effective November 10, 1993, the Commission instituted antidumping investigations Nos. 731–TA–669–670 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 17, 1993 (58 FR 60670). The conference was held in Washington, DC, on December 1, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on December 27, 1993. The views of the Commission are contained in USITC Publication 2713 (December 1993), entitled "Certain Cased Pencils from the People's Republic of China and Thailand: Investigations Nos. 731–TA–669–670 (Preliminary)."

Issued: December 29, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–150 Filed 1–4–93; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Brunsdale and Commissioner Crawford determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of certain cased pencils from Thailand.

[Investigation No. 337–TA–359]

Certain Dielectric Miniature Microwave Filters and Multiplexers Containing Same

Notice is hereby given that the prehearing conference in this matter will commence at 10 a.m. on January 12, 1994, in Courtroom A (Room 100), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: December 29, 1993.

Sidney Harris,

Administrative Law Judge.

[FR Doc. 94–151 Filed 1–4–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–349]

Commission Decision Not To Review an Initial Determination Suspending the Investigation

In the Matter of Certain Diltiazem Hydrochloride and Diltiazem Preparations

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) suspending the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3098.

SUPPLEMENTARY INFORMATION: On March 31, 1993, the Commission instituted an investigation into allegations by complainants Tanabe Seiyaku Co., Ltd. and Marion Merrell Dow ("complainants") that respondents Gyma Laboratories of America, Inc.; Mylan Pharmaceuticals, Inc., Mylan Laboratories, Inc. and Profarmaco Norbel SRL ("Mylan respondents"); Orion Corporation Fermion, Interchem Corporation, Rhone-Poulenc Rorer, Inc., and Copley Pharmaceuticals, Inc. ("the Fermion Respondents"); and Abic Ltd. ("Abic") were violating section 337 in the importation and sale of certain diltiazem hydrochloride and diltiazem preparations allegedly manufactured abroad by a process covered by claim 1 of U.S. Letters Patent 4,438,035 ("the '035 patent"). Plantex USA ("Plantex") was later added as a respondent. On May 3, 1993, respondent Abic requested that the U.S. Patent and Trademark Office ("PTO") reexamine all claims of the '035 patent. On June 25, 1993, the PTO granted Abic's request and began reexamination proceedings. On November 22, 1993, the PTO issued an office action rejecting claims of the '035 patent as obvious under 35 U.S.C. 103.

On November 23, 1993, as a result of the PTO's rejection, complainants moved to suspend the Commission investigation pending the outcome of the PTO reexamination proceedings. Respondents opposed the motion, and the Commission investigative attorney (IA) supported the motion. On November 24, 1993, the presiding ALJ issued an ID suspending the investigation until 30 days after the completion of reexamination proceedings at the PTO or until such time as may be prescribed by the Commission.

On December 2, 1993, Abic and Plantex filed a petition for review of the ID. On December 6, 1993, the Fermion respondents filed a response in support of Abic and Plantex's petition for review. On December 9, 1993, complainants and the IA filed oppositions to respondents' petition for review.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (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 ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 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.

Issued: December 28, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–152 Filed 1–4–94; 8:45 am]

BILLING CODE 7020–02–P

[332–237]

Production Sharing: U.S. Imports Under Harmonized Tariff Schedule Provisions 9802.00.60 and 9802.00.80, 1989–92

AGENCY: United States International Trade Commission.

ACTION: Opportunity to supply written comment on continuing investigation.

SUMMARY: The Commission annually conducts a study on production sharing. The Commission's 1993 report on "Production Sharing: U.S. Imports Under Harmonized Tariff Schedule Provisions 9802.00.60 and 9802.00.80," covering imports for the period 1989–92, will be published in January 1994. Last year's report, covering the period 1988–91, was published in February 1993 (USITC Publication 2592). The 1994 annual report (published in January 1995) will cover imports during the period 1990–93.

FOR FURTHER INFORMATION CONTACT: Richardo L. Witherspoon (202–205–3489), Minerals, Metals and Miscellaneous Manufactures Division, Office of Industries, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION: Harmonized Tariff Schedule (HTS) provision 9802.00.60 involves tariff treatment for metal of U.S. origin processed in a foreign location and returned to the United States for further processing; provision 9802.00.80 involves tariff treatment for imported goods that contain U.S.-made components. The initial notice of institution of this investigation in 1986 was published in the Federal Register of September 4, 1986 (51 FR 31729).

Written Submission

No public hearing is planned. Written statements concerning the investigation are welcome at any time, however, since monitoring imports under production sharing HTS provisions 9802.00.60 and 9802.00.80 is a continuing endeavor of the Commission. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–3810.

Dated: December 30, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–188 Filed 1–4–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–52 (Sub-No. 76X)]

Atchison, Topeka and Santa Fe Railway Co.—Abandonment Exemption—In Harper County, KS

The Atchison, Topeka and Santa Fe Railway Company (SF) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon a 1.84-mile line of railroad on its H&S Subdivision from milepost 258+2,120 feet to milepost 256+2,993 feet at or near Harper, in Harper County, KS.

SF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; and (3)

no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirement at 49 CFR 1152.50(d)(1) (notice to government agencies), 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), and 49 CFR 1105.12 (newspaper publication) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expressions of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 4, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29[3] must be filed by January 18, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 25, 1994, with: Office of the Secretary Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Peter M. Olson, 1700 E. Golf Road, Schaumburg, IL 60173.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

SF has filed an environmental report which addresses the abandonment's effect, if any, on the environment or historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by January 10, 1994. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 28, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 94–169 Filed 1–4–94; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Docket No. AB–410 (Sub-No. 1X)]

Austin Railroad Co., Inc., Discontinuance of Service Exemption—in Burnet and Llano Counties, TX

Austin Railroad Co., Inc., d/b/a Austin & Northwestern Railroad (AUNW) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to discontinue service over 26.4 miles of railroad from milepost 127.7 at Scobee to milepost 154.1 at the end of the track at Llano, in Burnet and Llano Counties, TX.

AUNW has certified that: (1) No local traffic has moved over the line for more than 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice of governmental agencies) have been met.

As a condition to this exemption, any employee affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 4, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues [1] and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2) [2] must be filed by January 18, 1994. Petitions to reopen must be filed by January 25, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Michael W. Blaszak, 211 South Leitch Avenue, LaGrange, IL 60525–2162.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

AUNW has filed an environmental report which addresses the discontinuance's effects, if any, on the environmental and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by January 10, 1994. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental and historic preservation conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 29, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 94–170 Filed 1–4–94; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[Docket Nos. AB–32 and AB–355 (Sub-Nos. 61X and 13X)]

Boston and Maine Corporation—Abandonment Exemption—New Haven County, CT; Springfield Terminal Railway Company—Discontinuance of Service Exemption—New Haven County, CT

Boston and Maine Corporation (B&M) and Springfield Terminal Railway Company (ST) filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to abandon and discontinue service over a segment of B&M's Dublin Street Track line of railroad between milepost 17.29 and milepost 19.86, a distance of approximately 2.57 miles, in Waterbury, New Haven County, CT. B&M seeks authority to abandon the line, and ST, which leases the line from B&M, seeks authority to discontinue service over the line.

B&M and ST certify that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic, if any, has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 4, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by January 18, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 25, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicants' representative: Kevin J. O'Connell, Esq., Law Department, Iron Horse Park, North Billerica, MA 01862.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

B&M and ST have filed an environmental report which addresses the effect, if any, of the abandonment and the discontinuance on the environmental and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by January 10, 1994. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 27, 1993.

By the Commission, Julia M. Farr, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–172 Filed 1–4–94; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Docket Nos. AB–32 and AB–355 (Sub-Nos. 58X and 10X)]

Boston and Maine Corporation—Abandonment Exemption—New Haven County, CT; Springfield Terminal Railway Company—Discontinuance of Service Exemption—New Haven County, CT

Boston and Maine Corporation (BM), and Springfield Terminal Railway Company (ST) filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments and Discontinuances* for BM to abandon and ST to discontinue service over a 0.88 mile segment of BM's rail known as the Waterbury Industrial Track, between milepost 0.98 and milepost 1.86, in Waterbury, New Haven County, CT.

BM and ST have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to the use of this exemption, any employee affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 4, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by January 18, 1994. Petitions to reopen or request for public use conditions under 49 CFR 1152.28 must be filed by January 25, 1994, with: Office of the Secretary, Case

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicants' representative: Kevin J. O'Connell, Iron Horse Park, North Billerica, MA 01862.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

BM and SP have filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by January 10, 1994. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 23, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–171 Filed 1–4–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

Claims Against Iran

AGENCY: Foreign Claims Settlement Commission of the United States, Department of Justice.

ACTION: Notice.

SUMMARY: The persons listed in the information section of this notice have claims pending against the Islamic Republic of Iran which are before the Foreign Claims Settlement Commission (FCSC) for adjudication. The claims are among a total of approximately 3,100 claims of under $250,000 which were settled under an agreement between the United States and Iran which took effect on June 22, 1990. However, these claimants have failed to inform the FCSC of their current addresses, and despite its efforts, the FCSC has been unable to locate or contact these claimants. The purpose of this notice is to publicize the names, claim numbers, and last known addresses of these claimants, and to inform them that unless they furnish their current addresses to the FCSC by March 1, 1994, their claims will be dismissed from further consideration.

DATES: The deadline for providing an updated address is March 1, 1994.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission of the United States, 601 D Street, NW., room 10430, Washington, DC 20579, (202) 208–7730 or FAX (202) 208–2816.

SUPPLEMENTARY INFORMATION: The Foreign Claims Settlement Commission of the United States (FCSC) hereby gives notice that it has been unable to locate the following named claimants, whose last known addresses and claim numbers also appear below, who have claims pending before the FCSC for property and financial losses alleged to have been caused by the Government of Iran. These claims are among the approximately 3,100 claims of under $250,000 each which were settled en bloc under an agreement between the United States and Iran which took effect on June 22, 1990. *Settlement Agreement in Claims of Less than $250,000, Case No. 86 and Case No. B38*, Award No. 483 (1990). The FCSC has been given authority to adjudicate the claims under title V of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 (Pub. L. 99–93, approved August 16, 1985, 99 Stat. 437 (50 U.S.C. 1701 note)). Further, the FCSC hereby gives notice to each of these claimants that it will dismiss their claims from further consideration, regardless of their potential validity, unless it receives notification of the claimant's current address on or before the deadline of March 1, 1994.

Dated at Washington, DC on December 30, 1993.

Judith H. Lock,

Administrative Officer.

Name & last known address	Claim No. IR–
Adretta, Richard A., 1074 Lorimer Street, #1R, Brooklyn, NY 11222	3150
Arthur Tickle Engineering Works, Inc., 26 Delevan Street, Brooklyn, NY 11231	0368
Autodynamics, Inc., 1115 Green Grove Road, Neptune, NJ 07753	1373
Avilla, Henry, 17th ASG CM, Unit 45013, Box 2954, APO AP, 96338	1633
Batton, Cleophas, c/o Savaneeya Batton, 3871 N. Shelby Ln., Douglasville, GA 30135	2077
Berckemeyer, Jack R., 1860 Okeechobee Drive, Colorado Springs, CO 80915	0129
Bill, Luis L., 7401 New Hampshire Ave., #506, Hyattsville, MD 20783	2686
Blackledge, Albert H., Otis Engineering Corp, P.O. Box 34380, Dallas, TX 75234	1395
Blake, Harvey E., 1155 South Riverside Ave, Space 148, Rialto, CA 92376	2556
Boen, Clinton, Route 2, Box 10, Oark, AR 72852	2638
Brennan, John J., 16410 Miami Drive, North Miami Beach, FL 33162	1145
Burge, John J., 3211 Oakridge Drive, Chino Hills, CA 91709	2628
Burkeman, Walter B., 252 South Maple Drive, Beverly Hills, CA 90212	3032
Bushey, Alfred J., RAO, 3d GSC/CDR, APO San Francisco, 96274	0367
Carey, Don N., 111 Woodlawn, Dollard, Des Orneaux, Canada H9A124	1204
Carriger, Lillian, 421 North Air Depot Blvd., #1, Midwest City, OK 73110	2295
Carriger, Charles, 1954 Highway 58, #114, Mojove, CA 93501–1933	1125
Carroll, Sue G., 757 Ledyard Place, Montgomery, AL 36109	0411
Carter, M.A., 1015 Bois d'Arc Street, Duncan, OK 73536	1619
Chandler, George M., c/o T. Norton, 20102 Chaparral Circle, Penn Valley, CA 95946	1674
Cobb, Frank W., Route 1, Box 123, Jackson, Alabama 36545	0739
Curtiss, Russell E., 2101 S. 324th Street, Space #6, Federal Way, WA 98003	2075
Davis, Laurene D., 4024 Kenwood Drive, Spring Valley, CA 92077	2509
Douglas, Arthur S., Box 59, Taif, Saudi Arabia	2792
Duck, John W., 1015 Bois d'Arc Street, Duncan, OK 73536	1690
Edwards, William N., 1101 Melanie Lane, Ozark, MO 65721	1391
Eubanks, Joe, 1215 E. 48th Street, Los Angeles, CA 90011	2292
Fleming, Victor D., 6801 Trovita Way, Citrus Heights, CA 95610	3085
Fox, Joseph A., 2441 W. 205H Street, #105, Torrance, CA 90501–1463	0432
Gavenas, Steven P., c/o U.S. Embassy Refugee Section, Bangkok, Thailand	2894
Gaynes Dept. Store, 861 Williston Road, South Burlington, VT 05401	1291
Gensplit Finance Corp., P.O. Box 1086, Sheboygan, WI 53081	0149
Girard, William Glen, 220 Holmes Blvd., #G–1, Gretna, LA 70053	1963
Glenn, Robert L., 124 W. Manta Cove, Savannah, GA 31410	3183
Greenlaw, Osborne M., 4379 Dunmovin Drive, Kennesaw, GA 30144	2058

Name & last known address	Claim No. IR–
Guinn, Elias, HC36 Box 184, Chavies, KY 41727	2931
Hancock, Herschel, NAC c/o Material Control Dept., APO New York, NY 09674	2622
Harvey, Norman Grant, 3834 Jupiter, Lompoc, CA 93436	1621
Hayes, Robert C., 711 Tenna Loma, Dallas, TX 75208	2360
Henderson, Howard W., 211 Artesian Forest, 6 Wellwood St., Conroe, TX 77304	2679
Hewitt, Thomas, Est. of, c/o Ms. Nita Hewitt, 4020 Pinehurst, Amarillo, TX 79109	2951
Holleman, David J., P.O. Box 3694, Jeddeah, Saudi Arabia	1677
Howard, Kelly, 5218 Prairie Creek Drive, Flower Mound, TX 75028	1931
Howarth, Neville, 30709 Rue Langlois, Rancho Palos Verdes, CA 90274	1060
Howell, Donald T., 13823 NE 74th Street, Redmond, WA 98052	1596
Huffman, Jack, 1600 N. Lake Street, #6, Madera, CA 93638	2497
Imperial Van Lines, Inc., 2805 Columbia Street, P.O. Box 2917, Torrance, CA 90503	2939
ITT Blackburn Co., P. Moelling, 1525 Woodson Road, St. Louis, MO 63114	2920
Jarratt, Thomas Earl, 552 W. I–30, P.O. Box 428, Garland, TX 75043	0483
Jones, James B., P.O. Box 1949, Al-Khobar, Saudi Arabia	2469
Kamely, Daphne, 7119 Matthew Mills Road, McLean, VA 82358	3140
Killion, Milton, 196 E. Pleasantview Drive, Hurst, TX 76053	2428
Killion, Armedia, 196 E. Pleasantview Drive, Hurst, TX 76053	2428
King, Frederick L. 1021 E. Wheeler Street, Kokomo, IN 46901	0473
Kolendo, Chester, NAC, APO New York, NY 09674	2621
Kos, Jr., Frank, NAC c/o Material Control, APO New York, NY 09674	2623
Kuzbicki, Ramon S., 13079 Artesia Blvd., Suite 232, Cerritos, CA 90701	3198
Le Fevre, Jr., Bernard, 1115 West Fern, Redland, CA 92373	2234
Leake, Jr., James J., Saudi Arabian Airlines, Jeddah, Saudi Arabia	2068
Lee, Pamela C., 23 Lockatong Road, Stockton, NJ 08559	0523
Lopez, Filimon R., 1020 Alta Vista, Arcadia, CA 91006	2053
Loving, Joseph Sidney, 7059 Fernhill Drive, Malibu, CA 90265	0301
Mackown, Patricia A.B., 3640 Buttonwood Drive, Titusville, FL 32796	0289
Maxwell, Raymond S., Saudi Arabian Parsons Ltd., P.O. 3694, Jeddah, Saudi Arabia	1667
McClay, John F., 1601 Lexington Place, Bedford, TX 76022	2355
McDowell, James K., 1111 Schilling Road, MS 7041, Hunt Valley, MD 21030	2610
McNicholas, Martin J., 5249 North Fairhill Street, Philadelphia, PA 19120	2600
Mechtron Industries, Inc., P.O. Box 2322, Wilmington, DE 19899	2534
Mehrpouyan, Cyrus, c/o atty, 502 Capital Avenue, North Bay Village, FL 33141	1155
Miller, Kenneth George, 6913 Old Briarstown Drive, Waco, TX 76710	1866
Morse Shoe, Inc., c/o atty, Martin Cole, 111 E. 80th St., New York, NY 10021	3017
Mullis, Jr., Lance C., 3649 Groover Lake Road, Lithia Springs, GA 30057	2084
Nelson, Roger, 501 DeeAnn Road, Decatur, AL 35603	0362
Nelson, Charles, NAC Box 402, APO New York, NY 09674	2618
Nelson, II, John, 9415 Lynngrove, Dallas, TX 75205	2429
Nilsen, Karina, 821 S. Stanley Avenue, Los Angeles, CA 90036	0753
Noe, Victor E., 3316 Ellen Avenue, Hebron, Kentucky 41048	3080
Oritz-Moreno, Orlando, 1409 Prestwick Court, Orlando, FL 32817	2773
Outsen, Kenneth W., 29018 39th Avenue South, Auburn, WA 98002	0728
Parrish, Thadius A., 1045 West 55th Street, Los Angeles, CA 90037	1620
PLT Engineering, Inc., L. Hansen, One Sugar Creek Pl., 14141 SW Freeway, Sugar Land, TX 77478	2512
Rea International Corp., Alan Marrus, 937 East Hazelwood Avenue, Rahway, NJ 07065	2921
Riedel, Herbert, 20531 Shadow Mount Road, Walnut, CA 91789	1576
Riedel, Collen M., 20531 Shadow Mount Road, Walnut, CA 91789	1576
Rowlett, Larry, 629 North Mesa Drive, Mesa, AZ 85203	1095
Russ, Donald O., P.O. Box 27281, San Antonio, TX	2617
Russ, Jack O., NAC Box 401, APO New York, NY 35124	2619
Scalfati, Joseph, 12926 N.E. 147th Place, Kirkland, WA 98034	0754
Scarritt, John, c/o Aramco, P.O. 10803, Dhahran, Saudi Arabia	1476
Schoonmaker, David T., 16 Warfield Avenue, Cranston, RI 02920	1569
Shahrestani, Mostaffa, 10600 Western Avenue, #23, Stanton, CA 90680	2886
Shamilzadeh, Michael, 430 East 57th Street, New York, NY	0868
Shamilzadeh, Charles, 645 Bryant Avenue, Roslyn Harbor, L.I., New York	0869
Shaney, Richard E., P.O. Box 3694, Jeddah, Saudi Arabia	1662
Skeen, Alfred J., 7128 Tristan Circle, Stockton, CA 95210	2454
Smith, Oscar M., 5327 Montgomery, N.E., Albuquerque, NM 87109	1905
Smith, George L., NAC, APO New York, NY 09674	2620
Sotelo, William H., 1380 Christi Drive, Vista, CA 92083	0250
Spring, Mark D., c/o Petroleum Air Services, PO Box 2711, Cairo, Egypt	2470
Sturgis, Guy C., 1207 North Garfield, Midland, TX 79701	1586
Tamaddoni-Jahromi, Paula, Route 1, Box 571, Bainbridge, GA 31717	1209
Tehrani, Shahin, 43 Strathmore Road, Great Neck, NY 11023	3200
Ulicki, Thomas E., 515 Sunset Lane, Mt. Pleasant, MI 48858	0439
Veyro, Jose V., 1320 Todd Court, Wichita, KS 97207	2687
West, Bert A., 1786 Grove Valley Avenue, Palm Harbor, FL 33563	2474
Williams, Gerald W., 1015 Bois d'Arc Street, Duncan, OK 73536	1388
Youngs, Neil G., 111 Anthony Drive, Lakeville, MN 55044	2654
Zeiser, Robert E., 18 Grand Street, Smithtown, NY 11787	1562

[FR Doc. 94–148 Filed 1–4–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–29,008]

PPG Industries, Inc., Ford City, Pennsylvania; Negative Determination Regarding Application for Reconsideration

By an application dated December 13, 1993, the Aluminum Brick and Glass Workers Union requested administrative reconsideration of the Department's denial of trade adjustment assistance (TAA) benefits for workers of the subject firm. The Department's notice of negative determination was issued on November 29, 1993 and will be published in the **Federal Register** soon.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of

the law justified reconsideration of the decision.

The union claims that a French Canadian firm is selling glass at prices lower than domestic producers' costs. The union also states that the Department's survey of customers did not take into account the lowered demand for glass in the industry and PPG plans for expansion in Mexico.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. The Department's survey of PPG's major customers shows that most respondents did not import and those that did had very minor import purchases in the period relevant to the petition.

The investigation file shows that the workers at Ford City purchase glass and fabricate it into commercial windows unlike the French Canadian firm cited by the union which is a primary glass producer.

With respect to the union's example of sheet glass and fabricated commercial glass windows, the Department does not see any relevance. One is a raw material used in making a different product while the other is a finished article. Sheet glass and fabricated commercial glass windows are not interchangeable, nor are they like or directly competitive within the meaning of section 222(3) of the Trade Act.

Further, company officials indicated that there is a downswing in the production of commercial glass windows because the commercial market currently is overbuilt. The construction boom during the 1980s resulted in record vacancy rates for office buildings, stores and hotels—all users of fabricated glass windows.

Other findings show that the PPG does not import commercial glass windows.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 22nd day of December, 1993.

Mary Ann Wyrsch,

Director, Unemployment Insurance Service.

[FR Doc. 94–166 Filed 1–4–94 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,968]

Plains Petroleum Operating Co. Midland, TX; Affirmative Determination Regarding Application for Reconsideration

On November 19, 1993, after being granted a filing extension, one of the former workers requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on September 27, 1993 and was published in the **Federal Register** on October 21, 1993 (58 FR 54736).

The former worker submitted additional information showing that the Midland facility had decreased sales and production in 1993.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 22nd day of December, 1993.

Mary Ann Wyrsch,

Director, Unemployment Insurance Service.

[FR Doc. 94–165 Filed 1–4–94; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

Withdrawal of Notice of Proposed Exemption

In the matter of Day Runner, Inc. 401(k) Plan (the Plan), Located in Fullerton, California [Exemption Application No. D–9357]

In the **Federal Register** dated April 27, 1993 (58 FR 25661), the Department of Labor (the Department) published a notice of proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1986. The notice of proposed exemption concerned the proposed cash sale by the Plan to Day Runner, Inc. (the Employer), the sponsor of the Plan, of a guaranteed investment certificate issued by Mutual Benefit Life Insurance Company of New Jersey.

On December 16, 1993, the applicant informed the Department that it did not wish to proceed with the exemption application procedure.

Accordingly, the notice of proposed exemption is hereby withdrawn.

Signed at Washington, DC, this 30th day of December, 1993.

Ivan Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–107 Filed 1–4–94; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–9470 through D–9473]

Proposed Exemptions; Avram A. Jacobson, M.D. Employee Profit Sharing Plan; The Avram A. Jacobson, M.D. Employee Money Purchase Pension Plan, Collectively

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public

inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Avram A. Jacobson, M.D. Employee Profit Sharing Plan (the Profit Sharing Plan) and the Avram A. Jacobson, M.D. Employee Money Purchase Pension Plan (the Money Purchase Plan; Collectively, the Plans) Located in Beverly Hills, California

[Application Nos. D–9470 through D–9473]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) of certain works of art (the Art Work) by the Plans to Avram A. Jacobson, M.D., a sole proprietor and disqualified person with respect to the Plans.[1]

This proposed exemption is conditioned upon the following requirements: (1) The Sale is a one-time cash transaction; (2) the Plans are not required to pay any commissions, costs or other expenses in connection with this transaction; (3) the Art Work is appraised by qualified, independent appraisers; (4) the sale price for the Art Work reflects the greater of either: (a) The original amount paid by the Plans at the time of acquisition; or (b) its fair market value on the date of the Sale; and (5) within ninety days of the publication in the **Federal Register** of the grant of this notice of proposed exemption, Dr. Jacobson will file Forms 5330 with the Internal Revenue Service (the Service) and pay all applicable excise taxes that are due by reason of the past prohibited transactions.

Summary of Facts and Representations

1. The Plans are a profit sharing plan and a money purchase pension plan, which as of December 31, 1992, had total assets of $1,642,180 and $960,643 respectively. Dr. Jacobson is the 100 percent owner of Avram A. Jacobson, M.D. (the Employer), a sole proprietorship and the sponsoring employer of the Plans. Dr. Jacobson maintains a pathology practice in Beverly Hills, California. The only participants in the Plans are Dr. Jacobson and his wife. The Trustee of the Plans is Dr. Jacobson, who has sole investment discretion with respect to the assets of the Plans.

2.The Profit Sharing Plan owns three works of contemporary art and the Money Purchase Pension Plan owns one work of mixed media art, collectively known as the Art Work. The Art Work was purchased for a cash amount of $685,000 by the Plans from unrelated parties with respect to Dr. Jacobson, the Employer, or the Plans. To date, the Plans have not incurred any costs associated with acquisition and holding of the Art Work. A description of the Art Work is as follows:

Plan	Title	Artist	Date of purchase	Price
PSP	"Untitled"	M. Merz	10/6/89	$135,000
PSP	"Grau"	G. Richter	11/9/89	150,000
MPPP	"Pau"	F. Stella	5/1/86	180,000
PSP	"Fouffi Noutti in Hell"	J. Schnabel	5/18/93	220,000
Total				685,000

3. Following its acquisition, the Art Work has been in the possession of Dr. Jacobson at his residence located at 630 N. Sierra Drive, Beverly Hills, California. During a 1993 audit, the Service determined that Dr. Jacobson had engaged in prohibited transactions with the Plans by reason of his use of the Art Work for the years 1989 and 1990.[2]

Dr. Jacobson represents that he will file Forms 5330 with the Service and pay the applicable excise taxes associated the past prohibited transactions within ninety days of the publication in the **Federal Register** of the notice granting this proposed exemption. In addition, Dr. Jacobson will pay the Plans the fair market rental value in the amount of approximately $90,000 for his use of the Art Work for years 1989 through 1993. Excise taxes will accrue for the period between 1989 and 1993.

4. At present, the Art Work has produced no income for the Plans. In order to enable the Plans to divest themselves of the Art Work and to invest in income-producing, marketable securities, Dr. Jacobson proposes to

[1] Since Dr. Jacobson and his wife are the only participants in the Plans, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under the Act pursuant to section 4975 of the Code.

[2] The Department notes that in 1987 the Profit Sharing Plan purchased a third party note for cash form the Norman L. Jacobson, M.D., P.A. Profit Sharing plan, the sole participant and trustee of which is Dr. Jacobson's brother, Norman L. Jacobson. In 1993, the Profit Sharing Plan sold the note back to the Norman L. Jacobson, M.D., P.A. Profit Sharing Plan for cash. The Department is not granting an exemption for such purchase and sale and is expressing no opinion as to whether the purchase and sale of such note constitutes a violation of any provision of the Code.

purchase the Art Work from the Plans for a cash amount equal to the aggregate of the greater of either: (a) The original amount paid by the Plan at the time of acquisition; or (b) its fair market value on the date of the Sale. Accordingly, Dr. Jacobson requests an administrative exemption from the Department to permit his purchase of the Art Work from the Plans under the terms and conditions described herein.

5. The Art Work has been valued by two separate, independent, qualified appraisers, Arline Edelbaum and Jacqueline Silverman, both the Los Angeles, California. Ms. Edelbaum is a senior member of the American Society of Appraisers and has nineteen years experience in appraising fine arts and personal property. Ms. Silverman is a certified member of Appraisers Association of America and has fifteen years experience in appraising modern and contemporary art. Both appraisers represent that they are unrelated to and independent of Dr. Jacobson. Ms. Edelbaum and Ms. Silverman's valuations of the Art Work as of June 28, 1993 and June 22, 1993, respectively, are as follows:

Plan	Work	Purchase price	Edelbaum	Silverman
PSP	"Untitled"	$135,000	$135,000	$120,000
PSP	"Grau"	150,000	165,000	150,000
MPPP	"Pau"	180,000	275,000	275,000
PSP	"Fouffi Noutti in Hell"	220,000	165,000	175,000

Because their fair market values are less than or equal to their original purchase price, "Untitled" and "Fouffi Noutti in Hell" will be purchased by Dr. Jacobson for their original purchase prices of $135,000 and $220,000, respectively. In addition, Dr. Jacobson will purchase "Grau for $165,000, which reflects its higher fair market valuation as determined by Ms. Edelbaum. Finally, Dr. Jacobson will purchase "Pau" for $275,000, which reflects its fair market value as determined by both appraisers. Dr. Jacobson proposes to purchase the Art Work for an aggregate cash purchase price of $795,000.

6. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 4975(c)(2) of the Code because: (a) The Sale will be a one-time cash transaction; (b) the Plan will not be required to pay any commissions, costs or other expenses in connection with this transaction; (c) the Art Work will be appraised by a qualified, independent appraiser; (d) the sale price for the Art Work will reflect the greater of either: (1) The original amount paid by the Plan at the time of acquisition; or (2) its fair market value on the date of the Sale; and (e) within ninety days of the publication in the **Federal Register** of the grant of this notice of proposed exemption, Dr. Jacobson will file Forms 5330 with the Service) and pay all applicable excise taxes that are due by reason of the past prohibited transactions.

Notice to Interested Persons

Since Dr. Jacobson and his wife are the only participants in the Plan, it has been determined that there is no need to distribute the notice of the proposed exemption to interested persons. Comments are due thirty days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 30th day of December, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–116 Filed 1–4–94; 8:45 am]

BILLING CODE 4510–29–P

Withdrawal of Notice of Proposed Exemption

In the matter of Kalon L. Kelley IRA and Karen R. Kelley IRA (the IRAs), located in Santa Barbara, California [Exemption Application Nos. D–9167 and D–9168]

In the **Federal Register** dated December 17, 1993 (58 FR 66031/66032), the Department of Labor (the Department) published a notice of proposed exemption from certain taxes imposed by the Internal Revenue Code of 1986. The notice of proposed exemption concerned the prospective cash sale of certain commercial real property (the Property) by the IRAs to Kalon L. Kelley and Karen R. Kelley (the

Applicants), disqualified persons with respect to the IRAs.

On December 17, 1993, the applicant informed the Department that it wished to withdraw the notice of proposed exemption.

Accordingly, the notice of proposed exemption is hereby withdrawn.

Signed at Washington, DC, this 30th day of December, 1993.

Ivan Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 94–115 Filed 1–4–94; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 94–1, et al.; Exemption Application No. D–9438, et al.]

Grant of Individual Exemptions; Tenneco, Inc., The General Employee Benefit Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Tenneco, Inc., The General Employee Benefit Trust (the GEBT) and Case Corporation Pension Plan for Hourly-Paid Employees (the Plan) Located in Houston, TX

[Prohibited Transaction Exemption 94–1; Application No. D–9438]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the transfer of shares of common stock (the Stock) of Cummins Engine Company, Inc. (Cummins) to the GEBT by Tenneco, Inc. (Tenneco), the Plan sponsor, to reflect the contribution of the Stock to the Plan, provided that: (a) The Stock is valued at its fair market value as of the date of contribution by a qualified, independent appraiser; (b) the contribution of the Stock is approved on behalf of the Plan by a qualified, independent fiduciary; (c) the GEBT's continued holding of the Stock is monitored by a qualified, independent fiduciary; (d) the GEBT's independent fiduciary will monitor and enforce the conditions of the exemption and take whatever action is necessary to protect the GEBT's rights, including, but not limited to, the enforcement of a legally enforceable contribution obligation (the Contribution Obligation) as described in the Notice of Proposed Exemption, which will remain in force for as long as the GEBT continues to hold any shares of the Stock; and (e) the Contribution Obligation is secured by a letter of credit issued by a bank approved by the GEBT's independent, qualified fiduciary.

Comments

In the Notice of Proposed Exemption, the Department invited interested persons to submit written comments and requests for a hearing on the exemption. All comments and requests for hearing were due by December 20, 1993. The Department received over 100 telephone inquiries from interested persons who expressed concern over the effect, if any, of the transaction on their pension benefits. These inquiries were responded to by a Department representative who informed the callers that the transaction does not affect the calculation of pension benefits or the Plan's obligation to make benefit payments.

The Department received a total of 29 written comments with only one of those comments containing a request for a hearing.[1] Nine commentators stated that they did not understand the proposed exemption or how it would affect their pensions.

The remaining commentators were opposed to the granting of the exemption. The comments addressed 17 general areas of concern about the proposed transaction. The concerns are summarized as follows:

1. Questions about the correct value of Cummins Stock, including a question about the discrepancy between the New York Stock Exchange (NYSE) price quoted in the Notice and the price quoted in a national newspaper on December 2, 1993.

2. Concerns that the restrictions on the Stock make the Stock less valuable and increase the risk that the Plan will not be able to dispose of the Stock in the future.

3. Concerns about the wisdom of investing this much of the GEBT's assets in one company.

4. Assertions that Tenneco would not be able to stand behind its obligation under the Contribution Obligation based on its history of financial troubles.

5. Concern that the letter of credit proposes to protect only 20% of the value of the Stock, leaving 80% at risk.

6. A request that Tenneco fully fund all of its pension liabilities.

7. A request that Tenneco guarantee the value of the Stock to be contributed to the GEBT.

8. Questions about the possibility that the transaction will decrease the amount of pension payments to participants and beneficiaries of the Plan.

9. Concerns over changes in retiree medical benefits.

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[1] Because the exemption provides relief from section 406(b) of the Act, 29 CFR 2570.46 of the Department's regulations provides that the Department in its discretion may convene a hearing if requested by interested persons.

10. Questions regarding the wisdom of allowing Tenneco to contribute Cummins stock to the GEBT since, according to the commentator, Tenneco owns Cummins.

11. Comments indicating that the Plan participants would prefer to receive cash contributions rather than stock.

12. Allegations that individuals who would be affected by the proposed transaction have not received proper notice.

13. Questions concerning the independent fiduciary's alleged determination that the Stock will experience no precipitous declines in value in the future.

14. Confusion over the consequences for the GEBT of any decline in value of the Stock.

15. Concern over the proper exercise of the voting and other privileges applicable to shareholders of the Stock.

16. Questions about the guidelines for determining if and when to adjust the amount of the letter of credit (or alternative collateral) which secures the Contribution Obligation.

17. A request that Tenneco guarantee that the value of the contribution will not be diminished by transaction costs when the Stock is sold at some future date.

Responses to these comments were submitted by the applicant, on behalf of both Tenneco and Woodbridge, the GEBT'S independent fiduciary. These responses are summarized as follows, corresponding in order to the comments listed above:

1. According to the applicant, subsequent to the publication of the Notice of Proposed Exemption, Cummins had a 2 for 1 stock split which accounts for the change in the price of the Stock as listed on the NYSE.

2. The applicant notes that after a review of the Stock's past performance, Woodbridge has determined that the Stock is a prudent investment for the Plan despite the restrictions on transferability. Furthermore, the applicant states that the Stock's value has been determined by an independent appraisal company, taking the restrictions into account. Finally, the applicant notes that the restrictions on transfer of the Stock will expire in July, 1996.

3. The applicant explains that once the Stock is contributed to the GEBT, it will represent only 5.65% of the assets of the GEBT. In addition, because each of the Affected Plans has an undivided interest in the assets of the GEBT, no single plan will hold all of the Stock.

4. The applicant asserts that Standard & Poors and Moody's rating of Tenneco debt as investment grade, as well as Tenneco's recent sale of $1 billion of equity, are indications that Tenneco is a viable company. The applicant again notes that the proposed transaction is backed by the judgment of Woodbridge as independent fiduciary, by the independent appraisal of the Stock and by the letter of credit in the amount of 20% of the value of the Stock.

5. The applicant represents that due to Tenneco's financial condition, as described in 4. above, a letter of credit in the amount of 20% of the value of the Stock is sufficient to protect the interests of the GEBT. The applicant represents that the face value of the letter of credit is approximately $32,000,000. The applicant also represents that Tenneco's financial condition is good and that its credit-worthiness is adequate security for the unsecured portion of the Contribution Obligation.

6. According to the applicant, the contribution of the Stock to the GEBT is part of an overall strategy to ensure that the Tenneco Plans will be fully funded.

7. The applicant represents that the Contribution Obligation assumed by Tenneco guarantees the value of the contribution since Tenneco is required to make a cash contribution to the GEBT to compensate for any loss in the value of the Stock in any calendar quarter. Furthermore, the Contribution Obligation is secured by a letter of credit issued by a major bank in the amount of 20% of the value of the Stock.

8. The applicant responds by explaining that all plans invested in the GEBT are defined benefit plans, the benefits of which are not affected by the investment performance of plan assets.

9. Retiree medical benefits are not relevant to the proposed exemption.

10. Tenneco does not own Cummins. The applicant represents that Tenneco owns less than 10% of Cummins' stock.

11. The applicant represents that the contribution of the Stock to the GEBT is essentially the same as a cash contribution to the GEBT followed by a purchase of Cummins' stock by the GEBT. In addition, the applicant states that maintaining the Plan assets primarily in uninvested cash would be a breach of fiduciary duties under ERISA. The applicant further states that the GEBT will at all times maintain sufficient liquid assets to pay benefits when due.

The applicant also represents that the Stock is not replacing cash or other assets in the GEBT; rather, the Stock is being contributed in addition to the assets already held in the GEBT. According to the applicant, the contribution of Stock enables Tenneco to accelerate the time at which the GEBT will receive contributions.

12. The applicant represents that it has complied with all applicable notice requirements. An authorized representative of Tenneco has provided the Department with a declaration under penalty of perjury attesting to the truth of the information regarding Tenneco's notice to interested persons as required by the Department's regulations (see 29 CFR 2570.43). In addition, in response to information indicating that several interested persons in and around Hutchinson, Kansas had not received proper notice of the proposed exemption, the applicant represents that notice was again provided to people in the Hutchinson area.

13. The applicant explains that, contrary to the commentator's assertion, Woodbridge has not made any such determination but has concluded that the Stock is a prudent investment for the GEBT, based in part on the Stock's market history over the past 3 years. In addition, Woodbridge has determined that any decline in value of the Stock would be adequately compensated for by the Contribution Obligation.

14. The applicant asserts that the Contribution Obligation ensures that the value of the stock contribution will remain the same even if the value of the Stock decreases. The applicant explains that, if, for example, the Stock is valued at $160,000,000 on the date of contribution to the Plan and, over the course of a year the price drops, Tenneco would be obligated, over the course of that year, on a quarterly basis, to contribute cash so that the value of the Stock plus the aggregate amounts of cash contributed pursuant to the Contribution Obligation equals $160,000,000. It is represented, therefore, that the value of the intial contribution will never be diminished.

15. The applicant responds by explaining that Woodbridge, acting in its capacity as independent fiduciary, will exercise the stock voting rights and the right to designate a person to the Cummins Board of Directors, pursuant to the direction of the GEBT's Investment Committee; provided, that Woodbridge may decline to designate the Investment Committee's choice if it determines that to do so is in the GEBT's best interests.

16. The applicant states that the determination regarding the increase in the amount of the letter of credit or the need to provide alternative collateral is a simple calculation based on the difference between (a) the balance of the letter of credit and (b) the product of the number of shares of the Stock held by

the GEBT, the contribution price of the Stock and 20%.

17. The applicant explains that the Contribution Obligation will be in effect when the Stock is sold in the future. According to the applicant, if the Stock is sold at a loss, any transaction costs would be accounted for by the Contribution Obligation which would require Tenneco to contribute an amount equal to the number of shares sold, multiplied by the difference between the realized net price and the Lowest Price (see paragraph 5 in the Notice of Proposed Exemption). If the Stock is sold at a gain, the GEBT would bear the transaction costs. The applicant represents that it is customary for pension plans to bear such transaction costs in similar circumstances.

Only one of the interested persons who commented on the proposed exemption requested a public hearing, although several others indicated that they wished to be notified if a hearing was scheduled. The Department has considered the concerns expressed by the commentators and the applicant's written responses addressing such concerns, and, on the basis of the materials provided, has determined not to hold a public hearing. Furthermore, after giving full consideration to the entire record, including the written comments and the responses thereto, the Department has decided to grant the exemption.

Finally, the applicant has informed the Department that it intends to enter into the transaction on December 29, 1993, and requests that the exemption be made effective as of that date. The Department concurs with this suggested modification.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on November 15, 1993, at 58 FR 60217.

EFFECTIVE DATE: This exemption is effective December 29, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Lakeshore Foods Corp. Retirement Savings Plan (the Plan) Located in Michigan City, Indiana

[Prohibited Transaction Exemption 94–2; Exemption Application No. D–9441]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) of through (E) of the Code, shall not apply to (1) past and proposed interest-free loans to the Plan (the Loans) by Lakeshore Foods Corporation, the sponsor of the Plan, with respect to guaranteed investment contracts number C90816 and number C91096 (the GICs) issued by Inter-American Insurance Company of Illinois (Inter-American); and (2) the Plan's potential repayment of the Loans (the Repayments); provided that the following conditions are satisfied:

(A) No interest and/or expenses are paid by the Plan;

(B) The Loans are made to reimburse the Plan for amounts invested with Inter-American under the terms of the GICs;

(C) The Repayments are restricted to cash proceeds paid to the Plan (the GIC Proceeds) by Inter-American and/or any other responsible third party with respect to the GICs, and no other Plan assets are used to make the Repayments;

(D) Any GIC Proceeds received by the Plan are applied first to make the Plan whole with respect to the Guaranteed Amount (as defined in the Notice of Proposed Exemption), and thereafter to repay the Loans; and

(E) The Repayments will be waived to the extent the Loans exceed the GIC Proceeds.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 29, 1993 at 58 FR 58197.

EFFECTIVE DATE: This exemption is effective as of December 23, 1992.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Goodman-Gable-Gould Company Profit Sharing Plan (the Plan) Located in Baltimore, Maryland

[Prohibited Transaction Exemption 94–3; Exemption Application No. D–9498]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) a loan of up to $250,000 (the Loan) by the Plan to the Office Property Joint Venture (OPJV), a party in interest with respect to the Plan; and (2) the personal guarantees of OPJV's obligations under the Loan by William A Goodman, Harvey M. Goodman, Lawrence H. Goodman, and Myron Schwartz, each of whom is a party in interest with respect to the Plan; provided the following conditions are satisfied:

(A) All terms of the Loan are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) For the duration of the Loan, the principal balance of the Loan does not exceed twenty-five percent of the net assets of the Plan at any time;

(C) For the duration of the Loan, the Plan's interests with respect to the Loan are represented by Barry C. Greenberg, an independent fiduciary who will monitor and enforce the OPJV's compliance with the Loan terms and the conditions of this exemption; and

(D) Upon the making of the Loan and for its duration, the Loan is secured by a perfected lien on real property having a fair market value of no less than 150% of the outstanding principal balance of the Loan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 10, 1993 at 58 FR 59738.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 30th day of December, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–117 Filed 1–4–94; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted on or before February 4, 1994.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202–606–8494) and Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202–395–6880).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202) 606–8494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revisions

Title: Process of Application, Evaluation, Award, and Report of NEH Fellowships
Form Number: OMB No. 3136–0083
Frequency of Collection: Annual
Respondents: Scholars, writers, and teachers in the humanities
Use: Application for funding, evaluation, award-making, and reporting for NEH Fellowships
Estimated Number of Respondents: 7,586
Frequency of Response: Once
Estimated Hours for Respondents to Provide Information: 2.7 per respondent
Estimated Total Annual Reporting and Recordkeeping Burden: 20,067 hours

Donald Gibson,

Acting Deputy Chairman.

[FR Doc. 94–168 Filed 1–4–94; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

McMurdo Station, Antarctica; Environmental Assessment

AGENCY: National Science Foundation.

ACTION: Notice of environmental assessment and request for comments.

SUMMARY: The National Science Foundation (NSF) has prepared an Environmental Assessment of the United States Antarctic Program's Management of Food Wastes at McMurdo Station, Antarctica, from 1993–1996. NSF is inviting public comments on the Environmental Assessment. In order to be assured consideration, comments must be received no later than February 4, 1994.

ADDRESSES: Copies of the Environmental Assessment may be obtained from and comments addressed to Thomas F. Forhan, Head, Antarctic Staff, Polar Coordination and Information Section, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, room 755, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan, 703–306–1031.

Dated: December 29, 1993.

Lawrence Rudolph,

Acting General Counsel.

[FR Doc. 94–64 Filed 1–4–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

North Atlantic Energy Service Corp. et al., Seabrook Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an order authorizing a transfer of ownership and an amendment to the Facility Operating License No. NPF–86 issued to North Atlantic Energy Service Corporation (North Atlantic/the licensee) for operation of the Seabrook Station, Unit No. 1, located in Rockingham County, New Hampshire.

Environmental Assessment

Identification of the Proposed Action

The proposed action would approve the transfer of ownership of Vermont Electric Generation and Transmission Cooperative, Inc's. (Vermont) 0.41259 percent share of Seabrook 1 to North Atlantic Energy Company (NAEC). A license amendment would be issued to change the footnote on page 1 of Facility Operating License No. NPF–86 by deleting Vermont, as one of the entities for which North Atlantic is authorized to act.

The Need for the Proposed Action

In 1990, Vermont filed a claim against Public Service Company of New Hampshire (PSNH) with the United States Bankruptcy Court which was then hearing a petition from PSNH for reorganization under Chapter 11 of the United States Bankruptcy Code. Vermont's claim sought redress for damages which were alleged to have been incurred while PSNH had been the managing agent for Seabrook 1. In November 1990, the two parties arrived at a settlement which included an agreement by PSNH or its designee to purchase Vermont's share of Seabrook 1 subject to obtaining the necessary approvals from all regulatory agencies. Subsequently, the Bankruptcy Court issued an order approving the stipulation that PSNH and Vermont had filed describing the settlement.

In June 1992, in accordance with the Plan of Reorganization for PSNH that was confirmed by the Bankruptcy Court, Northeast Utilities (NU) acquired PSNH in merger transactions and, after receipt of NRC approval, NAEC (a newly-formed and wholly-owned subsidiary of NU) acquired PSNH's interest in the Seabrook 1. As the successor to PSNH's interest in Seabrook 1, NAEC is obligated to purchase Vermont's interest in Seabrook Station. The transfer of Vermont's ownership share in Seabrook 1 to NAEC will consummate the settlement entered into by Vermont and PSNH.

Environmental Impacts of the Proposed Action

The proposed action would approve the transfer of ownership of 0.41259 percent of Seabrook 1 from Vermont to NAEC. The transfer will not involve any changes to the Seabrook 1 staff, to the facility itself, or in the manner by which Seabrook 1 is operated.

The Commission has evaluated the environmental impact of the proposed action and has determined that the probability or consequences of accidents would not be increased by the transfer of ownership, and that post-accident radiological releases would not be greater than previously determined. Further, the Commission has determined that the transfer of ownership would not affect routine radiological plant effluents and would not increase occupational radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the transfer of ownership would not affect nonradiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impact need not be evaluated.

The principal alternative would be to deny the requested approval. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are identical.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement Related to Operation of Seabrook Station, Units 1 and 2, dated December 1982.

Agencies and Persons Consulted

The NRC staff consulted with the State of New Hampshire and the Commonwealth of Massachusetts regarding the environmental impact of the proposed action. The State of New Hampshire and the Commonwealth of Massachusetts had no comments on the proposed action.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

For further details with respect to this action, see the request for approval dated August 27, 1993, 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 located at the Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Dated at Rockville, Maryland, this 29th day of December 1993.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Acting Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–127 Filed 1–4–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–275 and 50–323]

Pacific Gas and Electric Co., Diablo Canyon Power Plant, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licensing Nos. DPR–80 and DPR–82, issued to the Pacific Gas and Electric Company (the licensee), for operation of Diablo Canyon Power Plant, Unit Nos. 1 and 2, located in San Luis Obispo, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would consist of revisions to the Technical Specifications in response to the revised 10 CFR part 20. The change would revise the limitations on the dose rate resulting from radioactive material released in gaseous effluents, and reflect the relocation of the prior 10 CFR 20.106 requirements to the new 10 CFR 20.1302. These changes are in response to the licensee's application for amendments dated July 7, 1993.

The Need for the Proposed Action

The proposed action is needed in order to retain operational flexibility consistent with 10 CFR part 50, appendix I, concurrent with the implementation of the revised 10 CFR part 20.

Environmental Impacts of the Proposed Action

The proposed revision, in regard to the actual release rates as referenced in the Technical Specifications (TS) as a dose rate to the maximally exposed member of the public, will not increase the types or amounts of effluents that may be released offsite, nor increase individual or cumulative occupational radiation exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendments.

With regard to potential nonradiological impacts, the proposed changes do not affect nonradiological effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant envirommental impacts associated with the proposed amendments to the TS, any alternative to the amendments will have either no significantly different environmental impact or will have greater environmental impact. The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts as a result of plant operation.

Alternatives Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement and Addendum related to the operation of Diablo Canyon Power Plant Units 1

and 2, dated May 1973 and May 1976, respectively.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated July 7, 1993, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Director, Project Directorate V, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–128 Filed 1–4–94; 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 January 6–8, 1994, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on November 24, 1993.

Thursday, January 6, 1994

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. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 a.m.–9:45 a.m.: Proposed Final Rule to Revise Emergency Planning Regulations on Exercise Requirements (Open)—The Committee will review and comment on the proposed final rule on emergency planning regulations that is intended to clarify the requirements for the emergency planning exercises.

Representatives of the NRC staff will participate.

9:45 a.m.–10:45 a.m.: Proposed Resolution of Generic Issue 67.5.1, "Reassessment of SGTR Radiological Consequences" (Open)—The Committee will review and comment on the proposed resolution of Generic Issue 67.5.1 regarding reassessment of the validity of the present techniques used to calculate radiological consequences resulting from a steam generator tube rupture (SGTR) event. Representatives of the NRC staff will participate.

11 a.m.–12:30 a.m.: Results of the Public Workshop on License Renewal (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding the results of the September 30, 1993 public workshop on license renewal, and a draft Commission paper that includes staff recommendations on the future directions of the license renewal. Representatives of the industry will participate, as appropriate.

1:30 p.m.–3 p.m.: BWR Core Power Stability/ATWS (Open)—The Committee will hear briefings by and hold discussions with representatives of the NRC staff regarding the status of the issues associated with the resolution of BWR core power stability combined with an ATWS event, including the issue of liquid poison remixing phenomena, and the development of emergency procedure guidelines. Representatives of the industry will participate.

3:15 p.m.–4:15 p.m.: Reliability Assurance Program (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding the staff position on the Reliability Assurance Program for the Advanced Light Water Reactors.

4:15 p.m.–5:15 p.m.: Evaluation of License Feedback on the Impact of NRC Activities on Licensee Operations (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding SECY–93–236, "The Staff's Evaluation of Ongoing Licensee Feedback on the Impact of NRC Activities on Licensee Operations." Representatives of the industry will participate, as appropriate.

5:15 p.m.–6 p.m.: Proposed ACRS Report on Certified Design Material for ABWR (Open)—The Committee will discuss a proposed ACRS report on Certified Design Material in the areas of Human Factors Engineering, Radiation Protection, Piping Design, and Instrumentation and Control.

6 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

Friday, January 7, 1994

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–10:15 a.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

10:30 a.m.–11:30 a.m.: Meeting with the Deputy Executive Director (Open)—The Committee will meet with Mr. Sniezek, Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, and Mr. Milhoan who will succeed Mr. Sniezek in early February 1994 and discuss items of mutual interest.

12:30 p.m.–1:15 p.m.: Future Activities (Open)—The Committee will discuss topics proposed for consideration during future ACRS meetings.

1:15 p.m.–2 p.m.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business and internal organizational and personnel matters relating to the ACRS staff members. It may also discuss qualifications of candidates nominated for appointment to the ACRS.

A portion of this session may be closed to public attendance to discuss matters that relate solely to internal personnel rules and practices of this advisory committee and to discuss matters the release of which would represent a clearly unwarranted invasion of personal privacy.

2 p.m.–2:15 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations to recent ACRS comments and recommendations.

2:15 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

Saturday, January 8, 1994

8:30 a.m.–10:30 a.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

10:30 a.m.–11 a.m.: Miscellaneous (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of topics that were not completed during previous meetings as time and availability of information permit.

11 a.m.–12 noon: ACRS Subcommittee Activities (Open)—The Committee will hear reports and hold discussions regarding the status of ACRS subcommittee activities.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 30, 1993 (58 FR 51118). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the 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 contacting the 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 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 information that involves the internal personnel rules and practices of this advisory Committee per 5 U.S.C. 552b(c)(2) and to discuss 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 therefor can be obtained by contacting the ACRS Executive Director, Dr. John T. Larkins (telephone 301–492–4516), between 7:30 a.m. and 4:15 p.m. EST.

Dated: December 23, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 94–124 Filed 1–4–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–245]

Northeast Nuclear Energy Co.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company, et al. (the licensee) to withdraw its December 2, 1988 application for proposed amendment to Facility Operating License DPR–21 for the Millstone Nuclear Power Station, Unit 1, located at the licensee's site in New London County, Connecticut.

The proposed amendment would have revised the Technical Specifications to reflect the implementation of modifications during the 1989 refueling outage related to degraded grid undervoltage detection. Since the licensee plans to make additional modifications to the undervoltage detection circuitry during the Cycle 15 refueling outage, additional Technical Specification changes will be necessary and will be submitted prior to the outage.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on February 1, 1989 (54 FR 5170). However, by letter dated September 10, 1993, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated December 2, 1988, and the licensee's later dated September 10, 1993, which withdrew the application for license amendment. The above documents 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 located at the Learning Resources Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 28th day of December 1993.

For the Nuclear Regulatory Commission.

James W. Andersen,

Acting Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–130 Filed 1–4–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–20111, License No. 25–21258–01, EA 93–202]

Physicians' Laboratory Service, Inc. (Former Licensee) Bozeman, MT; Order Imposing Civil Monetary Penalty

I

Physicians' Laboratory Service, Inc. (Licensee or PLS) was the holder of NRC License No. 25–21258–01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission). The License, which was transferred to Bozeman Deaconess Hospital on July 2, 1993, authorized the Licensee to possess and use byproduct material to conduct nuclear medicine activities in accordance with the conditions of the License.

II

An inspection of the Licensee's activities was conducted July 14–16, 1993. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated October 18, 1993. The Notice described the circumstances surrounding the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice in a letter dated November 17, 1993. In its letter, the Licensee admitted the violations which resulted in the proposed civil penalty, but requested that the NRC reconsider the circumstances surrounding the violations and mitigate the proposed civil penalty for reasons that are summarized in the Appendix to this order.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered That:*

The Licensee pay the civil penalty in the amount of $2,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing," and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be:

Whether, on the basis of the violations admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland this 22nd day of December 1993.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix—Evaluation and Conclusions

On October 18, 1993, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection on July 14–16, 1993. Physicians' Laboratory Service, Inc. responded to the Notice on November 17, 1993. The Licensee admitted the violations that resulted in the proposed civil penalty, but requested that the NRC reconsider the circumstances surrounding the violations and mitigate the proposed civil penalty. A restatement of the violation, and the NRC's evaluation and conclusions regarding the Licensee's request follow:

Restatement of Violations Assessed a Civil Penalty

10 CFR 35.32 (a) and (e), require, in part, that by January 27, 1992, each licensee establish and maintain a written quality management program to provide high confidence that byproduct material or radiation from byproduct material will be administered as directed by the authorized user. The quality management program must include written policies and procedures to meet specific objectives, including that prior to administration, a written directive is prepared for any administration of quantities greater than 30 microcuries of sodium iodide I–125 or I–131.

10 CFR 35.2, "Definitions," defines a written directive, in part, as an order in writing for a specific patient, dated and signed by an authorized user prior to administration of a radiopharmaceutical and specifies, in part, that for the administration of quantities greater than 30 microcuries of either sodium iodide I–125 or I–131 or any therapeutic administration of a radiopharmaceutical other than sodium iodide I–125 or I–131, the written directive must include the dosage.

1. Contrary to the above, between January 27, 1992, and July 27, 1992, the licensee did not establish a written quality management program (01013).

2. Contrary to the above, on numerous occasions after January 27, 1992, including March 8 and 22, May 13, June 3, and July 1, 1993, the licensee administered sodium iodide I–131 for diagnostic purposes in quantities greater than 30 microcuries without a written directive signed by an authorized user (01023).

These violations represent a Severity Level III problem (Supplement VI).

Civil Penalty—$2,500

Summary of Licensee's Request for Mitigation

In response to the violation involving the failure to establish a written Quality Management Program, the Licensee admitted that it did not establish a Quality Management Program by the January 27, 1992 effective date of the rule. The Licensee states that it first learned of the requirement to establish a Quality Management Program following receipt of the June 1992 NMSS Newsletter and that it immediately devised a plan and submitted it to the NRC by July 27, 1992. Because corrective action was taken without NRC intervention, the Licensee requested that the violation be dismissed or mitigated to a reprimand without penalty.

In response to the violation concerning the administration of sodium iodide without a written directive signed by an authorized user, the Licensee admitted that a "minimal number" of patients received dosages of greater than 30 microcuries without written directives having been prepared. The Licensee stated that it took immediate corrective action and requested that the violation and the civil penalty be mitigated. In addition, the Licensee requested that the NRC take into account the fact that during the past 23 years, approximately 20,000 to 23,000 diagnostic administrations had occurred with no known misadministrations.

NRC Evaluation of Licensee's Request for Mitigation

The violations were not considered separately in this case. The proposed penalty was based on the aggregate of the two violations (i.e., a Severity Level III problem). Thus, the severity level of the violations was based on their collective significance—that is the combination of not establishing a Quality Management Program until six months after the effective date of the rule and not implementing the requirements of the Quality Management Program even after a written program was established by the Licensee.

The NRC places a great deal of importance on its Quality Management regulation. Thus, its Enforcement Policy was revised at the same time the rule was adopted to place an emphasis on noncompliance with the rule. Example C.6 was added to Supplement VI, such that violations involving "A substantial failure to implement the quality management program as required by § 35.32 * * *" was to be classified at Severity Level III (Note: This was later amended to state "Substantial failure to implement the quality management program as required by § 35.32 that does not result in a misadministration * * *").

The term "substantial" has consistently been applied to failures of a programmatic, as opposed to an isolated, nature. In this case, the Licensee's failure was deemed programmatic because the Licensee repeatedly failed to use written directives for diagnostic administrations of sodium iodide I–131 on quantities that exceeded 30 microcuries because of weaknesses in the program. Thus, the violations were appropriately classified in the aggregate as a Severity Level III problem.

With regard to the magnitude of the proposed civil penalty, the Licensee's argument are related to the civil penalty adjustment factors of Identification, Corrective Action and Licensee Performance. The use of these factors is described in Section VI.B.2 of the Enforcement Policy. No adjustment was made to the proposed base penalty with respect to any of these factors.

Although the Licensee identified its failure to establish a Quality Management Program and corrected it by submitting a plan to the NRC, the plan it submitted lacked specificity, contributing in part to the second violation, the failure to use written directives for diagnostic administrations of I–131 in excess of 30 microcuries. The second violation was identified by the NRC, continued for nearly a year after the Licensee became aware of the regulation, and was occurring at the time of the license transfer. The Licensee's arguments do not provide a basis for mitigation under the identification factor.

No adjustment was made under the corrective action factor because these violations were discovered after the license had been transferred to another entity. Thus, this factor did not, and still does not, appear to be applicable to the circumstances of this case. In addition, although the Licensee corrected its failure to establish a Quality Management Program, its corrective action was weak, i.e., the Licensee did not implement the use of written directives for diagnostic procedures, as discussed above. Thus, the Licensee has not provided a basis for mitigation under the corrective action factor.

No adjustment was made under the licensee performance factor. The Licensee's

performance was considered relatively poor in the two inspections that preceded the July 14–16, 1993 inspection. Several Severity Level IV and V violations were issued following each of the two prior inspections, one occurring in September 1991 and the other occurring in March 1990. This was balanced, however, against the fact that the July 1993 inspection found only the violations related to the Quality Management rule. Thus, notwithstanding the Licensee's statements about an absence of misadministration, the Licensee has not provided a basis for mitigation under the prior performance factor.

NRC Conclusion

The Licensee has not provided any information that provides a basis for reclassifying the violations or mitigating the proposed civil penalty. The proposed civil penalty in the amount of $2,500 should be imposed by order.

[FR Doc. 94–126 Filed 1–4–94; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–142]

University of California at Los Angeles Research Reactor; Order Releasing Facility for Unrestricted Use

By application dated February 28, 1980, the University of California, Los Angeles (UCLA) submitted a request for renewal of Facility License No. R–71 for the UCLA Research Reactor Facility (UCLA facility). By letters dated June 14 and July 26, 1984, UCLA requested termination of Facility License No. R–71. A "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts of Terminating Facility License" was published in the **Federal Register** on September 24, 1984 (49 FR 37484). Following hearings and stipulations on the license renewal and termination applications by the parties involved, an order was issued on November 8, 1985, by the Atomic Safety and Licensing Board that approved a Settlement Agreement dated September 30, 1985, between the Regents of the University of California, the Campus Committee to Bridge the Gap, and the staff of the United States Nuclear Regulatory Commission (the Commission/NRC). The Order also terminated UCLA License No. R–71. The Settlement Agreement stipulated a timetable for the decommissioning of the UCLA facility.

By application dated October 29, 1985, as supplemented, UCLA submitted a Phase I decomissioning plan. An order authorizing Phase I dismantling of the UCLA facility and disposition of component parts was issued by the Commission on July 14, 1986. Phase I concerned the removal of all UCLA facility components except for the concrete building structure, concrete biological shield, components affixed to or embedded in the biological shield, the holdup tank, primary water pump, sump pump, compressor system, floor drains, decontamination sinks, and fuel storage pits. Phase I of decommissioning was completed on August 18, 1989.

By application dated June 10, 1988, as supplemented, UCLA submitted its Phase II decommissioning plan. An order authorizing Phase II dismantling of the UCLA facility and disposition of component parts was issued by the Commission on July 28, 1989. Phase II decommissioning concerned the removal of components that remained after completion of Phase I decommissioning. When Phase II decommissioning was completed, UCLA submitted final survey information on January 4 and 28 and February 22, 1993.

The reactor fuel has been removed from the core and shipped to a Department of Energy (DOE) facility. The UCLA reactor facility has been completely dismantled and all NRC and settlement agreement requirements pertaining to residual radioactivity, personnel and external radiation exposure, and fuel disposition have been met. Confirmatory radiological surveys verified that the UCLA facility met the recommended regulatory guidance for release of the facility for unrestricted use. Accordingly, the Commission has found that the UCLA facility has been dismantled and decontaminated pursuant to the Commission Orders dated July 14, 1986, and July 28, 1989, and the Settlement Agreement. Satisfactory disposition has been made of the component parts and fuel in accordance with the Commission regulations in title 10 of the Code of Federal Regulations (10 CFR) chapter I, and in a manner not inimical to the common defense and security, or to the health and safety of the public. Therefore, on the basis of the Settlement Agreement, applications filed by UCLA and pursuant to sections 104 and 161 b, i, of the Atomic Energy Act of 1954, as amended, the UCLA facility is released for unrestricted use as of the date of this Order. In accordance with 10 CFR part 51, the Commission has determined that the issuance of this Order will have no significant environmental impact. The Environmental Assessment was published in the **Federal Register** on December 27, 1993 (58 FR 68445).

For further details with respect to this action see (1) UCLA final survey information dated January 4 and 28 and February 22, 1993, (2) the Settlement Agreement of September 30, 1985, (3) the Commission Safety Evaluation related to release of the UCLA facility for unrestricted use, (4) the Environmental Assessment, and (5) the "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts of Terminating Facility License," which was published in the **Federal Register** on September 24, 1984 (49 FR 37484). Each of these items is available for public inspection at the Commission Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Copies of items (3), (4), and (5) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Operating Reactor Support.

Dated at Rockville, Maryland this 28th day of December 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 94–129 Filed 1–5–94; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 030–01244, License No. 06–00819–03, EAs 92–241 and 93–016]

Yale-New Haven Hospital, New Haven, Connecticut; Order Imposing Civil Monetary Penalties

I

Yale-New Haven Hospital (Licensee), New Haven, Connecticut, is the holder of Byproduct Material License No. 06–00819–03 (License), issued by the U.S. Nuclear Regulatory Commission (NRC or Commission). The License was most recently amended on September 15, 1993. The License authorizes the Licensee to perform diagnostic and therapeutic procedures with radioactive material as well as research in accordance with the conditions specified therein. This is a broad scope license. The License was most recently renewed on August 13, 1985, and was due to expire on August 31, 1990 but was extended by the NRC pending staff action on the Licensee's renewal request. Based on the Licensee's application to renew the License dated June 17, 1990, and pursuant to 10 CFR 30.37(b), the existing License has not expired and continues in effect.

II

Between December 3, 1992, and January 27, 1993, the NRC performed two inspections of licensed activities at the Licensee's facility. The inspections were conducted to review two incidents involving therapeutic misadministrations and a failure to control licensed material that occurred between November 30 and December 1,

1992, and on January 21, 1993. During the inspections, five violations of NRC requirements were identified. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the Licensee by letter dated April 26, 1993. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalties proposed for the violations.

The Licensee responded to the Notice on June 10, 1993. In its response, the Licensee denies Violations II.A and II.B set forth in the Notice; questions the Severity Level classification for Violations I.A, I.B, and I.C; and requests reduction of the civil penalties.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations did occur, the Severity Level classifications were appropriate, and the penalties proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The Licensee pay civil penalties in the amount of $10,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Violations II.A and II.B in the Notice referenced in section II above, and

(b) Whether, on the basis of such violations and the other violations set forth in the Notice of Violation that the Licensee admitted, this Order should be sustained.

Dated at Rockville, Maryland, this 27th day of December 1993.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluations and Conclusion

On April 26, 1993, a Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was issued for violations identified during two NRC inspections. The Licensee responded to the Notice on June 10, 1993. The Licensee denied Violations II.A and II.B; questioned the Severity Level classification of Violations I.A, I.B, and I.C; and requested reduction of the civil penalties. The NRC's evaluations and conclusions regarding the Licensee's requests are as follows:

Restatement of Violations—Section I

I.A. Condition 23 of License No. 06–00819–03 requires that licensed material be possessed and used in accordance with statements, representations, and procedures contained in an application dated December 13, 1984.

Item 7 of that application, dated December 13, 1984, states that the Hospital Radioisotope Committee has the responsibility of establishing and enforcing the Hospital's Radiation Safety Program to ensure the safety and welfare of hospital personnel and property as well as protecting the surrounding community from the potential hazards of sources of ionizing radiation used at the hospital.

A procedure of the Hospital's Radiation Safety Program entitled, "Procedure for Nursing Care of Patients Containing Radioactive Sources for Therapy", requires, in part, that "during nursing care procedures, the nurse must check all materials used by the patient . . . for radioactive sources that may have become dislodged," and that "everything used by the patient (except dishes) must be saved and monitored before disposal."

Contrary to the above, the Hospital Radioisotope Committee did not enforce the Hospital's Radiation Safety Program to ensure safety and welfare of hospital personnel and property as well as protecting the surrounding community from the potential hazards of all sources of ionizing radiation used at the hospital. Specifically, on November 30 and December 1, 1992, nurses on the ninth floor of Yale-New Haven Hospital removed linen pads from a brachytherapy patient's room without first checking the pads for radioactive sources which may have become dislodged and failed to survey the linen pads before disposal.

B. 10 CFR 20.207(a) requires that licensed materials stored in an unrestricted area be secured against unauthorized removal from the place of storage. 10 CFR 20.207(b) requires that licensed materials in an unrestricted area and not in storage be tended under constant surveillance and immediate control of the licensee. As defined in 10 CFR 20.3(a)(17), an unrestricted area is any area access to which is not controlled by the licensee for purposes of protection of individuals from exposure to radiation and radioactive materials.

Contrary to the above, on December 1 and 2, 1992, licensed material consisting of a 35 millicurie cesium-137 brachytherapy source was located, at various times, in unrestricted areas, namely, a hallway on the ninth floor of the hospital, the laundry collection area of the hospital, and a contractor's laundry facility; and at those times, the brachytherapy source was not under the constant surveillance and immediate control of the licensee.

C. 10 CFR 20.105(b) requires, in part, that except as authorized by the Commission in 10 CFR 20.105(a), no licensee allow the creation of radiation levels in unrestricted areas which, if an individual were continuously present in the area, could result in his receiving a dose in excess of 2 millirems in any one hour or 100 millirems in any seven consecutive days.

Contrary to the above, on December 1 and 2, 1992, the licensee allowed the creation of radiation levels, at various times, in unrestricted areas, namely, in a hallway on the ninth floor of the hospital, in the laundry collection area of the hospital, and a contractor's laundry facility, such that if an individual were continuously present in the area, he could have received a dose in excess of 2 millirems in any one hour or 100 millirems in any seven consecutive days.

These violations are classified in the aggregate as a Severity Level III problem. (Supplements IV and VI)

Civil Penalty—$2,500

Summary of Licensee Response to the Violations in Section I

The Licensee, in its response, states that the safety significance of the loss of the source was minimal, noting that the potential absorbed dose to any member of the general public as a result of this incident was well below regulatory limits. Further, the Licensee argues that the possibility of public exposure was minimized by the hospital's prompt search for and discovery of the source. The Licensee believes that personnel and members of the public who may have been exposed to the source received only a minimal dose as a result of this incident, noting that its calculations indicate that the

maximum dose to any exposed individual was unlikely to have exceeded a total of 30 millirems.

While the Licensee recognizes that, under postulated worst case conditions, the exposure rate at distances less than 2.4 meters could have exceeded the NRC's applicable limits for the general public, the Licensee argues that this exposure condition would only have existed for very short periods of time, on the order of several minutes, and with the bulk of the postulated exposure at a dose rate well below NRC's standards for the general public. The Licensee also notes that the source was located in linen that was removed from a patient's room, and that since the linen is treated as a biologically hazardous waste, it is highly unlikely that a person would have any extended contact with the source once it had left the patient's room.

The Licensee states that immediately upon discovery that a source was missing, the Radiation Safety Officer, and the resident physician who misplaced the source, conducted a search that promptly located and safely recovered the missing source. The Licensee further contends that despite this corrective action, the NRC chose to treat the sequential consequences which flowed from the initial failure as separate violations which could be treated in the aggregate and escalated to a Severity Level III problem.

In addition, while the Licensee recognizes the NRC's authority to cite for each separate violation, the Licensee believes that the circumstances of the violations do not represent a programmatic breakdown in its radiation safety program, and even when aggregated, do not have the safety or regulatory significance to be considered a Severity Level III problem.

The Licensee argues that the 100 percent escalation of the civil penalty was not warranted since the Notice makes reference to an incident that occurred in 1989. The NRC's enforcement policy states that a licensee's prior performance normally refers to a period within the last two years of the inspection at issue, or the period within the last two inspections; whichever is longer.

The Licensee concludes by requesting that the NRC exercise its discretion to reduce the civil penalty associated with the violations in Section I of the Notice.

NRC Evaluation of the Licensee Response to Violations in Section I

While the NRC agrees that the doses to members of the general public resulting from the loss of the source were small, the source was, nonetheless, missing for a period of time in excess of twenty-three hours. During that time, the source was in the hallway outside the patient's room for at least seventeen hours, in a basement laundry closet and in a laundry service truck for at least an hour each, and on the floor of the laundry facility or in the laundry washing machine for at least four and one half hours. None of these locations was controlled by the Licensee for the purposes of radiation protection. Therefore, since the radiation levels were in excess of applicable levels for unrestricted areas for periods of hours, this created a significant potential for an exposure in excess of regulatory limits to personnel or members of the public, and the NRC maintains that this is a significant lack of control of licensed material.

As noted in Section C.1 of Supplement VI of the Enforcement Policy, violations involving a failure to control access to licensed materials for radiation purposes (as specified in the NRC requirements) constitute Severity Level III violations. Therefore, Violation I.B could have been individually classified at Severity Level III. However, the NRC chose to aggregate the Licensee's violation in failing to control licensed material with its root cause (failure to survey—Violation I.A) as well as the effect of the violation (the creation of radiation levels in excess of that allowed in NRC regulations—Violation I.C) since the three violations were all related to the one incident.

In view of the above, the assertion that Violations I.A, I.B, and I.C were classified in the aggregate at Severity Level III because they represent a programmatic breakdown is incorrect. In addition, the Licensee's contention regarding corrective action, involving the prompt location and recovery of the source are not controlling in determining the severity level of the violation. The severity level is determined by the safety or regulatory significance of the violation. The Licensee's request for mitigation of the civil penalty is discussed below.

In conclusion, the violations were properly classified in the aggregate as a Severity Level III problem.

Restatement of Violations—Section II

II.A. 10 CFR 35.32(a) requires, in part, that each licensee shall establish and maintain a written quality management program to provide high confidence that byproduct material or radiation from byproduct material will be administered as directed by the authorized user. Pursuant to 10 CFR 35.32(a)(4), the quality management program must include written policies and procedures to meet the objective that each administration is in accordance with the written directive.

Contrary to the above, as of November 30, 1992, the licensee's quality management program did not include written policies and procedures to meet the objective that each administration was in accordance with the written directive. In particular, the licensee did not establish written procedures to identify if a brachytherapy source was not properly implanted or inadequately secured against accidental removal. As a result, on November 30, 1992, during a therapy procedure that involved a gynecological implant of four cesium-137 sources, one source was either not implanted as required or it was implanted properly but inadequately secured because the source came out of the applicator and lay undetected in the patient's bed. As a result, the dose administered to the patient was less than that prescribed by the physician and the patient received a radiation dose to the leg, an area not intended to receive radiation.

B. 10 CFR 35.32(a)(4) requires, in part, that each licensee shall establish and maintain a written quality management program to provide high confidence that byproduct material or radiation from byproduct material will be administered as directed by the authorized user. The quality management program must include written policies and procedures to meet the specific objective that each administration is in accordance with the written directive.

On January 27, 1992, the licensee implemented a quality management program for the use of byproduct material. Section 3 of the quality management program entitled "Policies and Procedures for Brachytherapy", paragraph 3.1.3 of the "High Dose Rate Remote Afterloading Devices", requires, in part, that the treatment site be confirmed with the written directive and treatment plan by the administering person before administration of the treatment dose.

Contrary to the above, on January 21, 1993, the authorized user physician failed to follow the quality management program in that during a brachytherapy patient treatment with a high dose rate remote afterloader, the treatment site was not confirmed by the authorized user physician, causing the patient to receive 700 rads to the rectum, instead of the vagina, as prescribed in the written directive.

These violations are classified in the aggregate as a Severity Level III problem (Supplement VI).

Civil Penalty—$7,500

Summary of Licensee Response to Violations in Section II

In its response, the Licensee denies that it violated the requirement to establish and maintain a written QMP, noting that it established a written QMP based upon the NRC's own guidance published in Regulatory Guide 8.33 on January 27, 1992, and as required by 10 CFR 35.32(a)(4). The Licensee further states that the written quality management policy and procedures were distributed to all authorized users for comment on January 21, 1992, and no comments were received from the authorized users on this final version, and the same version was presented to NRC Region I in a letter dated January 27, 1992.

The Licensee also notes that in addition to giving each authorized user a copy of the written quality management policy and procedures, the radiation safety officer conducted formal training for the members of the radiation therapy staff on March 5, 1992, detailing the requirements of the QMP, and both physicians involved in the alleged violations attended this presentation. The Licensee further states that both physicians understood that the written directive needed to be verified during the application process. Nonetheless, despite the existence of a comprehensive QMP and related training, these events occurred.

With respect to the first incident, the Licensee also states that the resident physician followed the established procedures and, therefore, reasonably concluded that he had successfully placed the sources in the applicator during the loading process, and he and the dosimetrist identified the correct sources as they were moved from the transportation shield. The Licensee stated that in the process of moving

one of the four sources and its applicator to the patient, the source inadvertently slipped unnoticed from the applicator, and that since the resident missed the source in its fall under the patient, he had no opportunity to identify the error once the applicator was placed into the Fletcher Suit Device (FSD). Since the resident wholly believed he had fulfilled the written directive, the Licensee submits that he had satisfied the requirements of the QMP regardless of his error.

With respect to the second incident involving the High Dose Rate Afterloading (HDR) device, the Licensee states that the physician who prepared the written directive was the same physician who placed the applicator in error. Since he was the prescribing physician, the Licensee contends that there is no doubt that he understood the intent of the written directive. The Licensee states that while the physician did not visually confirm or verify the placement, he fully believed that he had correctly placed the applicator, based on his sense of touch during the physical examination, knowledge of anatomy, the feel and depth of the applicator insertion, and by asking the patient if she felt comfortable after the placement. Since the physician fully believed that he had carried out the written directive, the Licensee submits that it had fulfilled the requirements of the QMP notwithstanding his error.

NRC Evaluation of Licensee Response to Violations in Section II

The NRC does not dispute, in general, that the Licensee established and maintained a QMP, or that it provided training to authorized users. However, with respect to the first incident, the NRC maintains that the Licensee's QMP did not include written policies and procedures to provide high confidence that the QMP would meet the objective that each brachytherapy administration is in accordance with the written directive. 10 CFR 35.32(a) requires, in part, that each licensee shall establish and maintain these written policies and procedures to provide high confidence that the radiation from byproduct material will be administered as directed by the authorized user. Therefore, it is incumbent upon the Licensee to establish written procedures that provide high confidence in the delivery process of therapeutic radiation and the accurate administration of the prescribed dose. In this case, the Licensee did not establish adequate written procedures, as required, to effectively implement their QMP and procedures to verify whether brachytherapy sources were properly inserted in accordance with the written directive. In particular, the QMP was inadequate in that it did not require visual or other verification of proper insertion of the sources while they were being inserted. The Licensee stated that it established a QMP based on requirements in 10 CFR 35.32. 10 CFR 35.32(a)(4) requires that each administration be in accordance with the written directive. The licensee's QMP did require that a means be employed of verifying sources are positioned properly. However, the licensee had not established such a procedure to meet this objective by directing the physician to verify proper insertion of the source or sources (e.g., by visual inspection). In this instance, visual verification of the sources in the applicator would have been an acceptable means. The QMP did not have any procedure to ensure, nor did the physician confirm, that the administration of the dose was in accordance with the written directive. Therefore, the QMP did not provide high confidence that radiation from byproduct material would be administered as directed pursuant to 10 CFR 35.32(a).

With respect to the second incident, although the authorized user fully understood the intent of the written directive, the individual did not confirm or verify the proper placement of the applicator, which had not been placed into the correct organ, with the treatment site specified in the written directive *and* treatment plan. The Licensee stated that it established a QMP based on requirements in 10 CFR 35.32. 10 CFR 35.32(a)(4) requires that each administration be in accordance with the written directive but did not describe how this should be done. The licensee's QMP did require the treatment site be confirmed with the written directive. Visual verification of the source insertion into the proper organ would have been an acceptable means. As in violation IIA, the QMP appears inadequate in that it did not require visual or another specific procedure for verification of proper insertion of the sources while they were being inserted. The QMP did not have any specific procedure to ensure, nor did the physician confirm, that the administration of the dose was in accordance with the written directive. Therefore, the QMP did not provide high confidence that radiation from byproduct material would be administered as directed pursuant to 10 CFR 35.32(a).

The NRC realizes that confirmation of a treatment site by the Licensee may be accomplished in a number of ways. However, it is the responsibility of the Licensee to establish effective procedures to meet the performance-based objective of the QMP required by 10 CFR 35.32(a)(4), and provide high confidence that the intended therapeutic radiation is administered to the designated treatment site as prescribed by the physician authorized user. In this case, simple visual confirmation could have prevented the error and would have provided higher confidence than the physician's method of feeling to locate the treatment site.

As demonstrated by the authorized user's failure to treat the prescribed treatment site, the Licensee did not meet the objective in 10 CFR 35.32(a)(4).

The NRC agrees that the Licensee had a QMP and that the physician understood the intent of the written directive. The NRC has determined, however, that the procedures may have been inadequate in that the physician did not adequately confirm (or verify) the placement of the applicator and that the QMP procedure for confirmation (or verification) is vague and does not provide high confidence that the objective will be met.

Accordingly, the NRC maintains that with regard to both incidents, violations of the QMP occurred.

Summary of Licensee Response Requesting Mitigation of the Civil Penalties

As a general comment to violations identified in Sections I and II of the Notice, the Licensee contends that the civil penalties should be reduced, noting that it has voluntarily conducted an independent, formal, and comprehensive review of the hospital's radiation safety program, and a panel of four experts conducted the review on May 10 and 11, 1993. The Licensee also notes, as evidenced by this formal review program, and other comprehensive measures detailed in its incident reports dated December 22, 1992, January 4, 1993, and February 5, 1993, that it is committing significant management and fiscal resources to address the concerns expressed in the enforcement action. The Licensee believes that the remedial actions that the NRC seeks to encourage will be realized without the need for stringent enforcement in the form of proposed civil penalties, and that this is consistent with the Enforcement Policy.

With respect to the violations in Section I, as stated above, the Licensee notes that the NRC letter stated that 100 percent escalation of the civil penalty was warranted based upon the hospital's past enforcement history. Since the letter makes reference to an incident which occurred in 1989, the Licensee questions consideration of that action since the NRC's Enforcement Policy indicates that a licensee's prior performance normally refers to a period within the last two years of the inspection at issue, or the period within the last two inspections, whichever is longer. Since this license is a broad scope license that is inspected on a yearly interval, the Licensee believes it is contrary to established NRC practice to cite an incident occurring more than three and a half years ago as a basis for escalation of the civil penalty. Further, since the NRC's current Enforcement Policy has been modified to provide for maximum flexibility and consideration of all mitigating circumstances, the Licensee requests that the NRC exercise its discretion to reduce the civil penalty associated with the violations in Section I of the NOV.

With respect to the violations in Section II, the Licensee states that the NRC's cover letter to the NOV indicates that all of the adjustment factors set forth in 10 CFR Part 2, Appendix C, were considered. Although the NRC increased the base civil penalty by 200 percent for "past enforcement history and multiple examples," and concluded that the remaining factors warranted no further adjustment, the Licensee believes that, upon closer examination of the circumstances, mitigation is warranted.

Regarding the "multiple examples" adjustment factor, the Licensee notes that the NRC's Enforcement Policy makes it explicitly clear that for this factor to be applicable, the multiple occurrences should have the "same root causes." The Licensee contends that while the NRC indicated that the root cause of the two incidents was inattention to detail by the treating physicians, this is not the root cause of the cited violations. The Licensee notes that the NOV states that the root cause of Violation II.A was failure to have an adequate procedure in place consistent with

the program requirements in 10 CFR 35.32, whereas the second violation, II.B, is stated by the NRC to arise from a different root cause, namely, failure to follow an existing procedure established in conformance with the program requirements of 10 CFR 35.32. The Licensee further states that the fact that these violations derive from different root causes is reinforced by the fact that the specific corrective action for one violation would not necessarily have prevented the other. Based on this information, the Licensee believes that escalation of the base civil penalty under the "multiple examples" factor is inappropriate.

Regarding the "prior enforcement history" adjustment factor, the Licensee believes that the application of this factor was inappropriate in this case, noting that the Quality Management rule has become effective only recently, and there has been no opportunity to develop an enforcement history for compliance with this rule. Just as the Enforcement Policy recognizes that this factor should not be applied where the Licensee has not been in existence long enough to establish a performance history, the Licensee contends that so too should this logic be applied in establishing performance history for quality management violations. On this basis, the Licensee contends that escalation of the base civil penalty is unwarranted.

Regarding the other factors, the Licensee believes that, on balance, the remaining adjustment factors warrant mitigation even though none was applied. Regarding the "identification" factor, the Licensee notes that the current Enforcement Policy streamlines the applicability of this factor to situations where the Licensee identified the violations and promptly reported them to the NRC. The Licensee argues that, in both cases, following identification of the violation, the hospital thoroughly evaluated the events and promptly provided the NRC with the results in letters to the NRC Region I office, dated December 22, 1992, January 4, 1993, and February 5, 1993. Based on this information, the Licensee believes that full mitigation on this factor is warranted.

Regarding the "corrective action" factor, once the violations were identified, the Licensee maintains it took prompt action to bring the situations into compliance. Immediate corrective actions were implemented to assure that fully safe conditions were restored and that further noncompliance with the NRC's requirements was halted. In addition, as evidenced by the NRC's inspection report dated December 30, 1992, the Licensee maintains that it had already developed proposed long-term corrective actions, "at the time of the inspection," which was the day after the incident was reported. Given this information, the Licensee believes that further mitigation due to this factor is warranted.

Finally, the Licensee maintains it had no prior opportunity to identify the two specific violations, neither misadministration resulted in doses to the patients that exceeded the prescribed doses by more than 20 percent of the total prescribed doses, nor are they believed to result in any significant detriment, and therefore, no escalation is warranted for these factors. In summary, when the circumstances surrounding the violations are fully considered, the Licensee submits that significant mitigation of the proposed civil penalty for Violation II is warranted.

NRC Evaluation of Licensee Response Requesting Mitigation of the Civil Penalties

The NRC has evaluated the Licensee response and has determined, as set forth below, that the Licensee has not provided an adequate basis for any mitigation of the civil penalty. In determining the amount of the civil penalty, the NRC considered the escalation and mitigation factors set forth in the NRC Enforcement Policy.

With respect to the issues provided in the Licensee's response as a basis for mitigation of the penalty, the NRC acknowledges that the Licensee performed an independent assessment on May 10 and 11, 1993, to improve implementation of the radiation safety program. However, this commitment was made only after these violations were identified by the NRC as a result of inspections conducted on December 3 and 4, 1992, and January 26 and 27, 1993, at the Licensee's facility. Nevertheless, the NRC mitigated the base civil penalty for corrective action for Violations I.A, I.B, and I.C by 50 percent, the maximum recommended under the enforcement policy. No further mitigation is warranted under this factor.

With respect to the violations in Section I, the Licensee states that the NRC, contrary to established practice in Section VI.B.2.(c) of the Enforcement Policy, used an enforcement action which occurred in 1989 as part of its inspection history to establish a basis for the 100 percent escalation of the civil penalty for licensee performance. The NRC agrees that prior performance normally refers to the licensee's performance within the last two years of the inspection at issue, or the period within the last two inspections, whichever is longer. However, Section VI.B.2.(c) also states that the base civil penalty may be escalated by as much as 100 percent if the current violation is reflective of the licensee's poor or declining prior performance. While the NRC did mention the escalated action issued in 1989 in its April 26, 1993, cover letter to the Notice of Violation, it also referred to an escalated action that was issued in 1992, which is within the two year/two inspection period. Viewed collectively, the past enforcement actions demonstrate a declining trend in performance at the Licensee's facility. Additionally, the escalated enforcement action issued in 1989 involved the Licensee's loss of control of a cesium-137 sealed source and subsequent improper disposal. The Licensee's corrective action for this incident was not broad and lasting, and did not prevent recurrence of a similar violation described in Section I of the Notice issued April 26, 1993, involving the loss of a cesium-137 brachytherapy sealed source. Based on the above, the NRC believes that the 100 percent escalation for Licensee performances, was a proper application of the Enforcement Policy in determining the civil penalty amount of $2500 for the violations in Section I. As for the Licensee's contention regarding identification of Violations I.A, I.B, and I.C, the NRC in the Notice proposed 50 percent mitigation, which is the maximum recommended under the enforcement policy.

The escalation/mitigation factors for the violations in Section II were applied consistent with the Policy. Regarding the "multiple examples" factor, the violations both involved the failure to meet the specific objective that each administration is in accordance with the written directive. The QMP was inadequate in that it did not contain procedures that provide high confidence in the delivery process of therapeutic radiation and the accurate administration of the prescribed dose. The administering physician's inattention to detail was the root cause and primary contributing reason for the occurrence of both misadministrations at the facility within a short period. In violation II.A, the physician failed to observe that one of four sources fell into the patient's bed, while in violation II.B, the physician failed to use any visual means to verify correct insertion of the sources. Had either physician paid adequate attention while inserting the sources, or if the Licensee's QMP had provided specific procedures to verify correct source insertion, these violations would likely have been averted. Therefore, based on the fact that both events were due to the same root cause, escalation on this factor was warranted.

With respect to the "prior performance" factor, while there is no history in the quality management area given its recent implementation, the Licensee's poor and declining overall performance in the radiation safety area of the medical program warrants escalation of the penalty on this factor, as set forth above.

Regarding the "identification" factor, the NRC maintains that, while the two misadministrations were self disclosing, the associated quality management violations were identified by the NRC. In both events, the Licensee did not identify the failure of the QMP to include written policies and procedures to meet the objective that each brachytherapy administration is verified to be to the proper treatment site in accordance with the respective written directive. In each case, the NRC identified the failure to establish adequate written procedures to ensure the Licensee's proper placement of brachytherapy source(s) at the prescribed treatment site. Therefore, on balance, no adjustment by the NRC on this factor was warranted.

With respect to the "corrective action" factor, the actions taken in response to these violations were not considered sufficiently prompt and comprehensive to warrant mitigation because they were initially narrowly focused on the specific events, rather than on root causes, the QMP and improvements necessary to increase management oversight. The Licensee did implement additional training and instruction in the loading and placement of brachytherapy sources and applicators. However, the Licensee did not perform an extensive and comprehensive root cause analysis of the two misadministrations. The corrective actions were narrowly focused and

primarily directed at the performance of visual checks and examinations of the sources and applicators before implantation. The corrective actions did not include a comprehensive review of the QMP procedures to determine what written modifications might be necessary to ensure compliance with the failed objective and program areas of concern. Additionally, the corrective actions failed to address what changes in management oversight and involvement would be incorporated into the Licensee's QMP to prevent recurrence of similar events and improve supervision of brachytherapy activities. Following the second event and discussions with NRC, a more comprehensive approach was adopted. However, on balance, no adjustment on this factor is warranted.

NRC Conclusion

The NRC concludes that the Licensee has not provided an adequate basis for mitigating any portion of the civil penalties. Accordingly, the NRC has determined that monetary civil penalties in the amount of $10,000 should be imposed.

[FR Doc. 94–125 Filed 1–4–94; 8:45 am]
BILLING CODE 7590–01–M

Biweekly Notice Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 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 December 13, 1993, through December 22, 1993. The last biweekly notice was published on December 22, 1993 (58 FR 67840).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, 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 amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The 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.

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.

Written comments may be submitted by mail to the Rules Review and Directives 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 a hearing and petitions for leave to intervene is discussed below.

By February 4, 1994, 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 a 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 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 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.

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 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 a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: December 2, 1993

Description of amendment requests: The proposed changes would modify TS 3/4.6.1.2 by removing the schedular requirements for a Type A (overall integrated containment leakage rate) test to be performed specifically at 40 1B 10 month intervals and replacing these requirements with a requirement to perform Type A testing in accordance with Appendix J to 10 CFR 50.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis about the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes would not involve an increase in the probability or the consequences of an accident previously evaluated. The proposed change only allows flexibility in the scheduling of the three required Type A tests in the 10-year service period. The additional flexibility is needed for plants using 18-month fuel cycles to allow refueling outages and testing intervals to coincide. There is no change to the number of tests required, test methodology, or acceptance criteria.

(2) The proposed changes would not create the possibility of a new or different type of accident from any accident previously evaluated. The proposed change to the test schedule only provides flexibility in meeting the same requirement for three tests in a 10-year period. The testing type and bases have not changed. Therefore, operation of the units with this more flexible test schedule will not result in an accident previously not analyzed in the Updated Final Safety Analysis Report (UFSAR). The proposed changes do not impact the design bases of the containment and do not modify the response of the containment during a design basis accident.

(3) The proposed changes would not involve a reduction in the margin of safety. The proposed changes to the schedule only provides flexibility in meeting the same requirement for three tests in a 10-year period. These proposed changes do not affect or change any limiting conditions for operation (LCO), or any other surveillance requirements in the TS, and the basis for the surveillance requirement remains unchanged. The testing method, acceptance criteria, and bases are not changed. The TS continue to require testing that is consistent with the requirements of Appendix J to 10 CFR 50.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: Theodore R. Quay

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: November 18, 1993

Description of amendment request: The proposed amendment would permit extending the time to perform leak rate testing of certain containment isolation valves so that the testing can be performed during the refueling outage scheduled to start April 16, 1994, rather than requiring an earlier shutdown solely to perform the testing. The proposed amendment would revise Surveillance Requirements 4.6.1.3d and 4.6.1.3f to allow a one-time extension of the surveillance intervals for leak rate testing of containment isolation valves. In addition, the proposed amendment would revise Surveillance Requirements

4.4.3.2.2a and 4.4.3.2.2b, replacing the requirement to leak test the reactor coolant pressure isolation valves every 18 months or prior to returning a valve to service, with a requirement to leak test the valves in accordance with the Inservice Testing Program. This would allow the testing to be performed during the fifth refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. 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 changes would not significantly increase the probability or consequences of a previously evaluated accident.

One of the proposed technical specification (TS) changes requests a one-time only extension of the surveillance intervals for the TS Surveillance Requirements of TS 4.6.1.3f, leak rate testing of valves sealed by the main steam positive leakage control system (MS-PLCS) and the penetration valve leakage control system (PVLCS). The revision would permit eleven containment isolation valves to be tested a maximum of 46 days later than required by current technical specifications.

To permit the one-time extension of the surveillance interval for leak rate tests of containment isolation valves, TS 4.6.1.3d must also be revised to permit the interval for Type C leak rate tests to exceed 24 months. This change is consistent with an associated exemption request. The exemption request and this revision would permit 20 valves to be tested a maximum of 35 days later than required by the current technical specifications.

The proposed amendment would also revise Surveillance Requirements 4.4.3.2.2a and 4.4.3.2.2b, replacing the requirement to leak test the reactor coolant pressure isolation valves every 18 months or prior to returning a valve to service, with a requirement to leak test the valves in accordance with the Inservice Testing Program. This change would require that the pressure isolation valves be tested in accordance with Section XI of the ASME Boiler and Pressure Vessel Code, resulting in the valves being tested at least every refueling outage, rather than specifying an 18 month cycle. The revision would permit five valves to be tested a maximum of 65 days later than allowed under the current technical specification.

Based on the short duration of the requested extensions, the extensions will not significantly increase the probability or consequences of a previously evaluated accident.

2. The proposed changes would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed TS changes permit extension of the surveillance intervals for leak rate testing of containment isolation valves and reactor coolant system pressure isolation valves. In that the requested extension durations are small as compared to the overall interval allowed by TS, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The proposed changes would not involve a significant reduction in the margin of safety.

The proposed TS changes permit extension of the surveillance intervals for leak rate testing of containment isolation valves and reactor coolant system pressure isolation valves. In that the requested extension durations are small as compared to the overall interval allowed by TS, the proposed changes do not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005

NRC Project Director: Suzanne C. Black

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: December 8, 1993

Description of amendments request: The frequency for Channel Calibration would be revised from Q (quarterly) to R (refuel) for Technical Specification Table 4.3.2.1, Item 4.a.4, High Pressure Core Injection Steam Line Tunnel Temperature-High.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change corrects Technical Specification pages issued for Amendment 166 for Brunswick Unit 1 and Amendment 197 for Brunswick Unit 2, regarding NUMAC Steam Leak Detection Equipment. Specifically, on page 3/4 3-29 for each unit, the Channel Calibration frequency of Item 4.a.4, HPCI [High Pressure Core Injection] Steam Line Tunnel Temperature - High, was inadvertently left as quarterly (Q) rather than being revised to refuel (R). The text of CP&L's September 14, 1992 license amendment request and the NRC's safety evaluation for Amendments 166 and 197, dated October 14, 1993, addressed the frequency change from quarterly to refuel for this item. Therefore, the proposed change is purely administrative in nature and can not involve a significant increase in the probability of consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, the NRC's safety evaluation for Amendments 166 and 197, dated October 14, 1993, addressed the frequency change from quarterly to refuel for Item 4.a.4 of Table 4.3.2-1, HPCI Steam Line Tunnel Temperature - High. Therefore, the proposed change is purely administrative in nature and can not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendment does not involve a significant reduction in the margin of safety. The proposed change corrects Technical Specification pages issued for Amendment 166 for Brunswick Unit 1 and Amendment 197 for Brunswick Unit 2, regarding NUMAC Steam Leak Detection Equipment. The NRC's safety evaluation for Amendments 166 and 197, dated October 14, 1993, addressed the change of Channel Calibration frequency of Item 4.a.4, HPCI Steam Line Tunnel Temperature - High from quarterly (Q) to refuel (R). Therefore, the proposed change is purely administrative and can 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: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: S. Singh Bajwa

Dairyland Power Cooperative, Docket No. 50-409, La Crosse Boiling Water Reactor (LACBWR), Vernon County, Wisconsin

Date of application for amendment: November 5, 1993 (Reference LAC-13320)

Brief description of amendment: This proposed change would modify the Technical Specifications incorporated in Facility Operating License No. DPR-45 in accordance with the requirements of the revised 10 CFR Part 20 which becomes mandatory January 1, 1994 (56 FR 23360). In addition, this proposed change would correct several editorial oversights from previous amendments.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee provided the results of its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the information provided by the licensee and found that the licensee did not provide specific information as to how it determined that the three standards of 50.92(c) were satisfied. The NRC staff performed its own evaluation of the proposed change to determine if the three standards of 50.92(c) were satisfied. The NRC staff's no significant hazards consideration evaluation is presented below:

1. Will operation of the facility according to this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change is to bring the LACBWR Technical Specifications into conformance with the revised 10 CFR Part 20 and to correct several editorial oversights previously evaluated. The proposed change has no affect on any plant operating parameters. Consequently, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility according to this proposed change create the possibility of a new or different kind of accident from any previously evaluated?

The proposed change is to bring the LACBWR Technical Specifications into conformance with the revised 10 CFR Part 20 and to correct several editorial oversights previously evaluated. The proposed change is administrative in nature. Further, the proposed change does not result in any physical alteration to any plant system, and does not result in any change in the method by which any safety-related system performs its function. Consequently, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility according to this proposed change involve a significant reduction in a margin of safety?

The margin of safety is the difference between the value of a critical design, operating, or post accident parameter, and the value of the parameter which would produce unacceptable results. The proposed change does not affect any hardware, has no effect on the current operating methodologies or actions which govern plant performance, and does not affect any accident analysis parameter. Consequently, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has determined based on its own no significant hazards consideration evaluation 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: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601

Attorney for licensee: Fritz Schubert, Esquire, Dairyland Power Cooperative, 2615 East Avenue South, La Crosse, Wisconsin 54601

NRC Branch Chief: John H. Austin

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: November 11, 1993

Description of amendment request: The proposed amendments would consolidate the Quality Verification Department with the Nuclear Generation Department and realign the Nuclear Safety Review Board such that it reports to the Senior Vice-President of the Nuclear Generation Department.

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 amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.]

The proposed revisions to consolidate the Quality Verification Department with the Nuclear Generation Department and realign the NSRB [Nuclear Safety Review Board] such that it reports to the Senior Nuclear Officer, change the reference from Semiannual to Annual, change the reference from group to division, delete titles of persons designated to approve modifications, clarify the responsibilities of the Safety Assurance Manager, and delete the requirement to perform an annual independent Fire Protection Audit will not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes do not have any impact upon the design or operation of any plant systems or components.

[2. The amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.]

The proposed revisions will not create the possibility of a new or different kind of accident from any previously evaluated because the changes are administrative in nature and operation of Catawba, McGuire, and Oconee Nuclear Stations in accordance with these TS [technical specifications] will not create any failure modes not bounded by previously evaluated accidents.

[3. The amendments do not involve a significant reduction in a margin of safety.]

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Loren R. Plisco, Acting

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: November 11, 1993

Description of amendment request: The proposed amendments would consolidate the Quality Verification Department with the Nuclear Generation Department and realign the Nuclear Safety Review Board such that it reports to the Senior Vice-President of the Nuclear Generation Department.

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 amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.]

The proposed revisions to consolidate the Quality Verification Department with the Nuclear Generation Department and realign the NSRB [Nuclear Safety Review Board] such that it reports to the Senior Nuclear Officer, change the reference from Semiannual to Annual, change the reference from group to division, delete titles of persons designated to approve modifications, clarify the responsibilities of the Safety Assurance Manager, and delete the requirement to perform an annual independent Fire Protection Audit will not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes do not have any impact upon the design or operation of any plant systems or components.

[2. The amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.]

The proposed revisions will not create the possibility of a new or different kind of accident from any previously evaluated because the changes are administrative in nature and operation of Catawba, McGuire, and Oconee Nuclear Stations in accordance with these TS [technical specifications] will not create any failure modes not bounded by previously evaluated accidents.

[3. The amendments do not involve a significant reduction in a margin of safety.]

The proposed revisions will not involve a reduction in a margin of safety because they are administrative in nature.

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: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Loren R. Plisco, Acting

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: November 11, 1993

Description of amendment request: The proposed amendments would consolidate the Quality Verification Department with the Nuclear Generation Department and realign the Nuclear Safety Review Board such that it reports to the Senior Vice-President of the Nuclear Generation Department. In addition, the requirement to conduct an annual independent Fire Protection Audit is deleted.

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 amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.]

The proposed revisions to consolidate the Quality Verification Department with the Nuclear Generation Department and realign the NSRB [Nuclear Safety Review Board] such that it reports to the Senior Nuclear Officer, change the reference from Semiannual to Annual, change the reference from group to division, delete titles of persons designated to approve modifications, clarify the responsibilities of the Safety Assurance Manager, and delete the requirement to perform an annual independent Fire Protection Audit will not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes do not have any impact upon the design or operation of any plant systems or components.

[2. The amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.]

The proposed revisions will not create the possibility of a new or different kind of accident from any previously evaluated because the changes are administrative in nature and operation of Catawba, McGuire, and Oconee Nuclear Stations in accordance with these TS [technical specifications] will not create any failure modes not bounded by previously evaluated accidents.

[3. The amendments do not involve a significant reduction in a margin of safety.]

The proposed revisions will not involve a reduction in a margin of safety because they are administrative in nature.

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: Loren R. Plisco, Acting

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: November 16, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications to change the periodic test schedule for containment Type A integrated leak rate tests (ILRTs) from a set of three tests performed at approximately equal intervals during each 10-year period, as specified in 10 CFR Part 50, Appendix J, Section III.D, to one Type A test performed at 10-year intervals. The change is being reviewed in conjunction with a proposed exemption to Appendix J, as requested by the licensee in a letter dated November 16, 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:

The Waterford 3 Type A test history provides substantial justification for the proposed test schedule. Three type A tests have been performed over an eight (8) year period with successful results. The tests indicate that Waterford 3 has a low leakage containment and that the leakage has never exceeded 24.6% of L_a. [L_a is the maximum allowed leakage rate of air from containment where containment is pressurized to P_a; for Waterford 3 P_a is 44 psig. L_a for Waterford is 0.50 percent by weight of the containment air per 24 hours at P_a.]

There are no structural mechanisms which would adversely affect the structural capability of the containment and that would be a factor in extending the Type A test schedule to ten years. A risk impact assessment was performed, and a determination was made that there is no risk impact as a result of changing the Type A test schedule. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

There are no design changes being made that would create a new type of accident or malfunction. The proposed change will not alter the plant or the manner in which it is operated. The change proposes a change to the schedule for performing the periodic Type A test. The purpose of the test is to provide periodic verification by test of the leaktight integrity of the primary reactor containment, and systems and components which penetrate containment. The tests assure that leakage through containment and systems and components penetrating containment will not exceed the allowable leakage rate values associated with conditions resulting from an accident. The change in schedule for performing the Type A test will not adversely affect the containment integrity in the event of an accident. Therefore, the proposed change will not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed change is a change to the schedule for performing the periodic Type A tests and does not reduce the margin of safety assumed in accident analysis for release of radioactive materials from the containment atmosphere into the environment or any

margin of safety preserved by the Technical Specifications. The methodology, acceptance criteria, and the technical specification leakage limits for the performance of the Type A tests will not change, and the Type A tests will be performed in accordance with 10CFR 50, Appendix J, and the Waterford 3 licensing basis. 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 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: November 16, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to provide acceptable conditions for operation when (1) the core operating limits supervisory system (COLSS) is in service and neither control element assembly calculator (CEAC) is operable and (2) the COLSS is out of service and either or both CEACs are operable.

This proposed TS change modifies the departure from nucleate boiling ratio (DNBR) margin, Limiting Condition for Operation (LCO) 3.2.4b and c, which limits the core power distribution to the initial value assumed in the accident analyses. Operation within this LCO either limits or prevents potential fuel cladding failures in the event of a postulated accident and limits damage to the fuel cladding during an accident by ensuring that the plant is operating within acceptable conditions at the onset of a transient. The limiting safety system settings and this LCO are based on the accident analysis, so that specified acceptable fuel design limits (SAFDLs) are not exceeded as a result of anticipated operational occurrences (AOOs) and the limits of acceptable consequences are not exceeded for other postulated accidents.

The COLSS and core protection calculators (CPCs) monitor the core power distribution on line and are capable of verifying that the linear heat rate (LHR) and DNBR do not exceed their limits. The COLSS performs this function by continuously monitoring the core power distribution and calculating core power operating limits corresponding to the allowable peak LHR and DNBR. The CPCs perform this function by continuously calculating an actual value of DNBR and LHR for comparison with the respective trip setpoints. CEACs monitor CEA position. Should a CEA deviate from its subgroup position, the CEACs will transmit an appropriate "penalty" factor to the CPCs.

The COLSS is normally used to monitor DNBR margin. When at least one CEAC is operable, TS 3.2.4a provides enough margin to DNB to accommodate the limiting AOO without failing the fuel. When neither CEAC is operable, the CPCs lack the CEA position information necessary to ensure a reactor trip when necessary. In this case TS 3.2.4b requires the COLSS calculated core power to be reduced to ensure that the limiting AOO will not result in fuel failure. Currently, TS 3.2.4b requires that the COLSS calculated power be maintained at 13% below the COLSS calculated power operating limit to compensate for the potential error in the CPC DNBR calculation. The proposed revision would increase this required adjustment to 16%, which is more restrictive than the present value.

In instances when the COLSS is out of service, but either or both CEACs are operable, TS 3.2.4c states that the DNBR operating margin shall be maintained by comparing the DNBR indicated on any operable CPC channel with the allowable value from TS Figure 3.2-2. Whenever the COLSS is out of service, the CPCs are used to perform the same monitoring function. However, the extra conservatisms built into the CPCs for transient protection are not all required when the CPCs are being used for monitoring. In order not to affect the CPC transient protection, these conservatisms are not taken from the CPC, but are credited in the COLSS out-of-service limits in Figure 3.2-2. A reevaluation of the limiting AOOs has verified that, by maintaining the margin in the proposed Figure 3.2-2, sufficient margin exists to ensure that the limiting Cycle 7 AOO will not result in fuel failure.

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:

For the case when neither CEAC is operable but COLSS is in service, the CPCs assume a preset CEA configuration and can not obtain the required CEA position information to ensure the SAFDL on DNBR will not be violated during an AOO. Thus, as a result of limiting AOOs for Cycle 7, Specification 3.2.4b requires that core power be reduced to a value 16% less than the current COLSS calculated power operating limit. This ensures the limiting AOO will not result in a violation of SAFDLs. The proposed revision to Figure 3.2-2 accounts for the situation when COLSS is out of service but at least one CEAC is operable. In this case, the Cycle 7 safety analysis has shown that by maintaining the CPC calculated DNBR above the value shown in the figure, the limiting AOO will not result in a violation of the SAFDLs. Therefore, the proposed change will not significantly increase the probability or consequences of any accident previously evaluated.

The proposed changes are primarily a result of changes in Cycle 7 core parameters. These changes do not involve any change to any equipment or manner in which the plant will be operated. These changes further restrict the plant operation when either COLSS or both CEACs are out of service. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The intent of this Specification is to ensure that there is always sufficient margin to DNB such that the CPCs can mitigate the consequences of the most limiting AOO prior to a violation of the SAFDLs. Generally, this margin is continuously monitored by COLSS; however, if COLSS is out of service, but at least one CEAC is operable, the limitation on CPC calculated DNBR (as a function of ASI [axial shape index]) shown in Figure 3.2-2 represents a conservative envelope of operating conditions consistent with the Cycle 7 safety analysis assumptions. This band of operating conditions has been analytically demonstrated to maintain an acceptable minimum DNBR through all AOOs. On the other hand, for the case when COLSS is in service, but neither CEAC is operable, the proposed change will ensure that the limiting AOO will not result in a violation of SAFDLs. Therefore, the proposed changes will not result in 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: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: December 2, 1993

Description of amendment request: The purpose of the request is to change the plant Technical Specifications (TS) to remove the limiting conditions for operation and surveillance requirements for the chlorine detection system. TMI-1 removed the gases Chlorination System for the Circulating Water and River Water Systems. This modification eliminated the need for a Chlorine Dectection System (CDS).

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 of occurrence or the consequences of an accident previously evaluated. The TS requirements assured the operability of the CDS in the event of an on-site chlorine release from a one ton cylinder. These TS requirements reduced the probability and the consequences of a radiological accident which may result from an incapacitation of control room operatorsafter entry of chlorine into the control room. With the removal and the restriction on delivery of one ton chlorine cylinders, this postulated event is no longer credible, and there is a decrease in the probability of a radiological accident.

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 TS requirements associated with the CDS were for the on-site release of chlorine from a one ton cylinder. These cylinders are removed and prohibited from the TMI-1 site. These actions preclude a significant on-site release of chlorine which could affect the control room operators.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The purpose of the TS requirements was to maintain operability of the CDS in the event of on-site release from a one ton chlorine cylinder. Since chlorine cylinders greater than 150 pounds are prohibited on-site, the TS requirements for chlorine detection are no longer required, and their removal will not reduce 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: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: November 23, 1993

Description of amendment request: The licensee proposes to modify the South Texas Project, Units 1 and 2, Technical Specification 3/4.8.1.1, "A.C. Sources," to modify the action statements and surveillance requirements for testing of the standby diesel generator. This amendment would incorporate the recommendations of NRC Generic Letter (GL) 93-05, "Line-Item Technical Specifications Improvements To Reduce Surveillance Requirements For Testing During Power Operation," dated September 27, 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:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change seeks to eliminate the unnecessary testing of an operable Standby Diesel Generator (SDG). Technical Specification (TS) 3.8.1.1 Actions a. and e. require all operable SDGs be started as a demonstration of operability whenever one or more of the offsite AC [alternating current] power sources is declared inoperable. The inoperability of an offsite AC power source has no effect on the reliability of a SDG. Deleting this requirement does not affect the design or performance characteristics of the SDGs. Therefore, the SDGs maintain their ability to perform their design function.

TS 3.8.1.1 Actions b. and c. require all remaining operable SDGs be started as a demonstration of operability whenever one of the SDG is declared inoperable except for preplanned preventive maintenance or testing. The proposed amendment would expand the testing exclusion to include an inoperable support system and an independently testable component in addition to preplanned preventive maintenance and testing. The proposed amendment would also eliminate the testing requirement of the remaining operable SDGs, when a SDG is declared inoperable, unless there is cause to believe a potential common mode failure exists for the remaining SDGs. The normal TS surveillance testing schedule assures that operable SDG(s) are capable of performing their intended safety functions. A failure of one SDG does not reduce the reliability of another, otherwise operable SDG. Deleting this requirement does not affect the design or performance characteristics of the SDGs, once a common mode failure has been dismissed. Therefore, the SDGs maintain their ability to perform their design function.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The elimination of these unnecessary tests does not affect the design bases of the SDGs, or any of the accident evaluations involving the SDGs. The SDGs are designed to provide electrical power to the equipment important for safety during all modes and plant conditions following a loss of offsite power. The test schedule established in accordance with GL 84-15 ["Proposed Staff Actions To Improve and Maintain Diesel Generator Reliability"] assures that operable SDGs are capable of performing their intended safety function. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

Since the proposed change does not affect the design bases, accident analysis, reliability or capability of the SDGs to perform their intended safety function, this change does not involve any reduction in a 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 request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036

NRC Project Director: Suzanne C. Black

Indiana Michigan Power Company, Docket No. 50-315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of amendment request: December 15, 1993. This submittal supersedes a previous submittal dated March 10, 1993.

Description of amendment request: The proposed amendment would

implement interim tube plugging criteria for the tube support plate elevation outer diameter stress corrosion cracking for cycle 14.

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 Donald C. Cook Nuclear Plant Unit 1 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Testing of model boiler specimens for free span tubing (no TSP restraint) at room temperature conditions shows burst pressures in excess of 5000 psi for indications of ODSCC with voltage measurements as high as 19 volts. Burst testing performed on pulled tubes from Cook Nuclear Plant Unit 1 with up to a 2.02 volt indication shows measured burst in excess of 10,000 psi at room temperature. Correcting for the effects of temperature on material properties and minimum strength levels (as the burst testing was done at room temperature), tube burst capability significantly exceeds the RG 1.121 criterion requiring the maintenance of a margin of 3 times normal operating pressure differential on tube burst. The 3 times normal operating pressure differential for the Cook Nuclear Plant Unit 1 steam generators corresponds to 4275 psi. Based on the existing data base, this criterion is satisfied with 7/8" diameter tubing with bobbin coil indications with signal amplitudes less than 4.9 volts, regardless of the indicated depth measurement. A 1.0 volt plugging criteria compares favorably with the structural limit considering the previously calculated growth rates for ODSCC within the Cook Nuclear Plant Unit 1 steam generators. Considering a voltage increase of 0.4 volts, and adding a 20% NDE uncertainty of 0.20 volts (90% Cumulative Probability) to the IPC of 1.0 volts results in an EOC voltage of approximately 1.6 volts for Cycle 14 operation. A 3.3 volt safety margins implied (4.9 structural limit - 1.6 volt EOC - 3.3 volt margin). This EOC voltage compares favorably with the Structural Limit of 4.9 volts.

For the voltage/burst correlation, the EOC structural limit is supported by a voltage of 4.9 volts. A 3.1 volt BOC repair limit confirms the structural limit when 40% growth and 20% uncertainty are applied to the repair limit. This repair limit will be applied for Cycle 14 IPC implementation to repair bobbin indication greater than 3.1 volts independent of RPC confirmation of the indication.

The conservatism of this repair limit is shown by the EOC 12 (Summer 1992) eddy current data. The overall average voltage growth was determined to be only 2.2%, with a 12% average voltage growth for indications less than 0.75 volt BOC and a 1% average voltage growth for indication >0.75 volt at the BOC. In addition, the Cycle 12 maximum observed voltage increase was found to be 0.49 volts, and occurred in a tube initially <1.0 BOC. In accordance with the technical specification requirements, the applicability of Cycle 13 growth rates for Cycle 14 operation will be confirmed prior to return to power of Cook Nuclear Plant Unit 1. Similar large structural margins are anticipated.

As stated previously, TSP proximity to the tubes will prevent tube burst during all plant conditions. Test data indicates that tube burst cannot occur within the TSP, even for tubes which have 100% through-wall EDM notches, 0.75 inch long, provided that the TSP is adjacent to the notched area. Therefore, a more realistic assessment of tube operability should be performed against the RG 1.121 loading requirements during accidents SLB conditions, since the TSP has the potential to deflect during blowdown following a main SLB, thereby uncovering the intersection. At the ASME Code recommended faulted condition loading of 3657 psi (2560 psi/0.7) structural integrity is provided for bobbin voltage indications of a minimum of 9.6 volts. The repair limit based on the structural limited conservative SLB conditions would be 6.0 volts (compared to a 3.1 volt repair limit for a structural limit based on the 3[delta]P burst capability voltage).

Only three indications of ODSCC have been reported to have operating leakage, and all three have been in European plants. No field leakage has been reported at other plants from tubes with indications of a voltage level of under 7.7 volts (from 3/4" tubing). Relative to the expected leakage during accident condition loadings, it has been previously established that a postulated main SLB outside of containment but upstream of the MSIV represents the most limiting radiological condition relative to the IPC. In support of implementation of the IPC, it will be determined whether the distribution of cracking indications at the TSP intersections at the EOC 14 are projected to be such that primary to secondary leakage would result in site boundary doses within a small fraction of the 10 CFR 100 guidelines. The SLB leakage rate calculation methodology prescribed in Section 3.3 of draft NUREG-1477 will be used to calculate EOC 14 leakage. Due to the relatively low voltage growth rates at Cook Nuclear Plant Unit 1 and the relatively small number of indications affected by the IPC, SLB leakage prediction per draft NUREG-1477 is expected to be less than the acceptance limit of 1.0 gpm in the faulted loop and far below the conservatively calculated SRP based allowable value of 120 gpm in the faulted loop. The NRC leakage rate calculation methodology applies a 98% confidence limit on leakage that is independent of voltage. This method for calculating SLB leakage is conservative as it assumes no correlations exists between SLB leakage and bobbin probe voltage. Tube pull results from Cook Nuclear Plant Unit 1 indicate that tube wall degradation of greater than 40% through-wall was detectable either by the bobbin or RPC probe. The tube with maximum through-wall penetration of 56% (42% average) had a voltage of 2.02 volts. This indication also was the largest recorded bobbin voltage from the EOC 12 eddy current data. All burst tested tube intersections had degradation depths of 40% to 56 % (actual) deep and all were detected by both probes, with all bobbin voltage grater than or equal to 1.0. Since the criteria requires the plugging of >1.0 volt bobbin indications with confirmed RPC calls, using the Cook Nuclear Plant Unit 1 pulled tube destructive examination results, it is reasonable that no indications of degradation greater than 40% to 56% deep with an ability to influence tube burst capability were left in service. Since the majority of the EOC 14 indications at Cook Nuclear Unit 1 are expected to be below this level, the inclusion of all IPC intersections into the leakage calculation is exceptionally conservative.

Therefore, as re-implementation of the 1.0 volt IPC during Cycle 14 does not adversely affect steam generator tube integrity and results in acceptable dose consequences, the proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated within the Cook Nuclear Plant Unit 1 FSAR.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed steam generator tube IPC does not introduce any significant changes to the plant design basis. Use of the criteria does not provide a mechanism which could result in a tube rupture outside of the region of the TSP elevations; no ODSCC is occurring outside the thickness of the TSPs. Neither a single or multiple tube rupture event would be expected in a steam generator in which the plugging criteria has been applied (during all plant conditions).

Specifically, Cook Nuclear Plant will continue to implement a maximum leakage rate limit of 150 gpd (0.1 gpm) per steam generator to help preclude the potential for excessive leakage during all plant conditions. The Cycle 14 Technical Specification limits on primary to secondary leakage at operating conditions is a maximum of 0.4 gpm (600 gpd) for all steam generators, or, a maximum of 150 gpd for any one steam generator. The RG 1.121 criterion for establishing operational leakage rate limits that require plant shutdown are based upon leaks-before-break consideration to detect a free span crack before potential tube rupture. The 150 gpd limit should provide for leakage detection and plant shutdown in the event of the occurrence of an unexpected single crack resulting in leakage that is associated with the longest permissible crack length. RG 1.121 acceptance criteria for establishing operating leakage limits are based on leak-before-break considerations such that plant shutdown is initiated if the leakage associated with the longest permissible crack is exceeded. The longest permissible crack is the length that provides a safety factor of 3 against bursting at normal operating pressure differential. A voltage amplitude of 4.9 volts for typical ODSCC corresponds to meeting this tube burst requirement at a lower 95% prediction limit on the burst correlation coupled with 95/95 LTL material properties. Alternate crack morphologies can correspond to 4.9 volts so that a unique crack length is

not defied by the burst pressure versus voltage correlation. Consequently, typical burst pressure versus through-wall crack length correlations are used below to define the "longest permissible crack" for evaluating operating leakage limits.

At current plant conditions, the single through-wall crack lengths that result in tube burst at 3 times normal operating pressure differential and SLB conditions are 0.44 inch and 0.84 inch, respectively. A leak rate of 150 gpd will provide for detection of 0.42 inch long cracks at nominal leak rates and 0.61 inch long cracks at the lower 95% confidence level leak rates. Since tube burst is precluded during normal operation due to the proximity of the TSP to the tube and the potential for the crevice to become uncovered during SLB conditions, the leakage from the maximum permissible crack must preclude tube burst at SLB conditions. Thus, the 150 gpd limit provides for plant shutdown prior to reaching critical crack lengths for SLB conditions.

3. The proposed license amendment does not involve a significant reduction in margin of safety.

The use of the voltage based bobbin probe interim TSP elevation plugging criteria at Cook Nuclear Plant Unit 1 is demonstrated to maintain steam generator tube integrity commensurate with the criteria of Regulatory Guide 1.121. RG 1.121 describes a method acceptable to the NRC staff for meeting GDCs 14, 15, 31, and 32 by reducing the probability or the consequences of steam generator tube rupture. This is accomplished by determining the limiting conditions of degradation of steam generator tubing, as established by inservice inspection, for which tubes with unacceptable cracking should be removed from service. Upon implementation of the criteria, even under the worst case conditions, the occurrence of ODSCC at the TSP elevations is not expected to lead to a steam generator tube rupture event during normal or faulted plant conditions. The EOC 14 distribution of crack indications at the TSP elevations will be confirmed to result in acceptable primary to secondary leakage during all plant conditions and that radiological consequences are not adversely impacted.

In addressing the combined effects of LOCA + SSE on the steam generator component (as required by GDC 2), it has been determined that tube collapse may occur in the steam generators at some plants. This is the case as the TSPs may become deformed as a result of lateral loads at the wedge supports at the periphery of the plant due to the combined effects of the LOCA rarefaction wave and SSE loadings. Then, the resulting pressure differential on the deformed tubes may cause some of the tubes to collapse.

There are two issues associated with steam generator tube collapse. First, the collapse of steam generator tubing reduces the RCS flow area through the tubes. The reduction in flow are increases the resistance to flow of steam from the core during a LOCA which, in turn, may potentially increase peak clad temperature (PCT). Second, there is a potential that partial through-wall cracks in tubes could progress to through-wall cracks during tube deformation or collapse.

Consequently, since the leak-before-break methodology is applicable to the Cook Nuclear Plant Unit 1 reactor coolant loop piping, the probability of breaks in the primary loop piping is sufficiently low that they need not be considered in the structural design of the plant. The limiting LOCA event becomes either the accumulator line brake or the pressurizer surge line break. LOCA loads for the primary pipe breaks were used to bound the Cook Nuclear Plant Unit 1 smaller breaks. The results of the analysis using the larger break inputs show that the LOCA loads were found to be of insufficient magnitude to result in steam generator tube collapse or significant deformation.

Addressing RG 1.83 consideration, implementation of the bobbin probe voltage based interim tube plugging criteria of 1.0 volt is supplemented by the following: enhanced eddy current inspection guidelines to proved consistency in voltage normalization, a 100% eddy current inspection sample size at the TSP elevations, and RPC inspection requirements as outlined in the technical specifications and Appendix A "NDE Data Acquisition and Analysis Guidelines" (Attachment 6).

As noted previously, implementation of the TSP elevation plugging criteria will decrease the number of tubes which must be repaired. The installation of steam generator tube plugs reduce the RCS flow margin. Thus, implementation of the alternate plugging criteria will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging.

Based on the above, it is concluded that the proposed license amendment request does not result in a significant reduction in margin with respect to plant safety as defined in the Final Safety Analysis Report or any of the plant Technical Specifications.

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: Leaks 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: A Randolph Blough, Acting

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 amendment requests: November 15, 1993

Description of amendment requests: The proposed amendments delete certain Limiting Conditions for Operation, Actions, and Surveillance Requirements for Reactor Coolant System Pressure Isolation Valves in the Technical Specifications. The Technical Specifications for these Reactor Coolant System Pressure Isolation Valves were added by Order dated April 20, 1981. This Order was prompted by concerns for an interfacing system loss-of-coolant accident as identified in the Reactor Safety Study (WASH-1400). The proposed Technical Specification change, by inference, also requests rescission of the April 20, 1981 Order.

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:

Per 10 CFR 50.92, a proposed amendment to an operating license will not involve a significant hazards consideration if the proposed amendment satisfies the following three criteria:

1. Does not involve a significant increase in the probability or consequences of an accident previously analyzed,

2. Does not create the possibility of a new or different kind of accident from an accident previously analyzed or evaluated, or

3. Does not involve a significant reduction in a margin of safety.

Criterion 1

The ISLOCA is not one of the accidents previously analyzed in Chapter 14, Safety Analysis, of the Cook Nuclear Plant Updated Final Safety Analysis Report. Chapter 14 analyzes the large break LOCA in Section 14.3.1, and "loss of reactor coolant from small ruptured pipes or from cracks in large pipes which actuates the ECCS", or small break LOCA in Section 14.3.2. Therefore, deleting from the Technical Specifications the Reactor Coolant System pressure isolation valves in Table 3.4-0, will not increase the probability or the consequences of the large break or the small break LOCAs previously analyzed for the Cook Nuclear Plant.

Criterion 2

The Reactor Coolant System pressure isolation valves in Table 3.4-0 of the Technical Specifications were added because WASH-1400 identified the ISLOCA as a significant contributor to core damage frequency. Deletion of the subject valves from the Technical Specifications and reliance on the testing requirements mandated by the In-Service Testing Program of ASME XI does not create the possibility of a new or different kind of accident from the large break or the small break LOCAs previously analyzed for the Cook Nuclear Plant.

Criterion 3

Deleting the Reactor Coolant System pressure isolation valves from the testing requirements in Table 3.4-0 of the Technical Specifications will result in these valves only being tested on a refueling outage frequency as part of the ASME B&PV Code Section XI IST Program. This somewhat reduced testing frequency will result in a slight increase in the ISLOCA contribution to core damage frequency of 5.4%, from lower 5.00E-08/

reactor year to mid 5.00E-08/reactor year. This insignificant increase will not affect the overall core damage frequency of 6.26E-05/reactor year. Therefore, it is concluded that the proposed deletion of the Reactor Coolant System pressure isolation valves in Table 3.4-0 of the Technical Specifications, as well as the proposed deletion of the portions of the Technical Specifications that are affected by Table 3.4-0, will not result in a significant reduction in the margin of safety that exists at Cook Nuclear Plant to prevent an ISLOCA or to mitigate the consequences of an ISLOCA.

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 requests involve no significant hazards consideration.

Local Public Document Room location: Maud 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: A. Randolph Blough, Acting

Pacific Gas and Electric Company, Docket No. 50-133, Humboldt Bay Power Plant, Unit 3, Humboldt County, California

Date of application for amendment: October 8, 1993 (Reference LAR 93-02)

Brief description of amendment: This Licensee Amendment Request (LAR) proposes to revise the Humboldt Bay Power Plant (HBPP), Unit 3, Technical Specifications (TS) by deleting Figure II-2 in Section II, "Site," by deleting the Restricted Area boundary line in Figure V-3, Section V, "Monitoring Systems," by incorporating a title change into Section VII, "Administrative Controls," and by revising Figure VII-2, "Plant Staff Organization." The proposed changes are in response to the revised 10 CFR Part 20 which becomes mandatory on January 1, 1994 (56 FR 23360). The specific TS changes proposed are as follows:

(1) Page v, Figures - delete reference to Figure II-2.

(2) Page II-1, Section II.B, Plant Areas - change "is shown in Figure II-2" to "shall be defined in plant procedures."

(3) Page II-3, Section II - delete Figure II-2.

(4) Page V-14, Section V - delete the Restricted Area boundary line from Figure V-3, "HBPP Groundwater Monitoring Systems Wells," to be consistent with item 3 above.

(5) Page VII-5, Section VII.C.2.e, Supervisor of Maintenance - change the title from "Supervisor of Maintenance" to "Maintenance Planner."

(6) Page VII-10, Section VII.D.1.b., Membership, List of minimum membership - replace "Supervisor of Maintenance" with "Maintenance Planner."

(7) Page VII-31, Section VII, Figure VII-2, Plant Staff Organization - replace "Maintenance Supervisor" with "Maintenance Planner."

(8) Page VII-31, Section VII, Figure VII-2, Plant Staff Organization - both the Mechanical Foreman and the Instrument/Electrical Foreman report directly to the Plant Manager, not to the "Maintenance Planner," as previously shown.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

A change to the defined restricted area has no affect on any plant operating parameters. Consequently, a change to the defined restricted area will not affect the probability or consequences of an accident occurring.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed revisions to the HBPP TS are administrative in nature. Further, the proposed changes would not result in any physical alteration to any plant system, and there would not be a change in the method by which any safety-related system performs its function.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The proposed revisions to the HBPP TS do not affect the margin of safety of any accident analysis since they do not affect the parameters for any accident analysis, and have no effect on the current operating methodologies or actions which govern plant performance.

Therefore, the proposed 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 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: Humboldt County Library, 636 F Street, Eureka, California 95501

Attorney for licensee: Christopher J Warner, Esq., Pacific Gas & Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Branch Chief: John H. Austin

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: October 29, 1993

Description of amendment request: The amendment would revise the Limerick Generating Station, Units 1 and 2, Technical Specifications to eliminate the Main Steam Line Radiation Monitoring System high radiation trip function for initiating 1) an automatic reactor scram and automatic closure of the Main Steam Line Isolation Valves, and 2) automatic closure of the Main Steam Line drain valves, and Main Steam and Reactor Water Sample line valves.

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 Technical Specification (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes involve eliminating the Main Steam Line Radiation Monitoring (MSLRM) system high radiation trip function for initiating an automatic reactor scram and automatic closure of the Main Steam Line Isolation Valves (MSIVs), Main Steam line drain valves, and Main Steam and Reactor Water sample line valves. The proposed TS changes support installation of a plant modification to defeat portions of MSLRM system high radiation trip function logic circuitry in the Reactor Protection System (RPS) and Primary Containment and Reactor Vessel Isolation Control System (PCRVICS). Installation of this modification will not adversely impact the operation of the RPS or PCRVICS with respect to performing its other intended safety functions. The proposed TS changes will not affect the operation of other plant systems or equipment important to safety. The MSLRM system high radiation trip function for the Mechanical Vacuum Pump (MVP) will be retained. The safety assessment and justification for eliminating the MSLRM system high radiation trip function for initiating an automatic reactor scram and automatic closure of the MSIVs [are] based on General Electric's (GE's) Topical Report NEDO-31400A, "Safety Evaluation for Eliminating the Boiling Water Reactor Main Steam Line Isolation Valve Closure Function and Scram Function of the

Main Steam Line Radiation Monitor," and the applicability of this report to Limerick Generating Station (LGS), Units 1 and 2. By letter dated May 15, 1991, the NRC approved this topical report and indicated that it was acceptable for licensees to reference this report as the basis for requesting a TS change to eliminate the MSLRM system high radiation trip functions as documented in the report and associated NRC Safety Evaluation Report (SER).

The safety assessment provided in NEDO-31400A can also be applied to eliminate the MSLRM system high radiation trip function for initiating the automatic closure of the Main Steam line drain valves although this aspect was not explicitly evaluated in NEDO-31400A. The flow from these valves ultimately discharges to the main condenser as do the MSIVs and therefore, any radioactive material passing through these valves would be processed in the same fashion as that passing through the MSIVs. The effects of eliminating the MSLRM system high radiation trip function for initiating the closure of the Main Steam and Reactor Water sample line valves is [are] negligible. The sample lines are routed to a sample sink where inlet valves installed on the sample lines are normally closed. Additionally, downstream of the inlet valves are needle valves designed to control and limit sample line flow. The sample sink is enclosed, and air vented from its exhaust hood is passed through filters prior to release to the environment. There is the potential that a minimal amount of radioactive material could be released to the environment if the sample sink inlet and needle valves failed to properly function. This potential release has been evaluated and determined to a small fraction of the dose limit requirements specified in 10 CFR 100.

The MSLRM system high radiation trip was intended to function in response to a Control Rod Drop Accident (CRDA), a Design Basis Accident previously evaluated. Although the CRDA assumes MSIV closure, no credit was taken for this in the CRDA analysis since it postulates that the radioactive material calculated to be released from the fuel is transported to the main condenser prior to the MSIVs completely closing. Furthermore, the probability of a fuel failure is independent of the operation of the MSLRM system.

The Steam Jet Air Ejectors (SJAEs) will continue to operate to remove non-condensable gases from the main condenser for processing by the Offgas Treatment system. The Offgas Treatment system will continue to function as designed to reduce offgas radioactivity levels prior to release to the environment. Eliminating the MSLRM system high radiation isolation functions will improve operational flexibility in that the main condenser will be available to aid in decay heat removal. Elimination of the MSLRM system high radiation trip functions in conjunction with proper operation of the Offgas Treatment system will ensure that any radioactive material released to the environment is a small fraction of 10 CFR 100 limits.

Therefore, the proposed TS changes associated with eliminating the MSLRM system high radiation trip function for initiating an automatic reactor scram and automatic closure of the MSIVs, Main Steam line drain valves, and Main Steam and Reactor Water sample line valves do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes involve eliminating the MSLRM system high radiation trip function for initiating an automatic reactor scram and automatic closure of the MSIVs, Main Steam Line drain valves, and Main Steam and Reactor Water sample line valves. The proposed TS changes will not affect the operation of other plant systems or equipment important to safety. The associated plant modification simply defeats the MSLRM system high radiation trip function logic circuitry in the RPS and PCRVICS. The RPS and PCRVICS will continue to respond in performing its other design intended safety functions. The MSLRM system high radiation trip function for the MVP will be retained. The proposed TS changes do not involve any plant hardware changes that could introduce any new failure modes or effects. The MSLRM system radiation monitors will remain active to initiate Main Control Room (MCR) annunciation alarms. Plant procedures will be in place to implement the appropriate mitigative measures in response to a MSLRM system high radiation alarm signal.

The SJAEs will continue to operate to remove non-condensable gases from the main condenser for processing by the Offgas Treatment system. The Offgas Treatment system will continue to function as designed to reduce offgas radioactivity levels prior to release to the environment.

Since the Design Basis Accident analysis (i.e., CRDA) does not credit the MSLRM system high radiation trip function for reducing the radiological consequences of the postulated accident, the proposed TS changes have effectively been evaluated and are included in the existing analysis. That is, the CRDA analysis already assumes that the radioactive material released from the failed fuel is immediately transported to the main condenser prior to the MSIVs completely closing.

The safety assessment and assumptions documents in GE Topical Report NEDO-31400A provide the basis for eliminating the MSLRM system high radiation trip function for initiating an automatic reactor scram and automatic closure of the MSIVs. The safety assessment provided in NEDO-31400A can also be applied to eliminate the MSLRM system high radiation trip function for initiating the closure of the Main Steam Line drain valves, since any radioactive material passing through these valves would be processed in the same fashion as that passing through the MSIVs. Eliminating the MSLRM system high radiation trip function for initiating the closure of the Main Steam and Reactor Water sample line valves will have a negligible impact. The sample lines are routed to a sample sink where inlet valves installed on the sample lines are normally closed. Downstream of the inlet valves are needle valves designed to control and limit sample line flow. The sample sink is located in the Reactor Enclosure and is enclosed, and air vented from its exhaust hood is passed through filters prior to release to the environment. The Reactor Enclosure ventilation duct radiation monitor samples air from the sample sink hood exhaust, and will isolate the Reactor Enclosure ventilation system if the radiation levels exceed the monitor's setpoint. There is the potential that a minimal amount of radioactive material could be released to the environment through this flowpath if the sample sink inlet and needle valves failed to properly function. This potential release has been evaluated and determined to a small fraction of the dose limit requirements specified in 10CFR100.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed TS changes to eliminate the MSLRM system high radiation trip function for initiating an automatic reactor scram and automatic closure of the MSIVs, Main Steam line drains valves, and Main Steam and Reactor Water sample line valves do not change the conclusion reached in the LGS Updated Final Safety Analysis Report (UFSAR) that the calculated radiological consequences of the bounding Design Basis Accident (i.e., CRDA) will not exceed the dose limit requirements established by 10 CFR 100. The proposed TS changes will improve the overall reliability of the plant when compared to the existing system lineup configuration, since it will reduce the potential of an unnecessary plant transient occurring as a result of an inadvertent MSIV closure.

A reliability assessment analysis was performed to evaluate the effects of eliminating the MSLRM system high radiation reactor scram function on reactivity control failure frequency and core damage frequency in GE Topical Report NEDO-31400A. This analysis indicated that there is a negligible increase in reactivity control frequency with the elimination of the MSLRM trip function. However, this increase is compensated for by the reduction in transient initiating events (i.e., inadvertent reactor scrams). This reduction in transient initiating events represents a reduction in core damage frequency and thus, results in a net improvement in safety.

Therefore, the proposed TS changes do not involve a 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: 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: Larry E. Nicholson, 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: November 30, 1993

Description of amendment request: The amendment would extend the surveillance interval of the primary containment drywell-to-suppression chamber bypass leak test from the current 18-month interval as required by Technical Specification (TS) Surveillance Requirement 4.6.2.1.d to a 40 +/- 10-month interval. This change would allow the drywell-to-suppression chamber bypass test to coincide with the 10 CFR 50, Appendix J, Type A test (i.e., Containment Integrated Leakage Rate Test (CILRT)) interval.

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 Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The failure effects that are potentially created by the proposed Technical Specifications (TS) changes have been considered. The accident which is potentially negatively impacted by the proposed TS changes are any Loss of Coolant Accident (LOCA) inside primary containment with or without offsite power available.

The proposed TS changes increase the surveillance interval of the drywell-to-suppression chamber bypass leak test required by TS Section 4.6.2.1.d, and will require that an additional test be performed on the downcomer vacuum breakers assemblies. The primary containment structure and associated equipment are not considered to be accident initiators, they act to mitigate the consequences of an accident. There are no physical or operational changes being made as a result of these proposed changes. Therefore, the probability of occurrence of an accident previously evaluated is not increased.

There is a potential increased risk that an increase in the bypass leakage may go undetected for the duration of the proposed extension of the interval between the performance of the drywell-to-suppression chamber bypass leak test. However, as discussed below, the increased risk is considered to be negligible due to the design of the diaphragm structure and past test data. Therefore, we have concluded that the probability of bypass leakage exceeding the allowed value is not increased as a result of the proposed TS changes.

The proposed TS changes will extend the surveillance interval for the drywell-to-suppression chamber bypass leak test from 18 months to 40 +/ − 10 months. These proposed changes would allow this test to be performed at the same interval as the 10CFR50, Appendix J, Type A test (i.e., Containment Integrated Leakage Rate Test (CILRT)). In addition, the proposed changes will add an additional surveillance requirement to be performed on the vacuum breaker assemblies during refueling outages when the drywell-to-suppression chamber bypass leak test is not required to be performed. The proposed TS changes do not increase the consequences of an accident previously evaluated. This is based on the evaluation summarized below that demonstrates that the overall impact, if any, on the plant containment integrity is negligible. Furthermore, the performance history for the previous LGS bypass leak tests does not indicate any time based failures. The proposed TS changes also include a change to the frequency of testing, if two consecutive tests fail, from once every nine (9) months to once every 24 months in order to coincide with the 24 month refueling cycle. This change has no impact on the consequences of an accident based on maintaining the original requirement to increase the frequency of testing if two consecutive bypass leak tests fail, and maintaining a TS requirement for the NRC to review the schedule for subsequent tests.

During a LOCA inside containment, potential leak paths between the drywell and suppression chamber airspace could result in excessive containment pressures, since the steam flow into the airspace would bypass the heat sink capabilities of the suppression pool. The containment pressure response to the postulated bypass leakage can be mitigated by manually actuating the suppression chamber sprays. Accordingly, since the sprays are manually actuated, an analysis was performed to show that the operator has sufficient time to initiate the sprays prior to exceeding the containment design pressure. This analysis is described in section 6.2.1.1.5 of the LGS Updated Final Safety Analysis Report (UFSAR). The analysis is based on a small break LOCA inside containment with a differential pressure between the drywell-to-suppression chamber equal to the static pressure due to downcomer submergence. The analysis concludes that the containment design pressure of 55 psig will be reached in over 30 minutes from the onset of a small break LOCA assuming a drywell-to-suppression chamber bypass flow area (i.e., A/square root of k) equal to 7.20 in^2 without operator intervention.

TS Limiting Condition for Operation 3.6.2.1.b conservatively specifies a maximum allowable bypass area of 10 % of the design value of 7.20 in^2. This TS limit provides an additional safety factor of 10 above the conservatism taken in the steam bypass analysis (i.e., 0.720 in^2). The drywell-to-suppression chamber bypass leak test required by TS Surveillance Requirement 4.6.2.1.d verifies that the actual bypass flow area is less than or equal to the TS limit of 0.720 in^2. The bypass leakage test ensures that degradation in the measured bypass area is identified and corrected to ensure containment integrity during LOCA events.

The potential bypass leakage paths can be divided into two categories as described below.

1) Leakage pathways other than those associated with the drywell-to-suppression chamber vacuum breaker assemblies such as diaphragm floor penetrations (i.e., downcomer and Safety/Relief Valve (SRV) discharge line penetrations), cracks in the diaphragm floor and/or liner plate, and cracks in the downcomers and SRV discharge lines that pass through the suppression chamber airspace.

2) The four sets of drywell-to-suppression chamber vacuum breaker assemblies.

All other potential bypass leakage pathways have at least two isolation valves in the potential leakage path. These valves are high quality leak-tight containment isolation valves that are normally closed and receive an isolation signal to close. All Air Operated Valves (AOVs) in these paths fail closed.

Several plant design features and the bypass leak test data measured to date confirm that the leakage from other than the vacuum breaker assemblies is negligible and indicates that this leakage will continue to be negligible for the proposed increased duration between tests. All pressure boundary penetrations between the drywell and the suppression chamber are welded except the vacuum breaker valves and the blind flanges closing 10 spare nozzles in the downcomers. All pressure boundary penetrations between the drywell-to-suppression chamber have been fabricated, erected, and inspected in accordance with the American Society of Mechanical Engineers (ASME) Code, Section III, Subsection NC, 1971 Edition, with the exception of the tees supporting the vacuum breakers.

The downcomer and SRV discharge lines penetrate through the diaphragm slab and terminate in the suppression pool. A steel ring plate is welded to the outside of the downcomers. The downcomer/ring plate assemblies are embedded in the diaphragm slab with the top surface of the ring plate flush with the drywell side of the diaphragm slab. All connections are welded to form a continuous steel membrane between the liner plate and downcomer penetrations. The SRV discharge lines are routed through welded flued heads at the diaphragm floor. The flued head design and construction are similar to the downcomer penetrations and also provide a continuous steel barrier. The downcomer and SRV discharge lines are designed and constructed to safety-related requirements. In addition, they are designed for all postulated loading conditions, including seismic, hydrodynamic, pressure, and temperature loads. The conservative design requirements ensure that the SRV discharge and the downcomer lines will not contribute to bypass leakage.

The diaphragm floor is a reinforced concrete slab approximately 3.5 feet thick.

The drywell side surface of the diaphragm slab is capped with a 1/4 inch thick carbon steel liner plate. The liner plate and diaphragm slab provide a barrier against the potential for bypass leakage through the diaphragm floor. The structural integrity of the diaphragm floor and penetrations was demonstrated during the pre-operational test program. The drywell was pressurized to a drywell-to-suppression chamber differential pressure of above 30 psid, which envelopes the maximum drywell-to-suppression chamber differential pressure postulated to occur during LOCA conditions.

There have been six Unit 1 and three Unit 2 bypass leak tests performed in accordance with TS Surveillance Requirement 4.6.2.1.d. These tests were conducted at a drywell-to-suppression chamber differential pressure of at least 4.0 psid. The measured leakage area includes leakage from both the vacuum breakers and sources other than vacuum breakers.

In all cases, the measured leakage is significantly less than the TS and design values. The maximum measured leakage areas are 0.0400 in^2 and 0.0111 in^2 for Unit 1 and Unit 2, respectively; or 5.56% and 1.55 %, respectively, of the TS limit. The average values are 0.0180 in^2 for Unit 1 and 0.0107 in^2 for Unit 2; or 2.5% and 1.49%, respectively, of the TS limit of 0.720 in^2. The minimum measured leakage areas are 0.0 in^2 and 0.0100 in^2 for Unit 1 and Unit 2, respectively, or 0% and 1.3 %, respectively, of the TS limit. Clearly, the test data confirm that the bypass leakage measured to date at LGS has been negligible.

In addition, we have obtained bypass leakage data from the Pennsylvania Power and Light Company, Susquehanna Steam Electric Station (SSES), Units 1 and 2, which also has Mark II containments with the Anderson Greenwood vacuum breakers (i.e., the same manufacturer as the vacuum breakers installed in the LGS, Unit 1 and Unit 2 containments) and therefore the data is applicable to LGS. The maximum bypass leakage area for the SSES Unit 1 containment was 0.037 in^2, and 0.009 in^2 for the SSES Unit 2 containment, or 4.81% and 1.17%, respectively, of the SSES TS limit. Approval for a similar TS change for SSES, Units 1 and 2 was issued by the NRC by letter dated August 11, 1993.

The remaining and most likely source of potential bypass leakage is the four sets of drywell-to-suppression chamber vacuum breakers. Each set consists of two vacuum breakers in series, flange mounted to a tee off the downcomers in the suppression chamber airspace. The drywell-to-suppression chamber bypass leak test is currently required by TS Surveillance requirement 4.6.2.1.d to be completed during each refueling outage and the results are used to verify that the total bypass area, including that due to the vacuum breakers, meets the TS limit. If maintenance has been performed on the vacuum breakers, this test also serves as a post-maintenance vacuum breakers leakage area test.

The proposed TS changes decrease the frequency of the drywell-to-suppression chamber bypass leak test. The drywell-to-suppression chamber bypass leak test data obtained following vacuum breakers maintenance cannot be utilized to determine vacuum breakers leakage reliability over the duration of the proposed test interval extension. To address this concern and collect additional vacuum breakers leakage data, the proposed TS changes include an additional requirement to perform a vacuum breaker leakage test as described below.

The leakage test will be conducted on each set of vacuum breakers (i.e., four vacuum breakers sets per unit) during each refueling outage when the drywell-to-suppression chamber bypass leak test would not be required to be performed. If maintenance is performed on the vacuum breaker assemblies, this additional test will be performed post-maintenance to verify that the leakage is acceptable. This test will be conducted at a drywell-to-suppression chamber differential pressure of 4.0 psid (i.e., the same as differential pressure required for the drywell-to-suppression chamber bypass leak test) by either pressurizing the drywell side of the vacuum breakers or inducing a vacuum on the suppression chamber side of the vacuum breakers. The acceptance criteria for the vacuum breaker leakage tests will be as follows. The total vacuum breaker leakage areas for all four sets of vacuum breakers will be less than or equal to 24% of the TS limit (i.e., 0.24 x 0.720 in^2 = 0.173 in^2). This proposed acceptable vacuum breaker leakage area provides a 76% margin to the TS limit to account for the leakage paths other than the vacuum breakers. As described above, previous bypass leakage testing measured a maximum bypass leakage area of 5.56% of the TS limit. The 76% margin is sufficiently large to accommodate the other expected leakage sources. In addition, each set of vacuum breakers will be limited to a leakage area twice the assumed leakage from a single vacuum breaker set, assuming the leakage area is evenly distributed among the four sets of vacuum breakers (i.e., four sets equate to 24% of the TS Limit where each set is 6% and twice this total is 12% of the TS Limit). This allows a leakage of less than or equal to 0.0865 in^2 (i.e., (0.173 in^2 divided by 4 sets of vacuum breakers) x (a factor of 2 times the acceptable total) = 0.0865 in^2) for an individual set of vacuum breakers. This criterion is stipulated to identify individual sets of vacuum breakers with higher leakage area.

The drywell-to-suppression chamber bypass leak test data obtained during previous testing at LGS demonstrates conformance by a large margin compared to the TS and design leakage requirements. The test data indicates that there is negligible risk that the bypass leakage will change adversely in future years. Furthermore, the proposed test frequency is judged to be acceptable based on the risk of the leakage sources other than the vacuum breakers being essentially equivalent to that of the rest of the primary containment structure, which is leak tested (i.e., CILRT) every 40 +/− 10 months as required by TS Surveillance Requirement 4.6.1.2.a. A bypass leak test will be developed and conducted to verify acceptable vacuum breaker bypass leakage areas for those outages when the bypass leak test will not be required to be performed. The proposed vacuum breaker leakage test with stringent acceptance criteria, combined with other negligible leakage areas, provide an acceptable level of assurance that the bypass leakage can be measured and an adverse condition can be detected and corrected such that the existing level of confidence that the primary containment will function as required during a LOCA is maintained.

Therefore, the proposed TS changes will not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes involve the drywell-to-suppression chamber bypass leak test frequency. There are no physical or operational changes as a result of these proposed changes. These proposed changes include the requirement to perform an additional surveillance test on the vacuum breaker assemblies, applying a differential pressure of 4.0 psid which is the same differential pressure as currently required by TS for the drywell-to-suppression chamber bypass leak test. This required test will ensure that acceptable vacuum breaker leakage is maintained during those intervals when the drywell-to-suppression chamber bypass leak test is not required to be performed. Furthermore, the affected structure (i.e., primary containment) acts as an accident mitigator and not as an accident initiator. Accordingly, the possibility of a different type of malfunction of equipment or the possibility of an accident of a different type is not introduced.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The drywell-to-suppression chamber bypass leak test data obtained during previous testing at LGS demonstrates conformance by a large margin to the TS and design leakage requirements. The test data indicate that there is negligible risk that the bypass leakage will change adversely in future years. Furthermore, the proposed test frequency is judged to be acceptable based on the risk of sources of leakage other than the vacuum breakers being essentially equivalent to that of the rest of the primary containment structure, which is tested every 40 +/− 10 months. A bypass leak test will be developed and conducted to verify acceptable vacuum breaker bypass leakage areas for those outages when the bypass leak test will not be required to be performed. The proposed vacuum breaker leakage test with stringent acceptance criteria, combined with the other negligible potential leakage areas, provide an acceptable level of assurance that the bypass leakage can be measured and an adverse condition can be detected and corrected such that the existing levels of confidence that the primary containment will function as required during a LOCA is maintained.

Therefore, the consequences of an accident are not impacted by this change and containment integrity during a LOCA will be maintained.

Therefore, the proposed TS changes do not involve a 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: 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: Larry E. Nicholson, Acting

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: November 17, 1993

Description of amendment request: The proposed Technical Specification (TS) changes to Surveillance Requirements would eliminate unnecessary emergency diesel generator (EDG) testing when a diesel generator or an offsite power source becomes inoperable. The proposed change would reduce the stresses on the diesel generators caused by unnecessary testing.

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 involve a significant increase in the probability or consequences of an accident previously evaluated because implementation of the proposed TS change, which would delete the requirement to demonstrate the operability of an otherwise operable EDG once the potential for a common cause failure has been dismissed, does not affect the design or performance characteristics of an EDG. Similarly, deleting the requirement to demonstrate the operability of EDGs when an offsite power source is inoperable does not affect the design or performance characteristics of an EDG. Therefore, the EDGs will maintain their ability to perform their design function. The EDGs are not assumed to be an initiator of any analyzed event. The role of the EDGs is the mitigation of accident consequences. Therefore, this proposed TS change does not increase the probability of an accident previously evaluated.

The consequences of an accident previously evaluated could be affected by the proposed TS change. As described above, implementation of the proposed change will result in the EDGs maintaining their ability to perform their design function. Excessive testing of EDGs can cause reduced reliability. Precluding unnecessary testing of operable EDGs will improve EDG reliability and thereby have an overall positive affect on plant safety. Therefore, this proposed TS change does not increase the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because implementation of the proposed TS change will not involve physical changes to plant systems, structures, or components (SSC). The design or performance characteristics of the EDG will not be affected by the proposed change. The proposed change does not introduce any new modes of plant operation or make any changes to system setpoints which would initiate a new or different kind of accident. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. The proposed change does not involve a significant reduction in a margin of safety because the proposed TS change does not affect the design or performance of any EDG. The change will increase EDG reliability by reducing the stresses on the EDG from unnecessary testing. This will result in an overall increase in plant safety. Therefore, the proposed 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: 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: November 19, 1993

Description of amendment request: The proposed change would eliminate the listing of specific position titles for the Plant Operations Review Committee (PORC) composition in favor of allowing the Plant Manager to appoint PORC members. This would eliminate the need to change the Technical Specifications (TSs) in the future whenever a position title is changed.

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 involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed TS change is administrative in nature. The PORC member titles will be removed from the TS to facilitate not requiring that a TS change be submitted for NRC approval when position titles change. PORC member qualifications will continue to be consistent with those required for the Facility Staff and meet or exceed Sections 4.2, 4.4, or 4.6 of ANSI N18.1-1971. The proposed change ensures that PORC will continue to be comprised of personnel involved in daily plant activities who are experienced individuals with varied expertise. By maintaining the qualification requirements for members of PORC who represent various areas of expertise, PORC will continue to fulfill its requirements specified in TS Section 6.5.1.6. The proposed change does not involve any physical changes to plant systems, structures, or components (SSC), or the manner in which these SSC are operated, maintained, modified, tested, or inspected. Therefore, the proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because implementation of the proposed TS change will not involve physical changes to plant SSC or the manner in which these SSC are operated, maintained, modified, tested or inspected. The proposed change does not introduce any new modes of plant operation or make any changes to system setpoints which would initiate a new or different kind of accident. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. The proposed change does not involve a significant reduction in a margin of safety because the proposed TS change is administrative in nature by providing internal flexibility in changing organizational titles and does not reduce the PORC function or responsibilities. PORC will continue to be filled by appropriately qualified personnel who have a variety of expertise. The change does not affect the plant material condition, operation, or accident analyses. Therefore, the proposed 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: 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 Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: November 24, 1993

Description of amendments request: The proposed changes to the Technical Specification will relocate the reactor trip system and engineered safety feature actuation system response time limits from the TS to the Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes are administrative in nature and do not involve any change to the configuration or method of operation of any plant equipment used to mitigate the consequences of an accident. Also, the proposed changes do not alter the conditions or assumptions in any of the FSAR accident analyses. Since the FSAR accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed changes. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

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 are administrative in nature and do not involve any change to the configuration or method of operation of any plant equipment used to mitigate the consequences of an accident.Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting failure been identified as a result of the proposed changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes are administrative in nature and will continue to ensure that the response times for the RTS and ESFAS instrumentation do not exceed the limits assumed in the accident analyses. As a result of the proposed changes, response time limits for the RTS and ESFAS will be administratively controlled in accordance with the provisions of 10 CFR 50.59, thus eliminating an unnecessary burden of governmental regulation without reducing protection for public health and safety. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: James H. Miller, III, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: S. Singh Bajwa

Tennessee Valley Authority (TVA), Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant (BFN), Units 1, 2, and 3, Limestone County, Alabama

Date of amendment request: September 30, 1993 (TS 337)

Description of amendment request: The proposed amendments provide an administrative vehicle for modifying a condition of the facility operating license for each of the BFN units. The condition requires the licensee to implement and maintain in effect all provisions of the "Fire Protection Program (FPP)" and lists the U.S. Nuclear Regulatory Commission (NRC) staff safety evaluations (SE) approving the FPP. If the staff approves of a revision currently under review to an element of the FPP, the "Appendix R Safe Shutdown Program (SSP)", the proposed amendments would add the staff SE documenting approval of the revised SSP to the above listing of SEs in each facility operating license. The current SSP is directed toward the safe shutdown of only one operating plant (Unit 2). The revised SSP would be directed toward the safe shutdown of two operating plants (Units 2 and 3).

Additionally, the proposed amendments add the definition of the SSP to Section 1.0 of the Unit 3 Technical Specifications (TS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change is administrative in nature. The proposed change is being made to revise the license condition to reflect a combined Unit 2 and 3 Appendix R Safe Shutdown Program following NRC approval. Compliance with the applicable Appendix R requirements is ensured through implementation of the Fire Protection Program and the Appendix R Safe Shutdown Program. The change does not affect any design bases accident or the ability of any safe shutdown equipment to perform its function. Also, there are no physical modifications required to implement this TS change. Therefore, these proposed administrative changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change is administrative in nature. The proposed change is being made to revise the license condition to reflect a combined Unit 2 and 3 Safe Shutdown Program following NRC approval. Compliance with the applicable Appendix R requirements is ensured through implementation of the Fire Protection Program and Appendix R Safe Shutdown Program. This change does not affect any design basis accident or the ability of any safe shutdown equipment to perform its function. Also, there are no physical modifications required to implement this TS change. Therefore, these proposed administrative changes do not create the possibility of a new or different kind of accident from an accident previously evaluated.

3. This change does not involve a significant reduction in the margin of safety.

The proposed changes are administrative in nature. Compliance with the applicable Appendix R requirements is ensured through the implementation of the Fire Protection Program and Appendix R Safe Shutdown Program. The proposed change does not affect any design basis accident and does not reduce or adversely affect the capability to achieve and maintain safe shutdown in the event of a fire. Furthermore, no reductions to the requirements for equipment operability, surveillance requirements or setpoints are being made which could result in reduction in the margin of safety. Therefore, these proposed administrative changes will not result in a reduction in the margin of safety.

The NRC 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: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Mr. Frederick J. Hebdon

Tennessee Valley Authority (TVA), Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant (BFN), Units 1, 2, and 3, Limestone County, Alabama

Date of amendment request: October 12, 1993 (TS 320)

Description of amendment request: The proposed amendment would delete reference in the BFN Unit 3 Technical Specifications (TS) to the Reactor Water Cleanup (RWCU) system floor drain high temperature switches and the RWCU system space high temperature switches. The piping configuration for the Unit 3 RWCU system has been modified, and the licensee contends that its revised High Energy Line Break (HELB) analysis has demonstrated that these switches are no longer required. Instead, to initiate RWCU system isolation, the HELB analysis has indicated the need for temperature switches in the main steam vault, the heat exchanger room, and the RWCU pipe trench. The proposed amendment therefore would add temperature switches to the Unit 3 TS for these areas and modify the TS Bases section accordingly. The proposed amendment also adds clarifying remarks to Tables 3.2.A and 3.2.B of the TS for each of the BFN units. The proposed remarks list the actuation signals for the various primary containment valve group isolations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

An analysis of HELBs in the Unit 3 reactor building identified certain RWCU pipe breaks which could not be automatically detected and isolated in a reasonable time frame. To resolve this issue, a design change is being performed to remove from service the existing non-environmentally qualified temperature switches used to detect RWCU line breaks and replace them with environmentally qualified RTDs [resistance temperature detectors] and IEEE [Institute of Electrical and Electronics Engineers] Class 1E qualified ATUs [analog trip units] located to detect and isolate the critical RWCU pipe breaks. This TS amendment adds the new ATUs [sic] function to Tables 3.2.A and 4.2.A. Note 14 is deleted from Table 3.2.A since it only applies to the temperature switches being removed from the table.

The safety function of the RTD/ATU temperature loops is to provide an isolation signal to close the RWCU suction line isolation valves (FCV-69-001 and FCV-69-002) and RWCU return line valve (FCV-69-012) on a high area temperature. This ensures RWCU pipe breaks are isolated. No other RWCU safety functions are affected by the change.

The new RTD/ATU temperature loops were chosen to decrease the time required to initiate closure of the RWCU valves. This improves the detection/isolation of RWCU breaks and helps to limit the reactor coolant lost, helps ensure core cooling, and helps ensure that environmental conditions inside the reactor building are maintained within the required limits.

Components added by this change are qualified for the environment in which they will operate. This ensures that the system will perform its function in a post accident environment. No additional paths for the release of radiation or contamination are created. The failure modes of the RTDs and ATUs are such that any single failure will result in a gross failure alarm and/or a channel trip. Because of the redundancy, separations, and logic designed into the system, a single failure of any part of the system will not prevent isolation of the primary containment isolation valves and spurious operation is minimized. The RTDs will be located and the instrument setpoints will be set to preclude spurious trips due to ambient temperatures including localized hot areas while assuring a timely trip due to a pipe break. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change is being made to improve the RWCU leak detection/isolation function of the RWCU Primary Containment Isolation System (PCIS). The PCIS will perform its intended safety function in the same manner as the previous installation. There is no affect [sic] on the function or operation of any other plant system.

Failure of the RTD/ATU temperature loops would be no different than failure of existing temperature switches. Since environmental qualification requirements, divisional separation, single failure requirements and one-out-of-two taken twice logic requirements are maintained, the possibility of a RWCU isolation failure on a RWCU line break or of a spurious isolation is no more likely after the change than before.

In the existing design, logic relays are powered from RPS Bus A or B. The new design also uses RPS Bus A or B to feed the ATUs. Therefore, the consequence of a power failure is unchanged from the present design. The seismic qualification and proper circuit coordination of the installation is maintained. The system functions and operates in the same manner as previously evaluated in the Safety Analysis Report. No new system interactions other than additional RTDs located in the main steam valve vault to input into the PCIS logic for isolation of the RWCU have been introduced by this activity. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The margin of safety will be enhanced by installing instruments that provide quicker response to a temperature rise indicative of a pipe break. Calculations have been performed to determine the analytical limits for the RTD/ATU temperature loops in each of the monitored areas and to determine the setpoints for the ATUs in each area. The setpoints are set above the maximum expected room temperatures to avoid spurious actuations due to ambient conditions and below the analytical limits to ensure timely detection of a pipe break. This type of design utilizing ATUs has been analyzed by the NRC [U.S. Nuclear Regulatory Commission staff] (NEDO-21617, Analog Transmitter/Trip Unit System for Engineered Safeguard Sensor Trip Input) and has been found to be generically acceptable at BWR facilities. Therefore, the proposed amendment does not involve a 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: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Mr. Frederick J. Hebdon

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: December 10, 1993

Description of amendment request: The proposed change would change the Technical Specifications (TS) for the North Anna Power Station, Units No. 1 and No. 2 (NA-1&2).

Specifically, the proposed changes would modify the surveillance frequency of the Auxiliary Feedwater System pumps from monthly to quarterly in accordance with the guidance provided in Generic Letter 93-05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation," dated September 27, 1993.

The NRC has completed a comprehensive examination of surveillance requirements in TS that require testing at power. The evaluation is documented in NUREG-1366, "Improvements to Technical Specification Surveillance Requirements," dated December 1992. The NRC staff found, that while the majority of testing at power is important, safety can be improved, equipment degradation decreased, and an unnecessary burden on personnel resources eliminated by reducing the amount of testing at power that is required by TS. Based on the results of the evaluations documented in NUREG 1366, the NRC issued Generic Letter 93-05.

The Auxiliary Feedwater System supplies water to the steam generators to remove decay heat from the Reactor Coolant System. To ensure operability of the Auxiliary Feedwater System, the pumps are currently tested on a monthly basis as required by the TS. Consistent with Generic Letter 93-05, Item 9.1 and NUREG-1366, the licensee is requesting a change to the surveillance testing frequency for the Auxiliary Feedwater Pumps from monthly to quarterly on a staggered test basis.

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:

Specifically, operation of North Anna Power Station in accordance with the proposed Technical Specifications changes will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

Changing the surveillance test frequencies of the Auxiliary Feedwater System pumps does not significantly affect the probability of occurrence or consequences of any previously evaluated accidents. Quarterly testing of the pumps on a staggered basis will continue to assure that the Auxiliary Feedwater System will be capable of performing its intended functions. Therefore, the change in frequency of testing the Auxiliary Feedwater System pumps does not affect the probability or consequences of any previously analyzed accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Changing the surveillance test frequency of the Auxiliary Feedwater System pumps does not involve any physical modification of the plant or result in a change in a method of operation. Quarterly testing of the Auxiliary Feedwater System pumps on a staggered basis will continue to assure that the Auxiliary Feedwater System will be capable of performing its intended function. Therefore, a new or different type of accident is not made possible.

3. Involve a significant reduction in a margin of safety.

Changing the surveillance test frequency of the Auxiliary Feedwater System pumps does not affect any safety limits or limiting safety system settings. System operating parameters are unaffected. The availability of equipment required to mitigate or assess the consequence of an accident is not reduced. Quarterly testing of the Auxiliary Feedwater System pumps on a staggered basis will continue to assure that the Auxiliary Feedwater System will be capable of performing its intended functions. Safety margins are, therefore, not decreased.

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: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow

Notice of Issuance of Amendments to Facility Operating Licenses

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 A Hearing in connection with these actions was published in the Federal Register 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 applications for amendment, (2) the amendment, 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 rooms for the particular facilities involved.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: October 5, 1993

Brief description of amendment: The proposed change to the Technical Specifications would revise the wording of liquid release rate limit and its associated bases, and relocate the old 10 CFR 20.106 requirements to the new 10 CFR 20.1302 to be consistent with the revised terminology of 10 CFR Part 20. The new wording will retain the same overall level of effluent control required to meet the design objectives of Appendix I to 10 CFR Part 50.

Date of issuance: December 14, 1993

Effective date: December 14, 1993

Amendment No.: 40

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: November 10, 1993 (58 FR 59746) The Commission's related evaluation of the amendment is

contained in a Safety Evaluation dated December 14, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: August 5, 1992

Brief description of amendments: The amendment revises the Braidwood Station, Units 1 and 2, Technical Specifications (TS) regarding Engineered Safety Features Actuation System (ESFAS) instrumentation. The ESFAS, Functional Units, Analog Channel Operational Test interval is changed from monthly to quarterly. Eighteen changes to the Reactor Trip System (RTS) are also included in this TS change.

Date of issuance: December 16, 1993

Effective date: December 16, 1993

Amendment Nos.: 44 and 44

Facility Operating License Nos. NPF-72 and NPF-77. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 28, 1992 (57 FR 48816) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 16, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: October 29, 1993

Brief description of amendments: The amendments revise Table 3.6.3-1, "Primary Containment Isolation Valves," of the LaSalle Technical Specifications for Units 1 and 2 by adding a new category of valves to these tables. There are a total of eight new valves added in each table, consisting of two check valves in each of four backfill lines. The backfill lines were added in response to NRC Bulletin 93-03, "Resolution of Issues Related to Reactor Vessel Water Level Instrumentation in BWRs," dated May 28, 1993.

Date of issuance: December 10, 1993

Effective date: December 10, 1993

Amendment Nos.: 92 and 76

Facility Operating License Nos. NPF-11 and NPF-18. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 9, 1993 (58 FR 59493). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 10, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: November 25, 1992, as supplemented by letter dated February 5, 1993.

Brief description of amendment: The amendment revises surveillance intervals for Process Radiation Monitors, Area Radiation Monitors, the Main Steam Line Radiation Monitors, the Auxiliary Feedwater System Initiating Logic, the Main Steam Safety Valves Setpoints, and the Toxic Gas Detection System Monitors to accommodate a 24-month refueling cycle. These revisions are being made in accordance with the guidance provided by Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle."

Date of issuance: December 16, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 166

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1993 (58 FR 16219) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 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.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: October 5, 1993, as supplemented November 15 and 22, 1993

Brief description of amendments: The amendments revise the Technical Specifications to reflect the appropriate operability requirements for cold leg accumulator water volume and surveillance requirements values for the centrifugal changing pumps, safety injection pumps, and residual heat removal pumps to prevent possible runout conditions during a loss of coolant accident event.

Date of issuance: December 15, 1993

Effective date: December 15, 1993

Amendment Nos.: 110 and 104

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 27, 1993 (58 FR 57848) The November 15 and 22, 1993, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 15, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: October 5 and 14, 1993, as supplemented November 15 and December 14, 1993

Brief description of amendments: The amendments revise the Technical Specifications to allow the implementation of interim steam generator tube plugging criteria for the tube support plate elevations.

Date of issuance: December 16, 1993

Effective date: December 16, 1993

Amendment Nos.: 111 and 105

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 27, 1993 (58 FR 57849) The November 15 and December 14, 1993, letters provided clarifying information and revisions to the coolant specific activity that did not change the scope of the original application and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 16, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: September 7, 1993

Brief description of amendments: The amendments revise the Technical Specification to (a) reduce the slope of the axial power imbalance penalty in the overtemperature-delta temperature reactor protection system trip setpoint equation, and (b) increase the boron concentration limits in the cold leg accumulators, the refueling water storage tank, the reactor coolant system, and refueling canal during MODE 6 conditions. These changes reflect the reloading of Unit 1 with Mark BW fuel for Cycle 8 including an increase in cycle length from 350 effective full power days (EFPD) to 390 EFPD.

Date of issuance: December 17, 1993

Effective date: December 17, 1993

Amendment Nos.: 112 and 106

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 27, 1993 (58 FR 57847) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 17, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: October 25, 1993, as supplemented December 3 and 6, 1993

Brief description of amendments: The amendments revise the Technical Specifications (TS) Figure 2.1-1, certain TS Table 2.2-1 factors in the equation for the OVERTEMPERATURE delta T and OVERPOWER delta T setpoints, and Figure 3.2-1 to reflect a reduction in the required minimum measured reactor coolant system (RCS) flow rate from 385,000 gallons per minute (gpm) to 382,000 gpm for Unit 1. Catawba Unit 2 values are unchanged and, accordingly, certain TS pages were modified to retain the current TS values in effect for Unit 2.

The need for these changes is attributed to the effects of steam generator tube plugging and to a hot leg temperature streaming phenomenon. The application also proposed to revise the text of TS 2.1.1 and the definition for TS Figure 2.1-1. These changes are not related to the changes in RCS flow rate. The staff is continuing to review these proposed changes and, accordingly, they are not dealt with in this amendment.

Date of issuance: December 17, 1993

Effective date: Effective within 30 days of its date of issuance.

Amendment Nos.: 113 and 107

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 10, 1993 (58 FR 59747) The December 3 and 6, 1993, letters provided clarifying information that did not change the scope of the October 25, 1993, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 17, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: May 20, 1993

Brief description of amendment: The amendment removed unnecessary operability requirements for the Intermediate Range Monitors (IRMs) and the Average Power Range Monitors (APRMs) during plant shutdown operations.

Date of issuance: December 13, 1993

Effective date: December 13, 1993

Amendment No: 109

Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34077) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 13, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: July 23, 1993

Brief description of amendments: The amendments are necessary to implement new Standards for Protection Against Radiation (10 CFR Part 20).

Date of issuance: December 16, 1993

Effective date: December 16, 1993

Amendment Nos.: 125, 63

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 1, 1993 (58 FR 46234) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 16, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: October 8, 1993

Brief description of amendment: The amendment deletes portions of the Oyster Creek Nuclear Generating Station Radiological Effluent Technical Specifications and relocates them to controlled programs in accordance with the guidance contained in NRC Generic Letter 89-01, dated January 31, 1989.

Date of issuance: December 13, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 166

Facility Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 10, 1993 (58 FR 59749) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated December 13, 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. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: October 18, 1993

Brief description of amendment: The amendment revises the Technical Specifications to delete requirements to demonstrate by testing, that a redundant system/component is operable when a system/component is declared inoperable. In lieu of testing the redundant system/component to demonstrate its operability the Technical Specifications are being revised to require an administrative check of plant records to verify operability of the redundant system/component. Confirming changes are made to Definition 1.1 "Operable-Operability."

Date of issuance: December 21, 1993

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 167

Facility Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 10, 1993 (58 FR 59749) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 21, 1993. No significant hazards consideration comments received: Yes. Comments were provided by letter dated December 10, 1993, from the State of New Jersey, Department of Environmental Protection and Energy, Division of Environmental Safety, Health and Analytical Programs. The comments and the NRC staff's response are addressed in the Commission's Safety Evaluation dated December 21, 1993.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: September 20, 1993, as supplemented on October 1, 1993.

Brief description of amendment: The amendment revises the plant Technical Specifications to reflect a partial GPU Nuclear reorganization to become effective when Three Mile Island, Unit 2 (TMI-2), enters the Post-Defueling Monitored Storage (PDMS) mode. This reorganization includes deleting TMI-2 as a Division and incorporating those functions and responsibilities required to maintain the PDMS condition and requirements into the current TMI-1 Division. The TMI-1 Division will be renamed the TMI Division.

Date of issuance: December 13, 1993

Effective date: No specific date has been specified by the staff for the effectiveness of this amendment. The amendment will become fully effective at such time as the Vice President - TMI has been delegated the full responsibility of the overall safe operation of both TMI-1 and TMI-2.

Amendment No.: 179

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 13, 1993 (58 FR 52987). The October 1, 1993, submittal provided clarifying and corrected TS pages which did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated December 13, 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 No. 1, Dauphin County, Pennsylvania

Date of application for amendment: August 9, 1993

Brief description of amendment: The amendment revises the plant Technical Specifications to be consistent with a major revision to 10 CFR Part 20 that is to be implemented by January 1, 1994.

Date of issuance: December 21, 1993

Effective date: As of the date of issuance to be implemented on January 1, 1994.

Amendment No.: 180

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 10, 1993 (58 FR 59751). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 21, 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 No. 1, Dauphin County, Pennsylvania

Date of application for amendment: August 24, 1993.

Brief description of amendment: The amendment revises the plant Technical Specifications to adopt the Standard Technical Specification (STS) provision that allows a period up to 24 hours to complete a surveillance requirement upon the discovery that the surveillance has been missed.

Date of issuance: December 22, 1993

Effective date: As of its date of issuance, to be implemented within 30 days of issuance.

Amendment No.: 181

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 10, 1993 (58 FR 59751). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 22, 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.

Gulf States Utilities Company and Cajun Electric Power Cooperative, Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: January 13, 1993, as supplemented by letter dated October 18, 1993.

Brief description of amendment: The amendment revises the River Bend, Unit 1 operating license to reflect a change in ownership of Gulf States Utilities (GSU). GSU, which owns a 70 percent undivided interest in the River Bend Station, will become a wholly-owned subsidiary company of Entergy Corporation.

Date of issuance: December 16, 1993

Effective date: December 6, 1993, to be implemented within 180 days of issuance.

Amendment No.: Amendment No. 69

Facility Operating License No. NPF-47: The amendment revised the license.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36435) The October 18, 1993, supplemental letter provided additional clarifying information and did not change the

initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 1993. No significant hazards consideration comments received: Yes. Comments and a request for hearing were received from Cajun Electric Power Cooperative of Baton Rouge, Louisiana.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: January 13, 1993, as supplemented by letter dated June 29, 1993.

Brief description of amendment: The amendment revises the River Bend Station, Unit 1 operating license to include as a licensee, Entergy Operations, Inc. (EOI), and to authorize EOI to use and operate River Bend and to possess and use related licensed nuclear materials.

Date of issuance: December 16, 1993

Effective date: December 16, 1993 to be implemented within 180 days of issuance.

Amendment No.: 70

Facility Operating License No. NPF-47: The amendment revised the license.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36436) The June 29, 1993, supplemental letter provided additional clarifying information and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 1993. No significant hazards consideration comments received: Yes. Comments and a request for hearing were received from Cajun Electric Power Cooperative of Baton Rouge, Louisiana.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: June 18, 1993

Brief description of amendment: The proposed changes to Technical Specifications 6.2.3.1, "Independent Safety Engineering Group (ISEG) Function;" 6.2.3.4, "ISEG Records;" 6.4.1, "Training;" and 6.5.2.2, "Nuclear Review and Audit Group (NRAG) Composition" are editorial changes reflecting recent administrative/organizational changes which occurred at Clinton Power Station.

Date of issuance: November 29, 1993

Effective date: Immediately, to be implemented within 30 days.

Amendment No.: 86

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 18, 1993 (58 FR 43927) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 29, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library District, 310 N. Quincy Street, Clinton, Illinois 61727

Indiana Michigan Power Company, Docket No. 50-316, Donald C. Cook Nuclear Plant, Unit No. 2, Berrien County, Michigan

Date of application for amendment: April 16, 1993, as supplemented September 28 and December 3, 1993

Brief description of amendment: The amendment revises Technical Specifications to allow certain tests normally designated as 18-month surveillances to be delayed until the next refueling outage scheduled to begin August 6, 1994.

Date of issuance: December 22, 1993

Effective date: December 22, 1993

Amendment No.: 158

Facility Operating License No. DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 4, 1993 (58 FR 41505) The supplemental letters provided clarifying information which did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 22, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: June 7, 1993

Brief description of amendment: The amendment revises Technical Specification (TS) 3/4.8.1, "AC Sources-Operating," and associated Bases to eliminate unnecessary diesel generator testing when a diesel generator or an offsite power source becomes inoperable. The amendment is intended to increase diesel generator reliability and the overall level of plant safety by reducing the stresses on the diesel generators caused by unnecessary testing. The amendment also makes additional changes to TS 3/4.8.1 to further enhance diesel generator reliability and incorporate certain administrative changes.

Date of issuance: December 15, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 54

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36440) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 15, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: November 11, 1992, as supplemented by letters dated July 2, 1993, and November 24, 1993.

Description of amendment request: The amendment modifies the Seabrook Station Technical Specifications to allow the use of either the fixed incore detector system or the movable incore detector system to perform technical specification surveillances. Specifically, the amendment modifies Technical Specification sections 3.1.3, 4.2.2, 4.2.3, 4.2.4, and 3.3.3.

Date of issuance: December 22, 1993

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 27

Facility Operating License No. NPF-86. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 3, 1993 (58 FR 7002). The licensee's letters dated July 2, 1993, and November 24, 1993, provide additional information and clarification to the application but do not change the initial proposed no significant hazards

consideration determination and do not provide information outside the scope of the original Federal Register notice. The licensee's November 24, 1993, letter provides a commitment to acquire, through the end of Cycle 4, a limited number of flux maps using the movable incore detector system for comparison to flux maps obtained using the fixed incore detector system. Additionally, the licensee committed to provide a report to the NRC at the end of Cycle 4 regarding comparison of the data obtained from both systems. The NRC's approval of the requested TS changes is conditioned upon the licensee's implementing the commitment. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 22, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

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: March 19, 1993

Brief description of amendment: The amendment revises the Technical Specifications (TS) to reflect staff positions and improvements to the TS in response to Generic Letter 90-06, "Resolution of Generic Issue 70, 'Power-Operated Relief Valve and Block Valve Reliability, and Generic Issue 94, 'Additional Low-Temperature Overpressure Protection for Light Water Reactors.'" Generic Issue 94 was closed out by Amendment 80 dated July 12, 1993. With the issuance of this TS amendment, we consider the licensee's response to Generic Letter 90-06 and Generic Issue 70 (TAC No. M77362) complete for the Millstone Nuclear Power Station, Unit No. 3.

Date of issuance: December 16, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 88

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 9, 1993 (58 FR 32388) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resource Center, Three Rivers Community Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: July 21, 1993

Brief description of amendment: The amendment revised the Technical Specifications to modify the requirement for acquisition of baseline data on single-loop operation from during startup testing following each refueling outage to at least once per 18 months.

Date of issuance: December 10, 1993

Effective date: December 10, 1993

Amendment No.: 131

Facility Operating License No. NPF-14: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 4, 1993 (58 FR 41509) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 10, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: April 1, 1993 as supplemented June 9 and August 5, 1993.

Brief description of amendment: This amendment relocates the Radiological Effluent Technical Specifications (RETS) to the Offsite Dose Calculation Manual (ODCM) and Process Control Program (PCP) in accordance with NRC staff Generic Letter 89-01, and changes the required frequency for submittal of the radioactive Effluent Release Report from semiannual to annual in accordance with 10 CFR 50.36(a).

Date of issuance: December 6, 1993

Effective date: 30 days from date of issuance

Amendment No.: 193

Facility Operating License No. NPF-1: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 7, 1993 (58 FR 36442) The supplements proposed additional changes and clarification to the TS regarding the frequency of effluent reporting. The changes were within the scope of the action described in the notice and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 6, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: September 25, 1992

Brief description of amendment: The amendment to the Technical Specifications (TSs) deletes the surveillance requirements for the iodine analyzer portion of the drywell atmosphere Continuous Atmosphere Monitoring system from TS Table 4.6-2 and makes accompanying changes to TS Bases Section 3.6/4.6.D. These changes are consistent with the guidance in Regulatory Guide 1.45, "Reactor Coolant Boundary Leakage Detection Systems."

Date of issuance: December 9, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 200

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 25, 1993 (58 FR 16229) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 9, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: May 26, 1992

Brief description of amendments: These amendments increase the shutdown margin requirements for the current operating cycle at both units; reduce the containment pressure high-high setpoint and allowable value; and change the containment spray system, containment fan cooler and service water system response times. These changes were necessitated by the discovery of containment fan cooler unit and containment spray system response

times greater than originally assumed for Loss of Coolant Accident (LOCA) or Main Steam Line Break (MSLB) analysis, and auxiliary feedwater system flow greater than assumed for the MSLB analysis.

Date of issuance: December 16, 1993

Effective date: December 16, 1993

Amendment Nos. 149 and 127

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 19, 1992 (57 FR 37571) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 16, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

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: June 28, 1991

Brief description of amendment: The amendment revised Technical Specification 3.5.1 to add a required action to periodically monitor alternative indication if one or both automatic depressurization system (ADS) safety related instrument air header(s) low pressure alarm system instrumentation channels become inoperable.

Date of issuance: December 13, 1993

Effective date: December 13, 1993

Amendment No.: 52

Facility Operating License No. NPF-58. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 7, 1991 (56 FR 37590) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 13, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

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: March 19, 1991

Brief description of amendment: The amendment revised Technical Specification Table 3.3.3-1 to make the required actions for the automatic depressurization system (ADS) consistent with the as-built configuration of the system. An editorial change to Action statement 32 was added to this amendment to make Action statement 32 consistent with Action statements 30 and 33.

Date of issuance: December 17, 1993

Effective date: December 17, 1993

Amendment No.: 53

Facility Operating License No. NPF-58. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 15, 1991 (56 FR 22480) Additional clarifying information was provided verbally by the utility on November 5, 1993, that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 17, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: November 9, 1992 as supplemented on November 22, 1993

Brief description of amendment: The amendment revises the Technical Specifications to allow the de-energization of the borated water storage tank outlet isolation valves in the open position during operational Modes 1, 2, 3, and 4.

Date of issuance: December 16, 1993

Effective date: December 16, 1993

Amendment No. 182

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 12, 1993 (58 FR 28061) The supplemental letter provided additional information that did not change the proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a safety evaluation dated December 16, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: August 1, 1991

Brief description of amendment: The amendment revises the Technical Specification Sections 3.3.3.6, 3.6.4.1, 4.11.2.5, 6.2.2, and Tables 3.3-4 and 3.3-10 to correct typographical errors and make editorial changes.

Date of issuance: December 21, 1993

Effective date: December 21, 1993

Amendment No.: 86

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 18, 1991 (56 FR 47244) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 21, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity For a Hearing (Exigent Public Announcement 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 consideration 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.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By February 4, 1994, 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 a 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 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 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 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 a 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).

Commonwealth Edison Company, Docket No. STN 50-456, Braidwood Station, Unit 1, Will County, Illinois

Date of application for amendment: November 12, 1993, as supplemented by letters dated November 18 and December 6, 1993

Brief description of amendment: The amendment changes the existing technical specifications (TS) by adding a footnote to TS 4.4.5.0 to address steam generator (SG) operability requirements. The change references an unscheduled inspection of the 1C SG which occurred due to a tube leak in that SG. The amendment was required because the circumstances of the inspection were not covered by the existing TS 3/4.4.5. It will allow SG operability requirements to be satisfied until the next SG inservice inspection, scheduled to begin no later than March 5, 1993.

Date of issuance: December 16, 1993
Effective date: December 16, 1993
Amendment No.: 43

Facility Operating License No. NPF-72. The amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated December 16, 1993.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

Local Public Document Room location: Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

NRC Project Director: James E. Dyer

Dated at Rockville, Maryland, this 28th of December 1993.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects - III/IV/V, Office of Nuclear Reactor Regulation

[Doc. 94-53 Filed 1-4-94; 8:45 am]

BILLING CODE 7590-01-F

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-33401; File No. SR-CHX-93-29]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Accelerated Approval to Proposed Rule Change Relating to Extended Trading Hours for the Chicago Stock Basket

December 29, 1993.

On October 27, 1993, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to extend the trading hours for the Chicago Stock Basket ("CXM").

The proposed rule change was published for comment in Securities Exchange Act Release No. 33241 (November 23, 1993), 58 FR 63407 (December 1, 1993). No comments were received on the proposal.

The CHX's primary trading session, including trading of the CXM, currently ends at 3 Central time (4 Eastern time).[3] The CXM is a standardized basket product consisting of twenty-five shares of each of the stocks included in the Chicago Mercantile Exchange's ("Merc") "MMI" futures contract. That contract is based on the American Stock Exchange's ("Amex") Major Market Index ("MMI"), a broad-based price-weighted index of twenty stocks listed on the New York Stock Exchange ("NYSE").[4]

The Exchange proposes to extend the hours for trading the CXM until 3:15 Central time (4:15 Eastern time). This proposal will make the trading hours of the CXM consistent with the trading hours of derivative products that are based on the same index as the CXM and other derivative products that could be used as a hedge against the CXM. According to the Exchange, similar trading hours should provide risk management benefits when trading the CXM.

The Exchange states that the proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[5] In particular, the Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

In recent years, concerns have been raised about the role that index-related trading strategies (e.g., use of the equity cash market to hedge positions in stock index futures and options contracts) played in increasing market volatility.[6] As a result, the Commission has, among other things, encouraged the national securities exchanges to list and trade standardized baskets of stocks.[7] The

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] See Article IX, Rule 10 of the CHX Rules.

[4] For further discussion of the terms of the CXM contract and the market structure for trading the CXM, see Securities Exchange Act Release No. 33053 (October 15, 1993), 58 FR 54610 (October 22, 1993) (File No. SR-CHX-93-18) ("CXM Approval Order").

[5] 15 U.S.C. 78f(b) (1988).

[6] See, e.g., SEC, Division of Market Regulation, The October 1987 Market Break (February 1988).

[7] In addition to the CXM, the Commission has approved the trading of market baskets on the NYSE and the Chicago Board Options Exchange ("CBOE"). See Securities Exchange Act Release

Continued

Commission believes that, in comparison to other methods of portfolio trading, basket products, such as the CXM, are an efficient means to make investment decisions based on the direction of standardized measures of stock market performance, and may enhance the market's ability to absorb program trading.[8]

The Commission has concluded that extending the trading hours for the CXM will enhance market participants' ability to use that basket for hedging purposes. The CXM offers a highly correlative hedge to the Merc's "MMI" futures contract. In addition, the CXM could be used to offset a position in the options on the MMI futures contract that are traded on the Merc; in the options on the MMI that are traded on the Amex; or in derivative products on other broad-based stock market indexes.[9] At the moment, however, CXM trading ends at 3 Central time (4 Eastern time), while trading of such derivative products continues until 3:15 Central time (4:15 Eastern time). The Commission recognizes that the current lack of coordination may hinder market participants' ability to adjust their risk in response to late price movements in the derivatives market.

Accordingly, the Commission believes that synchronizing the close of trading for the CXM with the close of trading for such derivative products will allow market participants to hedge their positions more effectively. Specifically, traders and investors will be able to employ closing strategies that reflect price movements that take place during the last fifteen minutes of derivatives trading, as well as complete last sale information for the various indexes' component stocks. To the extent that the CHX proposal will promote fair hedging opportunities, the Commission finds that extended trading hours should increase volume in the CXM, thereby adding to the depth and liquidity of the market for that basket product.[10]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. The CHX proposal is designed to eliminate a barrier to fair hedging opportunities; accelerated approval thereof will allow the resulting risk management benefits for traders and investors to be realized immediately. In addition, the proposed rule change was published in the **Federal Register** for the full statutory period and no comments were received on any aspect of the proposal.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CHX–93–29) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–145 Filed 1–4–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33379; File No. SR–MSTC–93–10]

Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing of a Proposed Rule Change Relating to the Limitation or Elimination of Directors' Liability

December 23, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 27, 1993, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by MSTC. MSTC amended the filing on October 6, 1993.[2] The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MSTC proposes to amend Article Ten of its Articles of Incorporation and Article VI, Section 1 of its By-Laws to limit or eliminate the potential monetary liability of its directors to the extent permitted by the Illinois Business Corporation Act except where such liability is the result of a violation of the federal securities laws.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC included statements concerning the purpose of and statutory basis for the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. MSTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposal will limit or eliminate the potential monetary liability of MSTC directors under certain circumstances. The proposed change is based on Section 2.10(b)(3) of the Illinois Business Corporation Act, under which MSTC is organized, which allows corporations to adopt provisions in their articles of incorporation that limit or eliminate the potential monetary liability of directors under certain circumstances.

General corporate law imposes a fiduciary duty of care upon each corporate director. This duty of care requires a director to exercise informed business judgment in good faith and to act with an honest believe that the action taken is in the best interest of the corporation. The proposal will not eliminate an MSTC's director's duty of care but will limit the personal liability of an MSTC director to MSTC or its shareholders should the director fail through negligence or gross negligence to satisfy his or her duty of care.[3] Under Illinois law, such limitations of personal liability do not apply in certain situations.

The proposal will prohibit limitation of a director's liability in instances where liability arises directly or indirectly as a result of a violation of federal securities laws. The proposal

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Nos. 27382 (October 26, 1989), 54 FR 45834 (October 31, 1989) (File No. SR–NYSE–89–05) (approving trading of basket of stocks comprising the Standard & Poor's ("S&P") 500 Portfolio Index); and 27383 (October 26, 1989), 54 FR 45846 (October 31, 1989) (File No. SR–CBOE–88–20) (approving trading of basket of stocks comprising the S&P 100 and S&P 500 Indexes).

[8] See CXM Approval Order, supra, note 4.

[9] For example, the promotional literature for the CXM illustrates how that basket could be used as a hedge against the S&P 100 options contract.

[10] The Commission used a similar rationale in approving extended trading hours for stock index options. See Securities Exchange Act Release No. 22957 (February 27, 1986), 51 FR 7869 (March 6, 1986) (File Nos. SR–CBOE–85–49, SR–Amex–86–02 and SR–NYSE–86–06). See also Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) (File No. SR–Amex–92–18) (approving trading of portfolio depository receipts until 4:15 Eastern time).

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from David T. Rusoff, Foley & Lardner, to Richard Strasser (Attorney), Division of Market Regulation, Commission (October 5, 1993).

[3] MSTC's proposal will limit a director's liability even if that director had been grossly negligent provided that the director exercised informed business judgment in good faith and acted with an honest belief that the action taken was in the best interest of the corporation. Because there has been no judicial interpretation on the scope of the applicable Illinois legislation, it is possible that an Illinois court may find as a matter of law that a director cannot act in a manner that is both grossly negligent and in good faith.

will not eliminate equitable remedies such as rescission or injunctive actions. Moreover, it will not eliminate the liability of an officer of MSTC for actions taken in that capacity even if the officer is also a director. Finally, the proposal will not affect the liability of a director for acts or omissions that occurred prior to approval of the proposal.

Limiting or eliminating directors' liability will help to ensure that MSTC will be able to recruit and retain competent directors. Due to the increased number and magnitude of lawsuits against directors, many other corporations from various states already have adopted provisions similar to those in MSTC's proposal.

The proposed rule change is consistent with the requirements of Section 17A of the Act because it will remove an impediment to attracting competent directors and thus will help assure the fair representation of shareholders and participants in the selection of directors and in the administration of MSTC's affairs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MSTC believes that no burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of MSTC. All submissions should refer to File No. SR–MSTC–93–10 and should be submitted by January 26, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–103 Filed 1–4–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33403; File No. SR–NYSE–93–35]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change Relating to Additions of Market-at-the-Close Orders to the "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A" and Amending Minor Rule Violation Enforcement and Reporting Plan

December 28, 1993.

On October 7, 1993 the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the Rule 476A Violations List for imposition of fines for minor violations of rules and/or policies by adding to the list Exchange procedures with respect to entry and cancellation of market-at-the-close ("MOC") orders on expiration days (i.e., expiration Fridays or the day on which Quarterly Index options expire). The NYSE also requested approval, under Rule 19d–1(c)(2), to amend its Rule 19d–1 Minor Rule Violation Enforcement and Reporting Plan to include the MOC procedures.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 33161 (November 5, 1993), 58 FR 60078 (November 12, 1993). No comments were received on the proposal.

Description and Background

In 1984, the Commission adopted amendments to paragraph (c) of Securities Exchange Act Rule 19d–1 to allow SROs to submit, for Commission approval, plans for the abbreviated reporting of minor rule violations.[4] Subsequently, in 1985, the Commission approved an NYSE Plan for the abbreviated reporting of minor rule violations pursuant to Rule 19d–1(c) under the Act. The Plan relieves the NYSE of the current reporting requirements imposed under section 19(d)(1) of the Act for violations listed in NYSE Rule 476A. The NYSE Plan, as embodied in NYSE Rule 476A, provides that the Exchange may designate violations of certain rules as minor rule violations. The Exchange may impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a violation of the delineated rules by issuing a citation with a specific penalty.[5] Such person can either accept the penalty, or opt for a full disciplinary hearing on the matter. Fines assessed pursuant to NYSE Rule 476A in excess of $2,500 are not considered pursuant to the Plan and must be reported in a manner consistent with the current reporting requirement of section 19(d)(1) of the Act. The Exchange also retains the option of bringing violations of rules included under NYSE Rule 476A to full disciplinary proceedings, and the

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[4] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Sharon Lawson, Assistant Director, Exchange and Options Regulation, Division of Market Regulation, Commission, dated October 5, 1993.

[4] See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Pursuant to paragraph (c)(1) of Rule 19d–1, an SRO is required to file promptly with the Commission notice of any "final" disciplinary action taken by the SRO. Pursuant to paragraph (c)(2) of Rule 19d–1, any disciplinary action taken by an SRO for a violation of an SRO rule that has been designated a minor rule violation pursuant to the Plan shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies. By deeming unadjudicated minor violations as not final, the Commission permits the SRO to report violations on a periodic, as opposed to immediate, basis.

[5] The List if contained under Supplementary Material to Exchange Rule 476A. As discussed in note 4 *supra*, only those fines imposed that are not in excess of $2,500 are subject to periodic reporting. Fines imposed pursuant to Rule 476A in excess of $2,500 are deemed final and therefore are subject to immediate reporting to the Commission.

Commission expects the Exchange to do so for egregious or repeat violations.

In adopting Rule 19d–1, the Commission noted that the Rule was an attempt to balance the informational needs of the Commission against the reporting burdens of the SROs.[6] In promulgating paragraph (c) of the Rule, the Commission was attempting further to reduce those reporting burdens by permitting, where immediate reporting was unnecessary, quarterly reporting of minor rule violations. The Rule is intended to be limited to rules which can be adjudicated quickly and objectively.

The NYSE currently is adding its procedures with respect to entry and cancellation of MOC orders on expiration days to the list of minor rule violations subject to the Rule 476A minor rule violation plan. The MOC order entry and cancellation procedures require, for example, that MOC orders be entered on the Exchange by 3:40 p.m. on expiration days if they are related to a strategy including any stock index future, stock index option or option on stock index future in expiring contracts, and that no cancellations of such orders be effected after 3:40 p.m. Violations of these policies could include late entry of MOC orders, entry of MOC orders which do not offset a published imbalance of 50,000 shares or more in a pilot stock or an improper cancellation of an MOC order. These procedures are announced to members and member organizations through an Information Memo issued approximately one week before each expiration day.

Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b)(1), (6) and (7), 6(d)(1) and 19(d) of the Act.[7] The proposal is consistent with the section 6(b)(6) requirement that the rules of an exchange provide that its members and persons associated with its members shall be appropriately disciplined for violations of rules of the exchange. In this regard, the proposal provides an efficient procedure for appropriate disciplining of members for a rule violation that is technical and objective in nature. Moreover, because the Plan provides procedural rights to the person fined and permits a disciplined person to request a full hearing on the matter, the proposal provides a fair procedure for the disciplining of members and persons associated with members, consistent with sections 6(b)(7) and 6(d)(1) of the Act.

The Commission also believes that the proposal provides an alternate means by which to deter violations of the NYSE rules included in the Plan, thus furthering the purposes of section 6(b)(1) of the Act. An exchange's ability to effectively enforce compliance by its members and member organizations with Commission and Exchange rules is central to its self-regulatory functions. Inclusion of a rule in an exchange's minor rule violation plan should not be interpreted to mean it is an unimportant rule. On the contrary, the Commission recognizes that inclusion of rules under a minor rule violation plan may not only reduce reporting burdens on an SRO but also may make its disciplinary system more efficient in prosecuting violations of these rules.

In addition, because the NYSE retains the discretion to bring a full disciplinary proceeding for any violation included on the List, the Commission believes that adding the procedures for entry and cancellation of MOC orders on expiration days to the List will enhance, rather than reduce, the NYSE's enforcement capabilities of these Exchange procedures.

As described above, MOC procedures are subject to change on a monthly basis and are outlined in an Information Memo disseminated to the members and member organizations prior to each expiration day. The Commission believes that whether a member or member organization has followed such specifically outlined procedures is amenable to quick, objective determinations of compliance with respect to activity on each expiration day. The quick and efficient resolution of questions of compliance with such procedures would facilitate the Exchange's ability to induce continued compliance without being hindered by the additional time and cost associated with more sophisticated Exchange disciplinary actions.

Finally, the Commission believes that the inclusion of the MOC procedural rules will prove to be an effective alternate response to a violation when the initiation of a full disciplinary proceeding is unsuitable because such a proceeding may be more costly and time-consuming in view of the minor nature of the particular violation. This is further reinforced by the nature of the monthly dissemination of these procedures to the members and their potential for change each month in response to the instruments affected on the expiration day and the surrounding circumstances at that time. By including the MOC procedures in the Rule 476A Minor Rule Violation List, the NYSE can quickly respond to violations, thereby deterring similar infractions the following month.

It is therefore ordered, Pursuant to section 19(b)(2) and Rule 19d–1(c)(2) under the Act,[8] that the proposed rule change (SR–NYSE–93–35) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–146 Filed 1–4–94; 8:45 am]

BILLING CODE 8010–01–M

[6] See Securities Exchange Act Release No. 13762 (July 8, 1977), 42 FR 35411 (July 14, 1977).

[7] 15 U.S.C. 78f(b)(1), (6) and (7), 78f(d)(1) and 78s(d) (1988).

[8] 15 U.S.C. 78s(b)(2) (1988) and 17 CFR 240.19d–1(c)(2) (1991).

[9] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–33400; File No. SR–NYSE–93–47]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Listing Standards for Non-U.S. Companies

December 29, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 16, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed modification to NYSE policy would amend Paragraph 103 of the NYSE Listed Company Manual ("Non-U.S. Companies") to permit non-U.S. issuers to distribute summary annual reports to U.S. holders, under certain circumstances.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received

on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed modification to policy recognizes an amendment, adopted in 1990, to the U.K. Companies Act which permits issuers listed on the London Stock Exchange to provide an option to holders of their ordinary shares to receive a full annual report or a summary annual report. The Companies Act sets forth the specific financial and management information that must be contained in the summary reports.

The Companies Act, as amended, also requires that shareholders who receive only the summary report be given the opportunity, at any time, to obtain the full annual report from the company and that companies must notify shareholders annually of this right and how the report might be obtained. When the program was instituted in the U.K. in 1990, shareholders received both reports and notice of the available option with respect to future reports.

Certain U.K. issuers are now seeking permission from the NYSE to provide holders of listed ADRs with summary reports in place of full annual reports if the holders do not object. The proposed modification to policy is necessary to grant permission since current policy requires all listed companies to submit to shareholders an annual report with financial information as detailed in Paragraph 203.01 of the NYSE Listed Company Manual.

The creation of the summary annual reports in the U.K. was prompted by two objectives: Potential cost savings to the company and the ability to provide a more easily read document to retail holders. The effort has been deemed successful in the U.K. since a majority of shareholders now receive the summary reports.

The Exchange is proposing that the NYSE annual report requirements be modified to allow holders of NYSE-listed non-U.S. securities to receive summary annual reports if (i) this is the practice in the home country and (ii) certain conditions are met.

Specifically, issuers proposing to provide summary annual reports to ADR holders would be required to:

(a) provide ADR holders with an ongoing option to

(1) Receive the full annual report on demand, and

(2) Annually change their election (as in the U.K., U.S. ADR holders would initially receive both reports and notice of the available option with respect to future reports);

(b) Follow the specific dictates of home country law or business practice with respect to the data presented;

(c) Include a U.S. GAAP reconciliation to the extent that such reconciliation would be required in the full annual report.

This proposal would be consistent with the Exchange's policies for non-U.S. companies which effectively allow these companies to follow home country practice in such areas as interim reporting and corporate governance. In addition, we believe the modification to policy would be consistent with the SEC's posture toward non-U.S. companies of being accommodating without compromising disclosure.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties. However, the Exchange adopted this proposed rule change, in part, in response to a petition from eight listed U.K. companies requesting that the exchange allow them to use summary annual reports.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at 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 NYSE. All submissions should refer to File No. SR–NYSE–93–47 and should be submitted by January 26, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–144 Filed 1–4–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice, Receipt of Noise Compatibility Program and Request for Review; Minneapolis-St. Paul International (Wold-Chamberlain Field) Airport, Minneapolis, MN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Minneapolis-St. Paul Metropolitan Airports Commission for Minneapolis-St. Paul International (Wold-Chamberlain Field) Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Minneapolis-St. Paul International (Wold-Chamberlain Field) Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before June 8, 1994.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is December 10, 1993. The public comment period ends February 8, 1994.

FOR FURTHER INFORMATION CONTACT: John M. Dougherty, Federal Aviation Administration, Airports District Office, room 102, 6020 28th Avenue South, Minneapolis, Minnesota 55450, (612) 725–4222. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Minneapolis-St. Paul International (Wold-Chamberlain Field) Airport are in compliance with applicable requirements of part 150, effective December 10, 1993. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before June 8, 1994. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional non-compatible uses.

The Minneapolis-St. Paul Metropolitan Airports Commission submitted to the FAA on March 30, 1992, noise exposure maps, descriptions and other documentation which were produced during the FAR Part 150 Noise Compatibility Study from March 1991 to March 1992. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Minneapolis-St. Paul Metropolitan Airports Commission. The specific maps under consideration are the 1991 existing Noise Exposure Map and the 1996 future Noise Exposure Map. The FAA has determined that these maps for the Minneapolis-St. Paul International (Wold-Chamberlain Field) Airport are in compliance with the applicable requirements. This determination is effective on December 10, 1993. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detail overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator who submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for the Minneapolis-St. Paul International (Wold-Chamberlain Field) Airport, also effective on December 10, 1993. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before June 8, 1994.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., room 617, Washington, DC 20591

Federal Aviation Administration, Minneapolis Airports District Office, room 102, 6020–28th Avenue South, Minneapolis, Minnesota 55450

The Minneapolis-St. Paul Metropolitan Airports Commission, Minneapolis-St. Paul International (Wold-Chamberlain Field) Airport, 6040–28th Street South, Minneapolis, Minnesota 55450

Questions may be directed to the individual named above under the heading, FOR FURTHER INFORMATION CONTACT.

Issued in Minneapolis, Minnesota on December 10, 1993.

Franklin D. Benson,

Manager, Minneapolis Airports District Office, FAA Great Lakes Region.

[FR Doc. 94–139 Filed 1–4–94; 8:45 am]

BILLING CODE 4910–13–M

Determination of Significance and Notice of Intent To Prepare an Environmental Impact Statement and To Conduct Scoping for Seattle-Tacoma International Airport, Seattle, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The Northwest Mountain Region of the Federal Aviation Administration ("FAA") and the Port of Seattle ("Port") announce that the FAA and the Port, acting as joint lead agencies, intend to prepare an Environmental Impact Statement (EIS) for a proposal by the Port to develop a new parallel runway and other airport facility improvements to be examined in an update to the Seattle-Tacoma International Airport (Sea-Tac Airport) Master Plan. To ensure that all significant issues related to the proposed action are identified, scoping comments are requested.

DATES AND ADDRESSES FOR COMMENTS: To facilitate the receipt of written comments, two scoping meetings will be conducted. The first meeting, in a workshop format, will be conducted for the public on February 9, 1994. A meeting for Federal, state and local agencies will be conducted on February 10, 1994. Send comments to, or seek additional information from the responsible Federal official: Mr. Dennis Ossenkop, Airports Division, Federal Aviation Administration, 1601 Lind Avenue SW., suite 540, Renton, Washington 98055–4056. To be considered, written comments must be received on or before February 25, 1994.

SUPPLEMENTARY INFORMATION: Recent planning studies have indicated both an existing and long-term need for additional airfield capacity at Sea-Tac Airport. Under current demand levels, the Airport experiences reduced operating capability and delay during bad weather conditions due to the close-spacing of the existing parallel runways. During busy hours, arrival demand exceeds the bad weather arrival capacity and aircraft and passenger delays result. In addition to increasing the severity of delays caused by bad weather, continued growth in aircraft operational demand is projected to exceed Sea-Tac's annual airfield capacity within the next ten years. The objective of the Master Plan Update, and accompanying EIS, is to address the bad weather capacity problem and to meet long-term regional air travel needs spurred by a growing regional economy.

An Environmental Impact Statement (EIS) will be prepared for the Master Plan Update, which is expected to include numerous projects including, but not be limited to: A new parallel runway and improvements to the passenger terminal, ground access system, and other support facilities. The range of new parallel runway options that may be considered in the EIS are anticipated to be in the immediate vicinity of the existing airfield at Sea-Tac Airport. Based on the Master Plan Update, other airport developments that may be considered in the EIS would be located on or in the immediate vicinity of the existing Sea-Tac Airport property. Mitigation measures will be proposed, as necessary, for the significant adverse impacts created by development. Major actions or concepts to be discussed in the draft EIS include the no action alternative and other reasonable alternatives meeting the purpose and need. Such alternatives are expected to include several options related to runway lengths, separations and threshold stagger.

The FAA and Port of Seattle have determined that the new parallel runway is likely to have a significant adverse impact on the environment. An Environmental Impact Statement (EIS) is required under the National Environmental Policy Act and the Washington State Environmental Policy Act (SEPA), RCW 43.21C.030(2)(c) and will be prepared. The FAA and Port of Seattle have identified the following key areas for discussion in the EIS including, but not limited to: Alternatives, noise and land use, social and socio-economic impacts, human health, water resources, biotic communities, construction, earth, transportation and air quality.

Scoping is the initial step in the preparation of the EIS. The scoping process is "an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to the proposed action." Agencies, affected tribes, and members of the public are invited to comment on the scope of the EIS. You may comment on alternatives, mitigation measures, probable significant adverse impacts, and licenses or other approvals that may be required. Comments and suggestions are invited from Federal, State and local agencies, and other interested parties and individuals to ensure that the full range of issues related to a Master Plan Update EIS are addressed and all significant issues identified.

To facilitate the receipt of comments, two scoping meetings will be conducted. A public workshop will be conducted to receive written comments on February 9, 1994 from 4 p.m. until 8 p.m. at Tyee Senior High School, 4424 South 188th Street, City of SeaTac. The second meeting will be held on February 10, 1994 between 9:30 a.m. and 11 a.m. for Federal, state and local agencies in the Sea-Tac Auditorium, Mezzanine Level Main Terminal Building, Seattle-Tacoma International Airport.

Issued in Renton, Washington on December 20, 1993.

Edward G. Tatum,

Manager, Airports Division, Federal Aviation Administration, Northwest Mountain Region, Renton, Washington.

William E. Brougher,

SEPA Responsible Official, Port of Seattle.

[FR Doc. 94–137 Filed 1–4–94; 8:45 am]

BILLING CODE 4910–13–M

Availability of Draft Environmental Impact Statement and 4(f) Statement for an Airport Surveillance Radar Model 9 Facility for Washington National Airport, Washington, DC and Conduct a Public Hearing

AGENCY: Department of Transportation, Federal Aviation Administration.

ACTION: Notice of availability of Draft Environmental Impact Statement (DEIS) and 4(f) Statement, and conduct a public hearing.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of the availability of a Draft Environmental Impact Statement (DEIS), which assesses the potential effects of constructing and operating an Airport Surveillance Radar Model 9 (ASR–9) facility at either a site within Ward 8 of the District of Columbia or at Washington National Airport, Arlington County, Virginia. The DEIS has been prepared in accordance with the National Environmental Policy Act of 1969. The purpose of the proposed action is to improve existing radar coverage provided to air traffic control servicing Washington National Airport and the airspace over Washington, DC.

ADDRESSES: Comments on the DEIS may be submitted in writing and may be mailed or delivered to the FAA at the following address: Federal Aviation Administration, Mr. Charles Hoch (AEA–400), Manager, Airway Facilities Division, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Federal Aviation Administration, Mr. Mike Lanz, AEA–451.1, (718) 553–1198 or Mr. Larry D. Walker, Louis Berger & Associates, Inc. (202) 331–7775.

SUPPLEMENTARY INFORMATION: An FAA evaluation concluded that potentially significant impacts may result to two of the sites on National Park Service land with respect to historical and visual resources. Mitigation of these impacts are expected to be developed as a result of the consultation process with the District of Columbia State Historic Preservation Office.

A Notice of Intent to prepare an Environmental Impact Statement (EIS) was published in the **Federal Register** by the FAA on October 13, 1992, inviting comments. A public scoping meeting was held on October 20, 1992 to receive comments on the proposed action from the public.

Six alternative sites and the no action alternative were evaluated in the DEIS. Three sites are located at Washington National Airport and three sites are located on National Park Service land in Anacostia, DC. The environmental review of the project was conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4371, *et seq.*), Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), the Department of Transportation (DOT) Act of 1966, DOT/FAA Orders, and all applicable Federal regulations and District of Columbia ordinances.

Comments on the DEIS are invited from Federal, State, and local agencies, and all other interested parties, and should be directed to the FAA at the addresses provided above. All comments received or postmarked within 60 days from the date of publication of the Environmental Protection Agency's (EPA) Notice of Availability of the DEIS in the **Federal Register** will be considered in the preparation of the Final Environmental Impact Statement.

The DEIS is available for public review at the following locations: Washington Highlands Library, 115 Atlantic Street, SW., Washington, DC 20032 and Aurora Hills Library, 735 18th Street South, Arlington, VA 22202.

To obtain a copy of the DEIS, submit a written request to: Mr. Charles Hoch (AEA–400), Manager, Airway Facilities Division, Fitzgerald Federal Building, Federal Aviation Administration, John F. Kennedy International Airport, Jamaica, New York 11430.

Public Hearing

The FAA solicits public comments on the DEIS and 4(f) Statement through a public hearing. To ensure the full range of issues related to this proposed action are addressed, comments and suggestions are invited from all interested parties. Interested parties are invited to attend a public hearing that will be conducted at 10 a.m. on February 5, 1994 in the Basement Meeting Room, Washington Highlands Library, 115 Atlantic Street, SW., Washington, DC. Written comments will be accepted until February 15, 1994.

Dated: December 22, 1993.

Herbert Ross,

Assistant Manager, Airway Facilities Division.

[FR Doc. 94–132 Filed 1–4–94; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering and Development Advisory Committee, Flight Service Technology Subcommittee; Meeting

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–362; 5 U.S.C. App. I), notice is hereby given of a meeting of the Flight Service Technology Subcommittee of the Federal Aviation Administration (FAA) Research, Engineering and Development (R,E&D) Advisory Committee to be held Friday, January 28, 1994, at 10 a.m. The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, in the Round Room on the tenth floor.

The agenda for this meeting will include: Review and discussion of the proposed task statement; organization of the effort to develop a report and recommendations; overview of the current and future technology associated with pre-flight weather and flight plan filing services. This subcommittee will attempt to ensure that the FAA's program addresses all the right technology issues.

Attendance is open to the interested public but limited to space available. With the approval of the Subcommittee Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or plan to access the building to attend the meeting should contact Mr. Carl McCullough, ASE–10, at (202) 287–8595 or Ms. Jan Peters, ASD–3, at (202) 287–8543 in the Office of the Associate Administrator for System Engineering and Development, 800 Independence Avenue, SW., Washington, DC 20591.

Members of the public may present a written statement to the subcommittee at any time.

Issued in Washington, DC, on December 27, 1993.

Martin T. Pozesky,

Executive Director, Research, Engineering and Development Advisory Committee.

[FR Doc. 94–138 Filed 1–4–94; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Cincinnati/Northern Kentucky International Airport, Hebron, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Cincinnati/Northern Kentucky International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 4, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 2851 Directors Cove, suite #3, Memphis, TN 38131–0301

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert F. Holscher, Director of Aviation, of the Cincinnati/Northern Kentucky International Airport at the following address: Second Floor, Terminal 1, C/NKIA, 2939 Terminal Drive, Hebron, Kentucky 41048.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Cincinnati/Northern Kentucky International Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, Planner, Memphis Airports District Office, 2851 Directors Cove, suite #3, Memphis, TN 38131–0301, (901) 544–3495.

The application may be reviewed in person at this office.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Cincinnati/Northern Kentucky International Airport under provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 22, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Cincinnati/Northern Kentucky International Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 30, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: March 1, 1994

Proposed charge expiration date: June 1, 1995

Total estimated PFC revenue: $20,737,000

Brief description of proposed project(s):

Impose and Use

1. Noise Compatibility and Land Use Management Measures:

a. Purchase Assurance Program off Runway Ends

b. Voluntary Acquisition in the 75 Ldn Contour

c. Voluntary Acquisition in Rolling Green Acres

d. Voluntary Acquisition in Ethan's Glen Subdivision and scattered homes in the 65–75 Ldn, West

e. Sound Insulation of Nursing Home

f. Sound Insulation of Schools

2. Part 150 Supplemental Study and Related Planning Costs

3. Noise Monitoring Equipment.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs:

1. FAR part 121 Supplemental Carriers which operate at the Airport without an Operating Agreement with the Kenton County Airport Board and enplane less than 1,500 passengers per year.

2. FAR part 135 on-demand air taxis, both fixed wing and rotary.

Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT"**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Cincinnati/Northern Kentucky International Airport.

Issued in College Park, Georgia on December 23, 1993.

Troy R. Butler,

PFC Program Manager, Airports Division, Southern Region.

[FR Doc. 94–135 Filed 1–4–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a subcommittee meeting of the Advisory Committee on Women Veterans will be held on January 11, 1994, in the 2nd floor conference room, 1785 Massachusetts Ave. NW., Washington, DC. The purpose of the subcommittee meeting is to review the research efforts to date for the Study of Reproductive Health Outcomes Among Women Vietnam Veterans.

The subcommittee will convene on January 11 from 10 a.m. to 4 p.m. and all sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Antoinette Workeman, Committee Coordinator, Department of Veterans Affairs (phone 202/606–5420) prior to January 11, 1994.

Dated: December 21, 1993.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–99 Filed 1–4–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 3
Wednesday, January 5, 1994

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).

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 3, 1994.

A closed meeting will be held on Friday, January 7, 1994, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9) (A) and (10) and 17 CFR 200.402(a)(4), (8), (9) (i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Friday, January 7, 1994, at 10:00 a.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.
Regulatory matter regarding financial institution.
Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brian Lane at (202) 272–2400.

Dated: December 30, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–236 Filed 3–3–94; 11:59 am]

BILLING CODE 8010–01–M

federal register

Wednesday
January 5, 1994

Part II

Environmental Protection Agency

40 CFR Part 13
Referral of Debts to Internal Revenue Service for Tax Refund Offset; Interim Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 13

[FRL–4818–2]

Referral of Debts to the Internal Revenue Service for Tax Refund Offset

AGENCY: Environmental Protection Agency.

ACTION: Interim rule with request for comments.

SUMMARY: The Environmental Protection Agency (EPA), as a participant in the Federal Tax Refund Offset Program, is issuing interim regulations to govern the referral of delinquent debts to the Internal Revenue Service (IRS) for offset against the income tax refunds of persons owing money to EPA. These regulations allow EPA to collect debts by means of offset from the income tax refunds of persons owing money to EPA provided certain conditions are met. This rule establishes procedures to be followed by EPA in requesting the IRS to offset tax refunds due to taxpayers who have past-due legally enforceable debt obligations to the EPA.

DATES: Interim rule is effective on January 5, 1994. Written comments must be received on or before March 7, 1994.

ADDRESSES: Send comments to: Stephen B. Hess, Claims and Property Law Branch (2376), Office of General Counsel, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Stephen B. Hess, Office of General Counsel. Telephone 202–260–7512.

SUPPLEMENTARY INFORMATION: This interim rule provides procedures for EPA to refer past-due legally enforceable debts to the IRS for offset against the income tax refunds of persons owing debts to EPA. This rule is authorized by 31 U.S.C. 3720A, the purpose of which is to improve the ability of the government to collect money owed it while adding certain notice requirements and other protections applicable to the government's relationship to the debtor.

This rule implements 31 U.S.C. 3720A, which directs any Federal agency that is owed a past-due legally enforceable debt by a named person to notify the Secretary of the Treasury in accordance with regulations issued by the Department of the Treasury at 26 CFR 301.6402–6. Before a Federal agency may give such notice, however, it must first:

(1) Notify the debtor that the agency proposes to refer the debt for a tax refund deduction;

(2) Give the debtor 60 days from the date of the notification to present evidence that all or part of the debt is not past-due or legally enforceable;

(3) Consider any evidence presented by the debtor and determine whether any amount of such debt is past-due and legally enforceable; and

(4) Satisfy such other conditions as the Secretary of the Treasury may prescribe to ensure that the agency's determination is valid and that the agency has made reasonable efforts to obtain payment of the debt.

This rule, in accordance with IRS regulations, provides that before EPA refers a debt to Treasury (through IRS), a notice of intention (Notice of Intent) will be sent to the debtor. This Notice of Intent will inform the debtor of the amount of the debt and that unless the debt is repaid within 60 days from the date of EPA's Notice of Intent, EPA intends to collect the debt by requesting the IRS to offset any tax refund payable to the debtor. In addition, the Notice of Intent will state that the debtor has a right, during such period, to present evidence that all or part of the debt is not past-due or legally enforceable. This rule also establishes procedures for the debtor to present such evidence.

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

Regulatory Flexibility Act Certification

This rule does not have a significant impact on a substantial number of small entities (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

No additional information and record keeping requirements are imposed by this rule.

National Environmental Policy Act

Promulgation of this rule does not represent a major Federal action with significant environmental impact. Therefore, preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) is not required.

Public Comments

Pursuant to an agreement between the IRS, the Financial Management Service, and EPA regarding EPA's participation in the Tax Refund Offset Program for 1994, EPA is required to have promulgated regulations regarding referral of debts to IRS for tax refund offset prior to EPA's participation in the program. EPA is issuing interim final regulations to take effect today in order to fulfill that requirement. Although EPA will respond to written comments on today's notice, EPA is not holding a hearing, providing an opportunity for prior comments, or delaying the effective date because this regulation is mostly procedural and because there are no significant issues of law or fact or relevant substantial impacts on the Nation or large numbers of persons of which EPA could take account consistent with law. Moreover, issuance of immediately effective interim final regulations does not prejudice the due process rights of debtors and is essential in order for EPA to participate in the 1994 program. Written comments are solicited for 60 days after publication of this document in the **Federal Register**. A final document discussing any comments received and revisions required will be published in the **Federal Register** as soon as possible after the close of the comment period.

Other Matters

These procedures are being codified in the Agency's regulations pursuant to statutory requirements regarding publication of rules of procedure in the **Federal Register**, 5 U.S.C. 552(a)(1)(C). However, the procedures described in the rule will be utilized before it becomes effective with respect to

persons who are provided actual notice of the procedures through the notices required under the procedures. See 5 U.S.C. 552(a)(1).

List of Subjects in 40 CFR Part 13

Environmental protection, Administrative practice and procedure, Claims, Government employees, Income taxes, Wages.

Dated: December 28, 1993.

Carol M. Browner,

Administrator.

In consideration of the foregoing, the Environmental Protection Agency hereby amends part 13 of title 40 of the Code of Federal Regulations as set forth below.

PART 13—[AMENDED]

1. The authority citation for part 13 is revised to read as follows:

Authority: 5 U.S.C. 552a, 5512, and 5514; 31 U.S.C. 3711 *et seq.* and 3720A; 4 CFR parts 101–10.

2. Subpart H is added to part 13 to read as follows:

Subpart H—Referral of Debts to IRS for Tax Refund Offset

Sec.

13.34 Purpose.
13.35 Applicability and scope.
13.36 Administrative charges.
13.37 Notice requirement before offset.
13.38 Review within the Agency.
13.39 Agency determination.
13.40 Stay of offset.

Supbart H—Referral of Debts to IRS for Tax Refund Offset

§ 13.34 Purpose.

This subpart establishes procedures for the Environmental Protection Agency (EPA) to refer past-due debts to the Internal Revenue Service (IRS) for offset against the income tax refunds of persons owing debts to EPA. It specifies the Agency procedures and the rights of the debtor applicable to claims for the payment of debts owed to EPA.

§ 13.35 Applicability and scope.

(a) This subpart implements 31 U.S.C. 3720A, which authorizes the IRS to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the United States.

(b) For purposes of this section, a past-due legally enforceable debt referable to the IRS is a debt which is owed to the United States and:

(1) Except in the case of a judgment debt, has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made;

(2) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(3) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the Agency against amounts payable to or on behalf of the debtor by or on behalf of the Agency;

(4) With respect to which EPA has given the taxpayer at least 60 days from the date of notification to present evidence that all or part of the debt is not past-due or not legally enforceable, has considered evidence presented by such taxpayer, if any, and has determined that an amount of such debt is past-due and legally enforceable;

(5) Has been disclosed by EPA to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless a consumer reporting agency would be prohibited from using such information by 15 U.S.C. 1681c, or unless the amount of the debt does not exceed $100.00;

(6) With respect to which EPA has notified or has made a reasonable attempt to notify the taxpayer that the debt is past-due and, unless repaid within 60 days thereafter, the debt will be referred to the IRS for offset against any overpayment of tax;

(7) Is at least $25.00; and

(8) All other requirements of 31 U.S.C. 3720A and the Department of the Treasury regulations at 26 CFR 301.6402–6 relating to the eligibility of a debt for tax return offset have been satisfied.

§ 13.36 Administrative charges.

In accordance with § 13.11, all administrative charges incurred in connection with the referral of a debt to the IRS shall be assessed on the debt and thus increase the amount of the offset.

§ 13.37 Notice requirement before offset.

A request for reduction of an IRS tax refund will be made only after EPA makes a determination that an amount is owed and past-due and provides the debtor with 60 days written notice. EPA's notice of intention to collect by IRS tax refund offset (Notice of Intent) will state:

(a) The amount of the debt;

(b) That unless the debt is repaid within 60 days from the date of EPA's Notice of Intent, EPA intends to collect the debt by requesting the IRS to reduce any amounts payable to the debtor as refunds of Federal taxes paid by an amount equal to the amount of the debt and all accumulated interest and other charges;

(c) That the debtor has a right to present evidence that all or part of the debt is not past-due or not legally enforceable; and

(d) A mailing address for forwarding any written correspondence and a contact name and phone number for any questions.

§ 13.38 Review within the Agency.

(a) *Notification by debtor.* A debtor who receives a Notice of Intent has the right to present evidence that all or part of the debt is not past-due or not legally enforceable. To exercise this right, the debtor must:

(1) Send a written request for a review of the evidence to the address provided in the notice;

(2) State in the request the amount disputed and the reasons why the debtor believes that the debt is not past-due or is not legally enforceable; and

(3) Include in the request any documents which the debtor wishes to be considered or state that additional information will be submitted within the remainder of the 60-day period.

(b) *Submission of evidence.* The debtor may submit evidence showing that all or part of the debt is not past-due or not legally enforceable along with the notification required by paragraph (a) of this section. Failure to submit the notification and evidence within 60 days will result in an automatic referral of the debt to the IRS without further action by EPA.

(c) *Review of the evidence.* EPA will consider all available evidence related to the debt. Within 30 days, if feasible, EPA will notify the debtor whether EPA has sustained, amended, or cancelled its determination that the debt is past-due and legally enforceable.

§ 13.39 Agency determination.

(a) Following review of the evidence, EPA will issue a written decision.

(b) If EPA either sustains or amends its determination, it shall notify the debtor of its intent to refer the debt to the IRS for offset against the debtor's Federal income tax refund. If EPA cancels its original determination, the debt will not be referred to IRS.

§ 13.40 Stay of offset.

If the debtor timely notifies the EPA that he or she is exercising the right described in § 13.38(a) and timely submits evidence in accordance with § 13.38(b), any notice to the IRS will be stayed until the issuance of a written decision which sustains or amends its original determination.

[FR Doc. 94–76 Filed 1–4–94; 8:45 am]

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Federal Register

Vol. 59, No. 3

Wednesday, January 5, 1994

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A cumulative list of Public Laws for the first session of the 103d Congress was published in Part IV of the **Federal Register** on January 3, 1994.

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103d Congress, 2d Session, 1994

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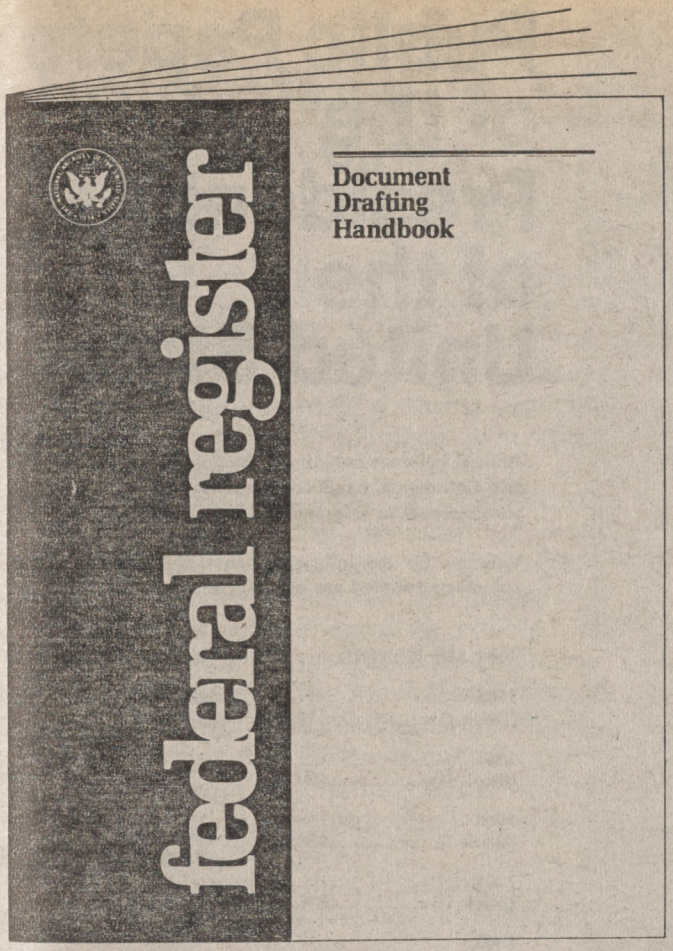
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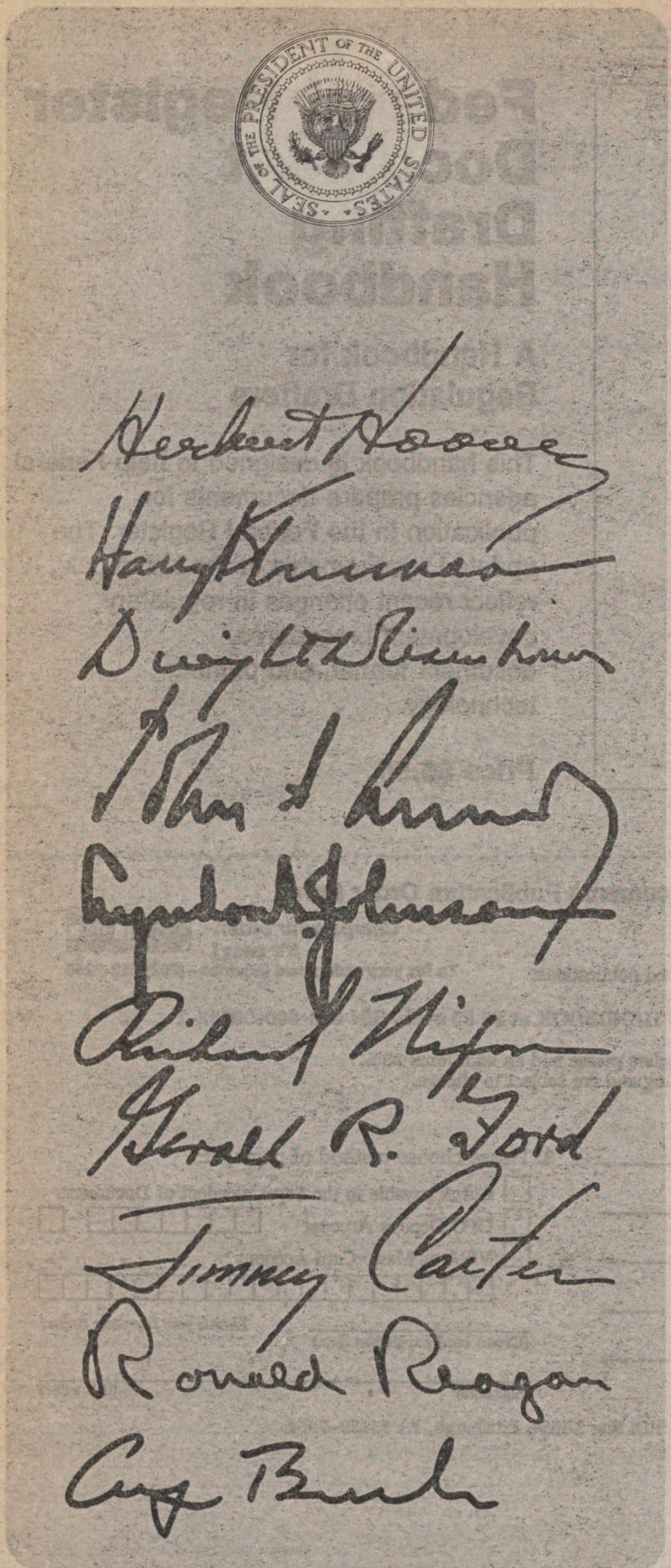
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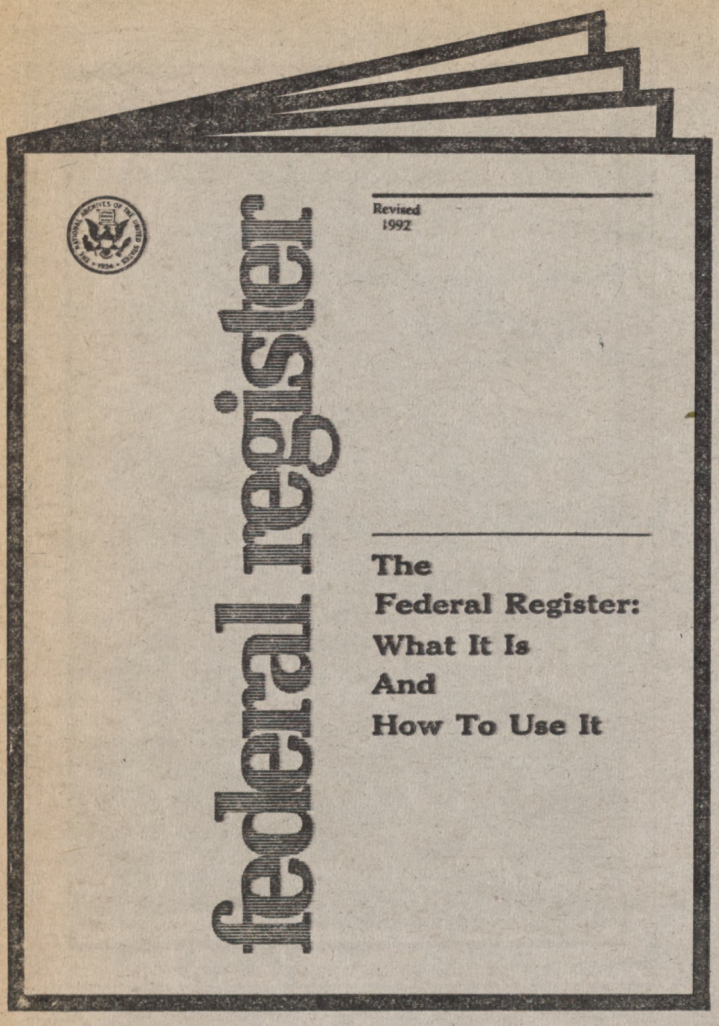
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