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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority to the Under Secretary for Small Community and Rural Development and the Administrator of the Rural Development Administration to administer the Rural Empowerment Zone and Enterprise Community Program authorized by Section 13301 of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, 26 U.S.C. 1391–1393. This action is being taken to select Empowerment Zones and Enterprise Communities and implement a cooperative program of assistance to communities and businesses within selected areas. The intended effect is to demonstrate the benefits of strategic planning and cooperative partnerships in promoting local self-sufficiency and economic enhancement.

EFFECTIVE DATE: January 18, 1994.

FOR FURTHER INFORMATION CONTACT: Beverly C. Gillot, Rural Development Specialist, Rural Development Administration, United States Department of Agriculture, room 5405 South Agriculture Building, 14th Street and Independence Avenue, SW., AG Box 3202, Washington, DC 20250, telephone 202–690–2516.

SUPPLEMENTARY INFORMATION: Section 13301 of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, 26 U.S.C. 1391–1393, established the Rural Empowerment Zone and Enterprise Community Program. Under this program, the Secretary of Agriculture is authorized to designate up to 3 Empowerment Zones and up to 30 Enterprise Communities in rural areas. This document authorizes the Under Secretary for Small Community and Rural Development and the Administrator of the Rural Development Administration to carry out that program.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment are not required, and this rule is effective January 18, 1994. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12866 and 12778. This action is not a rule as defined by Public Law 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act. This rule also is exempt from the requirements of the National Environmental Policy Act, as amended (42 U.S.C. Chapter 35).

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

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

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

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

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

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

2. Section 2.23 is amended by adding paragraph (b)(33) to read as follows:

§ 2.23 Under Secretary for Small Community and Rural Development.

* * * * *

(b) * * *

(32) Administer the Rural Empowerment Zone and Enterprise Community Program established by Section 13301 of Public Law 103–66 (26 U.S.C. 1391–1393).

* * * * *

Subpart I—Delegations of Authority by the Under Secretary for Small Community and Rural Development

3. Section 2.71 is amended by adding paragraph (a)(34) to read as follows:

§ 2.71 Administrator, Rural Development Administration.

(a) * * *

(33) Administer the Rural Empowerment Zone and Enterprise Community Program established by Section 13301 of Public Law 103–66 (26 U.S.C. 1391–1393).

* * * * *

For Subpart C.

Dated: January 7, 1994.

Mike Espy,

Secretary of Agriculture.

For Subpart I.

Dated: January 7, 1994.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 94–1123 Filed 1–18–94; 8:45 am]

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Food and Nutrition Service

7 CFR Parts 272, 273, 276 and 277

[Amdt. No 342]

RIN 0584–AB08

Food Stamp Program: Recipient Claims and Automated Data Processing (ADP) Funding Requirements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rulemaking implements provisions of the Mickey Leland Memorial Domestic Hunger Relief Act. The Act amends the timeframe for household election of a repayment method for intentional Program violation (IPV) claims, changes retention rates on food stamp recipient claims for State agencies and reduces the enhanced funding rate for the costs of planning, designing, developing and installing ADP and information retrieval systems. This rule also implements a provision of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991, relating to household election of repayment method for inadvertent household error

(IHE) claims. This rule also implements a change to ADP requirements which limits enhanced funding requests for automated systems to initial development of a "complete" system and corrects errors made in previously published regulations relating to recipient claims and enhanced ADP funding. In addition, this rule clarifies exceptions to requirements to provide notice of adverse action when an allotment is reduced to recoup a recipient claim and clarifies the Federal funding rate allowed for preparation of a Planning Advance Planning Document (PAPD). Finally, this rule gives State agencies, at their request, the option to make payment by check for FNS–209 amounts due FNS, and to have payments due from FNS to the State made by check in place of amending the States' letter of credit.

Section 13961 of the Omnibus Budget reconciliation Act of 1993 (OBRA), (Public Law 103–66), Signed August 10, 1993, reduces the federal reimbursement rate for development of automated data processing and information retrieval systems development to the standard 50 percent Federal reimbursement level effective April 1, 1994. During the last week of October 1993 and the first week of November 1993, the Department issued a memorandum which briefed States on the details of this change in the law. The memorandum will be followed by conforming regulations which will be effective April 1, 1994.

DATES: 7 CFR 273.18(d)(4)(ii) is effective retroactive to November 28, 1990. 7 CFR 273.18(d)(4)(i) is effective December 13, 1991. 7 CFR 273.18(h) and (i) are effective October 1, 1990. 7 CFR 277.4(b)(11) and (b)(12), 277.18(b), (c)(1) introductory text, (c)(1)(ii), (d)(1)(ii), (g) heading, (g)(1), (g)(2) and (g)(5) introductory text, (g)(2)(ii), (g)(3), (g)(6), (g)(7), (g)(8) introductory text, (g)(8)(iv), and (p)(5), and part 277, appendix A, paragraph B(1) are effective October 1, 1991. All remaining amendments are effective February 18, 1994.

FOR FURTHER INFORMATION CONTACT: John Knaus, Chief, Quality Control Branch, Program Accountability Division, Food and Nutrition Service (FNS), USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–2474.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12866/Secretary's Memorandum 1512–1

This final rule is issued in conformance with Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice to 7 CFR 3015, subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). George Braley, Acting Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. This rule will affect recipients who must elect a repayment method for IPV claims. State and local agencies which administer the Food Stamp Program will be affected by the change in retention rates on food stamp recipient claims and the reduction in the enhanced funding rate for development of ADP system.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping burden associated with the Notice of Adverse Action and the demand letter for recipient claims is approved by the Office of Management and Budget (OMB) under OMB number 0584–0064. The reporting and recordkeeping burdens associated with the collection of claims assessed against food stamp households have been approved by OMB under OMB number 0584–0069. Information collection requirements relating to automated data processing and information retrieval systems have been approved by OMB Approval No. 0584–0083. The provisions of this rule do not contain any additional reporting and/or recordkeeping requirements subject to OMB approval.

Background

On September 10, 1991, the Department published in the **Federal Register** (56 FR 46127) a Notice of Proposed Rulemaking (NPRM) which proposed changes to Food Stamp Program recipient claims and ADP funding requirements as required by the Mickey Le Lano Memorial Hunger Relief Act, Pub. L. 101–624, (hereinafter "Pub. L. 101–624"). The Department received 21 comment letters which addressed provisions of the proposed rule. FNS has given careful consideration to all comments received. The major concerns of the commenters are discussed below.

Recipient Claims

Repayment Decision Timeframe

The proposed rule would have shortened the time for participating households to choose how they would repay inadvertent household error (IHE) and intentional Program violation (IPV) claims in order to forestall involuntary reduction of their allotments. The timeframe for such elections would have been shortened from 30 days to the day of receipt of the demand letter for repayment unless the adverse action period for the claim had not elapsed or the household had timely requested a fair hearing and continued benefits. Public Law 101–624 mandates the shortened timeframe for IPV claims. The proposed rule would have also applied this timeframe to IHE claims. The preamble to the proposed rule should be consulted for the complete discussion of the background of this decision.

We received 13 comments on this part of the proposed rule, 10 from State agencies, one from the welfare department of a large city, and two from public interest groups. Five State agencies supported the proposal; most other commenters objected to it, primarily because it applied the shortened timeframe to IHE claims.

One commenter stated that since the statute spoke only to IPV claims, applying the "same day" decision timeframe to IHE claims was against the law. Several commenters objected to the proposal on the grounds that the shortened decision timeframe for IHE claims would cause hardship on households, especially those in rural areas, and was in any event too short to allow adequate time for due process. Two commenters objected to our statement that the proposal would enhance conformity with Aid to Families with Dependent Children

(AFDC) rules on claims management. Several commenters stated that if it were established for either IHE or IPV claims, the "same day" standard would impose significant operational problems on State agencies, and that a 10-day minimum should be adopted for both types of claims. One of the operational difficulties cited was the need to track responses due at varying intervals because of the consideration of such circumstances as geography. One commenter believed that the proposed rule required a fair hearing on IPV claims in addition to an administrative disqualification hearing or comparable action establishing such claims.

In section 911 of Public Law 102–237, which was signed December 13, 1991, Congress resolved this issue by providing that for an IHE claim, "the household shall be given notice permitting it to elect another means of repayment [other than allotment reduction] and given 10 days to make such an election before the State agency commences action to reduce the household's monthly allotment." The Department understands by this language that no action to reduce the household's monthly allotment may be taken by the State agency until the eleventh day following the household's receipt of notice of the IHE claim.

Typically households first receive notice about IHE claims through the mail in demand letters. Consequently, there is no practical way to determine exactly when households receive such notices and, in turn, the eleventh day afterwards. There is also the problem of allowing for return mail time. This rule provides that within 20 days of the date of the demand letter, households must notify State agencies of their choice of repayment method or be deemed to have elected allotment reduction. This timeframe should allow for the newly required 10-day decision timeframe and adequate mail time, five days for delivery to households and five days for household return mail to State agencies.

As discussed below, the provision is restated to deal with IHE and IPV claims separately and to clarify that the timeframe for the IHE claim repayment decision relates both to initial demand letters and to demand letters following fair hearings which sustain IHE claims. Finally, to take account of demand letters which may be handed to the household, the language makes clear that the 20-day period begins on the date the demand letter is mailed or otherwise delivered to the household.

Several commenters objected to the statement in the preamble to the proposed rule to the effect that the claim itself was the adverse action, not the collection action. (This statement was made in connection with exempting the initiation of allotment reductions from the adverse notice requirements when households have been provided notice about appeal rights on the underlying claim. That proposal is discussed later in this preamble.) The Department would like to clarify this matter. Current rules require that households be provided specific information about their rights to appeal recipient claims. Once this information is provided, if a fair hearing is requested and a determination to sustain the claim is made, the household's remaining decision is how it will pay the claim. Making that decision should take relatively little time. To clarify how this policy applies to IHE claims, the final rule provides that in cases of IHE claims, if a fair hearing sustains the claim, the household must notify the State agency of its election of repayment method within 20 days of receipt of the notice of the hearing decision or be deemed to have elected allotment reduction.

With respect to IPV claims, the final rule provides that households must elect a method of repayment on the date of receipt of the demand letter required by 7 CFR 273.16(e)(9), 7 CFR 273.16(f)(3) and (g)(3) of current rules (or if the date of receipt is not a business day, on the next business day) or be deemed to have elected allotment reduction. The final rule requires that for an IPV claim, the first claim demand letter following an action which establishes the claim, inform the household about this timeframe for election of a method of repayment and the consequence of failing to meet it. This is intended to clarify that the timeframe for electing a repayment option begins with the demand for repayment.

The final rule also provides that each State agency must, for IPV claims, determine a deadline for the return of completed election forms in order to determine if the election is timely. The Department does not expect State agencies to set such deadlines case by case. State agencies should establish uniform timeframes for responses to demands for repayment of IPV claims, if necessary allowing for situations such as mail time to and from remote areas. The final rule states that the deadline cannot exceed 10 days from the date that the demand letter is mailed or otherwise delivered to liable households. The time period is set at a maximum of 10 days because the law requires a "same day" decision from households and a relatively short response time is appropriate to that statutory requirement.

In addition to these changes, to accommodate the different requirements for IHE and IPV claims relating to repayment decisions, the final rule treats IHE and IPV claims in separate sections. Furthermore, since recoupment is a method of collection which is used only for participating households, when appropriate, the final rule refers to "participating households." In 7 CFR 273.18(d)(4), which contains the policies on repayment decision timeframes, the heading is changed to "Further collection actions" since that more accurately describes the material in the paragraph. Also, because IHE and IPV claims are treated in separate subparagraphs, the first sentence of paragraph (4)(i) of the proposed rule has been deleted to eliminate potential confusion. This deletion also eliminates the redundant phrase "do not respond timely or fail to respond."

The Department was concerned that a significant number of commenters believed that in reducing the time for electing repayment for IHE claims the proposed rule would also have abridged the right to appeal the claim. Consequently, in addition to treating IHE and IPV claims separately, the final rule sets forth requirements for the content of the initial demand letter for IHE claims separately from the content of a demand letter for IHE claims which are sustained by fair hearings. An initial IHE demand letter needs to inform the household that it has an option of timely electing a repayment method *or* requesting a fair hearing. A demand letter provided after a hearing decision which sustains the claim would not offer the hearing option. Similarly, the first demand letter for an IPV claim can only be issued following an administrative disqualification hearing or other action which establishes an IPV claim. The rule adds a phrase to clarify this point.

In response to other comments, the final rule makes several other changes with respect to the required content of the demand letter for IHE and IPV claims. One commenter recommended that the proposed list of repayment methods in 7 CFR 273.18(d)(3)(iii) be expanded to include repayment in coupons. However, a full list of repayment methods is already contained in 7 CFR 273.18(g). Paragraph (d)(3)(i) of that section already requires that the demand letter inform the household of these methods of repayment. Consequently, in addition to being incomplete, the proposed list in

paragraph (d)(3)(iii) is redundant, and so the final rule deletes it.

Another commenter pointed out that we do not require that the demand letter inform households when recoupment would begin and the amount of benefits the household would then receive. The Department believes that it would be useful to include this information in the demand letter. Current rules at 7 CFR 273.18(g)(4) require that prior to reduction State agencies inform households about the effect of recoupment on their benefits. Consequently, the final rule provides that, unless the State agency has otherwise informed the household what its allotment would be net of the reduction for repaying the claim, it provide that information in the demand letter.

Current rules at 7 CFR 273.12(c)(2) provide that decreases in benefits must be made effective no later than the month following the lapse of the adverse notice period. Consistent with this general policy and the required timeframe for election of a repayment method, the final rule provides that the initial demand letter for IHE claims must inform the household that the reduction will begin with the first allotment issued after the household either timely elects allotment reduction or, if it fails to make a timely election, with the first allotment issued after the expiration of the time for its election. Demand letters provided subsequent to a fair hearing sustaining an IHE claim must inform the household that if it fails to make a timely election, allotment reduction will begin with the first allotment issued after timely notice of such election is due to the State agency.

Another commenter on this paragraph recommended that we be more specific about the acceptable ways for households to communicate their decisions about repayment. The Department is not aware of any operational difficulties with how State agencies and households currently communicate about claims collections. Current rules at 7 CFR 273.15(h) provide that requests for fair hearings may be oral or in writing so long as they are clear and if they are not, State agencies may ask households for clarification. The Department encourages State agencies to apply this standard to communications concerning elections of repayment methods. Consequently, the final rule does not specify ways households must communicate elections about repayment methods.

The proposed rule would have amended 7 CFR 273.13(b) which lists exemptions from notices of adverse action. As mentioned earlier in this preamble, the proposed rule would have added situations where the State agency initiates allotment reduction against a household which has been provided notice of its appeal rights for the underlying claim to the list of exemptions. No commenter objected to this action or indicated the need for clarification. Consequently, the final rule adopts the language as proposed in 7 CFR 273.13(b)(14). Several commenters did remark about an associated statement in the preamble which was that the claim itself was the adverse action, not the collection action. The Department believes that the changes in this final rule clarify that statement. Households are due notice of specific appeal rights regarding claims such as how the claim arose, the information on which the claim is based, how the amount of the claim was calculated and the right to contest the claim. Once those due process requirements have been met and the claim has been established, State agencies are expected to proceed to collection activities without additional notices of adverse action.

Technical Corrections to Current Rules

The Department used the proposed rule to correct two errors in 7 CFR 273.18(d)(3) of current rules which resulted from the final Administration-Management rule published February 22, 1990 (55 FR 6233). The first correction clarified that a notice of adverse action is required when a claim is not established in a fair hearing. It deleted the phrase which limited this requirement to those circumstances where "the amount of the claim" had not been established. The one comment received on this matter was from a State agency which indicated it was already in compliance with the broader requirement. Consequently, the final rule adopts the language as stated in the proposed rulemaking.

The second correction reinstated a provision in 7 CFR 273.18(d)(4)(iii) allowing other methods of collecting claims for IHE and State agency error claims. A commenter objected on the grounds that the law does not authorize other collection methods for IHE claims. However, section 13(b)(2)(B) of the Food Stamp Act of 1977 (7 U.S.C. 2022(b)(2)(B)) does authorize such collection action for IHE claims. Accordingly, the final rule adopts the language as stated in the proposed rulemaking.

State Agency Retention of Claims Against Households

The proposed rule would have reduced the recipient claims retention rate for State agencies from 50 percent to 25 percent for IPV claims and from 25 percent to 10 percent for IHE claims. The proposed rule further specified that the new rates are effective for the period beginning October 1, 1990 and ending September 30, 1995. Beginning October 1, 1995 the old rates of 50 percent for IPV claims and 25 percent for IHE claims will again take effect. The proposed rule also would have allowed State agencies the opportunity to submit a one-time request for any additional amount due under the old, higher retention rates by November 30, 1991. Four comments were received on this section.

As explained in the proposed rule, the Department had previously directed State agencies to implement the new retention rates for reporting and payment purposes. This was done in order to comply with the Act and to minimize the need for revised reporting on the Form FNS–209, Status of Claims Against Households. Effective with the first quarter Fiscal Year 1991 FNS–209 report, the Department has been recovering funds from State agencies at the new retention rates in accordance with the Act. The Department had also previously advised State agencies of the procedure for requesting any additional retention due on collections received prior to October 1, 1990 and the deadline for filing such requests.

One State and one local agency felt that the retention rates should be restored to their former levels. The commenters indicated that the higher retention rates in effect prior to October 1, 1990 were a significant incentive for States to pursue the collection of Food Stamp Program claims and felt that the new lower retention rates could result in a loss of State or local support for collection and fraud control activity. The local agency stated that it used the money to help administer the fraud control program and that the cutback would hamper the county's effort to locate and prosecute food stamp fraud. The new retention rates were mandated in the Act and do not involve Departmental discretion. Since the retention rates are mandated by law, the final regulation retains the new retention rates as specified in the proposed rule.

Two State agencies commented on the procedure in the proposed rule of claiming only the new retention rates on the FNS–209 and filing an adjustment request for any additional retention amount due the State agency. The proposed rule provided that a one-time request to claim the higher rates for transactions occurring on or after October 1, 1990 but involving

collections received prior to October 1, 1990, may be filed with the Department after Fiscal Year 1991 but no later than November 30, 1991. One State agency believed that States should be given the option of using the old, higher retention rates on the FNS–209 if they can identify those collections, or the lower retention rates if it is in the State's best interest. The commenter felt that States should not be burdened with requesting and justifying higher retention rates in a special request if their systems are able to identify those collections that qualify. Another State agency recommended that there be no time limitation to filing a request and that States should continue to receive the higher retention amount due under the higher rates in effect prior to October 1, 1990 if all other conditions are met.

The Department is not adopting the suggestion to allow State agencies to claim higher retention rates for collections received prior to October 1990 on the FNS–209 rather than requiring submission of an adjustment request. The FNS–209 and the FNS automated system which supports State reporting are structured to recognize one retention percentage for each type of claim. Edit checks are designed to detect mathematical errors and inadvertent under- or over-retention for each claims category prior to the Department accepting the report. Instead of redesigning the FNS–209 and the automated system, the Department is permitting State agencies to claim for the additional retention by submitting an adjustment request after the end of the fiscal year.

The Department is also not adopting the suggestion to eliminate the time limitation for filing a request for retention adjustment, but has decided to allow State agencies an additional year to claim any additional retention. The proposed rule allowed a one-time request for retention adjustment and specified a deadline of November 30, 1991 for filing the request. In October 1992, the Department advised State agencies that it would allow a second round of adjustment requests after Fiscal Year 1992 which must be filed no later than November 30, 1992. Accordingly, the final rule allows State agencies to submit a first time request (if they have not previously done so), or second request for additional retention which must be filed no later than November 30, 1992. The Department believes the additional year should be sufficient time for any adjustments, transfers, and refunds of collections received in Fiscal Year 1990 or earlier to be adjusted and claimed by State agencies at the old, higher retention rates.

The Department is also using this opportunity to update the reference in the proposed rule concerning amending the States' letter of credit for FNS–209 payments to reflect current practice. The proposed rule restated current policy in that it provided that FNS would collect amounts due FNS or pay State agencies by amending the States' letter of credit. Although in most cases the State agency owes FNS for FNS' share of collections, FNS may owe the State agency in situations where the retention amount due the State agency exceeds the cash collection. This occurs when the State agency experiences a preponderance of non-cash rather than cash collections.

The regulations in 7 CFR 273.18 and 276.2 previously provided that FNS would collect amounts due FNS for recipient claims collections and title IV reimbursements and pay State agencies by offsetting or amending the States' letter of credit. However, in order to accommodate State and Federal financial management requirements, FNS has accepted FNS–209 payments by check from a number of State agencies and has sent checks to State agencies which were owed money. The Department believes it is appropriate to change the current language to provide for checks when requested by State agencies rather than require a number of State agencies to conform to the letter of credit procedure. In the final rule the Department is allowing State agencies to request that FNS accept checks from the State for FNS–209 amounts due FNS, or that FNS pay the State by check for FNS–209 amounts due the State. If such a request has not been or is not made, payment to the State agency and collection from the State agency will be made through the letter of credit. The Department reserves the right to offset any amount due FNS by letter of credit offset if payment is not made.

The final rule also amends similar provisions relating to title IV reimbursements in 7 CFR 276.2 and letter of credit offsets in 7 CFR 277.16 to conform with this change. Title IV reimbursements are reported as a separate line item on the FNS–209 and are used along with claims collection data in the calculation of the total amount due FNS from the FNS–209. Thus, a change in the method of collection or payment of the total amount due from the FNS–209 would also apply to the line items that make up the total figure. The change in the general authority for letter of credit offset in 7 CFR 277.16 is a consolidation of the authority for organization purposes. As noted above, the regulations in 7 CFR 273.18 and 276.2 previously allowed FNS to offset from the letter of credit for FNS–209 payments due FNS.

Automated Data Processing (ADP) Enhanced Funding Rate Reduction to 63 Percent

The proposed rule stated that section 1752(a) of Public Law 101–624, enacted on November 28, 1990, changed the enhanced funding rate for ADP and information retrieval system development from 75 percent to 63 percent effective October 1, 1991. The proposed rule also stated that pursuant to section 1752(b) of Public Law 101–624 this change in the funding rate does not apply to proposals approved prior to the enactment date of November 28, 1990.

Three comments were received which stated that this reduction is unreasonable at a time when automation efforts need to be increased to keep pace with growing caseloads and decreasing resources. One other commenter stated that this reduction was unfair to those States that had never requested enhanced funding because they had not previously had the necessary resources available for development purposes and that were now in the process of pursuing such development. The reduction in the enhanced funding rate was mandated by law and does not allow Departmental discretion. Since the retention rate is mandated by law, the final regulation retains the 63 percent rate as specified in the proposed rule.

One commenter requested clarification of whether approval of the planning advance planning document (PAPD) prior to November 28, 1990, constituted total project approval at the enhanced funding rate. The Department believes that the purpose of the PAPD is to determine whether the developing system would be a viable one and whether continued system development is appropriate. Therefore, approval for funding a PAPD is separate from later funding decisions.

The Department was also made aware of concerns about the approval of funding proposals after November 28, 1990 that were submitted prior to that date. Specifically, there was a concern that States which had submitted complete implementation advance planning documents (IAPD) prior to November 28, 1990, but did not receive approval by FNS until after that date were being unfairly penalized. The Department reviewed the legislation in light of this concern and has made a change in 7 CFR 277.4(b)(12) of the final rule. This section now provides that a

State will receive 75 percent enhanced funding for automated system development, if prior to November 28, 1990, the State had both an approved (PAPD) and had submitted an IAPD along with all the paperwork required for approval. However, modifications to approved IAPDs and any increase in costs which occur after September 30, 1991 (during system development), will be funded at the 63 percent level. Other than this modification, 7 CFR 274.4(b)(12) is adopted as proposed.

One-time Enhanced Funding

Nine comments were received on the proposed one-time enhanced funding provision which provided that all requests for more than one-time enhanced funding for automated system development in a particular State be denied. These comments focused on the rapid pace of changes in technology and the need for federal enhanced funding to allow States to incorporate these changes into a system once the initial system development has been completed.

As noted in the proposed rule, a 1988 audit issued by the General Accounting Office (GAO) interpreted the original legislation differently than the Department. According to GAO, the funding scheme was initially designed so that enhanced funding for automation should only be available for a State's first attempt at automation development.

FNS recognizes the concern expressed by commenters to keep pace with the rapid change in computer technology. However, the legislative history accompanying Public Law 96–249, The Food Stamp Amendments of 1980, specifically addressed the funding of upgrading or modification of a system originally funded at the enhanced level. In the House Report the Committee stated that the 75 percent rate for cost sharing was intended to be one-time and funds were to be strictly limited to initial development. H.R. Rep. No. 96–788, 96th Cong., 2nd Sess. 112–113 (1980). Ongoing system utilization or upgrading expenses would be shared at the 50 percent level applicable to most other administrative costs.

Based on the House Report and the General Accounting Office (GAO) audit cited in the proposed rule, the Department has decided that enhanced funding should not be available for system changes to an already existing system which was initially developed with enhanced funding. Accordingly, with some technical corrections described later, the proposed § 277.18(g)(1) is adopted.

The Department also wants to clarify that it will fund one "complete" system development effort at the enhanced level one time, if the system meets all applicable standards. A "complete" system contains both certification and issuance components that meet existing standards. For example, a State may receive enhanced funding for the development of a certification component of a system which meets all of the applicable functional standards. The State may then also receive enhanced funding for a subsequent project to "upgrade" the system by adding an issuance component which also meets all of the applicable functional standards.

States are currently given the opportunity to pay back the difference between regular and enhanced funding for a partial system (i.e. certification component only) and then move forward to develop a "complete" new system. As of (insert effective date of final rule), States will no longer be given the opportunity to pay back this difference. The Department will fund to "complete" system development but will not permit paybacks that allow the State to replace at enhanced levels a component already funded at the enhanced level which is no longer useful in the new system design. For example, a State has received enhanced funding for a certification component and completes component development. At a later date, the State re-evaluates automation activity and a decision is made to automate the issuance function, and to redo the certification component. In this situation, the Department may allow enhanced funding for the issuance component but will not allow funding at the enhanced level for a new certification component. Finally, if a "complete" system was funded at the enhanced level, a replacement system is not eligible for enhanced funding.

The Department will reimburse States at the enhanced level, if appropriate, for "planning efforts" that did not lead to implementation of a system. The purpose of the planning effort is to ensure that the ultimate system development effort is a viable one. Therefore, a State may qualify a second time for enhanced funding for planning if the previous planning effort was not successful. However, a State will not be eligible for enhanced funding for the actual implementation efforts for the second time if the initial implementation effort failed to develop a "complete" system that meets all applicable standards. Paybacks by States for failed implementation attempts will no longer be approved as of (insert the effective date of the final rule).

Federal Funding for Preparation of the Planning Advance Planning Document (PAPD)

The Proposed rule provided clarification that the 50 percent rate of Federal Financial Participation (FFP) would be allowed for State administrative expense incurred during preparation of the PAPD. Two commenters felt that the preparation of a PAPD should be funded at the enhanced rate since the preparation took more time than suggested in the regulations and resulted in a document more extensive than 6–10 pages. One commenter suggested that a clear description of specific costs eligible for enhanced funding would help to adequately differentiate between preparation of the PAPD and the actual planning phase activities.

The Department is maintaining the requirement that the preparation of the PAPD by States be funded at the regular FFP rate of 50 percent. The PAPD is intended to be a brief written plan of action which describes the State agency's intended activities and proposed budget for planning phase activities as well as an estimate of the total project costs. At a minimum, the State agency is required to include information set forth in 7 CFR 277.18(d) in the PAPD submission. Planning phase activities will be reimbursed at the enhanced rate only if the PAPD was approved at that rate. Planning phase activities that are eligible for reimbursement at the enhanced funding rate are identified in 7 CFR 277.18(g) of these regulations. In addition, the Department would like to clarify language in paragraph 277.18(g)(8)(iv) of that section which may have contributed to the confusion surrounding the level of FFP allowed for the preparation of a PAPD. The second sentence in this paragraph has been changed to read as follows: "The cost of planning activities which were approved for enhanced funding under a Planning APD may be funded at the 63 percent level regardless of final approval or denial of the Implementation APD".

Miscellaneous Comments

One commenter stated that the Department had failed to provide recipient protections in ADP systems through the proposed rule and requested that the Department republish the rule to include provisions for this concept. Through this rule the Department is addressing only the automation funding provision of the Public Law 101–624. Public Law 101–624 also contains provisions concerning

standards for automated systems that include concerns about recipient protection. However, this rule does not implement those provisions.

The Department is primarily interested in the use of automated systems to provide more timely and accurate benefits to recipients as well as more program and system accountability and the APD process, the Department is emphasizing recipient protection when a system is under development as well as when the system is operational. Notices, expedited service and processing procedures are being emphasized.

One commenter requested clarification regarding whether "development" of an automated system includes transfer and modification of an existing State system in an enhanced funding situation. The Department believes that current regulations at §§ 272.10(a)(3) and 277.18(d)(2)(ii) adequately address the requirement that a State, as part of the development of its automated system, assess whether the transfer or modification of an existing State system is cost effective. Transfer or modification may be reimbursed at either the regular or enhanced funding levels according to the criteria discussed above.

Other Revisions

An additional change is contained in these final provisions in order to correct language in 7 CFR 277.4 and 277.18 of current regulations. There is a typographical error in 7 CFR 277.4(b)(11) and (12), 277.18(b), under the definitions for enhanced funding or enhanced FFP and regular funding or regular FFP, and in 7 CFR 277.18(g)(1) and 277.18(g)(3). The word "or" appearing after the word "development" and before the word installation in these sections has been changed to "and".

Implementation

The provisions of this action relating to household election of repayment method for IPV claims at 7 CFR 273.18 are effective retroactive to November 28, 1990, when Public Law 101–624 was enacted. The provisions at 7 CFR 273.18 relating to household election of repayment method for IHE claims is effective December 13, 1991, the date of enactment of Public Law 102–237. The provisions at 7 CFR 273.18 which reduce State agency retention rates on claim collections applies, by its terms, to the period beginning October 1, 1990 and ending September 30, 1995. Therefore, the new retention rates are effective retroactively to October 1, 1990. The provision at 7 CFR 277.18 which reduces the enhanced funding level for ADP is effective retroactively to October 1, 1991 for costs incurred on that date and thereafter and does not apply to ADP plans approved prior to November 28, 1990. The corrections to the Administration Management final rule, the correction to the reference to enhanced ADP funding, the change to FNS–209 methods of payment and the amendments relating to one-time enhanced funding and to Federal funding for preparation of Planning APD's are effective 30 days following the date of publication of this final rule.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Records, Reporting and recordkeeping requirements, Social Security, Students.

7 CFR Part 276

Administrative practice and procedure, Food stamps, Fraud, Grant programs-social programs, Penalties.

7 CFR Part 277

Food stamps, Government procedure, Grant programs-social programs, Investigations, Records, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 272, 273, 276 and 277 are amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. The authority citation for part 272 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

2. In § 272.1, a new paragraph (g)(130) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(130) Amendment (342). The provision relating to household election of repayment method for IPV claims at § 273.18(d)(4)(ii) is effective retroactive to November 28, 1990. The provision relating to household election of repayment method for IHE claims at § 273.18(d)(4)(i) is effective December 13, 1991. The provisions for State agency retention rates on claim collections at § 273.18(h)(2) and (i) are effective retroactive to October 1, 1990. The provisions at § 277.18 which reduce the enhanced funding level for ADP is effective October 1, 1991 for costs incurred on that date and thereafter and does not apply to ADP funding approved prior to November 28, 1990.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. The authority citation for part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

4. In § 273.13, a new paragraph (b)(14) is added to read as follows:

§ 273.13 Notice of adverse action.

* * * * *

(b) *Exemptions from notice.* * * *

(14) The State agency initiates recoupment of a claim as specified in § 273.18(g)(4) against a household which has previously received a notice of adverse action with respect to such claim.

5. In § 273.18:

a. The third sentence and the last sentence of the introductory text of paragraph (d)(3) are amended by removing the words "the amount of";

b. Paragraph (d)(3)(iii) is revised, paragraphs (d)(3)(iv) through (d)(3)(viii) are redesignated (d)(3)(vi) through (d)(3)(x) respectively and new paragraphs (d)(3)(iv) and (d)(3)(v) are added;

c. The heading of paragraph (d)(4) and paragraph (d)(4)(i) are revised, paragraphs (d)(4)(ii) and (d)(4)(iii) are redesignated (d)(4)(iii) and (d)(4)(iv) respectively; and a new paragraph (d)(4)(ii) is added;

d. Newly redesignated paragraph (d)(4)(iv) is amended by adding a new sentence following the first sentence;

e. Paragraphs (h) through (l) are redesignated as paragraphs (i) through (m) respectively, and a new paragraph (h) is added; and

f. Newly redesignated paragraph (i)(1) is revised in its entirety.

The revisions and additions read as follows:

§ 273.18 Claims against households.

* * * * *

(d) *Collecting claims against households.* * * *

(3) *Initiating collection on claims.*

* * *

(iii) For inadvertent household error claims, the first demand letter to a participating household shall inform the household:

(A) That unless it elects a method of repayment and informs the State agency of its election within the time specified in paragraph (d)(4)(i) of this section, or timely requests a fair hearing and

continued benefits, its allotment will be reduced;

(B) How allotment reduction will affect household benefits, if the State agency has not otherwise informed the household about this matter;

(C) That if the household timely elects allotment reduction, such reduction will begin with the first allotment issued after such election, as provided in § 273.12(c)(2) of this part; and

(D) That if the household fails to make a timely election, or to timely request a fair hearing and continued benefits, the reduction will begin with the first allotment issued after timely notice of such election or request is due to the State agency, as provided in § 273.12(c)(2) of this part.

(iv) For inadvertent household error claims, a demand letter provided to a participating household subsequent to a fair hearing which sustains the claim shall inform the household:

(A) That unless it elects a method of repayment and informs the State agency of its election within the time specified in paragraph (d)(4)(i) of this section, its allotment will be reduced;

(B) How allotment reduction will affect household benefits, if the State agency has not otherwise informed the household about this matter;

(C) That if the household timely elects allotment reduction, such reduction will begin with the first allotment issued after such election, as provided in § 273.12(c)(2) of this part; and

(D) That if the household fails to make a timely election, the reduction will begin with the first allotment issued after timely notice of such election is due to the State agency, as provided in § 273.12(c)(2) of this part.

(v) For intentional Program violation claims, the first demand letter provided a participating household following the action which establishes the claim, as required in § 237.16 of this part, shall inform the household:

(A) That it must elect a method of repayment and inform the State agency of its election within the time specified in paragraph (d)(4)(ii) of this section, or its allotment will be reduced;

(B) How allotment reduction will affect household benefits, if the State agency has not otherwise informed the household;

(C) That if the household timely elects allotment reduction, such reduction will begin with the first allotment issued after such election, as provided in § 273.12(c)(2) of this part; and

(D) That if the household fails to make a timely election, the reduction will begin with the first allotment issued 10 days after the date of the demand letter, as provided in § 273.12(c)(2) of this part.

* * * * *

(4) *Further collection actions.* (i) *Inadvertent household error claims.* Participating households which are liable for inadvertent household error claims shall be deemed to have elected allotment reduction unless they notify the State agency of their choice of repayment method within 20 days of the date an initial demand letter, or a demand letter for payment following a fair hearing which sustains the claim, is mailed or otherwise delivered to them.

(ii) *Intentional Program violation claims.* Participating households which are liable for intentional Program violation claims shall elect a method of repayment on the date of receipt of the demand letter required in § 273.16(e)(9) and (g)(3) of this part (or if the date of receipt is not a business day, on the next business day) or be deemed to have elected allotment reduction. Each State agency shall determine a deadline for receipt of such elections for them to be considered timely. In no event shall that deadline exceed 10 days from the date the demand letter is mailed or otherwise delivered to liable households.

* * * * *

(iv) * * * The State agency may also pursue other collection actions, as appropriate, to obtain restitution of a claim against any household which fails to respond to a written demand letter for repayment of any inadvertent household error or administrative error claim.

* * *

* * * * *

(h) *Retention rates.* The following retention rates shall apply for claims collected by the State agency, including the value of allotment reductions for the purpose of collecting claims but not allotment reductions due to disqualification:

(1) For amounts collected prior to October 1, 1990, the State agency shall retain 25 percent of the value of inadvertent household error claims collected and 50 percent of the value of intentional Program violation claims collected;

(2) For amounts collected during the period October 1, 1990 through September 30, 1995, the State agency shall retain 10 percent of the value of inadvertent household error claims collected and 25 percent of the value of intentional Program violation claims collected;

(3) For amounts collected on or after October 1, 1995, the State agency shall retain 25 percent of the value of inadvertent household error claims collected and 50 percent of the value of intentional Program Violation claims collected;

(4) The State agency shall not retain any percentage of the value of administrative error claims collected.

(i) *Submission of payments.* (1) The State agency shall retain the value of funds collected for inadvertent household error, intentional Program violation, or administrative error claims rather than forwarding the payments to FNS. This amount includes the total value of allotment reductions to collect claims, but does not include the value of benefits not issued as a result of a household member being disqualified. The State's grant and letter of credit will be established or amended on a quarterly basis to reflect the State agency's retention of the value of claims collected as specified in paragraph (h) of this section unless the State agency requests or has requested that payment be by check. The State agency may request that FNS accept checks from the State for FNS–209 amounts due FNS, or that FNS pay the State by check for FNS–209 amounts due the State. If the State agency fails to pay FNS the amount due as reported on the FNS–209, FNS shall offset the amount due from the State's letter of credit. For FNS–209 reporting purposes, State agencies shall calculate the retention amount using the appropriate rate specified in paragraph (h) of this section which is in effect during the reporting period for the report. For those claims collected in Fiscal Year 1990 or earlier for which adjustments are made and reported in Fiscal Year 1991 or 1992, States may request a correction to reflect the difference between the old, higher rate (paragraph (h)(1) of this section) which is applicable to those claims, and the new, lower rate (paragraph (h)(2) of this section) at which the adjustments to those claims were reported on the FNS–209. One request for correction for each of fiscal years 1991 and 1992 may be filed with FNS after the fiscal year, but no later than November 30, 1991 for Fiscal Year 1991 reporting and no later than November 30, 1992 for Fiscal Year 1992 reporting. The request must be in writing, must include appropriate verifying documentation, and must reflect the net effect of all increases and decreases resulting from the application of the old retention rate.

* * * * *

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

6. The authority citation for part 276 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

7. In § 276.2 paragraph (e)(3) is revised to read as follows:

§ 276.2 State agency liabilities.

* * * * *

(e) *Title IV reimbursements.* * * *

(3) The State agency shall reimburse FNS through an adjustment to the Letter of Credit (LOC) unless it requests or has requested that it be allowed to pay by check. The reimbursement amount shall be reported quarterly on the Form FNS–209, Status of Claims Against Households, to be offset against LOC credit adjustments reported on that form. The State agency may request that FNS accept checks from the State for the amount due FNS. If a State agency fails to pay FNS the amount due as reported on the FNS–209, FNS shall offset the amount due from the State agency's Letter of Credit. The State agency shall maintain monthly records which detail the computation of reimbursement amounts reported on the Form FNS–209 for audit purposes.

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

8. The authority citation for part 277 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

9. In § 277.4:

a. Paragraph (b)(1) is revised; and

b. New paragraphs (b)(11) and (b)(12) are added. The revision and additions read as follows:

§ 277.4 Funding.

* * * * *

(b) *Federal Reimbursement Rate.*

* * *

(1) A 75 percent Federal reimbursement is payable for Food Stamp Program allowable costs incurred for State fraud investigations, prosecutions, and fraud hearings upon presentation and approval of a State Plan addendum as outlined in § 277.15.

* * * * *

(11) A 63 percent Federal reimbursement is payable for Food Stamp Program allowable costs incurred for State agency planning, designing, developing, and installing of computerized systems as described in § 277.18 and approved for enhanced funding by FNS after September 30, 1991.

(12) A 75 percent Federal reimbursement is payable for Food Stamp Program allowable costs incurred for State agency planning, designing, developing, and installing of computerized systems as described in § 277.18 and submitted for approval for enhanced funding by FNS before November 28, 1990. Those proposals, including modifications and cost increases, which received approval at the 75 percent level during the period from November 28, 1990 through September 30, 1991, shall be reimbursed at the 75 percent rate for costs incurred through September 30, 1991, and at the 63 percent rate for costs incurred thereafter. All modifications approved after September 30, 1991 and any cost increases which occur after this date shall be reimbursed at 63 percent regardless of when the original system was approved. For purposes of this paragraph, no system shall be funded at 75 percent unless all required paperwork for enhanced funding is (or was) either approved by FNS prior to the appropriate date contained in this paragraph or a planning advance planning document (PAPD) was approved and an implementation advance planning document (IAPD) was submitted with all the required paperwork for enhanced funding to FNS prior to November 28, 1990. The required paperwork is described in § 277.18.

* * * * *

10. In § 277.16, paragraphs (c)(1)(ii) and (c)(1)(iii) are revised and a new paragraph (c)(1)(iv) is added.

The revisions and addition read as follows:

§ 277.16 Suspension, disallowance and program closeout.

* * * * *

(c) *Offsets to the Letter of Credit.* (1) * * *

(ii) Unallowable costs resulting from audit or investigation findings;

(iii) Amounts owed which have been billed to the State agency and which the State agency has failed to pay without cause acceptable to FNS; or

(iv) Amounts owed to FNS for title IV reimbursements and recipient claims collections which were reported on the FNS–209 and which the State agency has failed to pay.

* * * * *

11. In § 277.18:

a. In paragraph (b) the definitions of "Enhanced funding or enhanced FFP rate" and "Regular funding or regular FFP rate" are amended by removing "75 percent" and adding "63 percent" in their place. The reference to "§ 277.4(b)(1)(ii)" in both of these definitions is removed and a reference to "§ 277.4(b)(11) and (b)(12)" is added in its place. These definitions are further amended by removing the word "or" after the word "development", and adding the word "and" in its place;

b. The introductory text of paragraph (c)(1), paragraphs (c)(1)(ii) and (d)(1)(ii), the heading of paragraph (g), paragraph (g)(1), the introductory text of paragraphs (g)(2) and (g)(5), paragraphs (g)(6) and (g)(7), the introductory text of paragraph (g)(8), and paragraphs (g)(8)(iv) and (p)(5) are amended by removing all references to "75 percent" and adding the words "63 percent" in their place;

c. Paragraph (g)(1) is further amended by adding the words "one time" after the word "reimbursement"; by removing the word "or" after the word development, and adding the word "and" in its place;

d. Paragraph (g)(2)(ii) is amended by removing the reference to "(g)(2)(vi), (g)(2)(vii), and (g)(3)(ix)" and adding in their place reference to "(b)(2)(vi), (b)(2)(vii), and (b)(3)(xi)";

e. The first sentence of paragraph (g)(3) is amended by removing the word "or" after the word development, and adding the word "and" in its place; and

f. The last sentence of paragraph (g)(8)(iv) is revised to read as follows:

§ 277.18 Establishment of an Automated Data Processing (ADP) and Information Retrieval System.

* * * * *

(g) * * *

(8) * * *

(iv) * * * The cost of planning activities, which were approved for enhanced funding under a planning APD, may be funded at the 63 percent level regardless of final approval or denial of the Implementation APD.

* * * * *

Appendix A to Part 277 [Amended]

12. In part 277, appendix A in the section titled "Standards for Selected Items of Cost", paragraph B (1) is amended by removing the words "75 percent" and adding the words "63 percent" in their place.

Dated: December 27, 1993.

Ellen Haas,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 94–613 Filed 1–18–94; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 90F–0257]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 3,5-di-*tert*–butyl-4-hydroxyhydrocinnamic acid triester with 1,3,5-tris(2-hydroxyethyl)-s-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione as an antioxidant for polyester elastomers in contact with dry food and rubber articles intended for repeated use in contact with food. This action is in response to a petition filed by the Ciba-Geigy Corp.

DATES: Effective January 19, 1994; written objections and requests for a hearing by February 18, 1994.

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

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 28, 1990 (55 FR 35188), FDA announced that a food additive petition (FAP 0B4222) had been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532–2188. The petition proposed that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamic acid triester with 1,3,5-tris(2-hydroxyethyl)-s-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione as an antioxidant for polyester elastomers in contact with dry food and rubber articles intended for repeated use in contact with food.

FDA, in its evaluation of the safety of this additive, reviewed the safety of the additive and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of unreacted ethyl acrylate, a carcinogenic reactant used in the manufacture of the additive. Residual amounts of reactants and manufacturing aids, such as ethyl acrylate, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define "safe" as "a reasonable certainty in the minds of competent scientist that the substance is not harmful under the intended conditions of use."

The anticancer or Delaney clause (section 409(c)(3)(A) of the act) further provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety clause using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive. *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984).

II. Safety of the Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamic acid triester with 1,3,5-tris(2-hydroxyethyl)-s-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione will result in exposure to the additive of no greater than 100 parts per billion (ppb) in the daily diet (Ref. 1).

FDA does not ordinarily consider chronic toxicological testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data from acute toxicity studies, subchronic studies, and teratological studies on the additive. No adverse effects were reported in these studies.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of risk presented by ethyl acrylate, a carcinogenic chemical that may be present as an impurity in the additive. This risk evaluation of the carcinogenic impurity ethyl acrylate has two aspects: (1) Assessment of the exposure to the impurity from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. Ethyl Acrylate

Using risk assessment procedures, FDA has estimated the hypothetical worst-case exposure to ethyl acrylate from the petitioned use of the additive in the manufacture of polyester elastomers and rubber articles for repeated use and currently regulated uses to be 380 parts per quadrillion of the daily diet (3 kilograms), or 1 nanogram (ng) per person per day (Ref. 1). The agency used data from the National Toxicology Program report (No. 259: 1986), a bioassay on ethyl acrylate, to estimate the upper-bound limit of lifetime human risk from exposure to this chemical stemming from the proposed use of the additive and the level of ethyl acrylate that may be present in the additive (Ref. 3). The results of the bioassay on ethyl acrylate demonstrated that the material was carcinogenic for rats and mice under the conditions of the study. The test material induced squamous cell neoplasms in both sexes of F344/N rats and B6C3F$_1$ mice when administered by gavage in corn oil.

Based on the potential exposure of 1 ng per person per day, FDA estimates that the upper-bound limit of individual lifetime risk from the use of the 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamic acid triester with 1,3,5-tris(2-hydroxyethyl)-s-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione is 8.1×10^{-11}, or 8.1 in 100 billion (Ref. 4). Because of the numerous conservatisms in the exposure estimate, the actual lifetime averaged individual exposure to ethyl acrylate is expected to be substantially less than the estimated daily intake, and therefore the calculated upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty that no harm from exposure to ethyl acrylate would result from the proposed use of 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamic acid triester with 1,3,5-tris(2-hydroxyethyl)-s-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione.

B. Need for Specifications

The agency has also considered whether a specification is necessary to control the amount of ethyl acrylate impurity in the food additive. The agency finds that a specification is not necessary for the following reasons: (1) Because of the low level at which ethyl acrylate may be expected to remain as an impurity following production of the additive, the agency would not expect this impurity to become a component of food at other than extremely small levels; and (2) the upper-bound limit of lifetime risk from exposure to this impurity, even under worst-case

assumptions, is very low, less than 8.1 in 100 billion.

C. Conclusion on Safety

FDA has evaluated data in the petition and other relevant material and concludes that the proposed use of the additive in polyester elastomers in contact with dry food and rubber articles intended for repeated use in contact with food is safe. Based on this information, the agency has also concluded that the additive will have the intended technical effect. Therefore, § 178.2010 should be amended as set forth below.

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

III. Environmental Impact

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

IV. Objections

Any person who will be adversely affected by this regulation may at anytime on or before February 18, 1994, file with the Dockets Management Branch (address above) written objection thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objection received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum dated November 9, 1992, from the Food and Color Additive Review Section (HFF–415), Indirect Additives Branch (HFF–335), concerning FAP 0B4222 (Ciba-Geigy Corp.) exposure to the food additive and its component (ethyl acrylate).

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," in *Chemical Safety Regulation and Compliance*, pp. 24–33, edited by F. Homburger J. K. Marquis, and S. Karger, New York, NY, 1985.

3. "Carcinogenesis Studies of Ethyl Acrylate (CAS Reg. No. 140–88–5) in F–344/N Rats and B6C3F$_1$ Mice" (gavage studies), National Toxicology Program, Technical Report Series, No. 259, December 1986.

4. Memorandum dated April 19, 1993, from the Quantitative Risk Assessment Committee, Center for Food Safety and Applied Nutrition, concerning ethyl acrylate, FAP 0B4222.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 178 is amended as follows:

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

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

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.2010 is amended in the table in paragraph (b) for the entry "3,5-Di-*tert*-butyl-4-hydroxyhydrocinnamic acid triester with 1,3,5-tris(2-hydroxyethyl)-s-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione" by numerically adding a new entry "5" under the heading "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* *
3,5-Di-*tert*-butyl-4-hydroxyhydrocinnamic acid triester with 1,3,5-tris(2-hydroxyethyl)-s-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione (CAS Reg. No. 34137–09–2).	For use only: * * * 5. At levels not to exceed 2 percent by weight of polyester elastomers, complying with § 177.1590 of this chapter, in contact with dry food only, and finished rubber articles for repeated use, complying with § 177.2600 of this chapter, in contact with all foods, at temperatures not to exceed 150 °F.
* * *	* *

Dated: January 12, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–1154 Filed 1–18–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 44, 45, 85, 92, 207, 213, 221, 232, 236, 242, 277, 280, 570, 572, 575, 576, 577, 578, 579, 880, 881, 883, 884, 885, 886, 889, and 890

[Docket No. R–94–1581; FR–2594–F–03]

RIN 2501–AB19

Implementation of OMB Circular A–133 "Audits of Institutions of Higher Education and Other Nonprofit Institutions"

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: OMB Circular A–133 provides policy guidance to Federal agencies for establishing uniform requirements for audits of awards provided to institutions of higher education and other nonprofit organizations. This rule makes final the interim rule that HUD promulgated in

July 1992 to incorporate the provisions of the circular.

EFFECTIVE DATE: February 18, 1994.

FOR FURTHER INFORMATION CONTACT: Steven O. App, Deputy Chief Financial Officer for Finance, room 10166, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0650. TDD: (202) 708–9300. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: OMB Circular A–133 establishes audit requirements and defines Federal responsibilities for implementing and monitoring such requirements for institutions of higher education and other nonprofit institutions receiving Federal awards. It supersedes Attachment F, subparagraph 2h, of Circular A–110, "Uniform Administrative Requirements for Grants and other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations."

The provisions of Circular A–133 apply to: a. Federal departments and agencies responsible for administering programs that involve grants, cost-type contracts and other agreements with institutions of higher education and other nonprofit recipients.

b. Institutions of Higher Education and Other Nonprofit Institutions whether they are recipients receiving awards directly from Federal agencies, or are subrecipients receiving awards indirectly through other recipients.

On July 27, 1992, the Department published an interim rule at 57 FR 33252 to adopt the provisions of the circular. The rule adopted the provisions of Circular A–133 by adding to Title 24 of the Code of Federal Regulations, a new PART 45—NON-FEDERAL AUDIT REQUIREMENTS FOR INSTITUTIONS OF HIGHER EDUCATION AND OTHER NONPROFIT INSTITUTIONS. Part 45 incorporates the requirements set forth in Circular A–133.

The rule also made numerous technical changes throughout the parts of Title 24 in order to make the cross-referencing and conforming changes necessary for implementation of Circular A–133. Included in these technical changes were a number of changes needed as a result of the definition of "Federal financial assistance," as set forth in the circular. That definition now covers loans, loan guarantees, and insurance. Therefore, programs that make, guarantee, or insure loans to nonprofit mortgagors have been brought within the coverage of Circular A–133, as it is implemented at part 45.

However, for HUD programs whose regulations are set forth in 24 CFR parts 207, 213, 221, 232, 236, 242, 277, 880, 881, 883, 884, 885, 886, 889, and 890, a nonprofit institution is the nonprofit corporation which owns the individual property receiving the HUD assistance. Each project under the parts 200 series and many projects under the parts 800 series are required to complete project-specific audits because they are deemed to be separate entities. The audits currently conducted under applicable HUD audit guides for these programs will serve as the organization-wide audits required by OMB Circular A–133 and this part. In performing the compliance review required by paragraph 13.c. of OMB Circular A–133, auditors should consider the compliance requirements set forth in the OMB Compliance Supplement. In accordance with the regulatory agreement incident to the insured mortgage, where HUD provides federal funding, the audit reports pertaining to nonprofit organizations subject to these regulations are to be submitted within 60 days after the end of the fiscal year audited. Each of the parts listed in the first sentence of this paragraph is amended to cross-reference to part 45. The details of coverage of entities receiving assistance under these parts is contained in section 45.1(c).[1]

Public Comments

The public was given 60 days in which to submit comments to the interim rule published on July 27, 1992, at 57 FR 33252, and comments were received from three commenters: One nonprofit organization, one certified public accounting firm, and one national association of certified public accountants. Below is a listing of the issues raised by the commenters and the Department's response and resolution of those issues.

Comment: The requirements for a compliance audit performed by an independent accountant seem to be redundant, time-consuming, and costly, especially where municipal and county requirements include monthly financial and compliance reports, and both municipal and county officials perform inspection of the records, programs and procedures. Nonprofit organizations that are subrecipients should be allowed to continue adherence to the guidelines in Circular A–110. [one nonprofit organization and one certified public accounting firm]

Response: Accommodation of this comment is not feasible. OMB issued Circular A–133 to supersede portions of Circular A–110 and clearly included, under the A–133 coverage, funds received as a subrecipient. The Department is implementing the provisions of the circular and has no flexibility in this matter.

Comment: The rule should be effective for years beginning on or after August 26, 1992, the effective date stated for the rule. However, the revisions to paragraph 45.1(d) state that the requirements are applicable to fiscal years beginning on or after January 1, 1990. An effective date of January 1, 1990 requires institutions to retroactively apply OMB Circular A–133, creating an undue hardship on those institutions and their auditors. [one national association of certified public accountants]

Response: The date in the summary of the interim rule (August 26, 1992) relates to when the audit is conducted, and the date in section 45.1 (fiscal years beginning on or after January 1, 1990) relates to the period audited. Circular A–133 specifies that audits of periods beginning on or after January 1, 1990 will be covered. The Department is merely implementing OMB policy.

Comment: The revisions to paragraph 45.1(b) state that the requirements apply to nonprofit institutions "* * * as defined in OMB Circular A–133 (including hospitals that are not affiliated with an institution of higher education) * * *." However, section 1.k. of the Attachment to Circular A–133 excludes hospitals that are not affiliated with an institution of higher education. Clarification is needed. [one national association of certified public accountants]

Response: The substitution of Circular A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions, for Circular A–110, Attachment F, subparagraph 2h (which covered grants to universities, hospitals, and other nonprofit organizations) left open the issue of coverage of hospitals. The explanation for this omission, advanced by OMB, was that most hospitals receive reimbursement from the federally funded Medicaid and Medicare programs, each of which has its own statutory audit requirements. Albeit hospitals which are affiliated with universities are covered by Circular A–133 by reason of that affiliation and non-university affiliated hospitals, which receive federal funds pursuant to research contracts, are

[1] Parts 889 and 890 are programs regarding supportive housing for the elderly and persons with disabilities, respectively. The regulations for these programs were developed after the publication of the interim rule. Nonetheless, the projects under these programs are required to complete project-specific audits because they are deemed to be separate entities.

subject to contract closing audits, there still remained a policy decision of coverage of non-university affiliated hospitals that may be receiving HUD assistance. Therefore, under section 45.1(b) of the interim rule, the coverage was continued under Circular A–133 for non-university affiliated hospitals that receive HUD assistance. The decision to extend coverage to this group of hospitals receiving HUD assistance was made as a matter of policy. Any hospital receiving Federal funds should, as a matter of sound fiscal management, receive audit reviews of the use of those funds.

This Final Rule

This rule makes final the interim rule that is discussed above. The following four programs are added to its coverage by this final rule, since the regulations for these programs were developed after the publication of the interim rule: PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM, PART 572—HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES PROGRAM (HOPE 3), PART 889—SUPPORTIVE HOUSING FOR THE ELDERLY, and PART 890—SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES. As discussed earlier in this preamble, the projects under parts 889 and 890 are required to complete project-specific audits.

Other Matters

Executive Order 12866.

This rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993. Any changes made in the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Office of the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Environmental Determination.

The content of this rule does not constitute a development, nor affect the physical condition of project areas or building sites, but relates only to auditing and fiscal functions. Thus, the authorities and standards of § 50.4 of 24 CFR part 50 (the regulations implementing Section 102(2)(C) of the National Environmental Policy Act of 1969) are inapplicable to this rule; therefore, it is categorically excluded from the NEPA requirements pursuant to § 50.20(k).

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities, because the rule does not impose additional audit requirements, but merely makes uniform the procedures that will be followed.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being.

Semiannual Agenda of Regulations

This rule was listed as item 1467 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56415), in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 44

Accounting, Grant programs, Grant programs—housing and community development, Intergovernmental relations, Loan programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 45

Audit requirements-nonprofits, universities; Reporting and recordkeeping requirements.

24 CFR Part 85

Accounting, Grant programs, Intergovernmental relations, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, reporting and recordkeeping requirements.

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 213

Cooperatives, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 242

Hospitals, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 277

Aged, Handicapped, Loan programs—housing and community development, Low and moderate income housing.

24 CFR Part 280

Community development, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—housing and community development, Grant programs—education, Guam, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands, Student aid.

24 CFR Part 572

Condominiums, Cooperatives, Fair housing, Government property, Grant programs—housing and community development, Low and moderate

income housing, Nonprofit organizations, reporting and recordkeeping requirements.

24 CFR Part 575

Civil rights, Community facilities, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 576

Community facilities, Grant programs—housing and community development, Emergency shelter grants, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 577

Grant programs—housing and community development, Homeless, Community facilities, Employment, Grant programs—social programs, Handicapped, Mental health programs, Nonprofit organizations, Reporting and recordkeeping.

24 CFR Part 578

Community facilities, Grant programs—housing and community development, Grant programs—social programs, Handicapped, Homeless, Reporting and recordkeeping requirements, Mental health programs, Nonprofit organizations, Technical assistance.

24 CFR Part 579

Grant programs—housing and community development, Homeless, Reporting and recordkeeping requirements, Community facilities, Grant programs—social programs.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

24 CFR Part 885

Aged, Handicapped, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 889

Aged, Capital advance programs, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 890

Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mental health programs, Reporting and recordkeeping requirements.

Accordingly, title 24 of the Code of Federal Regulations, parts 44, 45, 85, 207, 213, 221, 232, 236, 242, 277, 280, 570, 575, 576, 577, 578, 579, 880, 881, 883, 884, 885, and 886, Implementation of OMB Circular A–133 "Audits of Institutions of Higher Education and Other Nonprofit Institutions", is amended by adopting as final the interim rule, published in the Federal Register on July 27, 1992 at 57 FR 33252, and is further amended with the following revisions to parts 92, 572, 881, 889, and 890, to read as follows:

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

1. The authority for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

2. Section 92.506 is revised to read as follows:

§ 92.506 Audit.

Audits of the participating jurisdiction and subrecipients must be conducted in accordance with 24 CFR parts 44 and 45, as applicable.

3. Section 92.646 is revised to read as follows:

§ 92.646 Audit.

Audits of the Indian tribe and subrecipients must be conducted in accordance with 24 CFR parts 44 and 45, as applicable.

PART 572—HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES PROGRAM (HOPE 3)

4. The authority for part 572 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12891.

5. In § 572.420, the last sentence of paragraph (a)(1) is revised to read as follows:

§ 572.420 Miscellaneous requirements.

(a) * * *

(1) * * *Recipients are also subject to the audit requirements of OMB Circular A–128 (Audits of State and Local Governments) implemented at 24 CFR part 44, and OMB Circular A–133 (Audits of Institutions of Higher Learning and Other Nonprofit Institutions), implemented at 24 CFR part 45, as applicable.

* * * * *

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

6. The authority for part 881 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

7. In § 881.211, paragraph (b) is revised to read as follows:

§ 881.211 Audit.

* * * * *

(b) Where a nonprofit organization is the eligible owner of a project, receiving financial assistance under this part, the audit requirements in 24 CFR part 45 shall apply.

PART 889—SUPPORTIVE HOUSING FOR THE ELDERLY

8. The authority for part 889 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 3535(d).

9. Part 889 is amended to add a new § 889.280 to subpart B, to read as follows:

§ 889.280 Audit requirements.

Nonprofits receiving assistance under this part are subject to the audit requirements in 24 CFR part 45.

PART 890—SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES

10. The authority for part 890 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 8013.

11. Part 890 is amended to add a new § 890.275 to subpart B to read as follows:

§ 890.275 Audit requirements.

Nonprofits receiving assistance under this part are subject to the audit requirements in 24 CFR part 45.

Dated: December 21, 1993.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–1258 Filed 1–18–94; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Colorado Permanent Regulatory Program

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

ACTION: Final rule, approval of amendment

SUMMARY: OSM is announcing its decision to approve a proposed amendment to the Colorado permanent regulatory program (hereinafter referred to as the Colorado program), under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of Colorado's rules concerning backfilling and grading for the elimination of highwalls, and limited variances from approximate original contour (AOC) requirements. The amendment is intended to revise the Colorado program to be consistent with the corresponding Federal regulations and to improve operational efficiency.

EFFECTIVE DATE: January 19, 1994.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Telephone (505) 766–1486.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program for the regulation of coal exploration and coal mining and reclamation operations on non-Federal and non-Indian lands. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the December 15, 1980, **Federal Register** (45 FR 82173). Actions taken subsequent to approval of the Colorado program are codified at 30 CFR 906.15, 906.16, and 906 30

II. Submission of Proposed Amendment

By letter dated March 19, 1993, Colorado submitted to OSM a proposed amendment to the rules of the Colorado Mined Land Reclamation Board (Board) at 2 Code of Colorado Regulations (CCR) 407–2 (administrative record No. CO–536). Colorado submitted the proposed amendment at its own initiative.

In its March 19, 1993, amendment, Colorado proposed to revise 2 CCR 407–2, Rule 4.14.1(2), performance standards for underground mining operations and remining operations; Rule 4.14.2, modifications by the Colorado Division of Minerals and Geology (Division) to the general backfilling and grading requirements for steep-slope, underground, and remining operations; and Rule 4.27.4, variances from AOC requirements.

OSM published a notice in the **Federal Register** on April 14, 1993 (58 FR 19367), announcing receipt of the proposed amendment to the Colorado program and inviting public comment on its adequacy (administrative record No. CO–541). The public comment period was scheduled to end May 14, 1993. However, in response to a request for an extension of the public comment period, OSM published a notice in the May 12, 1993, **Federal Register** (58 FR 27967) extending the public comment period until May 29, 1993 (administrative record No. CO–545).

During its review of the amendment, OSM identified concerns with Rules 4.14.1(2) (f) and (g), regarding the need for a written demonstration that all reasonably available spoil is insufficient to completely backfill a highwall; Rules 4.14.1(2) (f) and (g), regarding the need to define the term "reasonably available spoil"; Rules 4.14.1(2) (f)(iii) and (g)(iii), regarding the need to demonstrate to the satisfaction of the regulatory authority that a highwall remnant is stable; and Rule 4.14.1(2)(f)(i), regarding the need to require that all reasonably available spoil within the permit area be used to eliminate a highwall. OSM notified Colorado of these concerns by letter dated July 8, 1993 (administrative record No. CO–553).

Colorado responded in a letter dated August 4, 1993, by submitting additional explanatory information and a revised amendment (administrative record No. CO–559). Specifically, Colorado proposed additional revisions to (1) Rule 1.04 (103a) to include a definition of the term "reasonably available spoil"; (2) Rule 4.14.1(2)(f), regarding a demonstration by the applicant in writing that an existing highwall was in place prior to August 3, 1977, and that the volume of all reasonably available spoil is insufficient to completely backfill the highwall and face-up area so as to achieve a safety factor of 1.3; (3) Rule 4.14.1(2)(f)(i), regarding the requirement that all reasonably available spoil in the permit area be used to backfill a highwall; (4) Rules 4.14.1(2)(f)(iii) and (g)(iii), regarding the requirement that the operator demonstrate to the satisfaction of the Division that a highwall remnant is stable; and (5) Rule 4.14.1(2)(g), regarding the allowance for incomplete highwall elimination for remaining operations that contain a preexisting highwall where the operator demonstrates in writing to the Division that the volume of all reasonably available spoil is insufficient to completely backfill a reaffected or enlarged highwall so as to achieve a safety factor of 1.3.

OSM announced receipt of the revised amendment in the August 30, 1993, **Federal Register** (58 FR 45467), and, in the same notice, reopened and extended the public comment period and provided opportunity for a public hearing on the adequacy of the amendment considering the additional materials submitted (administrative record No. CO–570). The comment period closed on September 14, 1993.

III. Director's Findings

After a thorough review, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds that the proposed amendment, as submitted by Colorado on March 19, 1993, and as revised by it on August 4, 1993, is no less stringent than SMCRA and no less effective than the Federal regulations.

1. Nonsubstantive Revisions to Colorado's Regulations

Colorado's proposed revisions to the following previously-approved rules are nonsubstantive in nature and consist of minor editorial, punctuation, and codification changes. Corresponding Federal provisions, if any exist, are listed in parentheses.

Rule 4.14.1(2)(h) (30 CFR 816 102(d) and 817.102(d)), placement of spoil on the area outside the mined-out area;

Rule 4.14.2(1)(a) (30 CFR 816.102(b) and 817.102(b)), general slope grading requirements, and

Rule 4.27.4 (30 CFR 816.102(a)(1) and (2), 817.102(a)(1) and (2), 816.133(d) and 817.133(d)), limited variances from AOC requirements.

Because the proposed revisions to these previously-approved Colorado rules are nonsubstantive in nature, the Director finds that these proposed Colorado regulations are not inconsistent with SMCRA and are no less effective than the Federal regulations. The Director approves these proposed rules.

2. Rule 1.04(103a), Definition of "Reasonably Available Spoil"

At newly-created Rule 1.04(103a), Colorado proposed to define the term "reasonably available spoil" that would apply to backfilling and grading operations and highwall elimination on continuously mined areas (Rule 4.14.1(2)(f), finding No. 3) and on remaining operations on previously mined areas (Rule 4.14.1(2)(g), finding No. 4). Colorado proposed to define "reasonably available spoil" to mean "spoil and suitable coal mine waste material generated by a remaining operation, or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment." Colorado's proposed definition is substantively identical to the corresponding Federal definition of the term "reasonably available spoil" at 30 CFR 701.5. Accordingly, the Director finds that Colorado's proposed Rule 1.04(103a) defining the term "reasonably available spoil" is no less effective than the corresponding Federal definition of "reasonably available spoil" at 30 CFR 701.5. The Director approves the proposed rule.

3. Rule 4.14.1(2)(f), Exception From the Requirement for Complete Highwall Elimination for Continuously Mined Areas at Underground Mining Operations

Colorado proposed to recodify existing Rule 4.14.1(2)(f) as 4.14.1(2)(h) and add a new Rule 4.14.1(2)(f). At Rule 4.14.1(2)(f), Colorado proposed requirements for underground mining operations that have highwalls or face-up areas that were in place prior to August 3, 1977, the effective date of SMCRA, and have continued to operate in the same location after that date. In this rule Colorado proposed an exception from the requirement for complete elimination of face-up areas and highwalls for underground mining operations of an applicant demonstrates in writing to the Division that the volume of all reasonably available spoil is insufficient to completely backfill the highwall and face-up area so as to achieve a safety factor of 1.3. Such face-up areas and highwalls would have to be eliminated to the maximum extent technically practical. Furthermore, Colorado proposed at Rules 4.14.1(2)(f)(i) through (v) that (1) all reasonably available spoil in the permit area shall be used to backfill the highwall and that reasonably available spoil in the vicinity of the operation shall be included in the permit area, (2) the backfill shall be graded to a slope that is compatible with the approved postmining land use and that provides adequate drainage and meets a minimum static safety factor of 1.3, (3) the highwall remnant shall be sufficiently stable so as not to pose a hazard to the public health and safety or to the environment and the operator shall demonstrate, to the satisfaction of the Division, that the highwall is stable, (4) exposed coal seams, toxic and acid-forming materials, and combustible materials shall be adequately covered or treated in accordance with Rule 4.14.3, and (5) spoil placed on the outslope during mining operations that occurred prior to August 3, 1977, shall not be disturbed if such disturbance will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

The Federal backfilling and grading regulations at 30 CFR 817.106 (a), (b), and (b)(1) allow an exception from the requirement for complete highwall elimination for underground mining operations that remine highwalls in "previously mined areas," which by definition are those that existed prior to August 3, 1977, the effective date of SMCRA, and are not subject to the standards of SMCRA. These regulations allow for the incomplete elimination of such highwalls where the volume of all reasonably available spoil is insufficient to completely backfill the reaffected or enlarged highwall.

Colorado's proposed rules differ from the Federal regulations in that Colorado proposed to extend the exception for incomplete highwall elimination to underground mining operations where highwalls or face-up areas were in place prior to August 3, 1977, the effective date of SMCRA, and have continued to operate in the same location after that date.

The Director has approved similar proposed regulations for Kentucky, West Virginia, and Utah (52 FR 49398, 49399, December 31, 1987; 56 FR 21304, 21330–21331, May 23, 1990; 58 FR 48600, 48603, September 17, 1993). Colorado's proposed rules and Kentucky's, West Virginia's and Utah's approved regulations address the situation of operators attempting to reclaim face-up entry areas that are created prior to the passage of SMCRA. Many of these underground mines have been in existence for many years and the earthen material necessary to eliminate the face-up entry is either no longer available or has been completely revegetated and its handling and use would cause new environmental damage and disruption. This problem is unique to underground mines where highwall areas do not move with the coal removal operations (as with surface mines) but exist in a static state for many years. The problem is not encountered in surface mines where post-SMCRA operations are continually creating new highwalls rather than extracting coal from pre-SMCRA highwall areas.

In passing SMCRA, Congress addressed the surface impacts of underground mining and surface extraction of coal in a generally similar manner, but it did provide for important differences. In section 516 of SMCRA, Congress affirmatively established certain performance standards applicable to underground mines and incorporated by reference other performance standards at section 515. One of the performance standards incorporated by reference, section 515(b)(3), requires highwall elimination. However, section 516(b)(10) also requires that the Secretary shall make such modifications in the requirements imposed by this subparagraph as are necessary to accommodate the distinct difference between surface and underground coal mining.

For the Kentucky, West Virginia, and Utah provisions, the Director exercised his authority as the Secretary's designee to consider these distinct differences between surface and underground mines and approved them. The Director reasoned that the provisions provided equitable treatment for pre-SMCRA mines that have operated continuously since before the effective date of SMCRA. They also afforded the same variance from AOC requirements as is provided in 30 CFR 817.106 for remining sites where operation of a pre-SMCRA mine has been interrupted and mining was begun again at the sites after the effective date of SMCRA.

For the same reasons discussed above for the Kentucky, West Virginia, and Utah proposed regulations, the Director finds that Colorado's proposed Rules 4.14.1(2)(f)(i) through (v) are not inconsistent with the Federal regulations at 30 CFR 817.106 (a), (b), and (b)(1) or any other requirements of the Federal regulations or SMCRA.

insofar as they apply to underground mining operations that operated prior to August 3, 1977, and have continuously operated since that time.

The Director wishes to emphasize that any exception to SMCRA's requirement to completely eliminate all highwalls, including the exception for continuously mined areas, must be construed and implemented in a carefully limited manner and should ensure that the highwall is removed to the maximum extent technically practical (48 FR 41720, 41729, September 16, 1983). Thus, for example, where an underground mining operation has been continuously mined since before the effective date of SMCRA (August 3, 1977) and contains both pre- and post-SMCRA face-up or portal areas, this exception must be understood as applying only to the pre-SMCRA face-up areas. Any post-SMCRA portal areas within the same mining operation must comply with the requirement to completely eliminate all highwalls.

Colorado has confirmed that the exception proposed at Rule 4.14.1(2)(f) would apply only to those face-up areas or highwalls that were created prior to August 3, 1977, and that any face-up area or highwall initially formed after August 3, 1977, at an underground mining operation would be subject to the requirements for complete highwall elimination under the approved Colorado program (administrative record No. CO–538).

For the reasons discussed above, the Director approves Colorado's proposed Rules 4.14.1(2)(f) (i) through (v).

4. Rule 4.14.1(2)(g), Exception From the Requirement for Complete Highwall Elimination for Remining Sites Mined and Abandoned Prior to August 3, 1977

Colorado proposed to add Rule 4.14.1(2)(g), which allows for an exception to the requirement for complete highway elimination at remining operations initiated after August 3, 1977, on sites that were mined and abandoned prior to August 3, 1977, and contain a preexisting highwall, when the operator demonstrates in writing to the Division that the volume of all reasonably available spoil is insufficient to completely backfill the reaffected or enlarged highwall so as to achieve a static safety factor of 1.3. In such instances, the highwall must be eliminated to the maximum extent technically practical and must comply with criteria proposed at Rules 4.14.1(2)(g) (i) through (v), which are addressed in finding No. 3.

Colorado's proposed rules are substantively identical to the requirements of the Federal regulations at 30 CFR 816.106(b) (1) through (4), 817.106(b) (1) through (4), 816.102 (a)(3) and (f), and 817.102(a)(3) and (f). For this reason, the Director finds that Colorado's proposed Rules 4.14.1(2)(g) (i) through (v) are no less effective than the counterpart Federal regulations and approves them.

5. Revisions to Colorado's Approved Program to Incorporate Both Existing and Proposed Exemptions to the Requirement to Achieve AOC and Proposed Exceptions to the Requirement to Completely Eliminate all Highwalls

(A) Rule 4.14.1(2)(a)

(1) *Colorado's proposed references to both existing and proposed exemptions to the requirement to achieve AOC.* Existing Colorado Rule 4.14.1(2)(a), which has been previously approved by OSM, provides that the AOC of an area disturbed by surface mining must be restored "[e]xcept as specifically exempted in these Rules." Colorado proposed to eliminate the general phrase "[i]n these Rules" and replace it with specific references to all of the provisions of the Colorado program that provide exemptions from the requirement to restore AOC. The referenced exemptions include proposed Rules 4.14.1(2)(f) and 4.14.1(2)(g) and existing Rules 2.06.5, 4.14.1(2)(e), and 4.27.4.

Proposed Rule 4.14.1(2)(f), which has no counterpart in the Federal regulations, provides a limited exemption from the requirement to restore AOC when the operation is an underground mining operation that contains a highwall or face-up area that was in place prior to August 3, 1977. For the reasons discussed in finding No. III.3., this exemption is no less effective than the Federal regulations.

Proposed rule 4.14.1(2)(g) provides an exemption from the requirement to restore AOC for remining operations initiated on sites that contain a preexisting highwall. For the reasons discussed in finding No. III.4., this exemption is no less effective than the counterpart Federal regulations at 30 CFR 816.102(a)(3) and (f), 817.102(a)(3) and (f), 816.106(b) (1) through (4), and 817.106(b) (1) through (4).

Existing Rules 2.06.5 and 4.27.4, which were previously approved by OSM, provide an exemption from the requirement to restore AOC in steep-slope mining situations. This exemption is no less effective than the counterpart Federal regulation exemptions at 30 CFR 785.16, 816.102(a) (1) and (2), 817.102(a) (1) and (2), 816.133(d), and 817.133(d).

Existing Rule 4.14.1(2)(e) provides that, for an underground mining operation, excess material not required to eliminate all highwalls and depressions need not be returned to AOC as required by the general grading requirements at Rule 4.14.2 if the operation demonstrates compliance with the applicable hydrologic balance, topsoil, excess spoil, and revegetation requirements at Rules 4.05, 4.06, 4.09, and 4.15 and the Division approves this practice. Rule 4.14.1(2)(e), which was previously approved by OSM, has no direct counterpart in the Federal regulations but has a general counterpart in the Federal backfilling and grading regulations at 30 CFR 817.102(a)(1). The applicable part of this regulation requires that disturbed areas for underground mining operations be backfilled and graded to achieve AOC. Rule 4.14.1(2)(e) provides a specific underground mining exemption to returning or blending excess material to AOC. The Director interprets this rule to mean that an underground mining operation's disturbed area, including all highwalls and depressions, must be backfilled and returned to AOC and that any excess material deposited outside the disturbed area must be blended with the surrounding terrain to achieve AOC. When narrowly interpreted in this manner to apply to underground mining activities, and not to surface mining activities, and only to excess spoil material remaining after AOC of the disturbed area has been achieved, Rule 4.14.1(2)(e) is not inconsistent with the Federal regulations at 30 CFR 817.102(a)(1).

The Federal regulations corresponding to proposed Rule 4.14.1(2)(a) are found at 30 CFR 816.102(a)(1) and 30 CFR 817.102(a)(1). Like the proposed rule, the Federal regulations contain specific references to the portions of the Federal regulations that provide exemptions to the requirement to restore AOC. Since the proposed revision would add specificity and clarity to the existing rule, and since each exemption referenced by the proposed revision is no less effective than the counterpart exemption in the Federal regulations, the Director finds the proposed revision to be no less effective than the corresponding Federal regulations and approves it.

(2) *Colorado's proposed exceptions to the requirement to completely eliminate all highwalls.* Existing Colorado Rule 4.14.1(2)(a) also provides that spoil must be graded to eliminate all highwalls, spoil piles, and depressions.

Colorado proposed to further revise Rule 4.14.1(2)(a) to provide for two exceptions to this requirement. The first exception provides that spoil need not be graded to eliminate all highwalls if the operation is an underground mining operation that meets the criteria of Rule 4.14.1(2)(f). The second exception provides that spoil need not be graded to eliminate all highwalls if the operation is a remining operation on a site mined and abandoned prior to August 3, 1977, pursuant to Rule 4.14.1(2)(g).

The counterpart Federal regulations at 30 CFR 816.102(a)(2) and 30 CFR 817.102(a)(2) provide for two exceptions to the requirement that all highwalls be eliminated. The first exception is for small depressions pursuant to 30 CFR 816.102(h). The second exception is for highwalls in previously mined areas pursuant to 30 CFR 816.102(k)(3)(iii) and 30 CFR 816.106.

As discussed in finding No. III.3., Colorado's first proposed exception, concerning underground mining operations that contain a highwall or face-up area that was in place prior to August 3, 1977, has no direct Federal counterpart and is not inconsistent with the Federal regulations at 30 CFR 817.106(a), (b), and (b)(1) or any other requirements of the Federal regulations or SMCRA.

As discussed in finding No. III. 4., Colorado's second proposed exception, concerning remining operations, is no less effective than the counterpart Federal exceptions at 30 CFR 816.102(a)(2) and 30 CFR 817.102(a)(2).

Since the proposed revision would provide for exceptions to the requirements to eliminate all highwalls that have been determined to be no less effective than the corresponding Federal regulations, the Director approves the proposed revision.

(B) Rules 4.14.2(1), 4.14.2(1)(b), and 4.27.4(1)

Colorado proposed to revise Rule 4.14.2(1) to allow modification of the slope grading requirements at Rule 4.14.2 by referencing existing exceptions to the backfilling and grading requirements at Rule 4.27, regarding performance standards for variances from AOC restoration requirements for steep-slope mining, and Rule 4.14.1(2)(e), regarding variances for excess spoil at underground mining operations from AOC requirements if the spoil is not needed to eliminate highwalls and depressions. In addition, Colorado referenced proposed exceptions to the backfilling and grading requirements at Rule 4.14.1(2)(f), regarding the exception for complete elimination of certain highwalls at underground mining operations, and Rule 4.14.1(2)(g), regarding the exception for complete highwall elimination for remining of sites mined and abandoned prior to August 3, 1977. In doing so, Colorado proposed to delete ambiguous language allowing for modification of the slope grading requirements for lands that had not been restored in accordance with Colorado's program and where insufficient spoil was available to otherwise comply with Rule 4.14.

Colorado proposed to revise Rule 4.14.2(1)(b) to incorporate exceptions to the requirement for complete elimination of highwalls by referencing proposed Rules 4.14.1(2) (f) and (g).

Colorado proposed to revise Rule 4.27.4(1), regarding variances from the requirements to meet AOC for steep-slope mining operations, and to incorporate a reference to the proposed highwall elimination variance provisions as set forth in proposed Rules 4.14.1(2)(f) for underground mining operations and Rule 4.14.1(2)(g) for remining operations.

For all of these rules proposed by Colorado, the corresponding Federal regulations are found at 30 CFR 816.102(a) (1) and (2) and 817.102(a) (1) and (2). These Federal regulations require that disturbed areas be backfilled and graded to achieve AOC, except as provided at 30 CFR 816.102(k) and 817.102(k), concerning variances from AOC for postmining slopes, and that all highwalls, spoil piles, and depressions be eliminated, except as provided at 30 CFR 816.102(h) and (k)(3)(iii) and 817.102(h) and (k)(3)(iii), concerning small depressions and previously mined areas.

Since Colorado's proposed revisions to Rules 4.14.2(1) and (1)(b) and 4.27.4(1) would simply provide for appropriate references in these rules to other Colorado rules that OSM has previously approved or is approving in this notice, the Director finds that the proposed revisions are no less effective than the Federal regulations at 30 CFR 816.102(a) (1) and (2) and 817.102(a) (1) and (2) that identify, by reference to other Federal regulations, the exceptions to the requirements for AOC and complete elimination of depressions, spoil piles, and highwalls. Therefore, the Director approves Colorado proposed Rules 4.14.2(1) and (1)(b), and 4.27.4(1).

IV. Summary and Disposition of Comments

1. Public Comments

In response to the request for public comments, OSM received one comment supporting and one comment opposing Colorado's proposed amendment.

A. Support for Colorado's Proposed Amendment

One commenter expressed support for and endorsed adoption of Colorado's proposed amendment. The commenter stated that the amendment allows the Division to make sound scientific reclamation judgments based upon site-specific conditions and ensures an environmentally sound reclamation configuration. The commenter recognized that the amendment does not represent a blanket exemption from complete highwall elimination for preexisting operations but requires applicants to make a specific demonstration in order to qualify for the exemption. Lastly, the commenter stated that the amendment provides an appropriate balance between the responsibilities of the operator to make an adequate demonstration, and the Division's responsibility to evaluate each submittal in light of the regulations.

The Director agrees with the commenter that the amendment does not provide a "blanket exemption" from complete highwall elimination for preexisting operations (those operations existing prior to August 3, 1977, the date SMCRA was passed). An operator must use all reasonably available spoil to backfill highwalls that were created before August 3, 1977, and continued to be used thereafter (finding No. III.3.) and to backfill remined highwalls that were initially mined and abandoned prior to August 3, 1977 (finding No. III.4.). In either of these situations, if the volume of reasonably available spoil exists for the operator to completely backfill the highwall, the operator must do so under Colorado's proposed rules. As the commenter stated, an operator must under Colorado's proposed rules completely backfill the highwall unless the operator demonstrates that the volume of spoil is insufficient to completely backfill the highwall. For these and the other reasons discussed in finding Nos. III.3. and 4., the Director is, as requested by the commenter, approving Colorado's proposed rules.

B. Request for OSM to Reject Colorado's Proposed Amendment

One commenter, on behalf of several individuals, expressed opposition to Colorado's proposed amendment and

requested that OSM reject it. Specifically, the commenter stated that regulators have caused much of the breakdown in coal enforcement by cutting "special deals" that overlook violations and sidestep rules to accommodate coal operators. The commenter further stated that Colorado's proposed amendment represents a "special deal" for some Colorado operators and urged OSM to reject it for several reasons.

The commenter stated that the Federal law and rules (30 CFR 817.102) require complete elimination of highwalls at operating mines and Colorado cannot adopt rules that are less strict than the Federal law and rules (30 U.S.C. 1253 and 30 CFR part 732).

The Director agrees that section 515(b)(3) of SMCRA and the Federal regulations at 30 CFR 816.102(a)(2) and 817.102(a)(2) require the elimination of all highwalls. However, section 516(b)(10) of SMCRA requires that the Secretary shall make such modifications in the requirements imposed by this subparagraph as are necessary to accommodate the distinct difference between surface and underground coal mining.

For the reasons stated in finding No. III.3. above, the Director exercised his authority as the Secretary's designee to consider these distinct differences between surface and underground mines and approved Colorado's proposed regulations that allow incomplete elimination of highwalls for underground mining operations where the highwall was created prior to August 3, 1977, but continued to be used thereafter.

Based upon the rationale of the finding and the substantive similarity of Colorado's proposed regulations to regulations previously approved in Kentucky, West Virginia, and Utah, the Director does not agree with the commenter's assertion that Colorado's proposed rules allowing for incomplete elimination of highwalls are less strict than the Federal law and rules.

The commenter also stated that "Congress found highwalls to be one of the most destructive impacts of irresponsible coal mining" and that "[t]hey cause serious erosion and land instability, threaten human and animal safety, and degrade the beauty and usefulness of public and private lands. (E.g., See U.S. Senate Report 95–128, 1977, p. 51)." The commenter has mischaracterized Congress' statements in the referenced report. The cited section of this report does not specifically address highwalls. It states that

> [i]f surface mining and reclamation are not done carefully, significant environmental damage can result. In addition, *unreclaimed or improperly reclaimed surface coal mines* pose a continuing threat to the environment, and at times are a danger to public health and safety, public or private property. Similar hazards also occur from the surface effects of underground coal mining, including the dumping of coal waste piles, subsidence and mine fires.

(U.S. Senate Report 95–128, 1977, p. 50; emphasis added).

While OSM realizes that unreclaimed highwalls left by irresponsible operators could cause such adverse impacts as identified by the commenter and Congress, OSM does not find that highwalls retained by responsible operators in accordance with Colorado's proposed rules would cause such adverse impacts.

As discussed in finding Nos. III.3. and III.4. above, Colorado has proposed regulations at Rule 4.14.1(2)(f), regarding incomplete elimination of highwalls for continuously mined areas that are not inconsistent with the Federal regulations at 30 CFR 816.106 (a), (b), and (b)(1) and 817.106 (a), (b), and (b)(1) and Rule 4.14.1(2)(g), regarding incomplete elimination of highwalls for remining operations in previously mined areas that are substantively identical to the Federal regulations at 30 CFR 816.106(b) (1) through (4), 817.106(b) (1) through (4), 816.102(a)(3) and (f), and 817.102(a)(3) and (f).

Both Colorado's proposed regulations and the corresponding Federal regulations include provisions that protect against erosion and land instability, as well as the threat to human and animal safety. Specifically, Rules 4.14.1(2)(f) (ii) and (iii) and 4.14.1(2) (ii) and (iii) require that a retained highwall be backfilled and graded to meet a minimum static safety factor of 1.3 and that a highwall remnant shall be sufficiently stable so as not to pose a hazard to the public health and safety or to the environment. In addition, before any highwall remnant is retained, the operator must demonstrate, to the satisfaction of the Division, that the highwall remnant is stable. The Director believes that Colorado's proposed rules, which are no less effective than the corresponding Federal regulations, provide sufficient safeguards to ensure that highwall stability is achieved and that threat to public health and safety or to the environment are prevented.

The commenter stated that the Division makes the misleading claim that its proposed rules put underground mines on equitable footing with remining operations. The commenter asserted that, in fact, Colorado's proposed amendment will significantly reduce the environmental standards for mines that have operated continuously since 1977. The commenter further stated that the Federal rules allow remining operations to meet lower environmental standards and leave some highwalls because they are cleaning up abandoned mines that might otherwise not be reclaimed. The commenter asserted that the Division proposes to treat all existing underground mines as remining sites and deny the public the protections promised by law and to allow underground mines to escape their obligations.

The Director does not agree with the commenter's assertions and statements. Colorado's proposed Rule 4.14.1(2)(f) requires face-up entry areas and highwalls to be eliminated to the maximum extent technically practical using all reasonably available spoil and achieve a minimum static safety factor of 1.3. These backfilling and grading standards apply to both continuously mined areas and remining operations.

In addition, underground mines can be designated as remining operations only if they qualify for such status in accordance with the Federal regulations at 30 CFR 816.106 and 817.106. Therefore, not every underground mining operation currently in existence in Colorado is automatically extended the designation of "remining operations" on previously mined areas. Accordingly, unless an underground mining operation began prior to August 3, 1977, and continued operations into permanent program approval or qualified as a remining operation, the operator is required to completely eliminate the highwall. As a result, the public is not denied the protections promised by SMCRA, nor are underground mine operations allowed to escape reclamation requirements.

The commenter asserted that Colorado's proposed amendment contains no clear, measurable standards for judging compliance and success. As an example, the commenter cited the fact that the Division has not clearly defined "reasonably available spoil" and that determining whether an operator has backfilled properly will be left to the judgment of the operator and the Division.

The Director notes that this comment was submitted on May 28, 1993, prior to Colorado's addition on August 4, 1993, of the definition of "reasonably available spoil." This definition is substantively identical to the corresponding Federal definition of

"reasonably available spoil" (finding No. III.2.).

OSM believes the definition of "reasonably available spoil" and the Director's clarifications in finding No. III.2. above include sufficient detail and safeguards to preclude improper implementation of highwall reclamation rules. If Colorado implements these rules in a manner that is not consistent with the Director's findings, OSM will address this issue in the oversight of the Colorado program and require Colorado to further modify its rule language in accordance with 30 CFR 732.17 or take other appropriate actions regarding the implementation and enforcement of its rules.

Finally, the commenter asserted and alleged that for a number of years, the Division has signed "settlement agreements" that allow operators to use lower standards in order to sidestep various performance standards and compliance deadlines. As an example, the commenter alleged that two recent "settlement agreements" were made to allow mines to avoid elimination of highwalls.

The commenter stated that this use of "settlement agreements" is unacceptable and represents Division-sanctioned licenses to violate the law, and that the Division and the Colorado Mined Land Reclamation Board do not have the legal authority to set aside the law or create lower standards.The commenter further stated that these agreements and other Division actions allow operators to continue violations, escape compliance deadlines, meet lower reclamation standards, and avoid full sanctions for serious violations.

Finally, the commenter requested that, within 60 days, OSM take the necessary steps to (1) revoke the settlement agreements, (2) achieve compliance at all mines with all rules and deadlines, and (3) prohibit the Division and Board from entering into similar settlement agreements in the future. The commenter also requested that OSM provide biweekly progress reports.

The Director acknowledges the commenter's assertions and requests. Regarding the request by the commenter that OSM revoke any settlement agreements entered into by the State of Colorado and an operator, OSM has been notified by Colorado that it has revoked the two settlement agreements that the commenter is referring to. Regarding the other requests by the commenter that OSM achieve compliance at all mines with all rules and deadlines, prohibit the Division and Board from entering into similar settlement agreements in the future, and provide biweekly progress reports, the Director must also decline to take action on these requests. Any violations of the approved Colorado State program are subject to enforcement by the State regulatory authority. Should the State fail to enforce its program, OSM, upon determining that such a failure did, in fact, occur, would use the Federal enforcement mechanisms available to it to ensure compliance with SMCRA.

Based upon the rationale set forth above in responding to the commenter's concerns and assertions, the Director does not find Colorado's proposed rules less effective than the corresponding Federal regulations. Therefore, the Director does not comply with the commenter's request to reject Colorado's proposed amendment pertaining to backfilling and grading for the elimination of highwalls and limited variances from AOC requirements.

2 Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), OSM solicited comments from the Administrator of the Environmental Protection Agency (EPA), the Secretary of Agriculture, and various other Federal agencies with an actual or potential interest in the Colorado program.

By letter dated August 25, 1993 (administrative record No. CO–567), the U.S. Army Corps of Engineers responded that it found the changes to Colorado's Coal Mining and Reclamation Regulatory Program to be satisfactory.

By letters dated April 15 and August 24, 1993 (administrative record Nos. CO–542 and CO–566), the U.S. Forest Service responded that it had no comments concerning the amendment.

By letters dated April 12 and August 26, 1993 (administrative record Nos. CO–540 and CO–568), the U.S. Bureau of Mines responded that it had no comments.

By letters dated June 10 and August 27, 1993 (administrative record Nos. CO–549 and CO–571), EPA's Region VIII office responded that it had no comments on the proposed amendment.

By letter dated September 1, 1993 (administrative record No. CO–572), the U.S. Bureau of Land Management responded that it had no comments.

By letter dated August 27, 1993 (administrative record No. CO–569), the U.S. Department of Agriculture, Soil Conservation Service (SCS), responded that it had no comments.

By letter dated June 24, 1993 (administrative record No. CO–551), the Mine Safety and Health Administration (MSHA) responded that the proposed amendment did not appear to conflict with any current MSHA regulations. By a second letter dated October 15, 1993 (administrative record No. CO–579), MSHA commented that while no direct conflict between Colorado's proposed changes to its rules and current MSHA regulations can be found, one item may cause future concern. Specifically, MSHA commented that Colorado's proposal to allow partial reclamation of highwalls means that any remnant of a highwall remaining after final reclamation creates the potential for misinterpretation to the extent that a mining company may not consider a [highwall] remnant to be a highwall while MSHA may, in certain situations, consider a remnant to be a highwall.

The Director agrees with MSHA that no direct conflict exists with Colorado's proposed amendment. In addition, OSM refers MSHA to the discussions at finding Nos. III.3. and 4. above, wherein Colorado's proposed Rule 4.14.1(f)(iii), regarding continuously mined areas, and Rule 4.14.1(g)(iii), regarding remining operations, requires highwall remnants to be sufficiently stable so as not to pose a hazard to the public health and safety or to the environment. The operator must also demonstrate, to the satisfaction of the Division, that the highwall remnant is stable. Colorado s proposed rules are substantively identical to the corresponding Federal regulations at 30 CFR 816.106(b)(3) and 817.106(b)(3).

Although a mining company may not consider a remnant to be a highwall, the company must, upon approval of this amendment, comply with Colorado s proposed rules addressing performance standards for highwall remnant stability. Consequently, the potential for misinterpretation of what constitutes a highwall remnant is minimal. The Director notes that if MSHA's regulations contain additional performance standards regarding highwall remnants, MSHA is not precluded from applying them.

3 State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) Comments

Pursuant to 30 CFR 732.17(h)(4), the Director is required to solicit comments from the SHPO and the ACHP for all amendments that may have an effect on historic properties. Neither the SHPO nor the ACHP responded to OSM's request.

4. EPA Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of EPA with respect to

any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the changes that Colorado proposes to its rules pertain to air or water quality standards. Nevertheless, OSM requested EPA's concurrence on the proposed amendment (administrative record No. CO–562). EPA did not respond to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves Colorado's program amendment as submitted on March 19, 1993, and revised on August 4, 1993. As discussed in finding Nos. III.1. through III.5., the Director has determined that Colorado's proposed regulations addressing backfilling and grading for the elimination of highwalls, and limited variances from AOC requirements are no less effective than the Federal regulations. The Director is approving the proposed rules with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 906 codifying decisions concerning the Colorado program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs 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 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 regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730 11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

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 that is the subject of this rule is based upon counterpart 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 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 for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 7, 1994.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

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

PART 906—COLORADO

1. The authority citation for part 906 continues to read as follows:

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

2. In § 906.15, a new paragraph (o) is added to read as follows:

§ 906.15 Approval of regulatory program amendments.

* * * * *

(o) The revisions to the following provisions of 2 CFR 407–2, the rules and regulations of the Colorado Mined Land Reclamation Board, as submitted on March 19, 1993, and revised on August 4, 1993, are approved on January 19, 1994. The amendment becomes effective upon State promulgation of the amendment in the same form as submitted to OSM.

Rule 1.04(103a)—Definition of "Reasonably Available Spoil."

Rule 4.14.1(2)(a)—General Backfilling and Grading Requirements to Restore Approximate Original Contour.

Rule 4.14.1(2)(f)—Incomplete Elimination of Highwalls for Continuously Mined Areas.

Rule 4.14.1(2)(g)—Incomplete Elimination of Highwalls for Remining Operations in Previously Mined Areas.

Rule 4.14.1(2)(h)—Placement of Spoil on the Area Outside the Mined-Out Area.

Rule 4.14.2(1), (1)(a), and (1)(b)—General Slope Grading Requirements.

Rule 4.27.4 and 4.27.4(1)—Limited Variances from Approximate Original Contour Requirements.

[FR Doc. 94–1200 Filed 1–18–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Inspector General

32 CFR Part 312

[Office of the Inspector General Policy and Procedures Manual, Chapter 33]

Office of the Inspector General (OIG) Privacy Program

AGENCY: Inspector General, DOD.

ACTION: Final rule.

SUMMARY: This is an administrative change. The U.S. Court of Appeals for the District of Columbia ruled that the Justice Department could not require FOIA/PA requesters to provide notarized signatures to prove their identities, finding the policy clashed with other Federal law Based on that ruling, the DoD Privacy Office has determined that DOD Component rules having a similar requirement for notarized signatures must be amended to eliminate the requirement.

Therefore, the Office of the Inspector General, DOD, is amending its rules to

eliminate the requirement for notarized signatures.

EFFECTIVE DATE: January 19, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Nadine K. Dulacki at (703) 695–9568.

SUPPLEMENTARY INFORMATION: Executive Order 12866. The Director, Administration and Management, Office of the Secretary of Defense has determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

The Office of the Inspector General, DOD, is amending 32 CFR part 312 by revising sections 312.4 and 312.5(b) to eliminate the requirement for notarized signatures.

List of Subjects in 32 CFR Part 312

Privacy.

Accordingly, the OIG is amending 32 CFR part 312 as follows:

1. The authority citation for 32 CFR part 312 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. Section 312.4 is revised to read as follows:

§ 312.4 Requirements for identification.

Only upon proper identification will any individual be granted access to records which pertain to him/her. Identification is required both for accurate record identification and to avoid disclosing records to unauthorized individuals. Requesters must provide their full name and as much information as possible about the record being sought in order that a proper search for records can be accomplished. Inclusion of a telephone number for the requester is recommended to expedite certain matters. Requesters applying in person must provide an identification with photograph, such as a driver's license, military identification card, building pass, etc.

3. Section 312.5, paragraph (b) is revised to read as follows:

§ 312.5 Access by subject individuals.

* * * * *

(b) Any individual may authorize the OIG to provide a copy of his/her records to a third part. This authorization must be in writing, must designate the recipient by name, must specify the records or portion to be provided to the recipient, and should accompany the initial request to the OIG.

* * * * *

Dated: January 11, 1994.

Linda L. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–1104 Filed 01–18–94; 8:45 am]

BILLING CODE 5000–04–F

Department of the Air Force

32 CFR Part 806b

[Air Force Reg. 12–35]

Air Force Privacy Act Program

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force published amendments to two exempt system of records. One amendment changed the system name, the other the system identifier to two separate exempt systems of records. Therefore, the Department of the Air Force is amending the exemption rules to reflect these changes under its Privacy Act Program.

EFFECTIVE DATE: January 19, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Gibson at (703) 697–3491 or DSN 227–3491.

SUPPLEMENTARY INFORMATION: Executive Order 12866. The Director, Administration and Management, Office of the Secretary of Defense has determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

The Department of the Air Force published amendments to two separate exempt systems of records. On May 29, 1990, at 55 FR 21755 and on May 25, 1993, at 58 FR 30039, respectively. The amendments changed the system identifier to one notice and the system name to the other notice. Therefore, the Department of the Air Force is amending 32 CFR part 806b as follows:

List of subjects in 32 CFR part 806b

Privacy.

Accordingly, the Department of the Air Force amends 32 CFR part 806b as follows:

1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. Section 806b.13 is amended by revising the introductory text to paragraphs (b)(6), (b)(14), (b)(15), and (b)(16).

§ 806b.13 General and specific exemptions

* * * * *

(b) Specific exemptions. * * *

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(6) *Family Advocacy Program Record (F168 AF SG B).* * * *

* * * * *

(14) *Master Cadet Personnel Record (Active/Historical) (F035 AFA B).* * * *

(15) *Sensitive Compartmented Information Personnel Records (F205 AFISA A).* * * *

(16) *Security and Related Investigative Records (F124 AFA).* * * *

* * * * *

Dated: December 23, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–1186 Filed 1–18–94; 8:45 am]

BILLING CODE 5000–04–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR–32–1–5935; FRL–4824–4]

Approval and Promulgation of Air Quality Implementation Plans; Oregon

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Oregon State Implementation Plan (SIP) for the attainment of National Ambient Air Quality Standards for carbon monoxide in the Portland and Medford-Ashland nonattainment areas. This revision provides for the adoption and implementation of a vehicle inspection/maintenance (I/M) program meeting all requirements of EPA regulations, published in the **Federal Register** on November 5, 1992, concerning vehicle I/M programs.

EFFECTIVE DATE: This action will become effective on March 21, 1994, unless notice is received by February 18, 1994, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Air and Radiation Branch (AT–082), United States Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington 98101.

Copies of the documents relevant to this action are available for public inspection during normal business hours at: Air and Radiation Branch (Docket #OR32–1–5935), United States Environmental Protection Agency, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101, and Department of Environmental Quality, Vehicle Inspection Program, 1301 SE., Morrison Street, Portland, Oregon 97214.

FOR FURTHER INFORMATION CONTACT: Christi Lee, Air and Radiation Branch (AT–082), United States Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1814.

SUPPLEMENTARY INFORMATION:

Clean Air Act Requirements

The Clean Air Act as amended in 1990 (CAA or Act) requires states to make changes to improve existing I/M programs or implement new ones. Carbon monoxide (CO) areas with moderate area designation are required to implement the vehicle inspection and maintenance program described in section 182(a)(2)(B).

EPA was also directed to publish updated guidance for state I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. All areas required by the Act to have an I/M program were to incorporate this guidance into the SIP. CO nonattainment areas with design classifications of 12.7 ppm and below were required to meet EPA guidance for "basic" I/M programs. These areas were required to submit a SIP revision to incorporate a basic I/M program by November 15, 1992.

In Oregon a basic I/M program is required in the following urbanized areas: Portland and Medford-Ashland Oregon.

Basis for Approval

EPA believes an approval of the committal SIP is appropriate in this case because the state could not be expected to begin developing an I/M program meeting the requirements of the Act and the I/M regulation until the I/M regulation was adopted as a final rule, which occurred on November 5, 1992. EPA does believe that states can adopt revised I/M program plans within one year of EPA's final rule. Oregon submitted an I/M SIP on November 15, 1993 which contains all of the elements in the implementation schedule, including authorizing legislation and implementing regulations. The 1993 submittal also included an analysis of the program using the most current EPA mobile source emission model demonstrating that the program meets the applicable performance standard, among other features.

I/M Regulation Requirements

Requirements for I/M programs were published in the **Federal Register** on November 5, 1992, under subpart S, part 51, title 40, Code of Federal Regulations (I/M Regulation). The I/M Regulation required each state that must implement an I/M program to submit by November 15, 1992, a SIP revision including two elements, a commitment from the Governor or his designee to the timely adoption and implementation of an I/M program meeting all requirements of the I/M regulation, and a schedule of implementation.

State Submittals

Oregon submitted a committal SIP to EPA on May 14, 1993. A public hearing on this submittal was held by the Oregon Department of Environmental Quality (DEQ) on April 20, 1993. EPA deemed the committal SIP complete on May 14, 1993. The submittal includes a commitment to the timely adoption and implementation of an I/M program meeting all requirements of the I/M regulation and the Act, and a schedule of implementation.

Statement of Approvability

Under the authority of the Governor's designee, the state of Oregon's DEQ submitted a SIP revision to satisfy the requirements of the I/M regulation to the EPA on May 14, 1993. The Agency has reviewed this submittal and is approving it under section 110(k)(4).

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and entities with jurisdiction over populations less than 50,000.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Nothing in this action should be construed as permitting or allowing or

establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective March 21, 1994, unless, by February 18, 1994, notice is received that adverse or critical comments will be received. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective March 21, 1994.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 21, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)) (see 42 U.S.C. 7607 (b)(2)).

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Motor vehicle pollution, Nitrogen oxide, Ozone, Particulate matter, Volatile organic compounds.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: December 29, 1993.

Jane S. Moore,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulation is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(103) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c)* * *

(103) On May 14, 1993, the Director of the Oregon Department of Environmental Quality (ODEQ) submitted a committal state implementation plan (SIP) for a basic inspection and maintenance (I/M) program for Portland and Medford-Ashland CO nonattainment areas. On November 15, 1993, ODEQ submitted the basic I/M program.

(i) Incorporation by reference.

(A) May 14, 1993 letter from the Director of ODEQ to EPA Region 10 submitting a committal SIP for the I/M program.

(B) November 15, 1993 letter from the Director of ODEQ to EPA Region 10 submitting the I/M program for moderate CO nonattainment areas.

(C) OAR 340–24–309 through 350, "Motor Vehicles," adopted on October 29, 1993 and effective on November 4, 1993.

[FR Doc. 94–1132 Filed 1–18–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 152

[OPP–250091B; FRL–4744–6]

Pesticides; Exemption From Federal Insecticide, Fungicide and Rodenticide Act Requirements for Natural Cedar Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule establishes an exemption from regulation under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), for natural cedar pesticides labelled, or for which claims are made, only to repel arthropods other than ticks, or to retard mildew growth.

EFFECTIVE DATE: March 21, 1994.

ADDRESSES: Written objections, identified by the document control number, [OPP–250091B], must be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Room 1132, CM #2, 1921 Jefferson Davis Highway, Crystal City, VA 22202.

FOR FURTHER INFORMATION CONTACT: By mail: Richard F. Mountfort, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 713, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–305–5446.

SUPPLEMENTARY INFORMATION:

I. Background

EPA issued a proposed rule, published in the Federal Register of August 11, 1993 (58 FR 42711) to exempt natural cedar pesticides, labelled, or for which claims are made, only to repel arthropods other than ticks, or to retard mildew growth, from regulation under FIFRA. The Agency concludes that use of these pesticides for these purposes poses negligible risks to human health or the environment and that the burden imposed by regulation is not justified. Accordingly, EPA is establishing this final exemption. Natural cedar pesticides labelled with claims of repelling ticks or for which claims are made to repel or otherwise mitigate ticks, are not included in the exemption. Ticks can be vectors of significant diseases affecting humans, and EPA has not yet fully evaluated whether or not such an exemption is justified. Thus, regulation of such pesticides is appropriate.

This exemption will not apply to any cedarwood product that is treated, combined or impregnated with any additional substances. EPA has determined that natural cedar itself poses little or no risk and does not pose unreasonable adverse effects on the environment. However, EPA has not made any such finding for cedar when

it is mixed with any other ingredients. Thus, to qualify for this exemption, the pesticide must only contain natural cedar and cannot contain any inert ingredients. For example, if cedar is painted or soaked in any substance, it would not qualify for the exemption. Likewise, if cedar chips or shavings are mixed with other ingredients, the exemption would not apply. Natural cedar products, however, may be packaged and still qualify for the exemption.

II. Public Comment and Agency Response

In the proposed rule, the Agency solicited comments on the proposed exemption from regulation of cedar pesticides labelled for use to repel arthropods (except ticks) or to retard mildew. Six sets of comments were received. Three commenters supported the proposed rule and three objected to it. EPA also invited suggestions for additional candidates for consideration for possible future exemption. Two commenters suggested such candidates.

EPA's proposal included the term "chips" to describe the exempted pesticide. American Wood Fibers of Jessup Maryland, Inc. requested that the word shavings be inserted in the rule in addition to the term chips. Shavings is the term used more often in the industry. In response to this comment, EPA has added the term "shavings" to the final rule. This is not a significant change since all forms of cedar products (except cedar oil) were intended to be covered by the exemption.

American Zinc Association and Alltrista Zinc Products Company and Roussel UCLAF Corporation responded to the Agency's invitation to suggest other low-risk pesticide candidates for exemption from regulation. American Zinc and Alltrista requested that zinc metal strips used for preventing moss, fungus and mildew on roofs be considered; Roussel UCLAF Corporation requested review of rotenone.

As noted in the proposal to this exemption, EPA recognizes that there may be other low-risk pesticides that would also be appropriate for exemption under section 25(b). EPA is currently evaluating existing pesticide registrations to identify other potential candidates for exemption or reduced regulation. EPA will include in this consideration the two pesticides, zinc metal strips and rotenone, that were identified as potential candidates in the comments submitted on the proposed cedarwood exemption. Moroever, as discussed in the proposed exemption, EPA plans to evaluate whether or not cedar oil extracted from plant parts is appropriate for exemption. EPA also plans to evaluate in the future whether or not it is appropriate to exempt cedar products for which claims such as "repels ticks" are made. If EPA determines that any of the above-described exemptions are warranted, EPA will publish a proposed rule on such exemptions and provide an opportunity for public comment.

The Chlorobenzene Producers Association [CPA]; Excell Products Corporation; and Willert Home Products opposed the cedarwood exemption. Each are, or represent, producers of alternative products for moth repellence which compete with cedar products. Their objections and the Agency's response to each are as follows:

1. Consumers will be harmed and cedar competitors placed at a disadvantage if natural cedar pesticides are exempted. CPA and Excell Products assert that a number of competing products to cedar are produced and distributed by small businesses.

The Agency disagrees that the proposed exemption of natural cedar will result in harm to consumers. As described in the proposal, the risk to humans or the environment associated with natural cedar is low. The natural oils in the wood and other plant parts are present at low levels and little exposure to users or the environment is likely. Cedar products have been sold and widely used for many years with no known health or environmental effects. EPA's regulatory authority under FIFRA is primarily a licensing authority; every decision has some potential effect on competitors. The Agency does not consider potential impact on competitors to be a valid and sufficient reason to preclude this exemption.

2. Cedar is ineffective for pest control purposes and cedar companies will be emboldened to make false and misleading claims without regulatory oversight. Marketing of refresher oils for cedarwood strengthens the impression that natural cedar is limited or ineffective in pest control.

The Agency is not endorsing the effectiveness of natural cedar as a repellent or for mildew prevention purposes. Because of the very low risk to man or the environment associated with cedar products, even if the commenters' claims of low efficacy are true, EPA believes the low risk nature of cedar justifies this exemption. EPA believes the marketplace is sufficient to suppress ineffective products. The Agency acknowledges that excessive and misleading claims may be associated with any products exempted from regulation, including cedar products. The Agency does not endorse or encourage use of excessive or misleading claims for cedar, but believes this is a circumstance where market choices will restrain abuse and ineffective products.

3. The Agency has already assisted the cedar industry with expedited review procedures.

Expedited review procedures were employed for several cedar registrations in large part because the Agency considered these pesticides to pose little or no risk to man or the environment. All supporting data for natural cedar products were waived except descriptions of processing the wood and analyses for oil content. The Agency concludes that the low risk associated with natural cedar does not justify the cost of regulation, including the reduced costs associated with the expedited review procedures cited above, for either society or the Agency.

4. This proposal improperly implies that natural substances are safe and synthetics are hazardous.

The Agency agrees that not all natural substances are safe and that not all synthetics are hazardous. Natural cedar, however, is low-risk for both humans and the environment.

5. The public health risk from exposure to natural cedar may not be negligible; lack of information suggesting risk does not support a finding of no unreasonable risk. This commenter [CPA] believes the statute requires a finding of no unreasonable adverse effect on the environment to support the exemption. CPA also concludes that exemption based on low exposure is inconsistent with prior Agency pesticide policy and that EPA's statutory obligations are not diminished when a pesticide also has non-pesticidal uses.

The Agency agrees that lack of information, in and of itself, is not sufficient to justify exemption. In the case of cedar, however, the point is reinforced from many years of distribution and widespread use of cedar with no known adverse effect. There is very little exposure likely for humans or the environment to the natural oils. Cedarwood oil typically occurs in cedarwood at low levels and cannot easily be separated from the wood or plant product. Consumers using cedarwood products are unlikely to be exposed to significant amounts of dust or oil either by inhalation or through the dermal route. Moreover, EPA believes that cedarwood oil, when used as it naturally occurs in blocks, chips, or other plant parts, is not expected to result in any significant environmental exposure and cedarwood

oil is not known to persist or bioaccumulate in the environment.

FIFRA section 25(b)(2) authorizes the Administrator to exempt a pesticide if it is determined to be "of a character which is unnecessary to be subject to this Act in order to carry out the purposes of this Act." Consistent with the comment from CPA, EPA has determined that cedarwood products, as defined in this rule, pose negligible risks to human health and the environment and do not pose unreasonable adverse effects on the environment. Thus, EPA has concluded that these products are of a character which is unnecessary to be subject to the Act. As discussed in the proposal of this rule, the term unreasonable adverse effect is defined at FIFRA section 2(bb) as "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide." EPA believes that natural cedar pesticides pose little or no risk to human health or the environment and that the regulatory burden imposed by registration of these products is not justified by the negligible risk posed by them.

None of the commenters offered any evidence that would contradict this finding. The only evidence of risk presented was reference to mechanical injury if a child swallowed a small cedar ball. This comment cited a reference in materials submitted by a cedar registrant to their product and labelling warning to keep the product away from children. The Agency agrees that any object small enough to swallow should be kept from small children. If the sole risk posed by cedarwood products is the risk of children swallowing them, that alone is not a sufficient basis for EPA to regulate them under FIFRA. FIFRA was designed to address the unique concerns presented by pesticides. EPA does not believe that this type of physical risk, in the absence of any other pesticidal risk, justifies regulation under FIFRA. Other Federal, State and local authorities exist that could be used to address this type of risk.

The CPA also commented that EPA is required to find that, to be eligible for exemption under FIFRA section 25(b)(2), a pesticide product satisfies "other objectives" of FIFRA such as meeting statutory criteria for registration with respect to labeling and composition. In the case of cedar, the Agency concludes that labelling requirements typically applied to pesticides are not necessary to prevent unreasonable risk to humans, including children (excluding products with claims involving public health issues). Determinations regarding product composition, labeling or other aspects of regulatory constraint are unnecessary given the low risk potential.

The Agency disagrees with CPA's assertion that consideration of lack of exposure is inconsistent with prior EPA pesticide policy. The Agency has previously exempted pheromones citing low exposure as one factor in the decision to exempt [47 FR 33717].

6. Excell Products Corporation urged that registrations for natural cedar pesticides issued prior to the exemption not be continued if the exemption is established. They are concerned that this would create a false impression of government endorsement for the registered articles.

The Agency does not intend to register additional natural cedar pesticides (unless claims for ticks are made — see discussions above). It is expected that existing registrations will be voluntarily cancelled after the rule becomes effective. Registration is never an endorsement of a pesticide.

The low risk associated with pesticidal use of natural cedar does not justify the cost of regulation to society or the Agency. There is no reason to believe that mis-use or disposal of natural cedar pesticides will increase potential risk. The Agency concludes that use of natural cedar pesticides as described in the proposed regulation will not cause unreasonable adverse effects on humans or the environment, whether regulated under FIFRA or not. None of the commenters offered any evidence that would contradict these conclusions.

This exemption will relieve regulatory burdens for those companies and products consistent with the terms and conditions described.

In accordance with FIFRA section 25, the FIFRA Science Advisory Panel (SAP) has waived review of the proposed and final rule. The Secretary of Agriculture waived review of the proposed rule and agreed to waive review of the final rule if it is the same as the proposed rule. A copy of the final rule was forwarded to the U. S. Department of Agriculture. Copies of the final rule also were forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition and Forestry of the Senate.

III. Conclusion

The Agency has considered the comments received in response to the proposed rule. Except for the one minor change in wording, the Agency concludes that the exemption is appropriate.

IV. Public Docket

The EPA has established a public docket for this rulemaking (OPP–2500091 and 2500091B). All comments received in response to the proposed and final rule are available in the public docket. The public docket is located at the Virginia address given under the ADDRESSES section above.

V. Regulatory Assessment Requirements

A. 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 all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a section of the economy, productivity, competition, jobs, the environment, public safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another Agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Under the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat.1164, 5 U.S.C. 601 et seq.). EPA has determined that this rule will not have a significant economic impact on a substantial number of small businesses, small governments or small organizations given the impacts forecasted pursuant to the analysis conducted under Executive Order 12866 as set forth above.

Accordingly, I certify that this rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This rule contains no information collection requirements. Therefore, the Paperwork Reduction Act of 1980 is not applicable.

In accordance with FIFRA section 25, the FIFRA Science Advisory Panel (SAP) has waived review of the proposed and final rule. A copy of the final rule has been forwarded to the U.S. Department of Agriculture before publication. Copies of the final rule also were forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition and Forestry of the Senate.

List of Subjects in 40 CFR Part 152

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

Dated: January 10, 1994.

Carol M. Browner,

Administrator.

Therefore, 40 CFR chapter I, part 152 is amended as follows:

PART 152—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 7 U.S.C. 136–136y.

2. In § 152.25 by adding a new paragraph (f) to read as follows:

§ 152.25 Exemptions for pesticides of a character not requiring FIFRA regulation.

* * * * *

(f) *Natural cedar.* (1) Natural cedar blocks, chips, shavings, balls, chests, drawer liners, paneling, and needles that meet all of the following criteria:

(i) The product consists totally of cedarwood or natural cedar.

(ii) The product is not treated, combined, or impregnated with any additional substance(s).

(iii) The product bears claims or directions for use solely to repel arthropods other than ticks or to retard mildew, and no additional claims are made in sale or distribution. The labeling must be limited to specific arthropods, or must exclude ticks if any general term such as "arthropods," "insects," "bugs," or any other broad inclusive term, is used. The exemption does not apply to natural cedar products claimed to repel ticks.

(2) The exemption does not apply to cedar oil, or formulated products which contain cedar oil, other cedar extracts, or ground cedar wood as part of a mixture.

[FR Doc. 94–1244 Filed 1–18–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300306A; FRL–4747–6]

RIN 2070–AB78

Trimethylolpropane; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of trimethylolpropane (CAS Reg. No. 77-99-6) when used as an inert ingredient (component of water-soluble film) in pesticide formulations applied to growing crops only. The Agency is issuing this regulation on its own initiative.

EFFECTIVE DATE: This regulation becomes effective January 19, 1994.

ADDRESSES: Written objections, identified by the document control number, [OPP-300306A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North, 6th floor, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 24, 1993 (58 FR 62071), EPA issued a proposal to amend 40 CFR 180.1001(d) to establish an exemption from the requirement of a tolerance for trimethylolpropane (CAS Reg. No. 77-99-6) when used as an inert ingredient (component of water-soluble film) in pesticide formulations applied to growing crops only with a limitation that it will not exceed 15% of the pesticide formulation.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility

that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

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

List of Subjects in 40 CFR Part 180

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

Dated: January 10, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Trimethylolpropane (CAS Reg. No. 77-66-9)	Not more than 15% of the pesticide formulation.	Component of water-soluble film.
* * * * * * *		

* * * * *

[FR Doc. 94-1237 Filed 1-18-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 271

[FRL-4827-7]

Montana; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Montana has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Montana's application and has made a decision, subject to public review and comment, that Montana's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Montana's hazardous waste program revisions. Montana's application for program revision is available for public review and comment.

DATES: Final authorization for Montana shall be effective March 21, 1994 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Montana's program revision application must be received by the close of business February 18, 1994.

ADDRESSES: Copies of Montana's program revision application are available during regular business hours at the following addresses for inspection and copying: Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, 836 Front Street, Helena, Montana 59601, Phone: 406/444-1430 and USEPA Region VIII, Montana Office, 301 S. Park, Federal Building, Helena, MT 59626, Phone: 406/449-5414. Written comments should be sent to: Rosemary Rowe, U.S. Environmental Protection Agency, 301 S. Park, Drawer 10096, Helena, MT 59626, Phone: 406/449-5414.

FOR FURTHER INFORMATION CONTACT: Rosemary Rowe, Air, Hazardous Waste, and Toxics Branch, USEPA, 301 S. Park, Drawer 10096, Helena, MT 59626, Phone: 406/449-5414.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or the "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 268 and 270.

B. Montana

Montana received partial Phase I Interim authorization in February, 1981. Complete Phase I authorization was received in February, 1982. Final

authorization of the base program was received in July, 1984.

EPA has reviewed Montana's application, and has made an immediate final decision that Montana's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Montana. The public may submit written comments on EPA's immediate final decision up until February 18, 1994. Copies of Montana's application for program revision are available for inspection and copying at the locations indicated in the ADDRESSES section of this notice.

Approval of Montana's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either: (1) A withdrawal of the immediate final decision; or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

A draft application was submitted on January 7, 1991. The State of Montana addressed all of EPA's concerns prior to submittal of the final application. Thus, the Montana program is granted immediate final authorization for the provisions in the following Table.

Provisions

Federal Register reference	State authority
1. Biennial Report, 48 FR 3977, 1/28/83.	75–10–405, MCA
2. Interim Status Standards Applicability, 48 FR 52718, 11/22/83.	75–10–405, MCA
3. Chlorinated Aliphatic Hydrocarbon Listing (F024), 49 FR 4312, 2/10/84.	75–10–405(a), MCA
4. National Uniform Manifest, 49 FR 10500, 3/20/84.	75–10–405, MCA
5. Permit Rules: Settlement Agreement, 49 FR 17718, 4/24/84.	75–10–405, MCA
6. Part 261—Warfarin and Zinc Phosphide, 49 FR 19923, 5/10/84.	75–10–405(a), MCA
7. Lime Stabilized Pickle Sludge, 49 FR 23287, 6/5/84.	75–10–405, MCA
8. Household Waste, 49 FR 44980, 11/13/84.	75–10–405, MCA
9. Interim Status Standards Applicability, 40 FR 46095, 11/21/82.	75–10–405, MCA
10. Corrections to Test Methods Manual, 49 FR 47391, 12/2/84.	75–10–405, MCA
11. Satellite Accumulation, 49 FR 49571, 12/20/84.	75–10–405, MCA
12. Definition of Solid Waste, 50 FR 614, 1/4/85.	75–10–405, MCA
13. Interim Status Standards for TSDF's, 50 FR 16044, 4/23/85.	75–10–405, MCA
14. Financial Responsibility: Settlement Agreement, 51 FR 16443, 5/2/86.	75–10–405, MCA
15. Listing of Spent Pickle Liquor (K062), 51 FR 19320, 5/28/86.	75–10–404, MCA, 75–10–405, MCA
16. Liability Coverage, 51 FR 25350, 7/11/86.	75–10–405, MCA
17. Standards for Hazardous Waste Storage and Treatment Tank Systems, 51 FR 25470, 7/14/86.	75–10–405, MCA
18. Corrections to Listings of Commercial Chemical Products and Appendix VIII Constituents, 51 FR 28296, 8/6/86.	75–10–405, MCA
19. Revised Manual SW–846; Amended Incorporation by Reference, 52 FR 8072, 3/16/87.	75–10–405, MCA
20. Closure/Post-Closure for Interim Status Surface Impoundments, 52 FR 8704, 3/19/87.	75–10–405, MCA
21. Definition of Solid Waste Technical Corrections, 52 FR 21306, 6/5/87.	75–10–405, MCA
22. Amendments to Part B Information Requirements for Disposal Facilities, 52 FR 23447, 6/22/87.	75–10–405, MCA
23. List (Phase 1) of Hazardous Constituents for Ground-Water Monitoring, 52 FR 25942, 7/9/87.	75–10–405, MCA, 75–10–406, MCA
24. Identification and Listing of Hazardous Waste, 52 FR 26012, 7/10/87.	75–10–405(a), MCA
25. Liability Requirements for Hazardous Waste Facilities; Corporate Guarantee, 52 FR 44314, 11/18/87.	75–10–405, MCA
26. Hazardous Waste Miscellaneous Units, 52 FR 46946, 12/10/87.	75–10–405, MCA
27. Technical Corrections; Identification and Listing of Hazardous Waste, 53 FR 13382, 4/22/88.	75–10–405(a), MCA
28. Generators of 100 to 1000 kg of Hazardous Waste, 51 FR 10146, 3/24/86.	75–10–404, MCA
29. Biennial Report Correction, 51 FR 28556, 8/8/86.	75–10–405, MCA, 75–10–204, MCA
30. Identification and Listing of Hazardous Wastes; Technical Correction, 53 FR 27162, 7/19/88.	75–10–405, MCA
31. Availabili ty of Information, Section 3006(f), 11/8/84.	75–10–405, MCA, 30–14–401, MCA
32. Radioactive Mixed Waste, 51 FR 24504, 7/3/86.	75–10–405, MCA

Montana's program revisions include a requirement that conditionally exempt small quantity generators keep records of waste analyses for three years (ARM 16.44.402(2)(d)). This provision is broader in scope than the federal requirement and is not a part of the federally authorized program. Requirements more stringent than those of the federal program are found in ARM 16.44.402(3) and 16.44.109(19). These provisions require annual, rather than biennial, reporting for state generators and treatment, storage, and disposal facilities. More stringent provisions are a part of the federally authorized program.

C. Decision

I conclude that Montana's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Montana is granted final authorization to operate its hazardous waste program as revised.

Because the State of Montana and the Environmental Protection Agency may have potential disagreement as to the scope of the State's jurisdiction over certain lands within "Indian Country", as defined in 18 U.S.C. 1151, Montana has not requested authorization of its hazardous waste program, as revised, within "Indian Country" in Montana. Accordingly, today's decision to grant Montana final hazardous waste authorization, as revised, does not extend to "Indian Country". The Environmental Protection Agency retains all hazardous waste authority under RCRA which applies to "Indian Country" in Montana.

Montana now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. Montana also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to issue orders under sections 3008, 3013, and 7003 of RCRA.

Montana has submitted draft applications for the hazardous waste program provisions in clusters non-HSWA V and VI, HSWA I and II, and RCRA I and II.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Montana's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 30, 1993.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 94–1246 Filed 1–18–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 59

[Docket No. FEMA–7589]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies a community, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that will be suspended on the effective date listed within this rule because of failure to enforce floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has taken action to bring their floodplain management program into compliance with NFIP requirements prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The community listed in this document no longer meets that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the community will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, the community may submit the required documentation to bring its floodplain management program in compliance with the NFIP regulatory standards, after this rule is published but prior to the actual suspension date. If the documentation is submitted and approved by FEMA, the community will not be suspended and will continue its eligibility for the sale of insurance. A notice withdrawing the suspension of the community will be published in the **Federal Register**.

In addition, FEMA has identified the special flood hazard areas in the community by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (Section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Deputy Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

This community received a 90-day, and two 30-day notifications addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Deputy Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts and enforces adequate floodplain management measures. The community listed no longer complies with the statutory requirements, and after the effective date, flood insurance will no longer be available in the community unless it takes remedial action.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981, 3 CFR, 1981 comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 comp., p. 309.

List of Subjects in 44 CFR Part 59

Flood insurance, Floodplains.

Accordingly, 44 CFR part 59 is amended as follows:

PART 59—[AMENDED]

1. The authority citation for part 59 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 comp., p. 376.

§ 59.24 [Amended]

2. The tables published under the authority of § 59.24 are amended as follows:

State/location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region IV—Georgia				
Clayton, city of, Rabun County.	130157	July 25, 1975, Emerg.; Aug. 13, 1984, Withd.; Jan. 13, 1988, Reins.; Jan. 13, 1988, Reg.; Jan. 19, 1994, Susp.	June 19, 1989	Jan. 19, 1994.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Withd.—Withdrawn.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 13, 1994.

Robert H. Volland,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–1394 Filed 1–18–94; 8:45 am]

BILLING CODE 6718–21–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85–07; Notice 8]

RIN 2127–AD27

Federal Motor Vehicle Safety Standards; Air Brake Systems—Control Line Pressure Balance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for reconsideration.

SUMMARY: This notice denies a petition submitted by Mr. Robert Crail requesting the agency to reconsider a final rule that added control line pressure balance requirements to the pneumatic timing requirements applicable to air brake systems. Mr. Crail's petition was based on his allegations that NHTSA had not adequately considered the added costs to trailer manufacturers imposed by the rulemaking, including the hardware costs to achieve compliance with the new control line pressure balance requirements and the costs associated with certifying compliance with those requirements. In response to this petition, the agency has reexamined the final rule's evaluation of additional costs for this requirement and again concludes that those additional costs are not excessive or unreasonable. Therefore, Mr. Crail's petition is denied.

FOR FURTHER INFORMATION CONTACT: Mr. Richard C. Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–5274).

SUPPLEMENTARY INFORMATION: On August 21, 1992, NHTSA published a final rule amending the pneumatic timing requirements of Standard No. 121, *Air Brake Systems*, with respect to the control line pressure balance for tractor trailer combinations (57 FR 37902). In that notice, the agency adopted a dynamic test procedure for determining the control signal pressure differential.

In comments to the notice of proposed rulemaking (NPRM) that preceded this final rule, Mr. Crail and the Truck Trailer Manufacturers Association (TTMA) stated that they believed that measuring control line pressure balance in a dynamic test instead of in a static test would result in excessive costs. Mr. Crail, who is employed by a trailer manufacturer, stated that the total cost of a dynamic test would be approximately $6,000, as compared to his estimated cost of $900 for a static test. Similarly, TTMA believed that a dynamic test procedure would require trailer manufacturers to purchase expensive equipment, such as transducers and recording equipment, costing as much as $6,000. TTMA estimated that the static test apparatus would cost about $300 per manufacturer.

Notwithstanding these comments, NHTSA adopted a dynamic test procedure to evaluate control line pressure differential in the August 1992 final rule. The agency concluded that the static control line pressure differential test advocated by Mr. Crail and TTMA would not adequately evaluate the pressure differential problem. The agency also determined that the costs associated with the new dynamic test were reasonable and would be well below the levels estimated by Mr. Crail and TTMA. The agency explained this determination as follows:

> The agency notes that most trailer manufacturers already own the most expensive portion of this test equipment for conducting timing tests (i.e., the data recorder/power supply/signal conditioning apparatus), and that the mini-tractor test rigs that are currently used in compliance testing with Standard No. 121 could be readily upgraded to check for pressure differentials for an additional cost of $300. Of this cost figure, $100 would cover the hose, gladhands, and air flow restrictor and $200 would cover the cost of upgrading the software of the test rig. NHTSA notes that the practical effects of these requirements are limited to only those trailer manufacturers who build towing trailers (i.e., trailers used in doubles or triples operations). Such

towing trailers currently constitute a very small percentage of the trailer market. 57 FR 37904.

In short, the agency concluded that most trailers would not be subject to the new dynamic test for control line pressure balance and those that were would face added costs of about $300.

Mr. Robert Crail filed the lone petition for reconsideration of this rule. Mr. Crail stated that the agency did not adequately consider the cost impact that would be imposed on trailer manufacturers to equip trailers with new hardware necessary to achieve compliance with the new requirements. The petitioner also believed that NHTSA did not adequately consider the cost impact on manufacturers to obtain or adapt test equipment to test trailers for compliance with the new requirements. The agency will address each of these assertions in turn.

Relay Booster Valves

In his petition for reconsideration, Mr. Crail contends that NHTSA seriously underestimated the cost impact per trailer of adding additional equipment to comply with the final rule. According to Mr. Crail, trailer manufacturers could comply with Standard 121 prior to this amendment without incorporating a relay booster valve on their trailers. However, again according to Mr. Crail, the August 1992 final rule in effect requires the use of relay booster valves on trailers. Mr. Crail estimates that the cost to the trailer manufacturer to add these valves would range from $26 to $54.

NHTSA believes that Mr. Crail's initial assertion about a trailer's ability to comply with Standard 121 without incorporating a relay booster valve on trailers is incorrect. The agency notes that the majority of trailers required a relay booster valve to comply with the requirements adopted on May 3, 1989 (54 FR 13890, 85–07, Notice 3). However, the control line pressure requirements of the August 1992 notice did not have the effect of requiring that an additional valve be added to the system. The August 1992 requirements only required that valves used to comply with the May 1989 requirements did not induce unwanted pressure differentials. Therefore, NHTSA believes that the amendment in question did not have the effect of requiring a relay booster valve where none was required before.

Other Hardware Costs

NHTSA further believes that Mr. Crail's assertions about the rulemaking's hardware costs are incorrect.

The agency considered these same assertions about hardware costs when it was developing the August 1992 rule. In that rule, NHTSA indicated that some manufacturers might have to use higher quality relay valves than they presently use to meet the requirements, but that these higher quality valves are not significantly more expensive. In addition, the agency acknowledged that manufacturers may have to modify existing valve designs to control pressure differential. However, the agency estimated that such modified valves would cost only a few dollars more per trailer. Moreover, the final rule also indicated that these upgraded valves would only be needed on towing trailers. The total annual production of towing trailers is roughly 21,400. Therefore, the agency concluded that the aggregate costs for additional equipment on all trailers to comply with the control line pressure balance requirements would be relatively small.

In its review of Mr. Crail's petition for reconsideration, NHTSA once again reviewed the hardware costs associated with the control line pressure balance requirements. The agency concludes that valves that would be needed to meet the August 1992 rule are not significantly more expensive that those used prior to the rule. To illustrate, Bendix, a valve manufacturer, has designed a new valve that it advertises as complying with these new requirements. These valves actually cost less than valves previously used in trailers to control for pressure balance. Accordingly, NHTSA continues to believe that its initial determination that the hardware costs associated with the rulemaking are not unreasonable is correct.

Testing Costs

Mr. Crail also asserted that the agency seriously underestimated the costs to trailer manufacturers for testing compliance with the new dynamic test procedure. As noted above, NHTSA stated in the final rule that the mini-tractor test rights that are currently used to test compliance with other requirements in Standard No. 121 could be readily upgraded to check for pressure differentials at an added cost of about $300. Mr. Crail asserted that, on top of the $300 costs estimated by NHTSA, there would be nearly $5900 of additional costs to record the pressure data collected during the prescribed test. The $5900 estimate consisted of two sets of pressure transducers and cables, at a cost of $600 per set, a strip chart recorder, at a cost of about $4000, and approximately $700 in labor costs.

Mr. Crail also stated that trailer test rigs commonly used by trailer manufacturers cannot be simply adapted to the additional tasks of recording pressure tracers simultaneously at both the trailer's input and delivery gladhands, as the agency suggested in the preamble to the final rule. Instead, Mr. Crail asserted that manufacturers would have to equip the test rig with at least three additional pressure transducers and a recording device capable of three channel input.

NHTSA disagrees. Through tests conducted at the Vehicle Research and Test Center (VRTC) and conversations with a Gooch Brake and Equipment Company, a manufacturer of mini-tractor test rigs, NHTSA concludes that trailer manufacturers need not equip their test rigs with additional pressure transducers and a recording device costing approximately $5900. As explained in the final rule, most trailer manufacturers use test rigs, known as "variables" test equipment, for a variety of timing and pressure testing of vehicles in certifying compliance with Standard No. 121. Therefore, a manufacturer typically will not have to procure test equipment solely to comply with the new rule. Rather, most manufacturers can easily upgrade their current test rig to evaluate the pressure differential through the following modifications at a cost of about $300: Adding a hose, gladhands, and an air flow restrictor, for approximately $100; and upgrading the test rig's software, for $200. While it is true that the total cost of "variables" test equipment would be approximately $6000 to $7000, a trailer manufacturer that already owns the test rig would incur an incremental cost of $300 to comply with this amendment.

NHTSA further notes that the petitioner's assertions appear to be based on a belief that a trailer manufacturer must use the test procedure and testing equipment described in Standard No. 121. Such a belief is incorrect. The National Traffic and Motor Vehicle Safety Act (Safety Act) requires each manufacturer to certify that its vehicles meet Standard No. 121. Accordingly, the vehicle must meet the applicable requirements of Standard No. 121 when tested by NHTSA according to the test procedure specified in the standard. However, the Safety Act does not require a manufacturer to use the standard's test procedure or specified test equipment. A manufacturer may use a variety of means to certify compliance, including, among other things, engineering analyses, actual testing, and computer simulations, provided that due care is exercised in making its certification. If

the manufacturer exercised due care, it would not be subject to civil penalties for manufacturing and selling a noncomplying vehicle.

Moreover, a manufacturer need not conduct these operations itself. Manufacturers can utilize the services of independent engineers and testing laboratories. The can also join together through trade associations to sponsor testing or analysis. Another alternative is for manufacturers, such as trailer manufacturers, to rely on testing and analysis performed by other parties, such as the valve manufacturers. Valve manufacturers perform extensive analyses and tests of their products and, because they seek to sell those products, have a strong incentive to provide their customers (the trailer manufacturers) with information that the trailer manufacturer can use to certify the vehicle to the applicable standards. For example, Bendix currently provides this type of information to vehicle manufacturers regarding Bendix's new valve for the new pressure control requirements. Based on the above considerations, NHTSA believes that a trailer manufacturer can certify compliance with the control pressure differential amendments without facing an unreasonable cost burden.

After reexamining this matter in response to Mr. Crail's petition, NHTSA reaffirms its conclusion that the new control line pressure balance requirements will result in relatively small costs for trailer manufacturers. The agency also believes that its conclusions in the final rule are appropriate. Accordingly, the petitioner's request to reconsider the amendment to Standard No. 121 is denied.

Issued on January 12, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–1176 Filed 1–18–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 930828–3324; I.D. 080593A]

RIN 0648–AC99

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the conservation and management measures contained in Amendment 4 to the Fishery Management Plan (FMP) for the Atlantic Sea Scallop Fishery. Amendment 4 substantially revises the management of the Atlantic Sea Scallop Fishery, especially regarding effort control in the fishery, permits, and reporting and recordkeeping requirements. The intent of this Amendment is to reduce the fishing mortality rate to eliminate the overfished condition of Atlantic sea scallops.

EFFECTIVE DATE: March 1, 1994.

ADDRESSES: Copies of Amendment 4, its regulatory impact review (RIR), initial regulatory flexibility analysis (IRFA), and the final supplemental environmental impact statement (FSEIS) are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (U.S. Rte. 1), Saugus, MA 01906–1097, telephone 617–565–8937. Copies of the Finance Handbook may be obtained from Mr. Joseph Giza, Chief, Fiscal Policy and Quality Assurance Branch, NOAA Financial Management Division, Caller Service No. 8025, 20020 Century Boulevard, Germantown, Maryland 20874, telephone 301–443–8795.

Comments regarding the burden-hour estimates or any other aspect of the collection-of-information requirements contained in this final rule should be sent to Richard B. Roe, Regional Director, One Blackburn Drive, Gloucester, MA 01930, and the Office of Management and Budget (OMB) (Attention NOAA Desk Officer), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION:

Background

Amendment 4 to the Atlantic Sea Scallop Fishery Management Plan (FMP) was prepared by the New England Fishery Management Council (Council) in consultation with the Mid-Atlantic and South Atlantic Fishery Management Councils, under the provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act) as amended, 16 U.S.C. 1801 *et seq.* A notice of availability for the proposed Amendment was published on August 10, 1993, (58 FR 42522) and a proposed implementing rule was published on September 2, 1993, (58 FR 46606).

Approval of Amendment 4

Amendment 4 was approved on November 5, 1993. However, concerns were raised about the potential for Amendment 4 to cause excessive harvest of small sea scallops the first few years of implementation, if a supplemental average minimum meat count measure were not included as a management measure in the Amendment. The Assistant Administrator for Fisheries, NOAA (AA), approved the Amendment, concurring with the Regional Director who stated that the issue of increased mortality on small scallops in the early years of the program was considered by the Council during deliberations by the Plan Development Team (where representatives of both the Northeast Fisheries Science Center and the NMFS Northeast Regional Office participate), the Sea Scallop Oversight Committee, and the Council. The rebuilding schedule and effort reductions in the Amendment are designed to strike a balance between an accelerated rate of recovery and the minimization of economic and social disruption to the fishery.

Although the Amendment was approved, NMFS remains concerned about the near-term level of protection of small sea scallops. This concern is reflected in the Regional Director's approval letter to the Council, dated November 5, 1993, which advised the Council that the Regional Director will be carefully monitoring the initial impact of the Amendment on fishing mortality rates of small sea scallops. If fishing mortality rates increase beyond anticipated levels, the Council is expected to implement immediately adjustments under the framework measures of the Amendment to protect sea scallop stocks adequately.

Overfishing Definition

Amendment 4 includes a definition of overfishing and a determination that the sea scallop resource is overfished. The preamble to the proposed rule included the definition of overfishing. It is not repeated here.

To reduce fishing mortality below the overfishing definition threshold, the Council will reduce fishing effort by approximately 40 percent over seven years. Because the impact of effort controls and gear restrictions on the resource is uncertain, the Council estimates that actual effort reduction needed could be as low as 35 percent or as high as 70 percent.

Approved Vessel Tracking System (VTS) Vendors

In the proposed rule for Amendment 4, NMFS requested that vendors interested in having their VTS certified for use in this fishery submit information showing that the VTS meets the specifications contained in the proposed rule. NMFS has reviewed the information submitted by several vendors and will make available to interested parties the names and addresses of those vendors who appear to meet the specifications. The opportunity remains open for interested parties to submit their information to the NMFS and to be added to the list of approved vendors if it appears to the NMFS that they can meet the specifications. It is not the intent of the NMFS to assure that the acquisition and installation of a VTS unit from any one of these vendors meets the requirement of this rule as specified at § 650.25. Vessel owners must demonstrate that the system purchased, from the list of approved vendors, is capable of meeting the operational requirements of the regulations by providing information on vessel position and vessel status. It is the intent of the NMFS that until the vessel owner can demonstrate to the satisfaction of the Regional Director that the VTS unit is fully operational and is providing the required information to the NMFS, the vessel owner/operator will not be eligible to receive a permit unless the Regional Director authorizes the use of a call-in system in accordance with § 650.26(a)(3).

Effective Date of Management Measures

The specific management measures that will be used to achieve the necessary reduction in fishing effort include the following: A moratorium on most new entrants into the scallop fishery; allocations of days-at-sea (DAS) that vessels may fish for scallops based on three vessel groups (Full-time, Part-time, and Occasional); a requirement to purchase and install a VTS unit for Full-time and Part-time vessels and a call-in system for Occasional vessels to monitor DAS; permits for vessel operators and dealers; an open access scallop permit for vessels landing no more than 400 pounds (181.44 kg) of shucked scallops or no more than 50 U.S. bushels (17.62 hl) of in-shell scallops per trip; limitations on upgrading of vessel size and engine horsepower; a prohibition on acquiring more than a 5 percent ownership interest in the total number of limited access scallop vessels; mandatory reporting for permitted vessels and dealers; crew-size limits; maximum dredge and trawl sweep size restrictions; minimum ring and mesh size restrictions; framework measures to adjust the effort control and other measures; a minimum shell height restriction; and an annual option for vessels in the Part-time or Occasional category to fish in the next higher vessel group if they use only one dredge no more than 10.5 feet (3.2 m) in width and their crew complement (including the operator) is five or less. The preamble to the proposed rule described the management measures and their rationale, which are not repeated here.

NMFS is implementing the measures in the Amendment and proposed rule as of March 1, 1994, in order to provide opportunity for the industry to convert to 3¼ inch rings and acquire and install VTS units; and because of the administrative burden imposed on the NMFS by these collective measures, *e.g.*, implementation of a VTS; the need to issue thousands of new permits for operators, dealers and vessels; the need to establish an appeal process for vessel owners who feel their DAS allocation is in error and/or for vessels that do not qualify; and the need to establish details of the recordkeeping and reporting requirements required under § 650.7 and the DAS monitoring set forth in § 650.25. While the VTS is being put in place and the initial problems with that new system are being worked out, a call-in procedure will be used to implement the DAS allocations. Existing regulations, including the meat count measure, will remain in effect until March 1, 1994.

On March 1, 1994, the effective date of these regulations, all scallop vessel owners and operators and all scallop dealers must have an appropriate permit, as specified under §§ 650.4, 650.5, and 650.6 in order to participate in the fishery. In order to ensure being issued a permit, if eligible, by that date all owners, operators, and dealers should apply for a permit as soon as possible. Application forms are available now and NMFS will attempt to mail such forms to all known scallop vessel owners and operators and scallop dealers as soon as possible. Applications will be processed as received. Early application, *i.e.*, one filed before February 1, 1994, will help assure that the permit is issued by March 1, 1994.

As provided in § 650.26(a)(3), until any VTS vendor is approved and the system is available, all permitted vessels fishing under the DAS program must comply with the call-in notification provisions of § 650.26(b).

Comments and Responses

NMFS received comments on the proposed rule from one member of the Congress of the United States, five fishing industry associations, and eight individuals. All of the comments were carefully considered during the formulation of the final rule. Specific comments are discussed and responded to below.

Comment: A member of Congress of the United States and an individual opposed the allocation of DAS because it takes Virginia, North Carolina, and New Jersey fishermen longer to reach their fishing grounds than it takes New England fishermen. These individuals offered days fished or a total allowable catch as an alternative. The commenters stated that the DAS rule gives a distinct advantage to one area over another, whereas, days fished provides a level playing field for all scallopers.

Response: The Council analyzed the days fished system before deciding on the DAS program, using the NMFS weighout database, and determined that DAS is a fair reflection of a vessel's historical time at sea because it takes into consideration the number of days a vessel spent traveling to and from the fishing grounds. The Council also determined the database could not accurately show actual days fishing. However, the final rule includes a measure that would allow the adoption of a days-fished system through a regulatory amendment, if data become available to support such a system.

Comment: Two industry associations requested an extension of the comment period to October 28, 1993, because the proposed rule was published in the **Federal Register** on September 2, 1993, and their associations did not receive a copy of the rule until the third week in September 1993.

Response: The Magnuson Act requires the Secretary of Commerce (Secretary) to follow a mandated time schedule for approval of a plan amendment once it has been submitted by a Fishery Management Council. On July 30, 1993, the New England Fishery Management Council submitted its plan amendment to NMFS, thereby triggering under the Magnuson Act the 95-day time period in which the Secretary must approve or disapprove the amendment. Because of this limited time frame to consider and respond to public comment and prepare the final rule for publication, NMFS allows for 45 days of public comment. NMFS believes the 45 days given for comment are adequate.

Comment: Two industry associations stated that they do not support staggering of implementation dates for

measures contained in the amendment and recommend that the meat count system remain in effect until all management measures contained in Amendment 4 are implemented.

Response: The final rule retains the meat count measure until the new measures are implemented.

Comment: Two industry associations commented that the requirement to submit applications for Operator permits 30 days prior to the date on which the permits are desired is unreasonable and recommended issuing permits locally or by FAX.

Response: Due to the projected initial volume of applications for Operator permits required under Amendment 4, the NMFS needs the flexibility to take 30 days to process and mail permits. However, NMFS will make every effort to process permits sooner. NMFS will make available permit applications well in advance of March 1, 1994, in order to maximize the likelihood that all participants in the scallop fishery will have the ability to obtain a permit before March 1, 1994.

Comment: One industry association commented that the requirement to provide written notice of changes in application information sections for Vessel, Operator, and Dealer permits was ambiguous and recommended that the changes be sent by registered or certified mail.

Response: The sections have been rewritten and now require that within 15 days after a change in the application information, a written report of the change be submitted and received by the Regional Director. Requiring all changes to be sent by registered or certified mail would be too burdensome. Nevertheless, permit holders could choose to send the notice of change by registered or certified mail, return receipt requested, if they want to verify that timely notification occurred.

Comment: Two industry associations and three individuals requested that the requirement of no more than double links between rings of a scallop dredge be changed to allow the placement of a new link between any two worn out ones or that the requirement be limited only to the apron of the dredge.

Response: Requiring double links between rings throughout the entire dredge is necessary to insure the escapement of small sea scallops in order to mitigate the impact of removing the meat-count-age-of-entry requirement. The NMFS recognizes that this may require some change in industry practices but considers these measures to be necessary to the overall success of the management program.

Comment: Two industry associations commented that the vessel recording and reporting requirements were burdensome and unnecessary.

Response: A mandatory real-time data collection system including census coverage is necessary to assess the effectiveness of the new management measures and to make the necessary adjustments through the framework system.

Comment: An industry association objected to the requirement, under the recordkeeping and reporting requirements of § 650.7 (a)(1) and (b)(1), to provide any other information required by the Regional Director.

Response: This requirement provides NMFS the flexibility to obtain the information necessary for management, and is not open-ended since the Regional Director must demonstrate that any additional data requested is necessary to manage the fishery.

Comment: An individual objected to the prohibition on transferring scallops at sea because it would not allow the transfer of sea scallop product to freezer vessels at sea.

Response: The transfer prohibition reflects the Council intent to control and equalize the amount of fishing pressure associated with allocated DAS. From an enforcement perspective, the prohibition is considered critical because it would be difficult to detect violations unless all transfers are prohibited.

Comment: Two industry associations requested that the at-sea observer requirements under § 650.28 be deleted because the provisions of this section were not clear regarding observer and vessel responsibilities.

Response: A high level of monitoring is required to ensure the effectiveness of the management program and to avoid imposing more restrictive measures than necessary on the industry because of insufficient data. This provision gives the Regional Director the discretion to require a vessel to carry an observer to enhance data collection, if necessary. In most cases where observer coverage is considered necessary, the Regional Director will first attempt to enlist voluntary participation. Observers would be provided through existing NMFS observer programs. The vessel would not have to pay the salary for the observer but would have to provide adequate accommodations and food. Neither NMFS nor the government is responsible for providing insurance coverage for the observer; each vessel should provide appropriate coverage.

Comment: Two industry associations supported the framework measures as described under § 650.40.

Response: Comment noted.

Comment: An individual opposed, based on efficiency and safety concerns, limiting scallop vessel crews to no more than nine people, including the operator, while fishing under the scallop DAS program.

Response: Most scallop dredge vessels currently have their crew members shuck scallop meats by hand while at sea. The amount and size of scallops selected for shucking is a function of the crew size and the catch rates. The crew size restriction reflects the Council's intention to cap the fishing power of these vessels at sea by limiting their processing (shucking) capacity. Currently, the average crew size on sea scallop vessels is nine; in the past, crew sizes were larger but this was a reflection of the condition of the resource. NMFS is not aware of any data or information indicating that the limitation on crew size will affect safety at sea.

Comment: An individual opposed the use of vessel landings in 1988 or 1989 as a criterion for limiting access to participation in the fishery and stated that this measure does not meet the requirements of the Magnuson Act.

Response: This requirement complies with the Magnuson Act for establishing a system for limited access to a fishery. If a system for limiting access to a fishery is included in a plan, the Magnuson Act requires the Council and the Secretary to "take into account" such factors as present participation in the fishery, historical fishing practices and dependence on the fishery, and capability of vessels to be used in other fisheries. The Council and NMFS considered all of these factors in establishing criteria required to qualify for full participation in the scallop fishery. A control date was announced on March 2, 1989, which gave notice to participants and potential participants of the fact that future participation in the fishery may be limited for vessels that entered the fishery after the control date.

The purpose of the control date was to discourage speculative entry into the fishery while development of Amendment 4 progressed. In deciding to add the requirement that a vessel must have landed more than 400 pounds of scallops on at least one trip in 1988–1989 in order to be eligible to participate in the fishery, the Council was addressing the factor of historical fishing practices and dependence on the fishery. Later in its deliberations, the Council recognized that not all participants may have received timely notice of the control date and, therefore, allowed a limited exception for vessels

purchased after the control date if the vessels had any participation in the fishery between 1982 and 1990. With respect to determining allocations of DAS, the Council expanded historical participation to include 1985–1990 in order to recognize longstanding historical dependence on the fishery.

The rule also adopts a Council recommendation to establish an exemption to the limited access fishery for vessels that land less than 400 pounds of scallops per day, in order to provide some opportunity for small-scale operations and new entrants to participate in the scallop fishery. Therefore, the Council's and NMFS's decision to rely on the criteria contained in the final rule represents a balancing of present and historical participation in the fishery with the need to reduce fishing mortality by limiting the number of full-time participants in the fishery.

Comment: One individual was opposed to the minimum ring size of 3¼ inches and another individual stated that the ring size must remain at 3¼ inches. Both individuals were opposed to further increases to 3½ inches under § 650.21.

Response: This requirement is necessary to provide protection for small scallops and to help control the amount of fishing mortality associated with a DAS. This measure is designed to help mitigate the impact of removal of the meat count which provides age-at-entry controls. It is not expected, however, to afford age-at-entry protection equal to the current meat count system.

Comment: Three industry associations and three individuals commented about a currently ongoing ring size experimental study being done under a Saltonstall/Kennedy grant and what impact it would have on Amendment 4.

Response: NMFS contacted William D. DuPaul, Ph.D., of the Virginia Institute of Marine Science, principal investigator on the experimental study, regarding the comments received. He commented that the first fishing trip of the experiment had recently been completed by a commercial vessel out of the port of New Bedford and that the larger rings allowed for significantly more escapement than the 3-inch rings currently in use by the industry. DuPaul also commented that the study is ongoing and that it is too early to draw any conclusions from the one trip taken. Final results on the experiment are not expected until work is completed in late winter of 1994. Therefore, NMFS has not considered the preliminary results of the ongoing experiment for the purposes of this rule.

Based on the best scientific information available at this time, however, there seems to be a correlation between ring size and size of scallops retained by scallop dredges. Because removing the meat count measure effectively removes all age-at-entry controls, the Council and NMFS have determined that implementation of minimum ring size requirements simultaneously with removal of the meat count measure is critical to the achievement of the amendment's objectives. Failure to provide some age-at-entry limitations could seriously jeopardize the ability of the management measures to achieve plan objectives in the time required.

Comment: Two individuals commented that vessel owners should be allowed to combine limited access scallop permits and DAS allocations on one vessel and that ownership interest should not be limited to 5 percent of the total number of scallop vessels qualifying under the moratorium.

Response: National Standard 5, 16 U.S.C. 1851(a)(5), states that conservation and management measures, where practicable, should promote efficiency. This standard also provides, however, that the goals of efficiency may be balanced against other factors such as social and biologic. In its deliberations, the Council explicitly considered possible gains in efficiency in allowing DAS to be combined, but ultimately rejected such a measure because of socioeconomic concerns of preserving current fishing practices and traditions at the outset of the management program. The Council was concerned that allowing combination or transfer of DAS allocations, at this time, may precipitously lead to aggregation of fishing rights in the hands of a few, thereby challenging the current type of fishing operations associated with the northeast region. Moreover, it would be impracticable to allow such fishing rights to be transferred, at this time, before the effectiveness of the management measures could be assessed. The Council did provide, however, that measures that may enhance efficiency can be considered and adopted through the framework procedure specified in the rule. NMFS concurs in the Council's deliberations and conclusions concerning these measures.

Comment: Two industry associations were opposed to allowing changes to the moratorium under the framework provisions of the regulations if fishing mortality declines faster than anticipated.

Response: The rule does not predetermine whether the moratorium will be lifted. The rule provides only that the Council may consider such a measure. If and when the Council considers such a measure, the plan requires that it be subject to public comment and that commenters have adequate opportunity to respond. If the Council decides to address this subject under the framework specifications all interested parties will be contacted and will have the opportunity to comment. The Council could adopt such measures only if it can be demonstrated that they are necessary to meet the goals and objectives of the FMP, including socioeconomic goals.

Comment: An industry association was opposed to allowing changes to the management measures through the framework specifications without considering appropriate analysis.

Response: The Council must provide the appropriate rationale and economic and biological analysis when determining whether adjustments, or additional management measures, are necessary to meet the goals and objectives of the rebuilding program of the FMP.

Comment: An industry association requested clarification of the regulations relating to when a DAS starts and ends.

Response: § 650.24(c)(2) has been modified to explain more clearly how DAS accrue under both the VTS and the call-in monitoring system.

Comment: An industry association requested that the Regional Director send notices to permit holders regarding VTS performance criteria and approval, including costs.

Response: In addition to publishing a list of approved VTS vendors in the **Federal Register**, all sea scallop permit holders will receive the information by letter from the Regional Director. As to costs, vessel owners will have to contact the individual vendors.

Comment: An industry association questioned the necessity for VTS vendors to have the capacity to archive vessel position histories and suggested that the requirement, with its related cost imposed on a non-fishing industry, is not within the realm of the Magnuson Act.

Response: This requirement only applies to vendors that volunteer to meet the specifications and provide VTS units to vessels in the fishery. The specification is necessary to comply with the Council's intent to provide NMFS with the capability to monitor and enforce the number of DAS used by each individual vessel issued DAS allocations.

Changes From the Proposed Rule

Changes were made to several sections of the proposed rule to clarify the measures and to ensure consistency with other regulations. In addition, substantive changes were made to the following sections:

In § 650.2, the definitions for *Authorized officer, Fishing, or to fish,* and *NMFS* were deleted because they are set forth in 50 CFR part 620, which provides general Magnuson Act provisions.

In § 650.2, the definition of an *Operator* was modified to add the phrase "or other individual on board", to clarify further the person in charge of the vessel while fishing.

In § 650.2, the definition of a *Vessel Tracking System* was modified to add the phrase "as set forth in § 650.25(a)(2) and approved ", to clarify further the meaning of a Vessel Tracking System.

In § 650.3, paragraph (b) was added to clarify the relationship between state and Federal regulations for Atlantic sea scallops.

In § 650.4, the narrative within the first paragraph and paragraph (a) was modified to add the phrase "and carry on board an authorizing letter issued under § 650.4(a)(9)(vi)(D)," to clarify how vessels appealing a denial of a limited access scallop permit may continue to fish.

In § 650.4, paragraph (a)(1)(i), the phrase "and its owner" was added in order to be consistent with following sections that refer to both vessel and vessel owner.

In § 650.4, paragraph (a)(1)(i)(D), the phrase "and the vessel meets the criteria described in paragraph (a)(4) of this section." was deleted because it was not accurate.

In § 650.4, paragraph (a)(1)(iii) and (d), the phrase "Applications for limited access scallop permits under this section will not be accepted after 12 months after the effective date of the final regulations for Amendment 4." was replaced with "Applications for limited access scallop permits under this section will not be accepted after December 31, 1994.", to clarify that applications for 1994 permits must be received by the end of the calendar year.

In § 650.4, paragraph (a)(4)(ii), the sentence "For undocumented vessels, net tonnage does not apply." was added to clarify further the requirements for replacement vessels.

In § 650.4, paragraph (a)(5)(ii) was modified to add the sentence, "This type of upgrade may be done separately from an engine horsepower upgrade.", in order to clarify further the requirements for upgrading a vessel.

In § 650.4, paragraph (a)(7) (i) and (ii), "March 1, 1994," was added for clarification and consistency with the beginning effective date of the moratorium on limited access scallop permits.

In § 650.4, paragraph (a)(9)(vi), the heading was modified to add the phrase *"of a limited access scallop permit denial"* in order to clarify that the appeal process under this paragraph applies only to limited access scallop permit denial. The paragraph was further modified to add the phrase "if the vessel has on board a letter of authorization from the Regional Director" to clarify the requirements that vessels fishing under appeal must carry on board the letter issued under § 650.4(a)(9)(vi)(D).

In § 650.4, paragraph (a)(9)(vi)(D) was modified to add the sentence, "If the appeal is denied, The Regional Director shall send a notice of denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.", to clarify how vessel owners will be notified in the event of a denial of the appeal of a limited access scallop permit.

In § 650.5, paragraph (c) was modified to add the sentence, "Further, such operators must agree as a condition of this permit that if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be on board any fishing vessel issued a Federal Fisheries Permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in offloading." This phrase was included under § 650.5(n) in the proposed rule and is repeated in this section in the final rule to increase awareness of this provision.

In § 650.5, paragraph (n) was modified to add the phrase "while the vessel is at sea or engaged in offloading", to allow vessel operators to conduct business activity on board a vessel when the vessel is not engaged in any type of fishing activity.

In § 650.6, paragraph (g) was modified to add the phrase, "or ownership changes," to clarify that the permit does not transfer with the change in ownership of the business.

In § 650.7, paragraph (a)(1) was modified to replace "provide" with "mail" to clarify the way in which the reports will be submitted. The paragraph was further modified to contain the phrase, "name and permit number of the vessels from which fish are landed or received;" and the sentence, "If no fish is purchased during the week, a report so stating must be submitted.", to clarify reporting requirements for dealers and to be consistent with the reporting requirements of other regulations.

In § 650.7, paragraph (a)(2) was modified to read, "Required data are the number of employees handling fishery products by month. Reports for a given calendar year shall be submitted to: NMFS Statistics, 166 Water Street, Woods Hole, MA 02543, and must be postmarked by February 10 of the following year." This change further details the requirements for this reporting requirement.

In § 650.7, paragraph (a)(5) was modified to add the following sentence, "If no product was purchased during a week, a report so stating must be submitted."

In § 650.9, paragraph (b)(1) was subdivided into paragraphs (i) and (ii). Paragraph (b)(1)(ii) was added in order to clarify paragraph (b)(1)(i) by prohibiting more than one trip per calendar day.

In § 650.9, paragraph (b)(11), (b)(12), (b)(13), (b)(17), and (c)(4), the phrase "Possess on board or" was added to clarify the prohibition.

In § 650.9, the following changes were made to clarify the prohibitions. Paragraph (c) was subdivided into paragraphs (c)(1) through (c)(7). Paragraph (d)(4) was changed to paragraph (d)(4)(i), and a new paragraph, (d)(4)(ii), was added. Paragraphs (d)(10) through (d)(15) were redesignated as paragraphs (d)(11) through (d)(16), and a new paragraph (d)(10) was added.

In § 650.20, paragraph (a) was modified to add the phrase, "that may be landed, or possessed at or after landing," in order to clarify that the minimum shell height size is not an at-sea measure. Parallel changes were made to sections 650.20(b) and 650.9(a)(1) to reflect this clarification.

In § 650.21, paragraph (a) was modified to add the phrase "in possession of more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 l) of in-shell scallops, or fishing for scallops," to clarify that certain trawl gear restrictions are also possession restrictions applicable to any vessel possessing more than 40 pounds of shucked scallops or 5 bushels of in-shell scallops. Similar changes were made to § 650.21(a) (1)–(2) and § 650.9(b)(8).

In § 650.21, paragraph (b) was modified by deleting the phrase "holding a Federal sea scallop permit under § 650.4 and" and adding the phrases "of more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 l) of in-shell scallops" and all vessels issued limited access scallop permits and fishing under the

DAS allocation program," to clarify that the dredge restrictions apply to all dredge vessels in possession of more than 40 pounds of shucked scallops or 5 bushels of in-shell scallops. In § 650.21, paragraphs (b) (1)–(3) were modified to add the phrase "in use by or in possession of such vessels" to clarify that the dredge restrictions are possession restrictions also. The corresponding prohibition sections to these restrictions, § 650.9, paragraphs (b) (11)–(15) and § 650.9, paragraphs (c) (2)–(6), were changed accordingly to reflect these clarifications.

In § 650.21, paragraph (b)(iii), the sentence, "The ring size will be the average of the measurements of any series of 20 consecutive rings." was deleted. This provision had been added by NMFS with the intent of facilitating enforcement. However, upon further consideration, it was determined that allowing an average minimum ring size would necessitate difficult and problematic measuring requirements and possibly would not be consistent with the Council's intent that no rings should be less than 3¼ inches. NMFS is developing a standard measuring device and procedures to determine minimum ring sizes and will publish a description of such device and procedures in the **Federal Register**.

In § 650.21, paragraph (e) was modified to add the phrase, "in addition to or notwithstanding other restrictions in this Part" to clarify that vessels operating under the small dredge program are still subject to other restrictions in § 650 unless modified by the special provisions of this section.

In § 650.24, paragraph (c)(2)(ii) was expanded to clarify the process for counting days at sea under the call-in system.

In § 650.24, paragraph (f)(6) was modified to add the phrase "if the vessel has on board an authorizing letter from the Regional Director".

In § 650.25, paragraph (b) was modified to cross reference correctly the call-in procedures described in § 650.26(b).

In § 650.26, paragraph (a) was modified to correctly cross reference the small dredge program in § 650.21(e).

In § 650.26, paragraphs (a)(1) and (a)(2) were modified to indicate that the Regional Director is to be notified "through the VTS".

In § 650.26, paragraph (a)(3) was modified to add the phrase "or not functional".

In § 650.26, paragraph (b) was modified to add language that is more specific regarding the call-in notification requirements of the vessel owner or authorized representative.

In § 650.26, paragraphs (b)(2) and (b)(4), the requirement that vessel owners or their authorized representative call-in 2 hours prior to leaving port and within 1 hour of returning to port was replaced with the provision that the DAS will begin and end upon receipt of the call. The Regional Director has determined that this less restrictive requirement is supportable by current technology without compromising the enforceability of this measure.

In § 650.40, paragraph (c), the phrase "After considering the PDT's findings and recommendations, or at any other time," was added in order to clarify the Council's procedures when it is considering changes in management measures.

In § 650.40, paragraph (e)(3), the sentence "The Council may reconsider its prior action and recommend a new action under paragraph (d) of this section." was deleted because it is considered to be unnecessary.

Classification

The Secretary of Commerce (Secretary) determined that the FMP amendment that this rule would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, has taken into account the information, views, and comments received during the comment period.

The Council prepared a final supplemental environmental impact statement (FSEIS) for Amendment 4, which was filed by the Environmental Protection Agency with the Office of the Federal Register. The Environmental Protection Agency has recommended that the National Marine Fisheries Service conduct studies in the near future to monitor the effect of scallop dredges on bottom habitat. The AA has determined that the preferred alternative of Amendment 4 versus the status quo is environmentally preferable upon review of the FSEIS and public comments. The FSEIS demonstrates that the preferred alternative contains management measures to rebuild the stock of Atlantic sea scallops, provides positive economic and social benefits to the fishing industry in the long term, and provides balance in the ecosystem in terms of the sea scallop resource.

NMFS certified to the Small Business Administration that this rule may have significant effects on a substantial number of small entities under the Regulatory Flexibility Act. For the purposes of the RFA, the RIR is retitled as a RIR/regulatory flexibility analysis (RFA). According to the RIR/RFA prepared by the Council, the management measures will have some negative impact on small entities. There are approximately 400–600 vessels that rely on scallops for a portion of their revenue. All are considered small entities. Of these, more than 150 vessels would not qualify for the vessel moratorium and may have to redirect effort into other fisheries. Approximately 63 percent of the 150 vessels, however, depend on sea scallops for 15 percent or less of their total revenue and may be able to compensate by participating in the general scallop fishery (no moratorium, landings up to 400 pounds (181.44 kg) per trip). For those vessels qualifying for the limited access fishery, there are significant short-term losses in revenue that are offset by long-term gains.

The rule contains eight new collection-of-information requirements and also revises four existing requirements previously approved by OMB under Control Numbers 0648–0202 and 0648–0229 and 0648–0018. These collection-of-information requirements have been approved by OMB. Nevertheless, public comments are invited on the burden-hour estimates for the collection of information requirements as listed below.

The new reporting requirements are:

(1) Dealer permits (§ 650.6—OMB Approval Number 0648–0202) (5 minutes/response);

(2) Operator permits (§ 650.5—OMB Approval Number 0648–0202) (1 hour/response);

(3) Notice requirements for observer deployment (§ 650.28—OMB Approval Number 0648–0202) (2 minutes/response);

(4) Proof of installation of vessel tracking system, (§ 650.25—OMB Approval Number 0648–0202) (2 minutes/response);

(5) Automated vessel tracking system (§ 650.25—OMB Approval Number 0648–0202) (0 minutes/response);

(6) Vessel call-in requirement (§ 650.25—OMB Approval Number 0648–0202) (2 minutes/response);

(7) Days-at-sea exemption program (§ 650.27—OMB Approval Number 0648–0202) (2 minutes/response);

(8) Vessel logbooks (§ 650.7—OMB Approval Number 0648–0212) (5 minutes/response).

Revisions to existing requirements are:

(1) Limited access scallop permit appeals—appeal of denied permits will require written submission (§ 650.24—OMB Approval Number 0648–0202) (3 hours/response);

(2) Days-at-sea appeals—appeal of the days-at-sea allocation will require written submission (§ 650.24—OMB Approval Number 0648–0202) (5 hours/response);

(3) Dealer purchase reports (§ 650.7—OMB Approval Number 0648–0229) (2 minutes/response);

(4) Annual processed products reports (§ 650.7—OMB Approval Number 0648–0018) (2 minutes/response).

List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: January 12, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 650 is revised to read as follows:

PART 650—ATLANTIC SEA SCALLOP FISHERY

Subpart A—General Provisions

Sec.

650.1 Purpose and scope.
650.2 Definitions.
650.3 Relation to other laws.
650.4 Vessel permits.
650.5 Operator permits.
650.6 Dealer permits.
650.7 Recordkeeping and reporting.
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Subpart B—Management Measures

650.20 Shell-height standard.
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650.22 Possession restrictions.
650.23 Transfer-at-sea.
650.24 Days-at-sea (DAS) allocations.
650.25 Monitoring requirements.
650.26 DAS notification program.
650.27 DAS exemption program.
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Subpart C—Framework Adjustments to Management Measures

650.40 Framework specifications.

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

Subpart A—General Provisions

§ 650.1 Purpose and scope.

The purpose of this part is to implement the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP), which was prepared and adopted by the New England Fishery Management Council in consultation with the Mid-Atlantic and South Atlantic Fishery Management Councils, and approved by the Assistant Administrator for Fisheries, NOAA.

§ 650.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Atlantic sea scallop or *scallop* means the species *Placopecten magellanicus* throughout its range.

Chafing gear or cookies mean steel, rubberized or other types of donut rings, disks, washers, twine, or other material attached to or between the steel rings of a sea scallop dredge.

COLREGS Demarcation Lines mean the lines of demarcation delineating those waters upon which mariners must comply with the International Regulations for Preventing Collisions at Sea, 1972 (33 CFR part 80), and those waters upon which mariners must comply with the Inland Navigation Rules.

Council means the New England Fishery Management Council.

Day(s)-at-sea (DAS) means each 24-hour period of time during which a fishing vessel is absent from port for purposes of scallop fishing.

Dealer means any person who receives scallops for a commercial purpose from the owner or operator of a vessel, other than exclusively for transport on land.

Dredge or *dredge gear* means gear consisting of a mouth frame attached to a holding bag constructed of metal rings, or any other modification to this design, that can be or is used in the harvest of Atlantic sea scallops.

Dredge top means the mesh panel in the top of a dredge and immediately adjacent rings and links found between the bail of the dredge, the club stick and the two side panels. The bail of the dredge is the rigid structure of the forward portion of the dredge that connects to the warp and holds the dredge open. The club stick is the rigid bar at the tail of the dredge bag that is attached to the rings.

Dredge vessel means any fishing vessel that is equipped for fishing using dredge gear and that is capable of catching Atlantic sea scallops.

Fishery Management Plan (FMP) means the Fishery Management Plan for Atlantic Sea Scallops, as amended.

Gross registered tonnage means the gross registered tonnage specified on the U.S. Coast Guard documentation for a vessel.

Land means to enter port with fish on board, to begin offloading fish, or to offload fish.

Net tonnage means the net tonnage specified on the U.S. Coast Guard documentation for a vessel.

Offload means to begin to remove, to remove, to pass over the rail, or otherwise take away fish from any vessel.

Operator means the master or captain of the vessel, or other individual on board the vessel, who is in charge of that vessel's operations.

Postmark means independently verifiable evidence of date of mailing, such as U.S. Postal Service postmark, United Parcel Service (U.P.S.) or other private carrier postmark, certified mail receipt, overnight mail receipt, or receipt received upon hand delivery to an authorized representative of NMFS.

Regional Director means the Director, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930–2298, or a designee.

Reporting month means a period of time beginning at 0001 hours local time on the first day of each calendar month and ending at 2400 hours local time on the last day of each calendar month.

Reporting week means a period of time beginning at 0001 hours local time on Sunday; and ending at 2400 hours local time the following Saturday.

Re-rig or re-rigged means physical alteration of the vessel or its gear in order to transform the vessel into one capable of fishing commercially for sea scallops.

Sea Scallop Plan Development Team (PDT) means a team of technical experts appointed by the Council.

Shell height is a straight line measurement from the hinge to the outermost part of the shell, that is, the edge furthest away from the hinge.

Shucking or *to shuck* means opening or to open a scallop and removing the meat or the adductor muscle from the shell.

Shucking machine means any mechanical device that automatically removes the meat or the adductor muscle from a scallop shell.

Sorting machine means any mechanical device that automatically sorts whole scallops by shell height, size, or other physical characteristics.

Transfer means to begin to remove, to remove, to pass over the rail, or otherwise take away fish from any vessel and move them to another vessel.

Trawl means gear consisting of a net that is towed and is capable of catching sea scallops, including Danish and Scottish seine gear.

Trawl sweep means the total length of the footrope on a trawl net that is directly attached to the webbing of a net.

Trip is the period of time during which a fishing vessel is absent from port, beginning when the vessel leaves port and ending when the vessel returns to port.

Under agreement for construction means that the keel has been laid and

that there is a written agreement to construct a fishing vessel.

Vessel registered length means the registered length specified on the U.S. Coast Guard documentation for a vessel or on the state registration for a vessel not required to be documented under Title 46 U.S.C., if the state-registered length is verified by an authorized officer.

Vessel Tracking System (VTS) means a vessel tracking system as set forth in § 650.25(a)(2) and approved by NMFS for use by scallop vessels as required by this part.

VTS unit means a device installed on board a vessel used for vessel tracking and transmitting the tracked position as required by this part.

§ 650.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter.

(b) Nothing in these regulations shall supersede more restrictive state management measures for Atlantic sea scallops.

§ 650.4 Vessel permits.

Any vessel of the United States that fishes for, possesses, or lands per trip Atlantic sea scallops in quantities greater than 40 pounds (18.14 kg) shucked scallops or 5 bushels (176.2 l) in-shell, except vessels that fish exclusively in state waters for sea scallops, must have been issued and carry on board an authorizing letter issued under § 650.4(a)(9)(vi)(D), a valid limited access scallop permit or a valid general scallop permit, issued under this section.

(a) *Limited access scallop permits.* Any vessel of the United States that possesses or lands per trip more than 400 pounds (181.44 kg) of shucked scallops or the equivalent amount of in-shell scallops (50 U.S. bushels (17.62 hl)), except vessels that fish exclusively in state waters for sea scallops, must have been issued and carry on board an authorizing letter issued under § 650.4(a)(9)(vi)(D), or a valid Federal limited access scallop permit. To qualify for a limited access scallop permit a vessel must meet the following criteria, as applicable:

(1) *Eligibility in 1994.* (i) To be eligible to obtain a limited access scallop permit for 1994, a vessel must meet one of the following criteria:

(A) The vessel had been issued a Federal scallop permit in 1988 or 1989, and the vessel landed more than 400 pounds (181.44 kg) of shucked scallops or the equivalent amount of in-shell scallops (50 U.S. bushels (17.62 hl)) on at least one trip completed during 1988 or 1989; or,

(B) The vessel was under written agreement for construction or for re-rigging on or prior to March 2, 1989, and the vessel was issued a Federal scallop permit and landed scallops between March 2, 1989, and March 2, 1990; or,

(C) The vessel was purchased between March 2, 1989, and November 28, 1990; it had been issued a Federal scallop permit and landed scallops between January 1, 1982, and January 1, 1988; and it had been issued a Federal scallop permit and landed more than 400 pounds (181.44 kg) of scallops on any one trip completed in 1990; or,

(D) The vessel is replacing a vessel that meets any of the criteria set forth in paragraph (a)(1)(i)(A), (a)(1)(i)(B) or (a)(1)(i)(C) of this section.

(ii) No more than one vessel may qualify, at any one time, for a limited access scallop permit based on that or another vessel's fishing and permit history. If more than one vessel owner claims eligibility for a limited access scallop permit, based on one vessel's fishing and permit history, the Regional Director shall determine who is entitled to qualify for the limited access scallop permit and the DAS allocation according to paragraph (a)(3) of this section.

(iii) A limited access scallop permit for 1994 will not be issued unless the application for such permit is received by the Regional Director on or before December 31, 1994.

(2) *Eligibility in 1995 and thereafter.* To be eligible to renew or apply for a limited access scallop permit after 1994, a vessel must have been issued a limited access scallop permit for the preceding year, or the vessel must be replacing a vessel that had been issued a limited access scallop permit for the preceding year, and, if applicable, the vessel must meet the criteria set forth in paragraph (a)(4) of this section. If more than one vessel owner claims eligibility to apply for a limited access scallop permit based on one vessel's fishing and permit history after 1994, the Regional Director shall determine who is entitled to qualify for the limited access scallop permit and the DAS allocation according to paragraph (a)(3) of this section.

(3) *Change in ownership.* The fishing and permit history of a vessel is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel fishing and permit history for purposes of replacing the vessel.

(4) *Replacement vessels.* To be eligible to replace a vessel that has been issued a limited access scallop permit, the replacement vessel must meet the following criteria:

(i) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel it is replacing as of the date the vessel it is replacing was initially issued a 1994 limited access scallop permit as specified on a valid application for a permit under this section; except that, the horsepower of the replacement vessel may not exceed the horsepower of the vessel being replaced if the horsepower of the vessel being replaced has been increased through upgrade or vessel replacement from that specified when the vessel being replaced initially applied for a 1994 limited access scallop permit; and,

(ii) The replacement vessel's length, gross registered tonnage, and net tonnage may not exceed by more than 10 percent the length, gross registered tonnage, and net tonnage of the vessel being replaced, based on specifications provided in the initial 1994 application for a limited access scallop permit; except that, the length, gross registered tonnage, and net tonnage of the replacement vessel may not exceed the length, gross registered tonnage, and net tonnage of the vessel initially issued a limited access scallop permit if any or all of these specifications have been increased through upgrade or vessel replacement from that specified when the vessel being replaced initially applied for a 1994 limited access scallop permit. For purposes of this paragraph, a vessel not required to be documented under Title 46, U.S.C. will be considered to be 5 gross registered tons. For undocumented vessels, net tonnage does not apply.

(5) *Upgraded vessel.* To remain eligible to retain a valid limited access scallop permit, or to apply for, or renew a limited access scallop permit, a vessel may be upgraded, whether through refitting or replacement, only if the upgrade complies with the following limitations:

(i) The vessel's horsepower may be increased, whether through refitting or replacement, only once. Such an increase may not exceed 20 percent of the horsepower of the vessel initially issued a 1994 limited access scallop permit as specified in that vessel's permit application for a 1994 limited access scallop permit; and,

(ii) The vessel's length, gross registered tonnage and net tonnage may be upgraded, whether through refitting

or replacement, only once. Such an increase shall not exceed 10 percent each of the length, gross registered tonnage, and net tonnage of the vessel initially issued a 1994 limited access scallop permit as specified in that vessel's application for a 1994 limited access scallop permit. This limitation allows only one upgrade, at which time any or all three specifications of vessel size may be increased. This type of upgrade may be done separately from an engine horsepower upgrade.

(iii) A replacement of a vessel that does not result in increasing horsepower, length, gross registered tonnage or net tonnage is not considered an upgrade for purposes of this section.

(6) *Notification of eligibility for 1994.* (i) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence that they meet the criteria described in paragraph (a)(1) of this section, that they qualify for a limited access scallop permit if they meet the requirements contained in paragraphs (c) through (g) of this section.

(ii) If a vessel owner has not been notified that the vessel is eligible to be issued a limited access scallop permit, and the vessel owner believes that there is credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for a limited access scallop permit by meeting the requirements described under paragraphs (d) and (e) of this section and by submitting the information described in paragraphs (a)(1) through (a)(5) of this section. In the event the application is denied, the applicant may appeal as specified in paragraph (a)(9) of this section. If, through either of these procedures, the Regional Director determines that the vessel meets the eligibility criteria, a limited access scallop permit will be issued to the vessel.

(7) *Percentage ownership restrictions.* (i) Any vessel owner is eligible to apply for and be issued a 1994 limited access scallop permit for any vessel owned as of March 1, 1994, provided that the vessel meets all pertinent criteria in this part regardless of the owner's ownership in other scallop vessels on March 1, 1994.

(ii) For any vessel acquired after March 1, 1994, except as provided in paragraph (a)(7)(iii) of this section, a vessel owner is not eligible to be issued a limited access scallop permit for the vessel if the issuance of the permit will result in the vessel owner, or any person who is a shareholder or partner of the vessel owner, having an ownership interest in limited access scallop vessels in excess of 5 percent of the number of all limited access scallop vessels at the time of permit application.

(iii) Vessel owners who were initially issued a 1994 limited access scallop permit, or were issued or renewed a limited access scallop permit for a vessel in 1995 and thereafter in compliance with the ownership restrictions in paragraph (a)(7)(ii) of this section, are eligible to renew such permit(s), regardless of whether the renewal of the permits will exceed the 5 percent ownership restrictions.

(iv) Having an ownership interest includes, but is not limited to, persons who are shareholders in a vessel owned by a corporation, who are partners (general or limited) to a vessel owner, or who, in any way, partly own a vessel.

(8) *Consolidation restriction.* Limited access scallop permits and DAS allocations may not be combined or consolidated.

(9) *Appeal of denial of limited access scallop permit.* (i) Any applicant denied a limited access scallop permit, may appeal the denial to the Regional Director within 30 days of the notice of denial. Any such appeal must be based on one or more of the following grounds, must be in writing, and must state the grounds for the appeal:

(A) The information used by the Regional Director was based on mistaken or incorrect data;

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(C) The applicant has new or additional information.

(ii) The Regional Director will appoint a designee who will make the initial decision on the appeal.

(iii) The appellant may request a review of the initial decision by the Regional Director by so requesting in writing within 30 days of the notice of initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision shall become the final administrative action of the Department of Commerce. The appellant's request for review must elect either to have the review conducted by a hearing officer appointed by the Regional Director or by an Advisory Appeals Board if established pursuant to paragraph (a)(9)(iv)(B) of this section.

(iv) *Recommendations to the Regional Director.* (A) *Hearing Officer.* If the initial decision is reviewed by a hearing officer, the hearing officer shall make findings and a recommendation to the Regional Director which shall be advisory only.

(B) *Advisory Appeals Board.* The Regional Director may establish, or request the Council to establish, an Advisory Appeal Board. If such a board is established and approved by the Regional Director, an appellant may request that the initial decision of his/her appeal be reviewed by the Appeals Board. If such a request is made, the Regional Director shall forward the request to the Appeals Board within 15 days after receipt. Any initial decision reviewed by an Appeals Board made up of other than Federal employees shall be open to the public, including all documentation presented to support the appeal. The Appeals Board shall make findings and a recommendation to the Council, which shall be advisory only. The Council in turn shall make findings and an advisory-only recommendation to the Regional Director.

(v) Upon receiving the findings and a recommendation, the Regional Director will issue a final decision on the appeal. The Regional Director's decision is the final administrative action of the Department of Commerce.

(vi) *Status of vessels pending appeal of a limited access scallop permit denial.* A vessel for which an application has been completed and an appeal has been initiated may fish under one of the following DAS allocation categories based on which criteria is applicable, pending a final decision on the appeal, if the vessel has on board a letter of authorization from the Regional Director.

(A) A vessel owner appealing under this part who can establish credible evidence, or NMFS records, that his/her vessel completed at least 10 trips, each landing more than 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops, in any consecutive 12-month period during 1991–1992, may fish under the Full-time DAS allocation, pending a final decision on the appeal.

(B) A vessel owner appealing under this part who cannot meet the criteria specified in paragraph (a)(9)(vi)(A), but who can establish through credible evidence, or NMFS records, that his/her vessel completed at least 5 trips, each landing more than 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops, in any 12 consecutive month period during 1991–1992, may fish under the Part-time DAS allocation, pending a final decision on the appeal.

(C) A vessel owner appealing under this part who cannot meet the criteria specified in paragraph (a)(9)(vi)(A) or (a)(9)(vi)(B), but who can establish through credible evidence, or NMFS records, that their vessel completed at least one trip, landing more than 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops, during 1991–1992, may fish

under the Occasional DAS allocation, pending a final decision on the appeal.

(D) The decision and notification whether to allow any vessel that presents evidence under paragraphs (a)(9)(vi)(A) through (a)(9)(vi)(C) of this section to fish under one of the three categories of DAS, pending a final decision on the appeal, will be provided by the Regional Director in an authorizing letter. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity pending a final decision on the appeal. The authorizing letter must be carried on board the vessel while participating in the DAS program. If the appeal is finally denied, the Regional Director shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

(b) *General scallop permit.* Any vessel of the United States that is not in possession of a limited access scallop permit, and that possesses, or lands per trip, more than 40 pounds (18.14 kg) and less than or including 400 pounds (181.44 kg), of shucked meats, or the equivalent amount of in-shell scallops (5 and 50 U.S. bushels (176.2 l and 17.62 hl), respectively), except vessels that fish exclusively in state waters for scallops, must carry on board a valid general scallop permit.

(c) *Condition.* Vessel owners who apply for a permit under this section must agree as a condition of the permit that the vessel and vessel's fishing, catch, crew size, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part, unless exempted from such requirements under § 650.27. The vessel and all such fishing, catch, crew size, and gear shall remain subject to all applicable state or local requirements. If a requirement of this part and a management measure required by state or local law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement.

(d) *Vessel permit application.* Applicants for a permit under this section must submit a completed application on an appropriate form obtained from the Regional Director. The application must be signed by the owner of the vessel, or the owner's authorized representative, and be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section. Applicants for limited access scallop permits who have not been notified of eligibility by the Regional Director shall provide information with the application sufficient for the Regional Director to determine whether the vessel meets the eligibility requirements specified under paragraph (a)(1) of this section. Applications for 1994 limited access scallop permits under this section will not be accepted after December 31, 1994. Acceptable forms of proof include, but are not limited to, state weigh-out records, packout forms, settlement sheets, grocery receipts, fuel receipts, and bridge logs.

(e) *Information requirements.* (1) In addition to applicable information required to be provided by paragraph (d) of this section, an application for either a limited access or general scallop permit must contain at least the following information, and any other information required by the Regional Director: Vessel name; owner name, mailing address, and telephone number; U.S. Coast Guard documentation number and a copy of vessel's U.S. Coast Guard documentation or, if undocumented, state registration number and a copy of the state registration; home port and principal port of landing; length; gross tonnage; net tonnage; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish-hold capacity; type of fishing gear used by the vessel; number of crew; permit category; if the owner is a corporation, a copy of the Certificate of Incorporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners; if there is more than one owner, names of all owners having owned more than 25 percent interest; and name and signature of the owner or the owner's authorized representative.

(2) Applications for a limited access scallop permit must also contain the following information:

(i) For every person named by applicants for limited access scallop permits pursuant to paragraph (e)(1) of this section, the names of all other vessels in which that person has an ownership interest and for which a limited access scallop permit has been issued or applied for;

(ii) The engine horsepower of the vessel as specified in the vessel's permit documentation as of August 3, 1992; or, if the engine horsepower is different from that stated in the vessel's Federal scallop permit as of August 3, 1992, sufficient documentation to ascertain the different engine horsepower;

(iii) If applying for Full-time or Part-time limited access scallop permit, or if opting to use a VTS unit although not required, a copy of the vendor installation receipt from a NMFS-approved VTS vendor as described in § 650.25(a); and

(iv) If applying for the small dredge program set forth under § 650.21(e), an annual declaration into the program.

(f) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee shall be calculated in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (g) of this section.

(g) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904 and under § 650.4(a)(9), the Regional Director shall issue a Federal scallop vessel permit within 30 days of receipt of the application unless:

(i) The applicant has failed to submit a completed application. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received and the applicant has submitted all applicable reports specified at § 650.7; or,

(ii) The application was not received by the Regional Director by the deadlines set forth in paragraphs (a)(1)(iii) and (p) of this section; or,

(iii) The applicant and applicant's vessel failed to meet all eligibility requirements described in paragraphs (a)(1) and (a)(2) of this section; or,

(iv) For applicants applying for a Full-time or Part-time limited access scallop permit, the applicant has failed to meet all of the VTS requirements as described in § 650.25; or,

(v) The applicant has failed to meet any other application requirements stated in 50 CFR part 650.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(h) *Expiration.* A permit will expire upon the renewal date specified in the permit.

(i) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or until it otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as specified in paragraph (l) of this section. Federal fishing vessel permits must be renewed annually and unless renewed will expire upon the renewal date specified in the permit.

(j) *Replacement.* Replacement permits, for an otherwise valid permit, may be issued by the Regional Director when requested in writing by the owner or authorized representative, stating the need for replacement, the name of the vessel, and the Federal Fisheries Permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged for issuance of the replacement permit.

(k) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the vessel and owner to whom it is issued.

(l) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, a written notice of the change must be submitted to the Regional Director. If the written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(m) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(n) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(o) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(p) *Limited access scallop permit renewal.* To renew or apply for a limited access scallop permit in 1995 and thereafter, a completed application must be received by the Regional Director by December 31 of the year before the permit is needed. For example, to receive a limited access scallop permit for 1996, vessel owners must apply by December 31, 1995. Failure to renew a limited access scallop permit in any year bars the renewal of the permit in subsequent years.

(q) *Abandonment or voluntary relinquishment of limited access scallop permits.* If a vessel's limited access scallop permit is voluntarily relinquished to the Regional Director, or abandoned through failure to renew or otherwise, no limited access scallop permit may be re-issued or renewed based on that vessel's history or to any vessel relying on that vessel's history.

§ 650.5 Operator permits.

(a) *General.* Any operator of a vessel issued a Federal limited access scallop permit under § 650.4, or any operator of a vessel fishing for scallops in the EEZ or in possession of more than 40 pounds (18.14 kg) of shucked scallops, or 5 U.S. bushels (176.2 l) of in-shell scallops, in or harvested from the EEZ, must carry on board a valid operator's permit issued under this part.

(b) *Operator application.* Applicants for a permit under this section must submit a completed permit application on an appropriate form obtained from the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section.

(c) *Condition.* Vessel operators who apply for an operator's permit under this section must agree as a condition of this permit that the operator and vessel's fishing, catch, crew size, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part while fishing in the EEZ or on board a vessel permitted under § 650.4, unless exempted from such requirements under § 650.27. The vessel and all such fishing, catch, crew size, and gear will remain subject to all applicable state or local requirements. Further, such operators must agree as a condition of this permit that if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be on board any fishing vessel issued a Federal Fisheries Permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in offloading. If a requirement of this part and a management measure required by state or local law differ, any operator issued a permit under this part must comply with the more restrictive requirement.

(d) *Information requirements.* An applicant must provide at least all the following information and any other information required by the Regional Director: name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; social security number (optional) and signature of the applicant. The applicant must also provide two color passport size photographs.

(e) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Financial Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (f) of this section.

(f) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director shall issue an operator's permit within 30 days of receipt of a completed application if the criteria specified herein are met. Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(g) *Expiration.* A permit will expire upon the renewal date specified in the permit.

(h) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or the applicant has failed to report a change in the information on the permit application to the Regional Director as specified in paragraph (k) of this section.

(i) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the Federal operator permit number assigned. An applicant for a replacement permit must also provide two color passport size photos of the applicant. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged.

(j) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom it is issued.

(k) *Change in application information.* Notice of a change in the permit holder's name, address, or telephone number must be submitted in writing to, and received by, the Regional Director within 15 days of the change in information. If written notice of the

change in information is not received by the Regional Director within 15 days, the permit is void.

(l) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(m) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(n) *Sanctions.* Vessel operators with suspended or revoked permits may not be on board a Federally permitted fishing vessel in any capacity while the vessel is at sea or engaged in offloading. Procedures governing enforcement related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(o) *Vessel owner responsibility.* Vessel owners are responsible for ensuring that their vessels are operated by an individual with a valid operator's permit issued under this section.

§ 650.6 Dealer permits.

(a) All dealers must have been issued and have in their possession a valid permit issued under this part.

(b) *Dealer application.* Applicants for a permit under this section must submit a completed application on an appropriate form provided by the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days before the date upon which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section.

(c) *Information requirements.* Applications must contain at least the following information and any other information required by the Regional Director: Company name, place(s) of business, mailing address(es) and telephone number(s); owner's name; dealer permit number (if a renewal); and name and signature of the person responsible for the truth and accuracy of the report. If the dealer is a corporation, a copy of the certificate of incorporation must be included with the application. If a partnership, a copy of the Partnership Agreement and the names and addresses of all partners must be included with the application.

(d) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (e) of this section.

(e) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit at any time during the fishing year to an applicant unless the applicant has failed to submit a completed application. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified in § 650.7(a). Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* A permit will expire upon the renewal date specified in the permit.

(g) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as required by paragraph (j) of this section.

(h) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the Federal dealer permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged.

(i) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom, or other business entity to which, it is issued.

(j) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, a written report of the change must be submitted to, and received by, the Regional Director. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(k) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(l) *Display.* Any permit, or a valid duplicate thereof, issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(m) *Federal versus state requirements.* If a requirement of this part differs from a fisheries management measure required by state law, any dealer issued a Federal dealer permit must comply with the more restrictive requirement.

(n) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

§ 650.7 Recordkeeping and reporting.

(a) *Dealers*—(1) *Weekly report.* Dealers shall mail at least the following information to the Regional Director, or official designee, on a weekly basis on forms supplied by or approved by the Regional Director. Or, if authorized in writing by the Regional Director, dealers may submit reports electronically or through other media. The following information, and any other information required by the Regional Director, must be provided: Name and mailing address of dealer; dealer number; name and permit number of the vessels from which fish are landed or received; dates of purchases; pounds by species; price by species; and port landed. If no fish is purchased during the week, a report so stating must be submitted.

(2) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section are required to complete the "Employment Data" section of the Annual Processed Products Reports; the other information on that form is voluntary. Required data are the number of employees handling fishery products by month. Reports for a given calendar year shall be submitted to: NMFS Statistics, 166 Water Street, Woods Hole, MA 02543, and must be postmarked by February 10 of the following year.

(3) *Inspection.* The dealer shall make available copies of the required reports that have been submitted, or should have been submitted, and the records upon which the reports were based, immediately upon request for inspection by an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections.

(4) *Record retention.* Copies of reports, and records upon which the reports were based, must be retained and available for review for one year after the date of the last entry on the report. The dealer shall retain such reports and records at its principal place of business.

(5) *Submitting reports.* Reports must be received or postmarked, if mailed, within 3 days after the end of each reporting week. Each dealer will be sent forms and instructions, including the address to which to submit reports,

shortly after receipt of a dealer permit. If no product was purchased during a week, a report so stating must be submitted.

(b) *Vessel owners*—(1) *Fishing log reports.* The owner of any vessel holding a Federal scallop permit under § 650.4 shall maintain, on board the vessel, and submit an accurate daily fishing log report for all fishing trips regardless of species fished for or taken, on forms supplied by or approved by the Regional Director. If authorized in writing by the Regional Director, vessel owners may submit reports electronically, using the VTS, or other media. At least the following information, and any other information required by the Regional Director, must be provided: Vessel name; U.S. Coast Guard (USCG) documentation number (or state registration number if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; pounds by species of all species landed and discarded; dealer permit number; dealer name; date sold; port and state landed; and vessel operator's name, signature, and operator permit number.

(2) *When to fill in the log.* Such log reports must be filled in, except for information required but not yet ascertainable, before offloading has begun. At the end of a fishing trip all information in paragraph (b)(1) of this section must be filled in for each fishing trip before starting the next fishing trip.

(3) *Inspection.* Owners and operators shall make, immediately upon request, the fishing log reports currently in use or to be submitted available for inspection by an authorized officer, or an employee of the NMFS designated by the Regional Director to make such inspections, at any time during or after a trip.

(4) *Record retention.* Copies of fishing log reports must be retained and available for review for one year after the date of the last entry on the report.

(5) *Submitting reports.* Fishing log reports must be received or postmarked, if mailed, within 15 days after the end of each reporting month. Each owner will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a Federal Fisheries Permit. If no fishing trip is made during a month, a report so stating must be submitted.

§ 650.8 Vessel identification.

(a) *Vessel name.* Each fishing vessel subject to this part and that is over 25 feet (7.6 m) in length must display its name on the port and starboard sides of its bow and, if possible, on its stern.

(b) *Official number.* Each fishing vessel subject to this part that is over 25 feet (7.6 m) in length must display its official number on the port and starboard sides of its deckhouse or hull, and on an appropriate weather deck, so as to be visible from above by enforcement vessels and aircraft. The official number is the U.S. Coast Guard documentation number or the vessel's state registration number for vessels not required to be documented under title 46 of U.S. Code.

(c) *Numerals.* The official number must be permanently affixed in contrasting block Arabic numerals at least 18 inches (45.7 cm) in height for vessels over 65 feet (19.8 m), and at least 10 inches (25.4 cm) in height for all other vessels over 25 feet (7.6 m) in length.

(d) *Duties of owner and operator.* The owner and operator of each vessel subject to this part shall:

(1) Keep the vessel name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

§ 650.9 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel issued a limited access scallop permit or a general scallop permit under § 650.4, or a letter under § 650.4(a)(9)(vi)(D), to do any of the following:

(1) Land, or possess at or after landing, in-shell sea scallops smaller than the minimum size specified in § 650.20(a). All Atlantic sea scallops will be subject to inspection and enforcement, in accordance with the compliance and sampling procedures specified in § 650.20(b), up to and including the time when a dealer receives or possesses sea scallops for a commercial purpose.

(2) Fail to comply in an accurate and timely fashion with the log report, reporting, record retention, inspection, and other requirements of § 650.7(b).

(3) Fish for, possess, or land sea scallops unless the operator of the vessel has been issued an operator's permit under § 650.5, and the permit is on board the vessel and is valid.

(4) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application as required under § 650.4(l) or § 650.5(k).

(5) Make any false statement in connection with an application under § 650.4 or § 650.5.

(6) Fail to affix and maintain permanent markings as required by § 650.8.

(7) Sell or transfer, or attempt to sell or transfer, to a dealer any sea scallops unless the dealer has a valid Federal Dealer's Permit issued under § 650.6.

(8) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove, or otherwise transfer Atlantic sea scallops or fish from one vessel to another vessel.

(b) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a limited access scallop permit under § 650.4(a), or a letter under § 650.4(a)(9)(vi)(D), to do any of the following:

(1)(i) Possess, or land per trip, more than 400 pounds (181.44 kg) of shucked sea scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 650.26, unless exempted from DAS allocations as provided in § 650.27.

(ii) Land scallops on more than one trip per calendar day after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 650.26, unless exempted from DAS allocations as provided in § 650.27.

(2) Fail to have an approved, operational, and functioning VTS unit that meets the specifications of § 650.25(a) on board the vessel at all times, unless the vessel is not subject to the VTS requirements specified in § 650.26.

(3) If the vessel is not subject to VTS requirements specified in § 650.26, fail to comply with any aspect of the call-in system as specified in § 650.26(b).

(4) Combine, transfer, or consolidate DAS allocations.

(5) Have an ownership interest in more than 5 percent of the total number of vessels issued limited access scallop permits, except as provided in § 650.4(a)(7)(iii).

(6) Fish for, possess, or land Atlantic sea scallops with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 650.4(a)(5).

(7) Fish for, possess, or land Atlantic sea scallops with or from a vessel that has had the length, gross registered tonnage, or net tonnage of such vessel or its replacement increased or upgraded in excess of limitations specified in § 650.4(a)(5).

(8) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 l) of in-shell scallops while in possession of, or fish under the DAS allocation program with, trawl nets that have a maximum sweep exceeding 144 feet (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing of the net.

(9) Fish under the DAS allocation program with, or have available for immediate use, trawl nets of mesh smaller than the minimum size, as specified in § 650.21(a)(2).

(10) Fish under the DAS allocation program with trawl nets that use chafing gear or other means or devices that violate the provisions of § 650.21(a)(3).

(11) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 l) of in-shell scallops while in possession of, or fish under the DAS allocation program with, dredge gear that has a maximum combined dredge width exceeding 31 feet (9.4 m), measured at the widest point in the bail of each dredge.

(12) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 l) of in-shell scallops while in possession of, or fish under the DAS allocation program with, dredge gear that uses net or net material on the top half of the dredge of a minimum mesh size smaller than that specified in § 650.21(b)(2).

(13) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 l) of in-shell scallops while in possession of, or fish under the DAS allocation program with, dredge gear containing rings that have minimum sizes smaller than those specified in § 650.21(b)(3).

(14) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 l) of in-shell scallops while in possession of, or fish under the DAS allocation program with, dredge gear that uses more than double links between rings of the gear.

(15) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 l) of in-shell scallops while in possession of, or fish under the DAS allocation program with, dredge gear that uses cookies, chafing gear or other gear, means, or devices on the top half of a dredge that obstruct the openings in or between the rings, other than double links as specified and described in § 650.21(b)(4).

(16) Fish under the DAS allocation program with more than 9 persons, including the operator, on board the vessel, unless otherwise authorized by the Regional Director.

(17) Fish under the small dredge program as specified in § 650.21(e), with, or while in possession of, a dredge that exceeds 10 feet 6 inches (3.2 m) in overall width, as measured at the widest point in the bail of the dredge.

(18) Fish under the small dredge program as specified in § 650.21(e) with more than 5 persons, including the operator, on board the vessel, unless otherwise authorized by the Regional Director.

(19) To have a shucking machine on board a vessel, or a sorting machine on board a vessel that shucks scallops at sea while fishing under the DAS allocation program, unless otherwise authorized by the Regional Director.

(20) Refuse or fail to carry an observer if requested to do so by the Regional Director.

(21) Interfere with or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer conducting his or her duties aboard a vessel.

(22) Fail to provide an observer with the required food, accommodations, access, and assistance, as specified in § 650.28.

(23) Fail to comply with any requirement for declaring in and out of the DAS allocation program as specified in § 650.26.

(24) Fail to comply with any requirement for participating in the DAS Exemption Program as specified in § 650.27.

(c) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a general scallop permit under § 650.4(b) to do any of the following:

(1) Possess, or land per trip, more than 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops;

(2) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 l) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that has a maximum combined dredge width exceeding 31 feet (9.4 m), measured at the widest point in the bail of each dredge;

(3) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 l) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses net or net material on the top half of the dredge of a minimum mesh size smaller than that specified in § 650.21(b)(2);

(4) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 l) of in-shell scallops while in possession of, or fish for scallops with, dredge gear containing rings that have minimum sizes smaller than those specified in § 650.21(b)(3);

(5) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 l) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses more than double links between rings of dredge gear;

(6) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 l) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses cookies, chafing gear or other gear, means, or devices on the top half of a dredge that obstruct the openings in or between the rings, other than double links as specified and described in § 650.21(b)(4);

(7) Fish for, or land more than 40 pounds of, scallops on more than one trip per calendar day.

(d) In addition to the general prohibitions specified in § 620.7 of this chapter and the prohibitions specified in paragraphs (a), (b) and (c) of this section, it is unlawful for any person to do any of the following:

(1) Possess, or land per trip, sea scallops in excess of 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 l) of in-shell scallops unless:

(i) The scallops were harvested by a vessel that has been issued and carries on board a general or limited access scallop permit under § 650.4, or a letter under § 650.4(a)(9)(vi)(D), or,

(ii) The scallops were harvested by a vessel without a Federal scallop permit and that fishes for scallops exclusively in state waters;

(2) Possess, or land per trip, sea scallops in excess of 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops unless:

(i) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit under § 650.4(a), or a letter under § 650.4(a)(9)(vi)(D), or,

(ii) The scallops were harvested by a vessel without a Federal scallop permit and that fishes for scallops exclusively in state waters;

(3) Possess, or land per trip, sea scallops in excess of 40 pounds (18.14 kg) of shucked scallops or 5 U.S.

bushels (176.2 l) of in-shell scallops unless:

(i) The scallops were harvested by a vessel with an operator on board who has been issued an operator's permit under § 650.5 and the permit is on board the vessel and is valid, or,

(ii) The scallops were harvested by a vessel not issued a Federal scallop permit and that fishes for scallops exclusively in state waters;

(4)(i) Land, offload, cause to be offloaded, sell, or transfer, or attempt to land, offload, cause to be offloaded, sell or transfer sea scallops, from a fishing vessel, whether on land or at sea, as an owner or operator without accurately preparing and submitting, in a timely fashion, the documents required by § 650.7, unless the scallops were harvested by a vessel without a Federal scallop permit and that fishes for scallops exclusively in state waters;

(ii) To have a shucking machine on board a vessel, or a sorting machine on board a vessel that shucks scallops at sea while in possession of more than 400 pounds (181.44 kg) of shucked scallops; or, the vessel fishes exclusively in state waters and has not been issued a Federal scallop permit.

(5) Purchase or receive scallops, or attempt to purchase or receive scallops, whether on land or at sea, as a dealer without accurately preparing, submitting and retaining, in a timely fashion, the documents required by § 650.7;

(6) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove or otherwise transfer, Atlantic sea scallops from one vessel to another;

(7) Sell, barter or trade, or otherwise transfer, or attempt to sell, barter or trade, or otherwise transfer, for a commercial purpose any sea scallops from a trip whose catch is 40 pounds (18.14 kg) of shucked scallops or less, or 5 U.S. bushels (176.1 l) of in-shell scallops unless the vessel has been issued a valid Federal general or limited access scallop permit under § 650.4, or a letter under § 650.4(a)(9)(vi)(D), or the scallops were harvested by a vessel without a Federal scallop permit that fishes for scallops exclusively in state waters;

(8) Purchase, possess, or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, in the capacity of a dealer, sea scallops taken from a fishing vessel, unless in possession of a valid dealer's permit issued under § 650.6;

(9) Purchase, possess, or receive for commercial purposes, or attempt to purchase or receive for commercial purposes, sea scallops caught by a vessel other than one issued a valid federal general or limited access sea scallop permit under § 650.4, or a letter under § 650.4(a)(9)(vi)(D), unless the scallops were harvested by a vessel without a Federal scallop permit and that fishes for scallops exclusively in state waters;

(10) To be or act as an operator of a vessel fishing for or possessing Atlantic sea scallops in or from the EEZ, or issued a Federal scallop permit under § 650.4, without having been issued and possessing a valid operator's permit issued under § 650.5.

(11) Assault, resist, oppose, impede, harass, intimidate, or interfere with either a NMFS-approved observer aboard a vessel, or an authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part;

(12) Make any false statement, oral or written, to an authorized officer, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any Atlantic sea scallops;

(13) Make any false statement on any report required to be submitted or maintained under § 650.7;

(14) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VTS unit or VTS signal required to be installed on, or transmitted by, Full-time and Part-time limited access scallop vessels or any other vessel required to use a VTS by this part;

(15) Violate any provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

(e) Any person possessing, or landing per trip, sea scallops in excess of 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 l) of in-shell scallops at or prior to the time when those scallops are received or possessed by a dealer is subject to all of the prohibitions specified in paragraphs (a), (b) and (c) of this section, unless the scallops were harvested by a vessel without a Federal scallop permit and that fishes for scallops exclusively in state waters.

(f) *Presumption.* Sea scallops that are possessed, or landed at or prior to the time when the scallops are received by a dealer, or sea scallops that are possessed by a dealer, are presumed to be harvested from the EEZ. A preponderance of all submitted evidence, that such scallops were harvested by a vessel without a Federal scallop permit and fishing exclusively for scallops in state waters, will be sufficient to rebut the presumption.

§ 650.10 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 650.11 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 650.20 Shell-height standard.

(a) The minimum shell height for in-shell Atlantic sea scallops that may be landed, or possessed at or after landing, is 3½ inches (89 mm).

(b) *Compliance and sampling.* Compliance with the specified shell-height standards will be determined by inspection and enforcement at or after landing, including, the time when the scallops are received or possessed by a dealer or person acting in the capacity of a dealer, as follows: the authorized officer will take samples of forty scallops each at random from the total amount of scallops in possession. The person in possession of the scallops may request that as many as ten samples (400 scallops) be examined as a sample group. A sample group fails to comply with the standard if more than ten percent of all scallops sampled are less than the shell height specified by the standard. The shell height shall be measured in a straight line from the hinge of the scallop to the outermost part of the curve on the leading edge. The total amount of scallops in possession will be deemed in violation of this regulation and subject to forfeiture if the sample group fails to comply with the standard.

§ 650.21 Gear and crew restrictions.

(a) *Trawl vessel gear restrictions.* Trawl vessels in possession of more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 l) of in-shell scallops, trawl vessels fishing for scallops, and trawl vessels issued a limited access scallop permit under § 650.4(a), while fishing under or subject to the DAS allocation program for sea scallops, must comply with the following:

(1) *Maximum sweep.* The trawl sweep in use by or in possession of such vessels shall not exceed 144 feet (43.9 m) as measured by the total length of the footrope that is directly attached to the webbing of the net.

(2) *Net requirements*—(i) *Minimum mesh size in 1994 and 1995.* In 1994 and 1995, the mesh size shall not be smaller than 5 inches (12.7 cm) south of a line commencing at the shoreline and proceeding easterly along 39°10′ N. Latitude until it intersects the outer boundary of the EEZ, and 5½ inches (13.97 cm) for any scallop trawl net north of this line.

(ii) *Minimum mesh sizes in 1996 and beyond.* In 1996 and beyond, the mesh size for any scallop trawl net in all areas shall not be smaller than 5½ inches (13.97 cm).

(iii) *Mesh stowage.* No vessel may have available for immediate use any net, or any piece of a net, not meeting the requirements specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this section. A net that conforms to one of the following specifications and that can be shown not to have been in recent use is considered to be not "available for immediate use":

(A) A net stowed below deck, provided:

(*1*) It is located below the main working deck from which the net is deployed and retrieved;

(*2*) The towing wires, including the "leg" wires, are detached from the net;

(*3*) It is fan-folded (flaked) and bound around its circumference.

(B) A net stowed and lashed down on deck, provided:

(*1*) It is fan-folded (flaked) and bound around its circumference;

(*2*) It is securely fastened to the deck or rail of the vessel; and

(*3*) The towing wires, including the leg wires, are detached from the net.

(C) A net that is on a reel and is covered and secured, provided:

(*1*) The entire surface of the net is covered with canvas or other similar material that is securely bound;

(*2*) The towing wires, including the leg wires, are detached from the net; and

(*3*) The codend is removed from the net and stored below deck.

(D) Nets that are secured in a manner authorized in writing by the Regional Director.

(iv) *Measurement of mesh size.* Mesh size is measured by using a wedge-shaped gauge having a taper of two centimeters in eight centimeters and a thickness of 2.3 millimeters, inserted into the meshes under a pressure or pull of five kilograms. The mesh size will be the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net will be measured at least five meshes away from the lacings, running parallel to the long axis of the net.

(3) *Chafing gear and other gear obstructions*—(i) *Net obstruction or constriction.* A fishing vessel may not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. "The top of the trawl net" means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes shall not be considered part of the top of the trawl net.

(ii) *Mesh obstruction or constriction.* A fishing vessel may not use any mesh configuration, mesh construction, or other means on, or in, the top of the net, as defined in paragraph (a)(3)(i) of this section, if it obstructs the meshes of the net in any manner.

(iii) No vessel may use or possess a net capable of catching sea scallops in which the bars entering or exiting the knots twist around each other.

(b) *Dredge vessel gear restrictions.* All dredge vessels fishing for or in possession of more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 l) of in-shell scallops, and all dredge vessels issued a limited access scallop permit and fishing under the DAS Program, with the exception of hydraulic clam dredges and mahogany quahog dredges in possession of 400 pounds or less (181.44 kg) of sea scallops, must comply with the following restrictions:

(1) *Maximum dredge width.* The combined dredge width in use by or in possession of such vessels shall not exceed 31 feet (9.4 m) measured at the widest point in the bail of the dredge, except as provided under paragraph (e) of this section.

(2) *Minimum mesh size.* (i) The mesh size of net material on the top of a scallop dredge in use by or in possession of such vessels shall not be smaller than 5½ inches (13.97 cm).

(ii) Mesh size is measured as provided in paragraph (a)(2)(iv) of this section.

(3) *Minimum ring size.* (i) For 1994 and 1995, the inside ring size of a scallop dredge in use by or in possession of such vessels shall not be smaller than 3¼ inches (83 mm).

(ii) For 1996 and thereafter, the inside ring size of a scallop dredge in use by or in possession of such vessels shall not be smaller than 3½ inches (89 mm).

(iii) Ring sizes are determined by measuring the shortest straight line passing through the center of the ring from one inside edge to the opposite inside edge of the ring. The measurement shall not include normal welds from ring manufacturing or links. The rings to be measured will be at least five rings away from the mouth, and at least two rings away from other rigid portions of the dredge.

(4) *Chafing gear and other gear obstructions*—(i) *Chafing gear restrictions.* No chafing gear or cookies shall be used on the top of a scallop dredge;

(ii) *Link restrictions.* No more than double links between rings shall be used in or on scallop dredges;

(iii) *Dredge and net obstructions.* No material, device, net, or dredge configuration or design shall be used if it results in obstructing the release of scallops that would have passed through a legal size net and dredge that did not have in use any such material, device, or net or dredge configuration or design.

(c) *Crew restrictions.* Limited access vessels fishing under or subject to the scallop DAS allocation program may have no more than nine people, including the operator, on board unless fishing under the small dredge program specified in § 650.21(e), or otherwise authorized by the Regional Director.

(d) *Sorting and shucking machines.* (1) Shucking machines are prohibited on all limited access vessels fishing under the scallop DAS program or any vessel in possession of more than 400 pounds (181.44 kg) of scallops, unless the vessel has not been issued a Federal limited access scallop permit and fishes exclusively in state waters.

(2) Sorting machines are prohibited on limited access vessels fishing under the scallop DAS program that shuck scallops at sea.

(e) *Small dredge program restrictions.* Any vessel owner whose vessel is assigned to either the Part-time or Occasional category may request to be placed in one category higher on the annual vessel permit application as described under § 650.4(e)(2)(iv). Vessel owners making such a request will be placed in the appropriate category, for the entire year, if they agree to comply with the following restrictions, in addition to and notwithstanding other restrictions of this part, when fishing under the DAS program described in § 650.24, or are in possession of more than 400 lbs (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops:

(1) The vessel must fish exclusively with one dredge no more than 10.5 feet (3.2 m) in width;

(2) The vessel is prohibited from having more than one dredge on board or in use; and,

(3) The vessel may have no more than five people, including the operator, on board.

§ 650.22 Possession restrictions.

(a) Owners or operators of vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 650.26, or have used up their DAS allocations and vessels possessing a general scallop permit, unless exempted under the DAS exemption program described under § 650.27, are prohibited from possessing or landing per trip, more than 400 pounds (181.44 kg) of shucked scallops, or 50 U.S. bushels (17.62 hl) of in-shell scallops, with not more than one scallop trip allowable in any calendar day.

(b) Owners or operators of vessels without a Federal sea scallop permit, except vessels fishing for scallops exclusively in state waters, are prohibited from possessing or landing per trip, more than 40 pounds (18.14 kg) of shucked sea scallops, or 5 U.S. bushels (176.2 l) of in-shell sea scallops. Owners or operators of vessels without Federal scallop permits are prohibited from selling, bartering, or trading sea scallops harvested from Federal waters.

§ 650.23 Transfer-at-sea.

(a) Owners or operators of vessels permitted under § 650.4 are prohibited from transferring or attempting to transfer fish from one vessel to another vessel.

(b) All persons are prohibited from transferring or attempting to transfer sea scallops from one vessel to another vessel.

§ 650.24 Days-at-sea (DAS) allocations.

Each vessel issued a limited access scallop permit shall be assigned to a DAS category based on evidence and criteria as specified in paragraph (a) of this section. Limited access scallop permits will indicate which category the vessel is assigned to. Vessels are prohibited from fishing for, landing per trip, or possessing more than 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops once their allocated number of DAS, as specified under paragraph (c) of this section, are used up.

(a) *Criteria for assigning DAS categories.* All vessels qualifying for a limited access scallop permit under the criteria specified in § 650.4(a) shall be assigned to the Full-time, Part-time, or Occasional DAS category based on the formulas specified in paragraph (b) of this section and the following:

(1) *Full-time.* A vessel shall be assigned to the Full-time category if that vessel has averaged at least 150 days of directed scallop fishing annually according to the formulas specified in paragraph (b) of this section;

(2) *Part-time.* A vessel shall be assigned to the Part-time category if that vessel has averaged more than 37 days but less than 150 days of directed scallop fishing annually according to the formulas specified in paragraph (b) of this section;

(3) *Occasional.* A vessel shall be assigned to the Occasional category if that vessel has averaged 37 days or less of directed scallop fishing annually according to the formulas specified in paragraph (b) of this section.

(b) *DAS formulas.* A vessel's average number of days of directed scallop fishing for purposes of assigning the vessel to one of the categories specified in paragraph (a) of this section shall be determined by applying one of the following formulas to the data, information, or other credible evidence available to the Regional Director. Scallop DAS for this purpose is defined as the total days at sea on trips with landings of more than 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops.

(1) The following formulas apply to all vessels qualifying for limited access scallop permits, with the exception of vessels that qualify under paragraph § 650.4(a)(1)(i)(C). The DAS formula applicable to that group of vessels is specified in paragraph (b)(2) of this section. Vessel owners may choose their 1990 history under paragraph (b)(1)(i) of this section, or a calculation based on the 1985–1990 history, as applicable, under paragraph (b)(1)(ii) of this section. DAS are calculated from the formulas below and the result is applied to the DAS categories described in paragraph (a) of this section.

(i) *1990 fishing history.* For any vessel that fished for scallops in 1990, the number of scallop DAS may be determined by calculating the total number of DAS on scallop trips ending in 1990; or,

(ii) *1985–1990 fishing history.* For vessels with history in the scallop fishery between 1985 and 1990, inclusive, the number of years history is determined as follows. With the exception of the adjustments specified under paragraphs (b)(1)(iii) and (b)(1)(iv) of this section, vessels whose calculated scallop history is based on a formula below must use their entire history in the scallop fishery and may not elect to use a formula based on fewer years history in the fishery.

(A) *Four or more years history.* Calculate the total number of scallop DAS for each year, exclude the high and low years of days at sea and average the remaining years; or

(B) *Three year history.* Calculate the total number of scallop DAS for each year, average the high and low years of days at sea, and then average the result with the third year; or

(C) *Two year history.* Calculate the total number of scallop DAS for each year, average the two years' DAS; or

(D) *One year history.* Calculate the actual number of scallop DAS for that year.

(iii) *Pro-ration.* If a limited access vessel entered the scallop fishery for the first time during the relevant time period, the first year shall be pro-rated to a full year by pro-rating on an annual basis the number of DAS the vessel actually incurred on trips landing more than 400 pounds (181.44 kg) of shucked scallops or more than 50 U.S. bushels (17.62 hl) of in-shell scallops to determine the number of days at sea the vessel would have incurred had the vessel been in the fishery for the full year. The pro-ration formula is as follows: The total number of scallop DAS in that year is divided by the percentage of the year the vessel was in the fishery (by month). In pro-rating the days for such vessels, the Regional Director shall take into account the date the vessel entered the fishery, the vessel's subsequent fishing history, and other relevant information.

(iv) *New owner.* Vessel owners who purchased their vessel during the 1985–1990 time period may request that the DAS formulas be based solely on their individual history in the scallop fishery, excluding all previous owner's scallop histories. Under this option a vessel's first year in the fishery may be pro-rated based on the criteria specified in paragraph (b)(1)(iii) of this section.

(2) For vessels qualifying for a limited access scallop permit under paragraph § 650.4(a)(1)(i)(C), pro-rate to a full year the total number of DAS for trips the vessel would have fished and landed over 400 pounds (181.44 kg) of shucked scallops or more than 50 U.S. bushels (17.62 hl) of in-shell scallops in 1990 based on the actual number of DAS the vessel did fish in 1990 and the criteria specified in paragraph (b)(1)(iii) of this section. Then, calculate the average number of DAS for trips landing more than 400 pounds (181.44 kg) of shucked scallops or more than 50 U.S. bushels (17.62 hl) of in-shell scallops for the years 1991 and 1992. The number of days to determine the category shall be the lower number between the pro-rated 1990 days and the average of DAS in 1991 and 1992.

(c) *DAS allocations.* Each vessel qualifying for one of the three categories specified in paragraph (a) of this section shall be allocated, annually, the

maximum number of DAS it may participate in the limited access scallop fishery, according to the category for which it qualifies. A vessel whose owner/operator has declared it out of the scallop fishery pursuant to the provisions of § 650.26, or has used up its allocated DAS, may leave port without being assessed a DAS as long as it does not possess or land more than 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.61 hl) of in-shell scallops and complies with the other requirements of this part.

(1) *Annual DAS allocations.* The annual allocations of DAS for each category of vessel specified in paragraph (a) of this section shall be as follows:

DAS category	1994	1995–96	1997	1998–99	2000+
Full-time	204	182	164	142	120
Part-time	91	82	66	57	48
Occasional	18	16	14	12	10

(2) *Accrual of DAS.* DAS shall accrue in hourly increments, with all partial hours counted as full hours. A DAS is calculated beginning when a vessel leaves port and ending when the vessel returns to port as follows:

(i) DAS for vessels that are under the VTS monitoring system described in § 650.26(a) are counted beginning with the first hourly location signal received showing that the vessel crossed the COLREGS Demarcation Line leaving port and ending with the first hourly location signal received showing that the vessel crossed the COLREGS Demarcation Line upon its return to port.

(ii) DAS for vessels fishing under the call-in notification system described in § 650.26(b) are counted beginning once the phone call has been received and confirmation given by the Regional Director. A DAS ends when after returning to port, the phone call has been received, and confirmation given by the Regional Director.

(d) *Adjustments in annual DAS allocations.* Adjustments or changes in annual DAS allocations, if required to meet fishing mortality reduction goals, may be made following a reappraisal and analysis under the framework provisions specified in subpart C of this part.

(e) *Notice of initial DAS category.* The Regional Director will attempt to notify all owners of vessels that are deemed eligible to be issued a limited access scallop permit pursuant to § 650.4(a)(6) as to which category the vessel qualifies for based on data, information and other evidence available to the Regional Director.

(f) *Appeal of DAS category.* (1) *Appeal criteria.* A vessel's owner may appeal his/her vessel's initial placement into a vessel category to the Regional Director within 30 days of receipt of the notice of a vessel's DAS category. Any such appeal must be based on one or more of the following grounds, must be in writing, and must state the grounds for the appeal:

(i) The information used by the Regional Director was based on mistaken or incorrect data;

(ii) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(iii) The applicant has new or additional information.

(2) The Regional Director will appoint a designee who will make an initial decision on the appeal.

(3) The appellant may request a review of the initial decision by the Regional Director by so requesting in writing within 30 days of the notice of initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision shall become the final administrative action of the Department of Commerce. The appellant's request for review must elect either to have the review conducted by a hearing officer appointed by the Regional Director or by an Advisory Appeals Board if established pursuant to paragraph (a)(9)(iv)(B) of this section.

(4) *Recommendations to the Regional Director*—(i) *Hearing Officer.* If the initial decision is reviewed by a hearing officer, the hearing officer shall make findings and a recommendation to the Regional Director which shall be advisory only.

(ii) *Advisory Appeals Board.* If an Advisory Appeals Board is established under § 650.4(a)(9)(iv), an appellant may request that the initial decision of his/her appeal be reviewed by the Appeals Board. If such a request is made, the Regional Director shall forward the request to the Appeals Board within 15 days after receipt. Any initial decision reviewed by an Appeals Board made up of other than Federal employees shall be open to the public, including all documentation presented to support the appeal. The Appeals Board shall make findings and a recommendation to the Council, which shall be advisory only. The Council in turn shall make findings and an advisory-only recommendation to the Regional Director.

(5) Upon receiving the findings and recommendation, the Regional Director will issue a final decision on the appeal. The Regional Director's decision is the final administrative action of the Department of Commerce.

(6) *Status of vessels pending appeal of DAS allocations.* A vessel, for which an appeal of its DAS category has been initiated, may fish under the DAS allocation allowed under the next higher category than the vessel's initial category placement if the vessel has on board a letter of authorization from the Regional Director, regardless of what category the vessel is appealing to be placed in, and is subject to all requirements applicable to such category of vessels unless otherwise exempted. That is, if a vessel was initially placed in the Part-time category, that vessel may fish up to the maximum number of DAS allocated to Full-time vessels until the Regional Director has made a final determination on the appeal. If a vessel is initially placed in the Occasional category, that vessel may fish up to the DAS allocated to Part-time vessels, regardless of what category the Occasional vessel is appealing to be placed in, until the Regional Director has made a final determination on the appeal. Any DAS spent fishing for scallops shall be counted against the DAS allocation of the category that the vessel is ultimately placed in. If, before this appeal is decided, a vessel exceeds the number of DAS it is finally allocated after appeal, the excess DAS will be subtracted from the vessel's allocation of DAS in 1995.

(g) *End-of-year carry-over.* Limited access vessels with unused DAS on December 31 of any year may carry-over a maximum of 10 DAS into the next year. At no time may more than 10 DAS be carried over.

(h) *Good Samaritan credit.* Limited access vessels fishing under the DAS program and that spend time at sea for one of the following reasons, and that can document the occurrence through the Coast Guard, will not accrue DAS for the time documented:

(1) Time spent assisting in a Coast Guard search and rescue operation; or

(2) Time spent assisting the Coast Guard in towing a disabled vessel.

§ 650.25 Monitoring requirements.

(a) *Full-time and Part-time limited access vessels.* To be issued a Full-time or Part-time limited access scallop permit as specified in § 650.4(a), all vessels must provide documentation to the Regional Director that the vessel has an operational VTS unit on board that is part of an approved VTS as specified in paragraph (a)(1) of this section and meets the minimum performance criteria specified in paragraph (a)(2) of this section, or as modified annually as specified in paragraph (a)(1) of this section.

(1) *Approval.* The Regional Director will annually approve VTSs that meet minimum performance criteria specified in paragraph (a)(2) of this section. Any changes to the performance criteria will be published annually in the **Federal Register** and a list of approved VTSs will be published in the **Federal Register** upon addition or deletion of a VTS from the list. In the event that a VTS is deleted from the list, vessel owners that purchased a VTS unit that is part of that VTS prior to publication of the revised list will be considered to be in compliance with the requirement to have an approved unit unless otherwise notified by the Regional Director.

(2) *Minimum VTS performance criteria.* The basic required features of the VTS are as follows:

(i) The VTS shall be tamper proof, *i.e.*, shall not permit the input of false positions; furthermore, if a system uses satellites to determine position, satellite selection should be automatic to provide an optimal fix and should not be capable of being manually overridden by any person on board a fishing vessel or by the vessel owner;

(ii) The VTS shall be fully automatic and operational at all times regardless of weather and environmental conditions;

(iii) The VTS shall be capable of tracking vessels in all U.S. waters in the Atlantic Ocean from the shoreline of each coastal state to a line 215 nautical miles offshore and shall provide position accuracy to within 400 meters (1,300 feet);

(iv) The VTS shall be capable of transmitting and storing information including vessel identification, date, time, and latitude/longitude;

(v) The VTS shall provide accurate hourly position transmissions every day of the year. In addition, the VTS shall allow polling of individual vessels or any set of vessels at any time and receive position reports in real time. For the purposes of this specification, "real time" shall constitute data that reflect a delay of 15 minutes or less between the displayed information and the vessel's actual position;

(vi) The VTS shall be capable of providing network message communications between the vessel and shore. The VTS shall allow NMFS to initiate communications or data transfer at any time;

(vii) The VTS vendor shall be capable of transmitting position data to a NMFS-designated computer system via a modem at a minimum speed of 9600 baud. Transmission shall be in ASCII text in a file format acceptable to NMFS;

(viii) The VTS shall be capable of providing vessel locations relative to international boundaries and fishery management areas;

(ix) The VTS vendor shall be capable of archiving vessel position histories for a minimum of one year and providing transmission to NMFS of specified portions of archived data in response to NMFS requests and in a variety of media (tape, floppy, etc.).

(3) *Operating requirements.* All required VTS units must transmit a signal indicating the vessel's accurate position at least every hour, 24 hours a day, throughout the year.

(4) *Presumption.* Failure of a VTS unit to transmit an hourly signal of a vessel's position shall be presumed to be a DAS, or fraction thereof, for as long as the unit fails to transmit a signal. A preponderance of evidence that the failure to transmit was due to an unavoidable malfunction or disruption of the transmission that occurred while the vessel was declared out of the scallop fishery or was not at sea will be sufficient to rebut the presumption.

(5) *Replacement.* Should a VTS unit require replacement, a vessel owner must submit documentation to the Regional Director, within 3 days of installation and prior to the vessel's next trip, verifying that the new VTS unit is an operational approved system as described under paragraph (a)(1) of this section.

(6) *Access.* As a condition to obtaining a limited access scallop permit, all vessel owners must allow the NOAA/NMFS, the U.S. Coast Guard, and their authorized officers or designees access to the vessels' DAS and location data obtained from its VTS at the time of or after its transmission to the vendor or receiver, as the case may be.

(7) *Tampering.* Tampering with a VTS, a VTS unit, or a VTS signal, is prohibited. Tampering includes any activity that is likely to affect the unit's:

(i) Ability to operate properly;

(ii) Signal; or

(iii) Accuracy of computing the vessel's position fix.

(b) *Occasional limited access vessels.* Vessels qualifying for a DAS allocation under the Occasional category as described under § 650.24(a)(3), may participate in either the DAS notification program using the VTS procedures described in § 650.26(a) or the call-in procedures described in § 650.26(b).

§ 650.26 DAS notification program.

(a) *VTS notification.* Owners of scallop vessels with Full-time or Part-time limited access scallop permits, owners of vessels with Occasional limited access scallop permits that have elected to fish under the VTS monitoring system specified in § 650.25(a), and owners of vessels fishing under the small dredge program specified in § 650.21(e), shall be subject to the following presumption and requirements:

(1) Full-time scallop vessels at sea are presumed to be fishing under the DAS allocation program unless they declare out of the sea scallop fishery for a specific time period by notifying the Regional Director through the VTS.

(2) Owners of Part-time scallop vessels may not fish in the DAS allocation program unless they declare into the scallop fishery for a specific time period by notifying the Regional Director through the VTS.

(3) If the VTS is not available or not functional, and if authorized by the Regional Director, a vessel owner must notify as required in paragraphs (a)(1) and (a)(2) of this section and report using the call-in notification system described under paragraph (b) of this section.

(b) *Call-in notification.* Owners of vessels qualifying for a DAS allocation under the Occasional category as described under § 650.24(a)(3) or fishing in the Part-time category under the Appeal Program described in § 650.24(f), who have not elected to fish under the VTS monitoring system described in § 650.25, and vessels fishing pending an appeal as specified in § 650.4(a)(9)(vi)(D), shall be subject to the following requirements:

(1) The vessel owner or authorized representative shall notify the Regional Director prior to leaving port that the vessel will be participating in the DAS program by calling (508–281–9335) and providing the following information: Owner and caller name and phone number; the vessel's name and permit number; the type of trip to be taken, and that the vessel is beginning a trip.

(2) A scallop DAS begins once the call has been received and confirmation given by the Regional Director.

(3) Upon returning to port, the vessel owner or owner's representative shall notify the Regional Director that the trip has ended by calling 508–281–9335 and providing the following information: owner and caller name and phone number; the vessel's name and permit number; and that the trip has ended.

(4) A DAS ends when the call has been received and confirmation given by the Regional Director.

(5) Any vessel that possesses or lands per trip more than 400 pounds of scallops shall be deemed in the DAS program for purposes of counting DAS whether or not the vessel's owner or authorized representative provided adequate notification as required by this part.

§ 650.27 DAS exemption program.

Any vessel holding a limited access scallop permit under § 650.4(a) may request an exemption from the DAS Program, as follows, while scallop fishing exclusively landward of the outer boundary of a state's waters. Any such exemption granted will exempt the vessel from the DAS requirements specified under § 650.24(c).

(a) *VTS notification.* Vessel owners requesting a DAS exemption via a VTS shall:

(1) Notify NMFS, via their VTS, prior to the vessel's first trip under the DAS exemption program, that the vessel will be fishing exclusively in state waters for scallops; and,

(2) Notify NMFS, via their VTS, prior to the vessel's first planned trip in the EEZ, that the vessel is to resume fishing under the vessel's DAS allocation.

(b) *Other methods of notification.* Vessel owners opting to request entry into the DAS exemption program via fax or phone shall:

(1) Notify NMFS by calling 508–281–9335 or faxing 508–281–9135 the following information at least 7 days prior to the date on which the exemption is requested: owner and caller name and address; vessel name and permit number; and beginning and ending dates of the exemption period;

(2) Remain in the exemption program a minimum of 7 days; and,

(3) If an exemption holder has been in the program a minimum of 7 days and wishes to withdraw earlier than the designated end of the exemption period, the exemption holder must notify the Regional Director of early withdrawal from the program. Notification of withdrawal is made by calling 508–281–9335 or by faxing 508–281–9135. When providing notice, the exemption holder will specify that the request is for withdrawal from the program and provide the vessel name and permit number, and the name and phone number of the caller. The exemption holder may not leave port to fish for scallops in the EEZ until 48 hours after notification of early withdrawal is received by the Regional Director.

(c) A vessel participating in the DAS exemption program may not fish in the EEZ during the participation period.

(d) Participation in the DAS exemption program expires when the owner's or vessel's name changes.

(e) Vessels participating in the DAS exemption program continue to be subject to all the other requirements of this part.

§ 650.28 At-sea observer coverage.

(a) The Regional Director may require observers for any vessel holding a Federal sea scallop permit.

(b) Owners of vessels selected for observer coverage must notify the appropriate Regional or Center Director, as specified by the Regional Director, before commencing any fishing trip that may result in the harvest of any Atlantic sea scallops. Notification procedures will be specified in selection letters to vessel owners.

(c) An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew;

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties;

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position;

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish; and

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish for that trip.

§ 650.29 Experimental fishing exemption.

(a) The Regional Director may exempt any person or vessel from the requirements of this part for the conduct of experimental fishing beneficial to the management of the sea scallop resource or fishery.

(b) The Regional Director may not grant such exemption unless it is determined that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the sea scallop resource and fishery; or

(2) Create significant enforcement problems.

(c) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of this part except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption.

Subpart C—Framework Adjustments to Management Measures

§ 650.40 Framework specifications.

(a) Annually, upon request from the Council, but at a minimum in the years 1996 and 1999, the Regional Director will provide the Council with information on the status of the sea scallop resource.

(b) Within 60 days of receipt of that information, the Council's Plan Development Team (PDT) shall assess the condition of the Atlantic sea scallop resource to determine the adequacy of the total allowable DAS reduction schedule, described in § 650.24(c), to achieve the target fishing mortality rate. In addition, the PDT shall make a determination whether other resource conservation issues exist that require a management response in order to meet the goals and objectives outlined in the FMP. The PDT shall report its findings and recommendations to the Council. In its report to the Council, the PDT shall provide the appropriate rationale and economic and biological analysis for its recommendation utilizing the most current catch, effort, and other relevant data from the fishery.

(c) After receiving the PDT findings and recommendations, the Council shall determine whether adjustments to, or additional, management measures are necessary to meet the goals and objectives of the FMP. After considering the PDT's findings and recommendations, or at any other time, if the Council determines that adjustments to, or additional, management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior

to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must come from one or more of the following categories:

(1) DAS changes;
(2) Shell height;
(3) Offloading window re-instatement;
(4) Effort monitoring;
(5) Data reporting;
(6) Trip limits;
(7) Gear restrictions;
(8) Permitting restrictions;
(9) Crew limits;
(10) Small mesh line;
(11) on board observers;
(12) Any other management measures currently included in the FMP.

(d) After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Director. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Director on whether to publish the management measures as a final rule. If the Council recommends that the management measures should be published as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(3) Whether there is an immediate need to protect the resource; and,

(4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.

(e) If the Council's recommendation includes adjustments or additions to management measures, and if after reviewing the Council's recommendation and supporting information:

(1) The Regional Director concurs with the Council's recommended management measures and determines that the recommended management measures may be published as a final rule based on the factors specified in paragraph (d) of this section, the action will be published in the **Federal Register** as a final rule; or,

(2) The Regional Director concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Director concurs with the Council recommendation, the action will be published as a final rule in the **Federal Register**; or

(3) The Regional Director does not concur, the Council will be notified, in writing, of the reasons for the non-concurrence.

(f) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson Act.

[FR Doc. 94–1188 Filed 1–18–94; 8:45 am]
BILLING CODE 3510–22–P

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50 CFR Part 650

[I.D. 010394A]

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary adjustment of the meat count/shell height standards.

SUMMARY: NMFS issues this notice to implement a temporary adjustment of the meat count and shell height standards for the Atlantic sea scallop fishery. Its purpose is to take into account the fact that at the end of the spawning season, the scallop resource is dominated by small scallops. This action increases the average meat count standard to 33 meats per pound (MPP) (33 meats per 0.45 kg) and the shell height standard to $3^{11}/_{16}$ inches (94 mm).

EFFECTIVE DATES: February 1, 1994, through February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Resource Policy Analyst, Fishery Management Operations, NMFS, Northeast Regional Office, 508–281–9273.

SUPPLEMENTARY INFORMATION: Regulations at 50 CFR part 650 implementing the Fishery Management Plan for Atlantic sea scallops (FMP) authorize the Director, Northeast Region, NMFS (Regional Director), to adjust temporarily the meat count/shell height standards (standards) upon finding that specific criteria are met. These criteria, which appear at § 650.22(c), include the finding that: (1) The objective of the FMP would be achieved more readily, or would be better served through an adjustment of the standards; (2) the recommended alteration in the standards would not reduce expected catch over the following year by more than 5 percent from that which would have been expected under the prevailing standard; (3) the recommended standards for meat count and shell height are consistent with each other; and (4) 50 percent of the harvestable biomass is at scallop sizes smaller than those consistent with the prevailing standards, and a temporary relaxation of the standards would not jeopardize future recruitment to the fishery. Adjustments of the standards may remain in effect for up to twelve months.

After consideration of the criteria, the Regional Director made a proposal to adjust the standards. In accordance with the regulations, a public hearing was held during the December 9, 1993, New England Fishery Management Council (Council) meeting and comments on this recommendation were solicited. Attendance at the public hearing was low; only one State Director and one member of the industry commented. The comments were in support of the recommended adjustment. No written comments were received on the recommendation.

After consideration of the full record, including: (1) Comments from the public, (2) comments from the Council, (3) new resource and assessment information, and (4) available information on the fishery and the industry, the Regional Director has decided to adjust the standards to 33 MPP (0.45 kg) with a corresponding shell height standard of $3^{11}/_{16}$ inches (94 mm) for the period February 1, 1994, through February 28, 1994.

This adjustment to the standards coincides with the end of the 10 percent spawning season adjustment approved under Amendment 2 to the FMP (53 FR 23634). This action was also taken in 1990, 1991, 1992, and 1993, at the end of the spawning season adjustment period. Survey information shows that abundance and recruitment values for the sea scallop resource are down and that the resource is dominated by small scallops. This makes attaining an average MPP standard difficult because of the scarcity of large scallops available for mixing. Vessel costs increase because additional time and fuel must be spent in search of large scallops, discard mortality increases on small scallops, and landings decrease. These factors conflict with the objectives of the FMP and, therefore, criterion 1 outlined above.

This action meets criterion 2 because it is not expected to reduce catch over

the following year by more than 5 percent.

Criterion 3 states that the meat count and shell height standards will remain consistent with each other. Based on analysis of historical survey data, the 33 MPP (0.45 kg) is consistent with a corresponding shell height standard of 3 11/16 inches (94 mm), thereby, conforming with criterion 3.

Criterion 4 states that 50 percent of the harvestable biomass must be at sizes smaller than the prevailing standard (30 MPP). Recent survey results show that 50 percent of the harvestable biomass consists of scallops smaller than 30 MPP. Thus this portion of criterion 4 is met. Criterion 4 also states that a temporary relaxation of the standards must not jeopardize future recruitment to the fishery. Sea scallops have their first significant spawning at age four. Age four sea scallops range from approximately 30 count to 50 count. The Regional Director recognizes that caution must be exercised when recommending a temporary adjustment to the meat count standard within this range. It is unlikely, however, that an adjustment of this magnitude, for a one month period, will jeopardize future recruitment to the fishery.

This temporary adjustment will be effective February 1, 1994, through February 28, 1994. During this period, the meat count standard will be 33 MPP (33 meats per 0.45 kg) and the shell height standard 3 11/16 inches (94 mm). After February 28, 1994, sea scallop FMP Amendment 4 will be effective, and the meat count will no longer be in use as a management measure.

List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: January 13, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–1245 Filed 1–18–94; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 59, No. 12
Wednesday, January 19, 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 and Nutrition Service

7 CFR Part 273

[Amendment No. 351]

Food Stamp Program—Distribution of Employment and Training Performance-Based Funds

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: State agencies that are responsible for administering the Food Stamp Program are required to operate the Food Stamp Employment and Training (E&T) program. To assist in the operation of their E&T programs, the State agencies receive a Federal E&T grant, a portion of which is distributed on the basis of each State agency's performance in serving the target population. This rule proposes to freeze the performance-based grants at the level the State agencies received in Fiscal Year 1993, for two years from promulgation of this rule in final form. The Department is proposing this action because of statutory amendments to the Food Stamp Act of 1977, as amended, made by the Food, Agriculture, Conservation and Trade Act Amendments of 1991 (December 13, 1991).

DATES: Comments must be received by March 21, 1994 to be assured of consideration.

ADDRESSES: Comments should be addressed to Ellen Henigan, Supervisor, Work Programs Section, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302. Comments may also be sent via fax to the attention of Ms. Henigan at (703) 305–2454. All written comments will be open for public inspection during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, VA, Room 718.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Ms. Henigan at the above address or by telephone at (703) 305–2762.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12866

This proposed rule is issued in conformance with E.O. 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.551. For reasons set forth in the final rule related Notice(s) of 7 CFR part 3015, subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or part 284 (for rules related to QC liabilities); (3) for program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). Christopher J. Martin, Acting Administrator of the Food and Nutrition Service (FNS), has certified that this action does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected because they administer the Program and the rule will affect the performance-based funding levels for each State agency.

Paperwork Reduction Act

This proposed rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

Under section 6(d)(4) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2015(d)(4)), State agencies are required to operate the Food Stamp Employment and Training (E&T) program. The purpose of the E&T program is to place able-bodied food stamp recipients in educational or work-related activities that will increase their chances of obtaining regular employment, and thus, reduce their need for public assistance.

Food stamp recipients who are required to register for work as specified under section 6(d)(4) of the Food Stamp Act are expected, if assigned, to participate in an E&T component as a condition of eligibility for receiving food stamps. Work registrants who refuse or fail to comply with an assigned E&T activity or component are ineligible to receive benefits for two months or until they comply with the assigned activity, whichever comes first.

The Food Stamp Act provides State agencies flexibility in operating their E&T programs. To meet the needs of their work registrant populations, the State agencies have discretion in determining which components will be offered to E&T participants and in targeting services toward certain work registrants. However, to avoid fiscal sanction, State agencies must meet performance standards specified under 7 CFR 273.7(o). In Fiscal Years (FYs) 1990 and 1991, the State agencies were required to place at least 50 percent of their mandatory E&T participants into E&T components. In FY 1992 performance standards were lowered to

10 percent in response to section 907(b) of Public Law 102–237. For the purpose of determining each State agency's performance level, a person is considered "placed" in a component each time they begin a component or fail to comply with an assigned activity and are sent a Notice of Adverse Action (NOAA). The performance formula also includes participants who are exempt from work registration but elect to participate in the E&T program (i.e., volunteers). State agencies may, but are not required to, serve volunteers.

Federal Funding for E&T Programs

Section 16(h), 7 U.S.C. 2025(h) of the Food Stamp Act authorizes the Secretary to distribute $75 million each year in unmatched Federal funds to State agencies to operate their E&T programs. The State agencies may also receive Federal matching funds for administrative costs above the initial Federal E&T grant. The Federal and State governments equally share the costs for transportation or dependent care reimbursements that are provided to E&T participants. Currently, participants must receive monthly reimbursements of up to $25 for transportation and other expenses related E&T to E&T participation. Public Law 103–66 removes the monthly cap on dependent care expenses effective September 1, 1994. Participants may be reimbursed for actual expenses incurred, not to exceed the applicable local market rate for the services.

As specified under section 16(h)(1)(C) of the Food Stamp Act, $60 million of the Federal E&T grant—the nonperformance based portion—is distributed on the basis of each State agency's work registrant population as a percent of the total work registrant population nationwide. Pursuant to Section 16(h)(1)(B), the remaining $15 million of the Federal E&T grant must be distributed on the basis of State agency performance. The Food Stamp Act does not address the methodology for distributing performance-based funds.

The Department published final rules on June 9, 1989 (54 FR 24664) that specify how these funds are distributed. Under 7 CFR 273.7(d)(1)(i)(B), performance-based E&T funds are distributed on the basis of the number of people placed into E&T components. A person is considered placed for the purpose of distributing performance-based funds if the person is required to work register and (1) begins an E&T component; or (2) fails to comply with the E&T requirement and is sent a Notice of Adverse Action (NOAA) by the State agency. Volunteers are not included in the calculations for distributing performance-based funds. To be eligible to receive performance-based funds, the State agency must meet the performance standard as set forth under 7 CFR 273.7(o).

The current method for distributing the $15 million performance-based funds encourages State agencies to serve large numbers of work registrants (i.e., broad-based) with low cost components such as job search and job search training. When implementing the E&T program in FY 1987, the Department encouraged broad-based programs because existing research indicated that they had a positive impact on a participant's future chances of obtaining employment or ending his or her dependence on public assistance. Given these results, the Department believed the possible benefits participants should be shared by as many participants as possible.

Since implementation of the E&T program in 1987, several things have shifted the focus of the program away from the broad-based perspective. One was the implementation of the Job Opportunities and Basic Skills Training (JOBS) program for non-exempt recipients of Aid to Families with Dependent Children (AFDC). With a combination of matching Federal funds of up to $1 billion annually, State agencies must offer a number of mandatory and voluntary components that are generally more intensive than those offered by the Food Stamp E&T program. By October 1992 JOBS had to be implemented statewide throughout the country. Several State agencies have sought to make the two programs more similar. A number have started directing their E&T funds toward a more targeted population.

Results of studies assessing the effectiveness of broad-based work programs have been published in recent years, including the Department's evaluation of the E&T program (See "Evaluation of the Food Stamp Employment and Training Program, Final Report," Abt Associates, June 1990). This study concluded that the broad-based E&T program in operation in FY 1988 did not have a significant effect on a participant's ability to find work or increase work hours or earnings. Without a positive effect on employment and earnings, the study further concluded that participation in the E&T program did not significantly reduce a person's need for food stamp benefits.

In light of these circumstances, Congress made certain amendments to the E&T provisions of the Food Stamp Act that allow, or even encourage, the State agencies to provide more intensive services towards a targeted population.

One amendment in the Hunger Prevention Act of 1988, (Pub. L. 100–435, 102 Stat. 1645, September 19, 1988), mandated that the Department implement outcome-based standards in place of the current process-based (i.e., placements) system. As specified under Public Law 100–435, outcome-based standards would measure job placement rates, wage rates, job retention rates, households ceasing to need food stamp benefits, improved education levels and the extent to which persons volunteer for E&T services. Public Law 100–435 also required that the outcome-based standards encourage State agencies to serve participants with barriers to employment (e.g., illiteracy or long-term food stamp dependency). Therefore, the E&T provisions under Public Law 100–435 reflect Congress' concern that, to be successful, Federal work programs must apply resources towards disadvantaged populations with barriers to employment and that performance must be measured in terms of successful outcomes rather than placements.

The Department was required under Public Law 100–435 to implement outcome-based performance standards by April 1, 1991. The implementation date was later amended to October 1, 1991 through the Mickey Leland Memorial Domestic Hunger Relief Act (Pub. L. 101–624, 104 Stat. 3359, November 28, 1990). This date was changed again by the Food, Agriculture, Conservation and Trade Act Amendments of 1991 (Pub. L. 102–237, 105 Stat. 1818, December 13, 1991). Under section 907(a) of Public Law 102–237, outcome-based performance standards must be implemented no later than one year after the DHHS publishes final outcome-based performance standards for its JOBS program. This delay will allow the Department of Agriculture and the DHHS to coordinate outcome-based performance standards for the two programs.

In the interim period before outcome-based performance standards are implemented, section 907(b) of Public Law 102–237 reduced the annual performance standard for States from 50 percent to no more than 10 percent in FYs 1992 and 1993. The provisions show clear Congressional intent that the State agencies no longer be held to a standard requiring service to a large number of participants. Rather, under Public Law 102–237, the State agencies must be provided the flexibility to target a smaller population with more intensive components. State agencies are not required to implement a more intensive E&T program and may

continue to operate broad-based programs.

Section 907(b) of Public Law 102–237 was effective on September 30, 1991. On February 12, 1992, the Department notified State agencies in writing of the reduction in performance standards for FY 1992. The Department will publish a rule implementing the revised performance standards in the near future.

The amendments made under Public Law 102–237 support efforts to target the E&T program towards fewer, harder to employ participants or to offer more intensive components to a smaller segment of the food stamp population. Given these amendments, the Department believes it must suspend the current method for distributing the $15 million performance-based funds and, in its place, implement a method which will not penalize State agencies that place fewer participants and/or operate more intensive components. If the current method for distributing performance funds is left unchanged, State agencies that elect to target fewer participants will lose performance-based funding. Thus, the current method for distributing funds is a barrier to the State agencies' implementation of amendments made by Public Law 102–237.

The Department considered numerous options for revising the methodology for distributing performance-based funds. All options were viewed with two purposes in mind—to remove barriers for those State agencies that wish to target their E&T programs and to reward State agencies equitably for their performance. After careful consideration of these options, the Department is proposing in this rule to freeze performance-based funds at the levels the State agencies received in FY 1993. This rule proposes that the freeze of performance-based funding remain in effect for two years from the date of promulgation of this rule in final form.

On February 12, 1992, the Department notified State agencies in writing of the freeze of performance-based funding to the FY 1993 level. FY 1994 performance-based funds were distributed based on this methodology.

The Department believes there are several advantages for freezing performance-based funds. First, the proposed freeze does not prohibit State agencies from either modifying their E&T program to target smaller populations or retaining the current broad-based program. Therefore, this proposal would provide the State agencies with the flexibility to move their E&T programs in the direction they believe is most appropriate for their work registrant population. However, no State agency would be penalized for meeting the lower standard. Second, the State agencies would know the amount of their performance-based funding levels for the foreseeable future.

In reaching its decision to propose a freeze on performance-based funds, the Department considered numerous other options. These included: (1) Distributing the funds on the basis that is currently used for distributing the $60 million nonperformance-based funds (i.e., work registrant population); (2) rewarding performance on the basis of how many participants complete a component or leave a component to take a job; (3) modifying the current definition of a "placement" (e.g., include volunteers and/or exclude NOAA's); and (4) providing extra credit to State agencies that target hard-to-employ populations (e.g., allow credit only for service to certain hard-to-employ groups such as long-term recipients of food stamp benefits or individuals who have not completed high school).

Even though each of these options has merit, the Department rejected the options in favor of a freeze. The option for distributing the $75 million Federal E&T grant on the basis of each State agency's work registrant population was rejected because it would not distribute the $15 million E&T funds on the basis of performance, as required by law.

The second option, rewarding performance for completed E&T components or job entries was rejected because it would base performance on outcomes. Because section 907(a) of Public Law 102–237 specifically delays outcome-based performance standards until coordination with the JOBS program can be achieved, the Department believes the option would not be consistent with the law. The Department is also reluctant to implement changes to program areas which will, in all likelihood, be changed again when the outcome-based performance standards are implemented.

Under the third option, the Department would have redefined "placements" in calculating the success of a State agency's performance. None of the possible redefinitions examined, however, would have resulted in moving away from rewarding States with high numbers of placements over those with low numbers. Thus, all of the possible changes would have penalized States that reduce the number of people served—contrary to the Congressional intent underlying the amendment.

The last option, providing extra credit to State agencies targeting populations with the greatest barriers to employment, was rejected because of its administrative burdens. The option would have resulted in better targeting of hard-to-employ populations, and thus, taken State agencies in the direction the program is heading. However, the Department is reluctant to implement a major increase in reporting requirements for a relatively short period of time before outcome-based performance standards are implemented. The Department further believes that the definition of hard-to-employ populations should be coordinated with the JOBS program during development of outcome-based performance standards.

Accordingly, the Department is proposing to amend § 273.7(d)(1)(i)(B) in this rulemaking to specify that the $15 million E&T funds will be frozen at the levels the State agencies received in FY 1993. In accordance with current rules, performance-based funds will be allocated by the ratio of the number of E&T mandatories placed in an E&T program in an eligible State to the number of E&T mandatories placed in all eligible States in Calendar Year 1991.

The rule proposes that the FY 1993 levels be used for the two Fiscal Years following the year in which this rule is published in final form. The Department is anxious to receive suggestions for ways the performance-based funds could be distributed beyond that, until outcome-based performance standards are implemented.

The State agencies must continue to meet established performance standards (i.e., 10 percent in FY 1994) to be eligible for their share of these funds as is required under 7 CFR 273.7(d)(1)(i)(B). Should a State agency fail to meet the 10 percent performance standard in a given fiscal year, it would be ineligible to receive its share of performance-based funding in the second following fiscal year. For instance, if a State agency fails to meet the 10 percent performance standard in FY 1992, it would be ineligible to receive performance-based funding in FY 1994. Should this occur, the Department is proposing in this rule to recalculate the performance-based funds to the State agencies on the basis of Calendar Year 1991 data, but excluding the States which did not place at least 10 percent of their eligible population.

As required under current rules, State agencies may not submit corrected FNS 583 reports any later than March 1 if they are to be used in determining whether a State agency is eligible for performance-based funding.

Implementation

The proposed provisions in this rule are effective retroactively to October 1, 1993. The State agencies are not required to take any action to implement these provisions.

List of Subjects in 7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR part 273 is proposed to be amended as follows:

1. The authority citation for part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. In § 273.7, paragraph (d)(1)(i)(B) is revised to read as follows:

§ 273.7 Work requirements.

* * * * *

(d) *Federal financial participation.*

(1) *Employment and training grants.*

(i) * * *

(B) In Fiscal Year 1993, the Secretary shall allocate $15 million of the Federal funds available for unmatched employment and training grants based on the ratio of the number of E&T mandatory participants placed (as defined under paragraph (o) in this section) in a food stamp E&T program in an eligible State to the number of E&T mandatory participants placed in all eligible States in Calendar Year 1991. Beginning in Fiscal Year 1994, and each subsequent fiscal year until two years after the promulgation of this rule in final, the Secretary shall allocate $15 million of Federal funds on the basis of the amount of performance-based funding each State agency received in Fiscal Year 1993, provided the State agency has met the performance standard as specified under paragraph (o) of this section for the second preceding fiscal year. For example, to receive performance-based funding in Fiscal Year 1994, the State agency must have met its performance standard in Fiscal Year 1992. Corrections to reports required to be submitted in accordance with paragraph (c) of this section must be received by FNS, and State agency good cause appeals must be resolved no later than March 1, to be used in determining whether a State agency is eligible for performance-based funding for the fiscal year beginning the following October. In Fiscal Year 1994 and each subsequent fiscal year until two years after the promulgation of this rule in final form, if the data on the reports show that a State agency did not meet its performance standard or a good cause determination was not made by FNS by March 1, the State agency shall not be eligible for performance-based funding. In this instance, the Secretary shall redistribute the $15 million Federal funds to eligible State agencies on the basis of Calendar Year 1991 data as prescribed under this paragraph, excluding the noncompliant States.

* * * * *

Dated: January 10, 1994.

Ellen Haas,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 94–1261 Filed 1–18–94; 8:45 am]

BILLING CODE 3410–30–U

SMALL BUSINESS ADMINISTRATION

13 CFR Part 116

Policies of General Application; Flood Insurance Protection

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the amount of flood insurance coverage required of recipients of certain SBA assistance. Under this proposal, flood insurance would be required in an amount equal to the lesser of the sum of all liens on the property (including any SBA lien) plus, if the SBA assistance is unsecured, the outstanding balance of the SBA assistance or the insurable value of the property, but in no event would the required insurance exceed the maximum flood insurance available under the National Flood Insurance Act of 1968.

DATES: Written comments must be received on or before February 18, 1994.

ADDRESSES: Comments may be sent to Bernard Kulik, Assistant Administrator or Disaster Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Bernard Kulik, Assistant Administrator for Disaster Assistance, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Prior to May 10, 1983, a borrower under any of SBA's financial assistance programs was required to carry and maintain flood insurance in the amount of the SBA loan balance, even if the insurable value of the collateral for the loan were greater and higher amounts of flood insurance were available under the National Flood Insurance Act of 1968, as amended (the "NFI Act"). See 13 CFR 116.11(c) (1983). On May 10, 1983, SBA amended this regulation to require borrowers to purchase the maximum amount of insurance available under the NFI Act, not to exceed the insurable value of the property. 48 FR 20933.

The purpose of the amendment was to assure that the value of SBA's collateral would be protected from floods in flood prone areas. SBA had realized that flood insurance in the amount of the SBA loan balance was inadequate protection when SBA's interest in the collateral was junior to another lender. If, for example, a disaster loan applicant had an existing mortgage on his property in favor of a commercial lender, SBA would assume a junior lienholder's position as security for the disaster loan. If a subsequent flood disaster occurred and the borrower had been carrying flood insurance only in the amount of the SBA loan, the insurance proceeds would be applied first to the commercial loan and would be insufficient to repay SBA. The requirement of "full insurable value" insurance prevented this outcome.

However, it also forced many borrowers to purchase insurance far in excess of the loan they would receive from the Agency. Moreover, in the ten years since the adoption of the May 10, 1983 final rule, SBA has observed a number of loan application cancellations as a result of the high cost of full insurable value insurance relative to the principal amount of the SBA loan. In some of those cases, the cost of the insurance may have even approached or exceeded the amount of the SBA assistance.

SBA recognizes that full insurable value insurance confers a benefit on the borrower (protection for his equity in the property), the Agency (reduction in the need for future disaster assistance), and the national flood insurance fund (bolstering of the fund's reserves). Nevertheless, the benefit comes at an additional cost to the borrower at a time when the borrower may be suffering significant economic distress from a flood disaster.

SBA has come to the conclusion that it can adequately protect its interest in the collateral or in the general credit of the borrower without forcing the borrower to purchase full insurable value flood insurance. Without returning to the pre-1983 rule, which placed SBA's interest in the collateral at risk if there were senior lienholders, SBA believes it can improve the present rule to protect SBA's interest without unnecessarily burdening the borrower.

Because SBA's real interest in the collateral exists only to the extent of the outstanding balance of the loan, SBA

loans can be adequately protected even if insurance does not cover the full value of the collateral, so long as insurance does cover the amount of all outstanding liens (including any SBA lien) on the property plus, in the event SBA's assistance is unsecured, the outstanding balance of such assistance. Then, if a borrower were to suffer a subsequent flooding loss and recover insurance proceeds, SBA would likely be reimbursed in full for the outstanding amount of its loan. Of course, if that flooding were to cause damage in excess of all liens (plus the amount of SBA's loan if SBA were unsecured), such "excess" damage would not be covered by insurance and would erode any equity the borrower might have had in the property.

After considering the issues discussed above, SBA has concluded that its flood insurance requirement should be amended. Accordingly, SBA is hereby proposing to revise Section 116.11(c) to require that applicants for SBA financial assistance who are located in a special flood hazard area obtain and maintain flood insurance in an amount equal to the lesser of: (1) All outstanding liens (including SBA's lien) on the property plus, if the SBA assistance is unsecured, the outstanding balance of the SBA assistance or (2) the insurable value of the property, but in no event would the required insurance exceed the flood insurance available under the NFI Act. This provision applies to the following programs: 7(a) business loans, 7(b) disaster loans, sections 501, 502 and 503 development company loans, lease guarantees, small business investment companies and pollution control guarantees. (13 CFR 116.10 (1993))

It is expected that most of the time the insurable value of the collateral will exceed the amount of all liens on the property (plus SBA's assistance, if unsecured). Thus, for most borrowers, the amount of flood insurance required would be determined by the liens on the property (plus SBA's assistance, if unsecured) so long as flood insurance in that amount were available under the NFI Act. On those occasions when the insurable value of the collateral dips below the liens on the property (plus SBA's assistance, if unsecured), only enough insurance to protect the collateral would be required.

Compliance With Executive Orders 12866, 12612 and 12778, and the Regulatory Flexibility and Paperwork Reduction Acts

Executive Order 12866 and Regulatory Flexibility Act

SBA certifies that this proposed rule, if adopted, would not be a significant regulatory action for purposes of E.O. 12866 and, for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, would not have a significant economic impact on a substantial number of small entities, for the following reasons:

1. It would not result in an annual economic effect 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. It would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

3. It would not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

4. It would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Executive Order 12612

SBA certifies that this proposed rule, if adopted, would have no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Paperwork Reduction Act

For purposes of the Paperwork Reduction Act, 44 U.S.C., ch. 35, SBA hereby certifies that this proposed rule, if adopted, would impose no new reporting or recordkeeping requirements.

Executive Order 12778

SBA certifies that this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of E.O. 12778.

List of Subjects in 13 CFR Part 116

Flood insurance, Flood plains, Small businesses.

For the reasons set forth above, part 116 of title 13, Code of Federal Regulations, is proposed to be amended as follows:

PART 116—[AMENDED]

Subpart B— [Amended]

1. The authority citation for subpart B of part 116 is proposed to be revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636 (b), (c), (f); Public Law 102–395, 106 Stat. 1828, 1864; and Public Law 103–75, 107 Stat. 739.

2. Section 116.11 is proposed to be amended by revising paragraph (c) to read as follows:

§ 116.11 Requirements.

* * * * *

(c) *Amount of coverage required.* The amount of flood insurance required is the lesser of the sum of all liens on the property (including any liens in favor of SBA) plus the outstanding balance of any unsecured SBA assistance, or the insurable value of the property, but in no event shall the required insurance exceed the maximum flood insurance available under the National Flood Insurance Act of 1968, as amended.

* * * * *

Dated: October 25, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–1053 Filed 1–18–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–94–1]

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 March 21, 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 January 6, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 27454.

Petitioner: Precision Airmotive Corporation.

Regulations Affected: 14 CFR part 21.

Description of Rule Change Sought: To require disclosure to the Type Certificate of Supplemental Type Certificate holder, and if identified, the Original Equipment Manufacture design owner of the names of applicants for Parts Manufacturer Approval and the parts for which approval is sought.

Petitioner's Reason for the Request: The petitioner feels this will enable the Type Certificate holder or Supplemental Type Certificate holder or the Original Equipment Manufacturer design owner to obtain information necessary to meet their obligations under the law and FAA regulation to provide post-sale safety information and warnings.

[FR Doc. 94–1171 Filed 1–18–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 21 and 23

[Docket No. 118CE, Notice No. 23–ACE–76]

Special Conditions, Ballistic Recovery Systems, Modified for Small General Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the supplementary type certification of the Ballistic Recovery Systems, Inc., parachute recovery system installed in small general aviation airplanes. This system is referred to as the GARD. Modifications to airplanes using this system will incorporate novel or unusual design features associated with a parachute recovery system for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. This notice contains the proposed safety standards that the administrator finds necessary to establish a level of safety equivalent to the original certification basis for these airplanes

DATES: Comments must be received on or before March 21, 1994.

ADDRESSES: Comment on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 118CE, room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 118CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: J. Lowell Foster, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service; Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified in this notice will be considered by the Administrator before taking action on these proposals. The proposals contained in this notice may change in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested parties both before and after the closing date for submission of comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Background

On January 12, 1987, Ballistic Recovery Systems, Inc. (BRS), 9242 Hudson Boulevard, Lake Elmo, Minnesota 55042, filed an application for a supplemental type certificate (STC) to install the GARD–150 parachute recovery system on Cessna 150/A150 Series and 152/A152 Model Airplanes. Subsequently they received the STC under Special Condition 23–ACE–33, dated November 17, 1987. The parachute recovery system is intended to recover an airplane in emergency situations such as mid-air collision, loss of engine power, loss of airplane control, severe structural failure, pilot disorientation, or pilot incapacitation with a passenger on board. The GARD–150 system, which is only used as a last resort, is intended to prevent serious injuries to the airplane occupants by parachuting the airplane to the ground.

BRS followed their STC on the Cessna 150/A150 and 152/A152 Series with a request for special conditions on a GARD system that would be applicable to most general aviation airplanes. The nature of the parachute recovery system applies to most general aviation airplanes instead of each airplane model needing separate special conditions.

Parachute recovery systems typically consist of a parachute packed in a canister mounted on the airframe. A solid propellant rocket motor or compressed air may deploy the canopy and is usually located on the side of the canister. A door positioned above the canister seals the canister, parachute canopy, and rocket motor from the elements and provides free exit when the canopy is deployed. These systems are deployed by a mechanical pull handle mounted so that the pilot and passenger can reach it. At least two separate and independent actions are required to deploy the system.

A four-cable bridle attaches the canopy bridle to the airplane primary structure. The cable lengths are designed to provide the best airplane touchdown attitude. The cables are routed externally and covered with small frangible fairings from the fuselage exit holes to the attach points.

The applicants must supplement the FAA-approved Flight Manual as part of the STC. The supplement will describe the system, define the operating envelope with appropriate warnings, and define required system maintenance and inspection information. A separate FAA approved Operating Manual describing the previous items will be provided for those airplanes that do not have an FAA-approved Flight Manual.

Recommended placards should be located near the pull handle in clear view of the pilot to identify the system and operating envelope, state deployment actions, and provide appropriate warnings. A warning placard should also be located on the canister near the rocket motor.

Discussion

The installation of parachute recovery systems in part 23 airplanes was not envisioned when the certification basis for these airplanes was established. In addition, the Administrator has determined that current parts 21 and 23 do not contain adequate or appropriate safety standards for a parachute recovery system; therefore, this system is considered a novel and unusual design feature.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of the novel and unusual design features of the airplane modification. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become part of the type certification basis, as provided by § 21.17(a)(2).

Special conditions are proposed for flight test demonstrations. These requirements would ensure that the parachute recovery system will perform its intended function without exceeding its strength capabilities. These requirements would also require that demonstrations be made to show that the parachute will deploy in various specified flight conditions.

Special conditions are proposed for the occupant restraint provisions where applicable. These requirements ensure that airplanes modified with a parachute recovery system are equipped with a restraint system designed to protect the occupants from injury during parachute deployment and ground impact.

Special conditions are proposed for the parachute performance. The requirements would ensure the following: (a) The parachute complies with the applicable section of TSO–C23c (SAE AS8015A) at the critical airplane weights, (b) the parachute deployment loads do not exceed the structural strength of the airplane, (c) the system will provide a ground impact that does not result in serious injury of the passengers, and (d) the system will operate in adverse weather conditions.

Special conditions are proposed for the functions and operations of the parachute recovery system. These requirements would ensure the following: (a) There is no fire hazard associated with the system, (b) the system has adequate reliability, (c) the sequence of arming and activating the system will prevent inadvertent deployment, (d) the system can be activated from either the pilot's or the copilot's position by various sized people, (e) the system will be labeled to show its identification function and operating limitations, and (f) if must be shown that the occupants will be protected from serious injury after touchdown under various adverse weather conditions, including high winds.

Special conditions are proposed for protection of the parachute recovery system. These requirements would ensure that the system is protected from deterioration due to weathering, corrosion, abrasion, and other causes; and that provisions are made to the parachute canister to provide adequate ventilation and drainage.

Special conditions are proposed for a system inspection provision. These requirements would ensure that adequate means are available to permit examination of the parachute recovery system components and that instructions for continued airworthiness are provided.

Special conditions are proposed for the operating limitations of the parachute recovery system. These requirements would ensure that the system operating limitations are prescribed for inspecting, repacking, and replacing the system's parachute and deployment mechanism at approved intervals.

The FAA has considered the features proposed by Ballistic Recovery Systems, Inc., for the GARD installation in the primary, normal, utility, and acrobatic category airplanes and has concluded that special conditions should be proposed for such systems to provide the necessary level of safety.

List of Subjects

14 CFR Part 21

Aircraft, Aviation safety.

14 CFR Part 23

Aircraft, Aviation safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.101(b)(2); and 14 CFR 11.28 and 11.29(b).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following special conditions as a part of the type certification basis for primary, normal, utility, and acrobatic category airplanes modified to incorporate parachute recovery systems.

1. *Flight test demonstration.* (a) The system must be demonstrated in flight to satisfactorily perform its intended function, without exceeding the system deployment limit load factors, for the critical flight conditions.

(b) Satisfactory deployment of the parachute must be demonstrated, at the most critical airplane weight and balance, for the following flight conditions:

(i) For airplanes—(1) Power off stall with slow entry,

(2) Spin with deployment at one turn,

(3) Maneuvering speed with 0g normal load, and

(4) Never exceed speed with 1g normal load.

(ii) In addition, for acrobatic airplanes—during inverted flight.

2. *Occupant restraint.* Each seat in an airplane modified with the parachute recovery system must be equipped with a restraint system, consisting of a seat belt and shoulder harness, that will protect the occupants from head and upper torso injuries during parachute deployment and ground impact at the critical load conditions.

3. *Parachute performance.* (a) The parachute must comply with the applicable requirements of TSO–C23c, or an approved equivalent, for the critical airplane weights.

(b) The system limit load factor for deployment must not exceed 80 percent of the airplane ultimate load factor.

(c) It must be shown that, although the airplane structure may be damaged, the airplane impact during touchdown will result in an occupant environment in which serious injury to the occupants is improbable.

(d) It must be shown that, with the parachute deployed, the airplane can impact the ground in various adverse

weather conditions, including winds up to 15 knots, without endangering the airplane occupants.

4. *System function and operations.* (a) It must be shown that there is no fire hazard associated with activation of the system.

(b) The system must be shown to function reliably and to perform its intended function.

(c) It must be shown that arming and activating the system can only be accomplished in a sequence that makes inadvertent deployment extremely improbable.

(d) It must be demonstrated that the system can be activated without difficulty by various sized people, from a 10th percentile female to a 90th percentile male, while sitting in the pilot or copilot seat.

(e) The system must be labeled to show its identification, function, and operating limitations.

(f) It must be shown that the occupants will be protected from serious injury after touchdown under various adverse weather conditions, including high winds.

5. *System protection.* (a) All components of the system must provide protection against deterioration due to weathering, corrosion, abrasion, and other causes.

(b) Adequate provisions must be made for ventilation and drainage of the parachute canister and associated structure to ensure the sound condition of the system.

6. *System inspection provisions.* (a) Instructions for continued airworthiness must be prepared for the system that meet the requirements of § 23.1529.

(b) Adequate means must be provided to permit the close examination of the parachute and other system components to ensure proper functioning, alignment, lubrication, and adjustment during the required inspection of the system.

7. *Operating limitations.* (a) Operating limitations must be prescribed to ensure proper operation of the system within the approved flight envelope of the airplane.

(b) Operating limitations must be prescribed for inspecting, repacking, and replacing the parachute and deployment mechanism at approved intervals.

Issued in Kansas City, Missouri, on January 3, 1994.

Henry A. Armstrong,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–1206 Filed 1–18–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

32 CFR Part 323

[Defense Logistics Agency Reg. 5400.21]

Defense Logistics Agency Privacy Program

AGENCY: Defense Logistics Agency, DOD.

ACTION: Proposed rule.

SUMMARY: The Defense Logistics Agency proposes to exempt an existing system of records, S255.01 DLA-GC, entitled Fraud and Irregularities, from certain provisions of the Privacy Act of 1974. The exemptions are intended to increase the value of the system of records for law enforcement purposes, to comply with prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the system of records. The notice was previously published on November 16, 1993, at 58 FR 60428.

DATES: Comments must be received no later than February 18, 1994, to be considered by the agency.

ADDRESSES: Send comments to the Privacy Act Officer, Administrative Management Division, Office of Planning and Resource Management, Defense Logistics Agency Administrative Support Center, Room 5A120, Cameron Station, Alexandria, VA 22304–6100.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 617–7583.

SUPPLEMENTARY INFORMATION: Executive Order 12866. The Director, Administration and Management, Office of the Secretary of Defense has determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

This proposed rule would add two exemptions to an existing DLA system of records. DLA performs as one of its principal functions investigations into and enforcement actions concerned with violations of civil and administrative law, fraud, or antitrust rules relating to DLA procurement, property disposal, contract administration, or other DLA activities. The proposal to add the (k)(2) and (k)(5) exemptions reflects recognition that certain records in the system may be deemed to require protection from disclosure in order to protect confidential sources mentioned in the files and avoid compromising, impeding, or interfering with investigative and enforcement proceedings. The system would thus be exempt from sections 552a(c)(3), (d)(1) through (d)(4), (e)(1), (e)(4)(G), (H), and (I), and (f) as well as corresponding DLA and DoD Regulations. The Director proposes to adopt the exemptions for the above reasons.

List of subjects in 32 CFR part 323

Privacy.

Accordingly, the Defense Logistics Agency proposes to amend 32 CFR part 323 as follows:

1. The authority citation for 32 CFR part 323 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. Appendix H to part 323 is amended by adding paragraph c.

* * * * *

Appendix H to Part 323–DLA Exemption Rules * * *

c. ID: S100.50 DLA-GC (Specific exemption).

1. *System name:* Fraud and Irregularities.

2. *Exemption:* This system of records is exempt from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G), (H), and (I), and (f).

3. *Authorities:* 5 U.S.C. 552a(k)(2) and (k)(5).

4. *Reasons:* From subsection (c)(3) because granting access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutive interest by DLA or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

From subsections (d)(1) through (d)(4) and (f) because providing access to records of a civil investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

From subsections (e)(4) (G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. DLA will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

Dated: December 23, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–1187 Filed 01–18–94; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

34 CFR Chapter VI

Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee Meeting

AGENCY: Department of Education.

ACTION: Notice of first meeting of the Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee.

SUMMARY: This notice sets forth the date and location of the forthcoming meeting of the Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee. The notice also describes the functions of the committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: January 26–27, 1994 from 9 a.m. to 5 p.m.

ADDRESSES: The Radisson Plaza Hotel at Mark Center, 5000 Seminary Road, Alexandria, Virginia, 22311.

FOR FURTHER INFORMATION CONTACT: Jennifer Peck, Office of the Assistant for Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW., (Room 4082, ROB–3), Washington, DC 20202–5100 Telephone: (202) 708–5547. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee is established by sections 422 and 457 of the Higher Education Act of 1965, as amended by the Student Loan Reform Act of 1993 (Pub. L. 103–66; 20 USC 1087g). The Committee is also established in accordance with the provisions of the Negotiated Rulemaking Act (Pub. L. 101–648, as amended; 5 USC 561). The advisory Committee is established to provide advice to the Secretary on the standards, criteria, procedures, and regulations governing advances for reserve funds of State and nonprofit private loan insurance programs. These standards, criteria, procedures and regulations will implement section 422 of the Higher Education Act of 1965, as amended by the Student Loan Reform Act of 1993 beginning with the academic year 1995–1996 (20 USC 1072).

The meeting is open to the public. The agenda for the initial meeting will include discussion of the committee's organizational structure and protocols, and establish a schedule to negotiate proposed rules by the summer.

This notice is published less than 15 days of the first meeting due to administrative difficulties.

Records are kept of all committee proceedings and are available for public inspection at the Office of the Assistant Secretary for Postsecondary Education, room 4082, ROB–3, 7th and D Streets SW., Washington, DC from the hours of 9 a.m. and 5 p.m. weekdays, except Federal holidays.

Dated: January 13, 1994.

David A. Longanecker,

Assistant Secretary, Office of Postsecondary Education, U.S. Department of Education.

[FR Doc. 94–1433 Filed 1–18–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 292

RIN 0596–AB08

Hells Canyon National Recreation Area; Public Lands

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish management standards and guidelines for the protection and preservation of historic, archeological, and paleontological resources; the use of motorized and mechanical equipment; the use of motorized and nonmotorized rivercraft; and the degree and type of timber harvesting, mining, and grazing permissible on National Forest System lands in the Hells Canyon National Recreation Area. The intended effect is to ensure the protection, preservation, and enjoyment of the Area as directed by statute.

DATES: Comments must be received in writing by March 21, 1994.

ADDRESSES: Send written comments to Director, Recreation, Cultural Resources and Wilderness Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed rule in the Office of the Director, fourth floor, central wing, Auditors Building 201 Fourteenth Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:30 p.m. Those wishing to inspect comments are encouraged to call ahead (202) 205–1423 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Tom Lennon, Branch Chief, Special Designations, Recreation, Cultural Resources, and Wilderness Management Staff (2300) (202) 205–1423 or Ed Cole, Ranger, Hells Canyon National Recreation Area (503) 426–4978.

SUPPLEMENTARY INFORMATION:

Background

The Act of December 31, 1975 (the "Act"), established the Hells Canyon National Recreation Area (the "HCNRA") "to assure that the natural beauty, and historical and archeological values of the Hells Canyon area * * * are preserved for this and future generations, and that the recreational and ecologic values and public enjoyment of the area are thereby enhanced." 89 Stat. 1117; 16 U.S.C. 460gg *et seq.* While the Act's overall thrust is to protect and enhance the identified resource values within the HCNRA, Congress acknowledged in Section 13 of the Act that "ranching, grazing, farming, timber harvesting, and the occupation of homes and lands associated therewith, as they exist on the date of enactment of this Act, are recognized as traditional and valid uses of the recreation area."

The HCNRA covers 658,457 acres. Almost 95% of the HCNRA, or 625,193 acres, is in federal ownership. Within the HCNRA is the Hells Canyon Wilderness, totalling 219,500 acres of National Forest System land, and a small section of the Eagle Cap Wilderness, totalling 3,553 acres of National Forest System land. Also within the HCNRA are the Snake, Rapid, and Imnaha Wild and Scenic Rivers, the corridors of which include 33,767 acres of National Forest System lands.

Section 7 of the Act stipulates that the HCNRA shall be administered for public outdoor recreation in a manner compatible with the following objectives:

(1) The maintenance and protection of the free-flowing nature of the rivers within the recreation area;

(2) Conservation of scenic, wilderness, cultural, scientific, and other values contributing to the public benefit;

(3) Preservation, especially in the area generally known as Hells Canyon, of all features and peculiarities believed to be biologically unique including, but not limited to, rare and endemic plant species, rare combinations of aquatic, terrestrial, and atmospheric habitats, and the rare combinations of outstanding and diverse ecosystems and parts of ecosystems associated therewith;

(4) Protection and maintenance of fish and wildlife habitat;

(5) Protection of archeological and paleontological sites and interpretation of these sites for the public benefit and knowledge insofar as it is compatible with protection;

(6) Preservation and restoration of historic sites associated with and typifying the economic and social history of the region and the American West; and

(7) Such management, utilization, and disposal of natural resources on federally owned lands, including, but not limited to, timber harvesting by selective cutting, mining, and grazing and the continuation of such existing uses and developments as are compatible with the provisions of the Act.

Section 10 of the Act authorizes the Secretary to promulgate rules and regulations necessary to accomplish the purposes of the Act. Section 10 expressly lists several subjects as possible topics for rulemaking, including the following:

(1) Standards and guidelines to insure the full protection and preservation of the historic, archeological, and paleontological resources in the recreation area;

(2) Provision for the control of the use of the use of motorized and mechanical equipment for transportation over, or alteration of, the surface of any Federal land within the recreation area;

(3) Provision for the control of the use and number of motorized and nonmotorized rivercraft: Provided, that the use of such craft is hereby recognized as a valid use of the Snake River within the recreation area; and

(4) Standards for such management, utilization, and disposal of natural resources on federally owned lands, including, but not limited to, timber harvesting by selective cutting, mining and grazing and the continuation of such existing uses and developments as are compatible with the provisions of this Act.

Section 10 also authorized rulemaking to establish standards for the use and development of privately owned property in the HCNRA. This is the subject of a separate rulemaking and, thus, is not included in this proposed rule.

Following enactment of the Act in 1975, the Forest Service construed Section 10's authority to promulgate regulations as discretionary and that the issues identified therein could be adequately addressed under existing statutory and regulatory authority. This interpretation was challenged in a 1988 lawsuit which contended that the regulatory authority in Section 10 was mandatory, not discretionary. *Oregon Natural Resources Council (ONRC)* v. *Lyng*, slip op. No. 88–680PA (D. Or. 1989). The district court in Oregon rejected ONRC's argument that the Secretary had a non-discretionary duty to issue regulations under Section 10 and dismissed the case. On appeal, however, the Ninth Circuit, reversed the district court and concluded that the regulations were, in fact, required by Section 10. According to the Ninth Circuit, Section 10 "compels the Secretary to promulgate nonduplicative regulations of the sort described by subsections 10(a) through 10(e)." *ONRC* v. *Lyng*, 882 F.2d 1417, 1421 (9th Cir. 1989).

Within three months of the 9th Circuit's decision in *ONRC* v. *Lyng*, an interim rule establishing standards and guidelines for federal lands in the HCNRA had been adopted and public comment solicited (54 FR 41089; Oct. 5, 1989). Only two comments were received on the interim rule. The interim rule has never been published as a final rule. Due to the length of time that has passed since the issuance of the interim rule, and the recognition that substantial modifications to the interim rule would be required, the agency has decided to issue a new proposed rule for public comment. Accordingly, an agency response to the comments submitted on the 1989 interim rule is not needed.

For ease of reference, the proposed rule divides the HCNRA into two categories—Wilderness Lands and Other Lands. Consistent with Congress' recognition that the wilderness portions of the HCNRA should receive substantially more protection than the rest of the HCNRA, some standards and guidelines are more protective in the Wilderness Lands category than in the Other Lands category. In other instances, however, the standards and guidelines are the same.

Section-By-Section Explanation of the Proposed Rule

This proposed rule would established a new Subpart F of Part 292, Hells Canyon National Recreation Area—Public Lands, in Title 36 of the Code of

Federal Regulations. A section-by-section explanation of the proposed rule follows:

Section 292.40 Purpose and Scope.

Paragraph (a) of proposed § 292.40 explains that the purpose of this rule is to establish specific standards and guidelines for the use of the National Forest System lands that comprise the Hells Canyon National Recreation Area (HCNRA). The topics that are the subject of these standards and guidelines correspond with the topics in Section 10 of the Act, except for the use and development of privately owned property which, as previously noted, is the subject of a separate rulemaking and not addressed herein. Paragraph (b) explains that, unless directly in conflict with the standards and guidelines set forth in the rule, all of the existing authorities generally applicable to National Forest System lands are specifically applicable to the National Forest System lands in the HCNRA. It also states that the specific regulatory authority for the HCNRA embodied in the rule's standards and guidelines would prevail over the Forest Service's general regulatory authority for National Forest System lands, if a conflict between the two should arise.

Section 292.41 Definitions

Proposed § 292.41 defines terms used in the proposed rule.

Section 292.42 Management Standards and Guidelines

Proposed § 292.42 would establish several guiding principles that apply to the standards and guidelines called for in Section 10 of the Act and set out in §§ 292.43 through 292.48. These principles include the recognition that the rule is a supplement to, not a substitute for, existing regulatory authority; that uses or activities authorized under the rule's standards and guidelines might require additional site-specific environmental analysis; that programmatic direction in the Comprehensive Management Plan must conform to the standards and guidelines of the rule; and, that the standards and guidelines for a given use or activity may vary depending on whether that use or activity is located inside or outside the designated wilderness in the HCNRA.

Section 292.43 Protection and Preservation of Cultural and Paleontological Resources

Proposed § 292.43 would create seven standards to guide Forest Service administration of cultural and paleontological resources in the HCNRA. Proposed paragraphs (a) (1)–(4) set forth the standards and guidelines for cultural and paleontological resources on the Other Lands in the HCNRA; proposed paragraphs (b) (1)–(3) set forth the standards and guidelines for cultural and paleontological resources located on the Wilderness Lands in the HCNRA. For ease of reference, "cultural resources" includes historic and archeological resources in the HCNRA. Though not explicitly referenced, the relevant provisions of the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*, the Archeological Resources Protection Act, 16 U.S.C. 470AA *et seq.*, and the Antiquities Act, 16 U.S.C. 431 *et seq.* and the accompanying regulations at 36 CFR parts 296 and 800 would also apply.

Paragraph (a)(1) would establish protection as the primary management objective for cultural resources in the HCNRA. It would additionally provide for public education and information opportunities about cultural resources as a management objective unless this would unreasonably interfere with protection efforts. This standard acknowledges the importance of cultural resource protection and education for the vast storehouse of information in the HCNRA but recognizes that educating the public about cultural resources must be secondary to protection and must occur only if the resources can be adequately protected.

Proposed paragraph (a)(2) requires that the Ranger establish management priorities for cultural resources based, in part, on whether the appropriate State Historic Preservation Office has concurred with the Forest Service's determination that a cultural resource is "significant." By establishing priorities, the Ranger will be able to allocate available moneys for protection, education, and enjoyment based on the historical or scientific importance of a cultural resource. The Ranger also may take into account the relative risk of damage or destruction to the resource and steps that could be taken to avoid or minimize that risk.

Paragraph (a)(3) would apply to cultural resources which meet the significance threshold. It would require that information from these resources be documented and favor on-site over off-site protection. The Ranger may select off-site protection under certain conditions. For instance, the Ranger may decide off-site protection is appropriate if the resource is located on NRA Wilderness Lands and protecting it on-site would significantly intrude on the wilderness resource. Another example of when off-site protection might be preferred is if the cost is less than on-site protection and significant cultural resources with identical or similar values have already been protected on-site.

Proposed paragraph (a)(4) applies to all paleontological resources in the HCNRA and would establish protection for scientific study as the primary objective. Prior written authorization would be required before any individual could disturb or remove a paleontological resource in connection with scientific study activities.

Paragraph (b)(1) would incorporate the standards and guidelines for Other Lands and apply them to the Wilderness Lands. This would ensure consistency of Forest Service cultural and paleontological resource administration within the HCNRA and, more importantly, the protection of these resources into the future.

Paragraphs (b) (2) and (3) would establish two additional standards for Wilderness Lands in recognition of the Agency's dual management objectives of protecting cultural resources and minimizing impacts on the wilderness. This would be accomplished by requiring that information and education activities related to cultural resources on Wilderness Lands be conducted outside of the wilderness and by precluding the development of new or relocated trails on Wilderness Lands which would be used primarily as a means of securing public access to cultural resources. This will enable visitors to experience cultural resources in their natural setting, unencumbered by the signs, guided tours, or other devices normally used to inform and educate the visitor about our past.

Section 292.44 The Use of Motorized and Mechanical Equipment

Proposed § 292.44 would create five standards to guide Forest Service administration of motorized and mechanical equipment on National Forest System lands in the HCNRA. Proposed paragraphs (a)(1)–(4) set forth the standards and guidelines for motorized and mechanical equipment use in the Other Lands; proposed paragraph (b) would establish the standard for such use in the Wilderness Lands. For ease of reference, the term "motorized and mechanical equipment" in this rule has the same meaning as "motorized equipment" and "mechanical transport" which are defined in regulations promulgated under the Wilderness Act at 36 CFR part 293 except that it would not include motorized wheelchairs or other devices used solely to assist people with disabilities. Nor would it include

motorized or nonmotorized rivercraft which are defined in and regulated under a separate provision of this rule. Though not explicitly referenced, the relevant provisions of the Wilderness Act, 16 U.S.C. 1131 *et seq.*, and regulations at 36 CFR parts 212, 261, 293, and 295 would also apply.

Paragraph (a)(1) would authorize the use of motorized and mechanical equipment on any Forest Service roads or airfields within the HCNRA subject to terms and conditions necessary to ensure the safe use of these facilities. This provision applies to all Forest Service transportation development facilities as that term is currently defined in 36 CFR 212.1, except for Forest Service trails which are the subject of paragraph (a)(2). This provision also does not purport to regulate the use of motorized and mechanical equipment on public roads or highways which are under the jurisdiction of a state or local transportation authority.

Paragraph (a)(2) would authorize the use of motorized and mechanical equipment on Forest Service trails subject to terms and conditions necessary to ensure the safe use of these facilities and when compatible with the management objectives identified in section 7 of the Act. As envisioned in the proposed rule, motorized and mechanical equipment could only be used on Forest Service trails in the non-wilderness portions of the HCNRA pursuant to a finding that such use was compatible with, among other things, the protection of free-flowing rivers, the conservation of wilderness and other values, the maintenance of fish and wildlife habitat, and/or the protection of historic, archeologic, and paleontologic sites. If a particular proposed use was compatible with some of the management objectives but not with others, the Ranger would have to decide whether, on balance, the compatibility outweighed the incompatibility and the use could proceed.

Paragraph (a)(3) would authorize the use of mechanical equipment off National Forest airstrips, roads, or trails only if such use is compatible with the management objectives of section 7 of the Act.

Paragraph (a)(4) would prohibit the use of motorized equipment off Forest Service airstrips, roads, and trails except in those cases where it is reasonably necessary to attain one or more of the management objectives set out in section 7. Under this standard, use of an off-road vehicle (ORV) might only be permitted if it were necessary to protect fish and wildlife habitat or preserve historic resources. ORV use also might be allowable if it were necessary to conduct the types of timber harvesting, mining, and grazing that are provided for in the proposed rule. It will be the responsibility of the proponent of such use to demonstrate its necessity related to the management objectives in section 7.

These standards, when read together, establish a three-tiered system governing motorized and mechanical equipment use in the non-wilderness portion of the HCNRA. The requirements by which use may be authorized become increasingly rigorous depending on whether the proposed use is contemplated on Forest Service roads/airfields, Forest Service trails, or off Forest Service airstrips, roads, or trails. This provision recognizes that off-road travel is generally not tolerated within the HCNRA due to the fragile and difficult terrain, impacts to wildlife and their habitat, and other issues associated with resource protection.

Proposed paragraph (b) explains that there are no non-duplicative regulations needed for managing motorized and mechanical equipment in wilderness areas of the HCNRA since such use is already prohibited by the Wilderness Act. Accordingly, the proposed rule would merely restate the exiting prohibition and provide cross-references to exceptions permitted in the Wilderness Act.

The proposed rule would exempt from its coverage all uses related to Forest Service administration which might include, at a minimum, research activities and public health and safety responses. It also would exclude uses necessary to access privately owned lands or interests in land wholly within the HCNRA.

Section 292.45 Use of Motorized and Non-Motorized Rivercraft

Proposed § 292.45 would establish seven standards to guide Forest Service administration of the use of motorized and non-motorized rivercraft in the HCNRA. These standards and guidelines are only applicable to those rivers or river segments that have been designated as components of the Federal Wild and Scenic Rivers System. Though not explicitly referenced, the relevant provisions of the Wild and Scenic Rivers Act, 16 U.S.C. 1271 *et seq.*, and regulations at 36 CFR part 297, would also apply.

Paragraph (a) would authorize the use of non-motorized rivercraft on Wild and Scenic Rivers subject to such rules and regulations the Ranger deems necessary to protect and enhance the values which caused the river to be designated wild and scenic or to ensure the public's safe use and enjoyment of the river.

Paragraph (b) would prohibit the use of motorized rivercraft on all Wild and Scenic Rivers except for the Snake River. This prohibition will not prevent the exercise of any type of currently authorized motorized rivercraft use in the HCNRA; rather, it will simply provide for management of this use which is currently limited to the Snake River. It does, however, effectively preclude expansion of motorized rivercraft use to other Wild and Scenic Rivers which will facilitate the protection and enhancement of the values which caused those rivers to be designated.

Paragraph (c) would require that all authorized rivercraft use on Wild and Scenic Rivers in the HCNRA be in compliance with State and/or Federal boating safety and registration laws.

Proposed paragraph (d) establishes a requirement that all users of motorized and non-motorized rivercraft on the Snake Wild and Scenic River must receive prior written authorization for such use from the Ranger. It also explains that such authorization may include terms and conditions on numbers, duration, seasons of use, noise, or other matters that will protect and enhance the river resource and ensure a high quality river experience for users of all types.

Paragraphs (e) and (f) are extensions of paragraph (d) and would require the Ranger, as part of the written authorization process for the Snake Wild and Scenic River, to make sure that both private and commercial rivercraft users are reasonably accommodated, and that the user capacity of the river is not exceeded, respectively.

Finally, paragraph (g) would require the Ranger to identify and minimize to the extent practicable any existing or potential conflicts between motorized and non-motorized rivercraft users or between rivercraft users in general and other individuals like fishermen or researchers who may use or enjoy the Wild and Scenic Rivers in the HCNRA.

These standards and guidelines have been narrowly tailored to address those specific types of rivercraft use on those specific river segments where the greatest potential risk exists to the agency's ability to administer the HCNRA in such a way as to protect and enhance its natural, cultural, recreational, fishery and other resource values. With respect to the use of rivercraft, the greatest risk is currently presented by the use of motorized rivercraft on the Snake Wild and Scenic River. As a result, most of the standards

and guidelines in this section pertain to that use on that river. Though the authority exists, it was deemed unnecessary to establish additional standards for other Wild and Scenic Rivers or other rivers in the HCNRA at this time to address future contingencies which may or may not ultimately materialize.

Section 292.46 Timber Harvesting Activities

Proposed § 292.46 would establish three standards to guide Forest Service administration of timber harvesting activities on National Forest System lands in the HCNRA. Proposed paragraphs (a)(1)–(2) set forth the standards and guidelines for timber harvesting activities in the Other Lands category of the HCNRA; proposed paragraph (b) establishes the standard in the Wilderness Lands. Though not explicitly referenced, the relevant provisions of the Wilderness Act, 16 U.S.C. 1131 *et seq.*, and regulations at 36 CFR part 223, 261 and 293 would also apply.

Paragraph (a)(1) would specify that timber will not be harvested solely for commercial gain but, rather, will be harvested only in conjunction with other, non-commercial purposes including maintenance or improvement of ecosystem health, wildlife habitat, or the recreational use and enjoyment of the HCNRA. Trees could also be removed to eliminate hazards to persons or their property. Finally, timber harvesting could also be employed as an appropriate and measured response to natural events including, but not limited to, fire, flood, and disease or pest infestation. The significance of this provision is that it does not provide for timber production in and of itself to be an objective of the timber harvesting activity.

In those instances where one or more of the purposes for which timber may be harvested is recognized, paragraph (a)(2) conditions the manner by which the timber may be harvested. These silvicultural prescriptions authorize timber harvesting only by means of selective or intermediate cuttings. For the purpose of this proposed rule, the term "selective cutting" means "selection cutting" as that term is defined by the Society of American Foresters. The Agency believes that the Act, in discussing the permissible types of silvicultural prescriptions in the HCNRA, incorrectly used the term "selective cutting" which is a type of exploitation cutting generally referred to as "creaming", "culling", or "high-grading". For that reason, the Agency defined "selective cutting" as "selection cutting" which is, in all likelihood, the term Congress intended to use in the Act and which means the annual or periodic removal of trees individually or in small groups. The other types of authorized cuttings are well understood within the forestry profession and are defined in the proposed rule as they appear in the book, *Terminology of Forest Science Technology Practice and Products*, published by the Society of American Foresters. These types of cuttings represent the most ecologically sensitive methods by which harvesting can be accomplished. Additional proposed restrictions on harvesting in this proposed section include requirements that the smallest area and least number of clearings be created, and that the clearings blend into the natural landscape to the extent practicable. These provisions would ensure that any timber harvesting allowable within the HCNRA would proceed as unobtrusively as possible.

Proposed paragraph (b) explains that there are no non-duplicative regulations needed for managing timber harvesting activities in wilderness areas of the HCNRA since such use is already generally prohibited by the Wilderness Act. Accordingly, it merely restates the existing prohibition and provides cross references to exceptions permitted in the Wilderness Act.

Section 292.47 Mining Activities

Proposed 292.47 would establish six standards to guide Forest Service administration of mining activities throughout the entire HCNRA. Proposed paragraphs (a)(1)–(4) set forth the standards and guidelines for mining activities in the Other Lands category of the HCNRA; proposed paragraphs (b)(1)–(2) establish the standards for the Wilderness Lands category. Though not explicitly referenced, the relevant provisions of the 1872 Mining Law, 30 U.S.C. 22 *et seq.*, the Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, the Mineral Materials Act of 1947, 30 U.S.C. 601 *et seq.*, the Wilderness Act, 16 U.S.C. 1131 *et seq.*, the Wild and Scenic Rivers Act, 16 U.S.C. 1271 *et seq.*, and regulations at 36 CFR parts 228 and 293 would also apply.

Paragraph (a) prohibits mining activities in the HCNRA subject to valid existing rights. This is a restatement of Section 11 of the Act which withdrew all federal lands within the HCNRA from the operation of the mining and mineral leasing laws subject to valid existing rights. Accordingly, the only authorized mining activities that may occur in the HCNRA are those in which the valid existing rights have been established. Holders of mining claims and mineral leases must demonstrate that they have valid existing rights before land disturbing activities can be initiated. This requirement would also extend to what in common parlance has become known as "recreational mining." There is no authority for recreational mining other than the statutes cited in the preceding paragraph. Thus, even if an operator claims that an activity involving the exploration and/or extraction of mineral resources is "recreational" in nature, that operator must prove that he or she has valid existing rights to conduct that activity under one of the aforementioned statutes.

Paragraph (b) proposes that the impact of mining activities be directed away from the Wilderness Lands and Wild and Scenic Rivers to the extent practicable. This would enable the impacts of developmental drilling operations and the construction of access routes, among other things, to be concentrated on lands which may be better suited to such uses or which may not possess the number or degree of resource values exhibited on Wilderness Lands or Wild and Scenic Rivers.

Paragraphs (c) and (d) concern the extraction and use of mineral materials in the HCNRA. Mineral materials include, but are not limited to, common varieties of sand, gravel, and stone and are governed by the Mineral Materials Act of 1947, 30 U.S.C. 601 *et seq.*, rather than the mining and mineral leasing laws. As a result, activities related to mineral materials are not subject to the withdrawal of federal lands from the operation of the mining and mineral leasing laws in Section 11 of the Act. These standards, in addition to the applicable provisions of Subpart C of 36 CFR part 228, specify the circumstances under which exploration, extraction and use of common variety mineral materials may occur in the HCNRA. Paragraph (c) would provide that mineral materials may only be used in the HCNRA for the purpose of constructing or maintaining facilities such as roads, existing airfields, trails and other recreation developments.

Paragraph (d) would require that mineral materials needed for use in the HCNRA for one of the enumerated purposes in paragraph (c) or for use outside the HCNRA on a project with specific and identifiable benefits for the HCNRA must come from sources located outside the HCNRA unless (1) the cost associated with using non-HCNRA mineral materials adds significantly to the costs of the material, or (2) the transportation of mineral materials from outside the HCNRA presents a safety hazard to the motoring

public. When mineral materials are obtained from inside the HCNRA, environmental impact at the source must be mitigated by contouring the land, re-establishing vegetation, and other appropriate measures. This paragraph would further prohibit the extraction of mineral materials from sources inside the HCNRA if the use would be outside the HCNRA and would not directly benefit the HCNRA.

Proposed paragraph (b)(1) would incorporate the standards and guidelines in paragraphs (a)(1) and (a)(2) for Other Lands and apply them to Wilderness Lands. This would ensure the consistency of Forest Service administration of mining activities within the HCNRA and further the protection and enhancement of the values which caused Congress to designate the HCNRA.

Paragraph (b)(2) would prohibit the extraction of mineral materials from the Wilderness Lands. This is a restatement of existing authority in 36 CFR 293.14(c).

The effect of the foregoing standards is to provide for the continued maintenance and development of facilities and transportation routes necessary for the administration and safe use and enjoyment of the HCNRA while at the same time minimizing the impacts of such activities on HCNRA lands and directing such activities to non-HCNRA lands wherever possible.

Section 292.48 Grazing Activities

Proposed § 292.48 would create four standards to guide Forest Service administration of grazing activities on National Forest System lands throughout the entire HCNRA. The agency felt that one set of standards and guidelines for the entire HCNRA would be simpler to administer and would adequately provide for the continuation of grazing and the protection and enhancement of the HCNRA resource values. Though not expressly referenced, the relevant provisions of the Granger-Thye Act, 16 U.S.C. 580 *et seq.*, the Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, the Public Rangelands Improvement Act, 43 U.S.C. 1901 *et seq.*, and regulations at 36 CFR part 222 would also apply.

Paragraph (a) would authorize the grazing of domestic livestock only on National Forest rangeland that has been found to be in satisfactory condition. In those situations where the land is suitable and in satisfactory conditions, livestock grazing could only take place in such numbers, seasons, and methods which will ensure that the satisfactory condition is maintained. This provision will ensure that domestic livestock grazing will not occur on rangelands that are currently in substandard condition nor will it occur in such a way as to degrade rangelands that are currently in satisfactory condition.

Proposed paragraph (b) requires the Forest Service to administer the grazing program to minimize or eliminate conflicts between domestic livestock and fish and wildlife, outdoor recreation, and the preservation and conservation of the other natural values for which the HCNRA was established by adjusting the level, type of livestock, or manner of grazing. This paragraph further requires that the domestic livestock grazing must cease in the event that the adjustment in the grazing activity has failed to eliminate the conflict. This ensures that grazing will not continue if it can not be conducted in a manner that is compatible with the purposes for which the HCNRA was established.

Paragraph (c) would require that range improvements constructed or implemented on National Forest System lands must be as unobtrusive as possible while still accomplishing the purposes for which the improvement was required. This could involve fences or water storage facilities being constructed in a visually inconspicuous fashion or the use of vegetative treatments in an environmentally sensitive manner.

Paragraph (d) would require that in administering the domestic livestock grazing program, measures must be instituted to protect and conserve riparian areas. This could take the form of restrictions on place, time, or manner of livestock grazing and would be in furtherance of protecting and enhancing fish and wildlife habitat which is one of the management objectives of the HCNRA.

Summary

The proposed rule establishes standards for National Forest System lands within the HCNRA to ensure that the activities which occur on the National Forest System lands within the HCNRA are compatible with the purposes for which the HCNRA was created. The proposed regulations have been carefully drafted to include only those management standards and guidelines which are nonduplicative.

Except in those instances in which there would be a direct and irreconcilable conflict, this proposed rule would not supplant the Forest Service's existing regulatory authority related to National Forest System lands. This regulatory authority covers a panoply of subjects including, but not limited to, range management (36 CFR part 222), timber (36 CFR part 223), minerals (36 CFR part 228), off-road vehicle use (36 CFR part 295), archeological resources (36 CFR part 296), and historic and cultural properties (36 CFR part 800).

Nor would this proposed rule simply restate the current regulatory authority of the Forest Service to administer the National Forest System lands. Instead, this proposed rule would augment existing regulatory authority to establish standards and guidelines that would address the subject matter areas identified in section 10 that were of particular concern to Congress when the HCNRA was established in 1975. Public comment is invited and will be considered in adoption of a final rule.

In summary, these standards and guidelines will protect and preserve historic, archeologic, and paleontologic resources; provide for the use of motorized and mechanical equipment; provide for the use of motorized and nonmotorized rivercraft; and establish the permissible scope and extent of timber harvesting, mining, and grazing on National Forest System lands in the HCNRA. In so doing, the Forest Service will be able to ensure that the natural beauty, historical, and archeological values of the HCNRA are preserved for this and future generations, and that the recreational and ecological values and public enjoyment of the area are thereby enhanced.

Regulatory Impact

This rule has been reviewed under Executive Order 12866 on "Regulatory Planning and Review." It has been determined that this is not a significant rule.

This rule also has been considered in light of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that act.

Environmental Impact

This proposed rule is promulgated in accordance with section 10 of the Act, 16 U.S.C. 460gg–7. The affected environment and consequences of implementing management alternatives for the HCNRA were analyzed and disclosed in the Environmental Impact Statement for the Comprehensive Management Plan that was implemented by the Chief of the Forest Service on May 23, 1981. The analysis completed for the Comprehensive Management Plan was revalidated in April 1990 with the signing of the Wallowa-Whitman National Forest Land

and Resource Management Plan Record of Decision (page 1). A review of this proposed rule indicates no potential for significant effect on the quality of the human environmental other than that previously disclosed in the Environmental Impact Statement. The environmental consequences of any future projects will be subject to site specific analysis pursuant to Forest Service National Environmental Policy Act procedures (Forest Service Manual Chapter 1950, Forest Service Handbook 1909.15). Therefore, no additional environmental documentation is deemed needed on this rule. Information pertaining to the environmental analysis may be obtained by writing or calling the persons or offices listed under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT.**

Takings Implication

In compliance with Executive Order 12630 and the Attorney General's Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings, the takings implications of this proposed rule have been reviewed and considered. It has been determined that there is no risk of a taking.

Executive Order 12778, Civil Justice Reform Act

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule were adopted, (1) all state and local laws and regulations that are in conflict with this proposed rule or which would impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed rule; and (3) it would not require administrative proceedings before parties could file suit in court challenging its provisions.

Paperwork Reduction

This rule will not result in additional paperwork not already approved for use. Therefore, the review provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in Part 292

National recreation areas.

Therefore, for the reasons set forth in the preamble, it is proposed to amend Part 292 of Chapter II of Title 36 of the Code of Federal Regulations by revising Subpart F to read as follows:

PART 292—NATIONAL RECREATION AREAS

Subpart F—Hells Canyon National Recreation Area—Federal Lands

Sec.

292.40 Purpose and scope.
292.41 Definitions.
292.42 Management standards and guidelines.
292.43 Protection and preservation of cultural and paleontological resources.
292.44 Use of motorized and mechanical equipment.
292.45 Use of motorized and non-motorized rivercraft.
292.46 Timber harvesting activities.
292.47 Mining activities.
292.48 Grazing activities.

Subpart F—Hells Canyon National Recreation Area—Federal Lands

Authority: Sec. 10, Public Law 94–199, 89 Stat. 1117 (16 U.S.C. 460gg–7).

§ 292.40 Purpose and scope.

(a) *Purpose.* The rules of this subpart establish standards and guidelines for the protection and preservation of historic, archaeological, and paleontological resources, the use of motorized and mechanical equipment, the use of motorized and nonmotorized rivercraft, and the management, utilization, and disposal of natural resources by timber harvesting, mining and grazing on National Forest System lands that comprise the Hells Canyon National Recreation Area located in the Wallowa-Whitman, Nez Perce, and Payette National Forests in the States of Idaho and Oregon as established by the Act of December 31, 1975, as amended (89 Stat. 1117, 16 U.S.C. 460gg *et seq.*).

(b) *Scope.* Management of National Forest System lands within the Hells Canyon National Recreation Area is subject to all laws, rules, and regulations applicable to the National Forest System, except as otherwise provided in this subpart. In the event of a conflict or inconsistency between rules of this subpart and other rules within this title, the rules of this subpart shall take precedence to the extent permitted by law.

§ 292.41 Definitions.

Special terms used in this subpart are defined as follows:

Act means the Act of December 31, 1975, as amended (Pub. L. 94–199, 89 Stat. 1117) which established the Hells Canyon National Recreation Area.

Comprehensive Management Plan is the document that establishes the array, levels, and manner of resource uses within the HCNRA. It is incorporated as part of the Wallowa-Whitman National Forest Land and Resource Management Plan.

Cultural Resources means historic and archaeological resources.

HCNRA is the abbreviation for the Hells Canyon National Recreation Area.

Intermediate Cutting means any removal of trees from a stand between the time of its formation and the harvest cutting. Examples of intermediate cutting include, but are not limited to, cleaning, thinning, liberation, improvement, hazard removal, salvage and sanitation cuttings.

Mining means any activity related to the discovery, extraction and exploitation of minerals or mineral materials including, but not limited to, actions taken pursuant to the Mining Act of 1872, 30 U.S.C. 22 *et seq.*, the Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, the Mineral Materials Act of 1947, 30 U.S.C. 601 *et seq.*, or any other activity using hydraulic equipment, pans, ground sluicing, sluice boxes, rockers, or suction dredges.

Motorized and Mechanical Equipment has the same meaning as "mechanical transport" and "motorized equipment" in 36 CFR 293.6(a) and (b), except that this term does not include either motorized or nonmotorized rivercraft or motorized wheelchairs or other devices used solely to assist persons with disabilities.

Motorized Rivercraft means any boat capable of being mechanically propelled by propeller(s) or jet pump(s) upstream through rapids.

Non-Motorized Rivercraft means any boat which is not a motorized rivercraft.

Other Lands means all nonwilderness National Forest Systems lands in the HCNRA.

Paleontological Resources means any remains, trace, or imprint of a plant or animal that has been preserved in the Earth's crust prior to the Holocene epoch.

Ranger is the HCNRA Area Ranger, Wallowa-Whitman National Forest, with offices located in Enterprise, Oregon, Riggins, Idaho, and Clarkston, Washington, except for the Rapid Wild and Scenic River where the term refers to the Salmon River District Ranger, Nez Perce National Forest, located in Whitebird, Idaho.

Selective Cutting means single tree or group selection cutting and is the periodic removal of trees individually or in small groups from an uneven aged forest in order to maintain diverse stands of irregular constitution and for which the management of the forest ecosystem is a primary consideration.

Suitable means it is appropriate to apply certain resource management practices to a particular area of land, as

determined by an ecological and environmental analysis of the land. A unit of land may be suitable for a variety of individual or combined management practices.

Wild and Scenic Rivers means the designated segments of the Snake, Rapid, Imnaha and any other river or segment thereof in the HCNRA hereafter designated as components of the National Wild and Scenic Rivers System.

Wilderness Lands means the Hells Canyon Wilderness, that portion of the Eagle Cap Wilderness in the HCNRA, and any other wilderness in the HCNRA hereafter designated as components of the National Wilderness Preservation System.

§ 292.42 Management standards and guidelines.

(a) In addition to existing statutory and regulatory authority governing administration of National Forest System lands and resources, the standards and guidelines in §§ 292.43 to 292.48 of this subpart prescribe the scope and extent of certain activities that may occur in the HCNRA. These standards and guidelines are consistent with the overall objective of administering the HCNRA to preserve its natural beauty, historical and archaeological values and enhance its recreational and ecological values and the public's enjoyment. The standards and guidelines may vary depending on whether the land where the proposed activity is contemplated is within the Wilderness Lands or the Other Lands.

(b) The standards and guidelines of this subpart govern the previous programmatic direction in the Comprehensive Management Plan that has been incorporated into the Wallowa-Whitman National Forest Land and Resource Management Plan. Site specific environmental analysis may be required even in those situations where a use or activity is permissible under the standards and guidelines set forth in this subpart.

§ 292.43 Protection and preservation of cultural and paleontological resources.

(a) *Other Lands.* The following standards and guidelines of this section apply to the protection and preservation of cultural and paleontological resources in the Other Lands category of the HCNRA:

(1) The primary objective of managing cultural resources is the protection of the resource from damage or destruction. To the extent consistent with protection, cultural resources may also be managed for public education and enjoyment.

(2) The Ranger shall establish priorities for management emphasis and protection of cultural resources based, in part, on whether the appropriate State Historic Preservation Office has concurred with the Forest Service's determination that a cultural resource is significant.

(3) Significant cultural resources are to be protected on-site, unless the Ranger determines that off-site protection is preferable because the resource is already adequately represented and protected on-site elsewhere, is within Wilderness Lands, or for other good cause shown. Information about significant cultural resources shall be documented.

(4) The primary objective of managing paleontological resources is for scientific study. Written authorization from the Ranger must be secured before paleontological resources can be disturbed or removed in conjunction with scientific study.

(b) *Wilderness Lands.* The following standards and guidelines apply to the protection and preservation of cultural and paleontological resources in the Wilderness Lands category of the HCNRA:

(1) The standards and guidelines for Other Lands in paragraph (a) of this section also apply to Wilderness Lands.

(2) Public education and information activities concerning cultural resources on Wilderness Lands may not be offered or established inside Wilderness Lands.

(3) New trails and relocations of existing trails may not be developed for the sole purpose of providing public access to cultural resource sites on Wilderness Lands.

§ 292.44 Use of motorized and mechanical equipment.

The standards and guidelines of this section apply to the use of motorized and mechanical equipment in the HCNRA. These standards and guidelines shall not be construed to impair or preclude the Forest Service's administration of the HCNRA; authorized scientific and other research activities within the HCNRA; timber harvesting, mining, or grazing activities as authorized in §§ 292.46–292.48 of this subpart; responses by the Forest Service or any other federal, state, or local agency to public health or safety emergencies; or access to private inholdings within the HCNRA.

(a) *Other Lands.* The following standards and guidelines apply to the use of motorized and mechanical equipment in the Other Lands category of the HCNRA:

(1) Motorized and mechanical equipment may be used on designated Forest Service access roads and existing airstrips subject to terms and conditions necessary for the safe use of such facilities.

(2) The use of motorized and mechanical equipment is permissible on designated National Forest trails subject to terms and conditions necessary for the safe use of such facilities and if such use is compatible with the management objectives set forth in Section 7 of the Act.

(3) Use of mechanical equipment off designated Forest Service access roads, National Forest trails, and existing airstrips is permissible subject to terms and conditions necessary for the safe use of such equipment and if such use is compatible with the management objectives set forth in Section 7 of the Act.

(4) Use of motorized equipment is prohibited off designated Forest Service access roads, National Forest trails, and existing airstrips unless it is reasonably necessary to attain one or more of the management objectives set forth in Section 7 of the Act.

(b) *Wilderness Lands.* Except as provided for in Sections 4 (c) and (d) of the Wilderness Act and regulations at 36 CFR parts 261 and 293, the use of motorized and mechanical equipment is prohibited on Wilderness Lands.

§ 292.45 Use of motorized and non-motorized rivercraft.

The standards and guidelines of this section apply to the use of motorized and non-motorized rivercraft on the Wild and Scenic Rivers within the HCNRA.

(a) The use of non-motorized rivercraft may be permitted subject to restrictions on numbers, duration, seasons, or other matters which may be deemed by the Ranger necessary to protect and enhance the values for which the rivers were designated wild and scenic or to ensure the safe use and enjoyment of the rivers.

(b) The use of motorized rivercraft is prohibited, except on the Snake River.

(c) The use of motorized and non-motorized rivercraft is subject to all Federal and State boating registration and safety laws.

(d) The use of motorized or non-motorized rivercraft on the Snake Wild and Scenic River requires prior written authorization from the Ranger and may be subject to limitations on numbers, duration, seasons, or noise limits, or other restrictions which may be deemed by the Ranger necessary to protect and enhance the values for which the Snake River was designated wild and scenic or to ensure the safe use and enjoyment of the river.

(e) In authorizing the use of motorized and non-motorized rivercraft on the Snake Wild and Scenic River, the Ranger must reasonably accommodate both private and commercial users of each type of rivercraft.

(f) In authorizing the use of motorized and non-motorized rivercraft on the Snake Wild and Scenic River, the Ranger must ensure that the user capacity of the river is not exceeded.

(g) In authorizing the use of motorized and non-motorized rivercraft on the Snake Wild and Scenic River, the Ranger shall seek to minimize, where practicable, conflicts between motorized and non-motorized rivercraft users and between both types of rivercraft users and all other users of the river.

§ 292.46 Timber harvesting activities.

(a) *Other Lands.* The standards and guidelines of this section apply to timber harvesting activities in the Other Lands category of the HCNRA.

(1) Timber may be harvested in order to protect and enhance ecosystem health, wildlife habitat, or recreational uses; to reduce the risk of harm posed by hazard trees; or to respond to natural events such as wildfire, flood, earthquake, volcanic eruption, high winds, and disease or pest infestation.

(2) Where authorized, trees may be removed by selective or intermediate cuttings. Openings created by the timber harvesting activity must be limited in size and number to the minimum necessary to accomplish the purpose of the harvest, and must blend with the natural landscape to the extent practicable.

(b) *Wilderness Lands.* Except as provided for in Sections 4 (c) and (d) of the Wilderness Act and regulations at 36 CFR part 293, timber harvesting is prohibited on Wilderness Lands.

§ 292.47 Mining activities.

(a) *Other Lands.* The standards and guidelines of this section apply to mining activities in the Other Lands category of the HCNRA.

(1) All mining activities are prohibited subject to valid existing rights.

(2) The impact of mining activities including, but not limited to, drilling and the development of ingress and egress routes, must be minimized and directed away from Wilderness Lands and Wild and Scenic Rivers to the extent practicable.

(3) Mineral materials including, but not limited to common varieties of gravel, sand, or stone may be used only within the HCNRA for the purpose of construction and maintenance of facilities including, but not limited to, roads, existing airfields, trails, and recreation developments.

(4) Sources of mineral materials should be located outside the HCNRA. Sources for mineral materials that may be used to benefit the HCNRA may be located inside the HCNRA if the cost of obtaining the materials outside the HCNRA adds significantly to the costs of the materials, or the transportation of mineral materials from outside the HCNRA present a safety hazard to the motoring public. When mineral materials are obtained from inside the HCNRA, environmental impact at the mineral source must be mitigated by contouring the land; re-establishing vegetation, and other appropriate measures. The HCNRA shall not be the source of mineral materials for use outside the HCNRA for projects that do not directly benefit the HCNRA.

(b) *Wilderness Lands.* The standards and guidelines of this section apply to mining activities in the Wilderness Lands category of the HCNRA.

(1) The standards and guidelines for Other Lands in paragraphs (a)(1) and (2) of this section also apply to Wilderness Lands.

(2) Extraction of mineral materials is prohibited on Wilderness Lands.

§ 292.48 Grazing activities.

The following standards and guidelines apply to domestic livestock grazing activities in the HCNRA:

(a) Grazing may occur only on rangeland determined to be suitable for grazing and to be in satisfactory condition.

(b) Where domestic livestock grazing is incompatible with the protection, restoration, and/or maintenance of fish and wildlife or their habitats; public outdoor recreation; conservation of scenic, wilderness, and scientific values; or rare combinations of outstanding ecosystems, the livestock use shall be modified as necessary to eliminate or avoid the incompatibility. In the event an incompatibility persists after the modification, or modification is not feasible, the livestock use shall be terminated.

(c) Range improvements must be designed and located to minimize their impact on scenic, cultural, fish and wildlife, and other resources in the HCNRA to the extent practicable.

(d) The authorization of grazing use, through a grazing permit, must provide for terms and conditions which protect and conserve riparian areas.

Dated: December 23, 1993.

William L. McLeese,

Acting Chief.

[FR Doc. 94–1035 Filed 1–18–94; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–24–1–6028; A–1-FRL–4821–3]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Amendment to Massachusetts' SIP (for Ozone and for Carbon Monoxide) for Transit Systems Improvements and High Occupancy Vehicle Facilities in the Metropolitan Boston Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision provides for the Commonwealth of Massachusetts' Executive Office of Transportation and Construction to construct and operate specified transit facilities and high occupancy vehicle (HOV) lanes established therein. Implementation of the defined transportation projects will help reduce the use of automobiles, provide for additional transit facilities in the Metropolitan Boston Region, and improve traffic operations on the region's roadways, resulting in improved air quality. This action should have a beneficial effect on air quality because it is intended to reduce vehicle miles traveled (VMT) in the Boston Metropolitan Area. The emissions to be reduced include hydrocarbons (ground-level ozone precursors) and carbon monoxide (CO).

This action is being taken under section 110(a) and (l) of the Clean Air Act.

DATES: Comments must be received on or before February 18, 1994.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environ- mental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the Commonwealth's submittal and EPA's technical support document are available for public inspection during normal business hours by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 7th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Donald O. Cooke, (617) 565–3227.

SUPPLEMENTARY INFORMATION: On December 9, 1991, the Massachusetts Department of Environmental Protection (MA DEP) submitted a revision to its SIP for Transit Systems Improvements and HOV Facilities in the Metropolitan Boston Air Pollution Control District. This new regulation commits the Massachusetts Executive Office of Transportation and Construction (MA EOTC) to pursue implementation, monitoring, and enforcement of transit system improvements and HOV facilities that were identified as transportation and air quality mitigation measures in a 1990 Final Supplemental Environmental Impact Statement for the CA/THT project. EPA determined five of the proposed TCMs were necessary to help achieve an air quality benefit from the CA/THT. This SIP amendment amends 310 CMR 7.00 by adding two new sections; 310 CMR 7.36–"Transit System Improvements," and 310 CMR 7.37–"High Occupancy Vehicle Lanes."

Background

The intent of the proposed regulation is to reduce concentrations of ground-level ozone by codifying commitments from the MA EOTC to implement HOV and transit system improvements. These commitments were originally included as part of a Metropolitan Planning Organization-approved Memorandum of Understanding (MOU): Traffic and Air Quality Mitigation For the Central Artery/Third Harbor Tunnel Project (CA/T) and were incorporated into Massachusetts Air Pollution Control Regulations 310 CMR 7.00 through adding Section 7.36: Transit System Improvements; and Section 7.37: High Occupancy Vehicle Lanes. The regulations are designed to help reduce the use of automobiles, to provide for additional transit facilities in the Metropolitan Boston region, and to improve traffic operations on the region's roadways, resulting in improved air quality.Reducing VMT eases traffic congestion and can lead to improved air quality. To the extent that reductions in regional VMT improve traffic flow, a subsequent reduction in the sources of CO and volatile organic compounds (VOC) may be achieved.

Reducing VMT will also contribute to a direct and indirect reduction in air toxics. Emissions from gasoline-driven engines contain air toxics, such as benzene, a known carcinogen. Many products of incomplete combustion, including polycyclic aromatic hydrocarbons such as benzo-a-pyrene, are emitted by gasoline and diesel engines and are associated with chronic and acute health effects. Gasoline vapors released during transfer or pumping of fuel also contain benzene and other air toxics. The health effects of air toxics are wide-ranging and can vary from long-term carcinogenic effects, to short-term adverse health effects.

The Massachusetts regulations are designed to support the Commonwealth's transportation control strategies and future attempts to control VMT and ease traffic congestion in the metropolitan Boston Area. For example, the facilities provided for in these regulations could support the development of employee trip-reduction programs by creating alternatives to single-occupant vehicles.

Summary of Proposed Transit System Improvements

The Transit System Improvements regulation consists of seven subsections summarized as follows:

(1) Applicability: The transit system improvements regulation applies to MA EOTC.

(2) Transit System Improvement Projects: The following transit projects must be completed and available for public use by these dates:

- By December 31, 1992–Lynn Central Square Station and Parking Garage, North Station high platforms and high tracks, Lynn Transit Station Bus Terminal.
- By December 31, 1994–South Station Bus Terminal, South Station Track Number 12, Ipswich Commuter Rail Line extension to Newburyport.
- By December 31, 1996–Old Colony Commuter Rail Line Extension, Framingham Commuter Rail Line Extension to Worcester, 10,000 Park and Ride and Commuter Rail parking spaces outside of the Boston core.
- By December 31, 1997–Green Line Arborway Restoration.
- By December 31, 1998–Blue Line platform lengthening and modernization.
- By December 31, 1999–10,000 Park and Ride and Commuter Rail Station Parking spaces outside of the Boston core in addition to those completed by December 31, 1996.
- By December 31, 2001–South Boston Piers Electric Bus Service.
- By December 31, 2011–Green Line extension to Ball Square/Tufts University, Blue Line Connection from Bowdoin Station to the Red Line at Charles Station.

(3) Project Delays, Project Deadline Extensions; and

(4) Substitute Transit System Improvement Projects: As described above, section 7.36(2) of the regulation identifies specific transit projects which must be completed by specific dates. In section 7.36(3) of the regulation, however, it appears MA EOTC is authorized to send MA DEP a notice delaying the completion date for any project. If the date is delayed for more than three years, the rule requires MA EOTC to propose a substitute transit improvement project under the process contained in section 7.36(4). EPA is taking comments on the way the transit project regulation addresses project delays and substitute projects.

Under 7.36(4), MA EOTC may at any time, and pursuant to 7.36(3) must in the event of a delay of over 3 years, propose a substitute transit project to MA DEP. MA EOTC may substitute a project if EOTC demonstrates to MA DEP that the project:

> * * * achieves equal or greater emission reductions of nonmethane hydocarbons [sic] (NMHC), carbon monoxide (C0) and nitrogen oxides (NOx) and would provide a greater improvement in air quality for CO and NOx in the area where the required project was to have been implemented, in both the short and long term.

310 CMR 7.36(4)(a)(1). MA DEP must supply EPA with a copy of MA EOTC's petition for the substitute, any demonstration, and MA DEP's action on the petition. However, EPA has no role in approving the project or reviewing it prior to MA DEP's acceptance of the substitute. In addition, there is also no public notice provided for any decision to substitute a project.

EPA has two concerns with these provisions. First, EPA and the public cannot rely on the completion dates listed in 7.36(2) as the final enforceable compliance dates for the transit projects. The rule allows MA EOTC and MA DEP to extend those dates by at least 3 years.

Second, and more importantly, at the end of any 3 year delay or any time before that, MA DEP is authorized, without any EPA concurrence or public comment, to substitute another transit project for those listed in the rule. MA DEP has imposed on itself and MA EOTC a standard for reviewing substitute projects, quoted above, that essentially requires the new project to provide air quality benefits equivalent to or better than the original project specified in the regulation. But other than to limit substitute projects to "transit improvement projects," the type of substitute project is otherwise unconstrained by the regulation.

There are many types of transportation control measures that might reasonably be treated as substitute transit projects under this rule, ranging from concrete capital investments such as different rail lines or special bus

lanes to market-based incentives such as mass transit fare subsidies or highway tolls.[1] It is impossible for EPA to know what sort of substitute projects MA DEP might be evaluating in the future. Consequently, it is also impossible for EPA to judge objectively the equivalency of any new project, since the MA DEP has not committed to using EPA-approved methodology for determining air quality benefits. The regulation does not provide for any specific quantification methodology that might allow EPA to assess the replicability of any air quality benefits analysis MA DEP will conduct in evaluating a substitute project. Therefore, EPA cannot now calculate with acceptable reliability the emissions reductions MA DEP, EPA, and the public will be able to enforce under this rule.

On the other hand, EPA believes that the kind of transit measures identified in this rule are directionally sound and that any substitute project meeting the standard contained in the rule should contribute to achieving the air quality standards for ozone and CO. Since under the current ozone and CO SIPs for this area, there are no specific measures to promote transit projects, section 7.36 must necessarily contribute more emissions reductions toward attainment than the existing SIP. So although EPA has concerns about the quantification of air quality benefits these rules will achieve, EPA is prepared to approve them into the SIP.[2]

To address EPA's concerns, however, the Agency proposes not to grant Massachusetts any credit for emissions reductions from these measures in any reasonable further progress (RFP), attainment, or maintenance demonstration, unless DEP submits a SIP revision making the requirement for the transit measure, or any substitute for that measure, federally enforceable. Upon approval of the SIP revision including the transit measure, Massachusetts could take credit for the measure, and the requirement to implement that measure would become an enforceable part of the SIP. EPA is proposing this approach because without a SIP revision, DEP could substitute the specific transit enhancements in these rules for another at any time. Given the inherent uncertainty in quantifying the emission impacts of potential substitution measures, as described above, EPA and the public may be left without an adequate remedy under the DEP rule to assure that the substitute project is in fact yielding equivalent emissions reductions. The SIP revision process gives EPA and the public an opportunity to examine Massachusetts' proposed emissions reduction credits. If DEP asks for credit for the measures specified in this proposed rule, approving an enforceable commitment of the Commonwealth into the SIP should be a relatively simple matter. Where the SIP revision proposes a substitute project, EPA and the public may need to examine whether the substitute in fact achieves equivalent reductions.[3]

(5) Project Review and Consultation: MA EOTC must consult with the MA Highway (formerly MA Department of Public Works), the Massachusetts Bay Transportation Authority (MBTA), the Metropolitan Area Planning Council (MAPC), EPA, and MA DEP on a quarterly basis when planning, directing, constructing, or making transit system improvements.

(6) Transit System Improvement Studies: By December 31, 1991, MA EOTC must draft and issue for comment an initial study of transit improvement strategies (in addition to those listed above), which will ultimately be incorporated into a Program for Mass Transit (PMT). By December 31, 1991, MA EOTC must draft and issue for comment the following transit system improvement studies: a toll pricing feasibility study to regulate single occupant vehicle trips to Logan Airport; a study of the feasibility of relocating some of the existing Sumner Tunnel Toll booths to Route 1A; a water shuttle service (for service between Boston and the North Shore) feasibility study; a study of transit system improvements which could be made in addition to those specific improvements listed above also in 310 CMR 7.36(2); a study of the feasibility of constructing a rail connection between South Station and Logan Airport; a study to expand the size and number of suburban locations of Logan airport express service parking and transit facilities; a study to expand the HOV lanes and services within the boundaries of Logan Airport. By December 31, 1994, MA EOTC must draft and issue for comment a study of transit system improvements including: connecting circumferential transit facilities and radial transit services; improving travel times and upgrading rail service to New York City NY, Worcester MA, Springfield MA, Hartford CT and Portland ME; and indexing transit fares to maximize the use of transit. Each study identified above would include a technical feasibility analysis, estimates of time and costs associated with implementing the measures, and the air quality impacts of the measure. Final reports for studies in this subsection, containing recommendations and schedule for further action, must be released by March 30 of the year following the deadline of the study.

(7) Record Keeping and Reporting: By March 1st of each year, MA EOTC must submit a progress report to the MA DEP on the status of each transit project/study in the regulation. The report must contain expected impacts on transit ridership system-wide. The report will be distributed to members of the Metropolitan Planning Organization (MPO) and other interested parties. EPA wishes to identify itself as an interested party at this time and requests that copies of the reports be forwarded to the EPA Regional Office.

Summary of Proposed High Occupancy Vehicle Facilities

The High Occupancy Vehicle Lanes regulation consists of eleven subsections summarized as follows:

(1) Applicability: The regulation applies to MA EOTC and the Massachusetts Turnpike Authority (MTA).

(2) HOV Lanes: By December 31, 1991, MA EOTC shall extend the I–93 Southbound HOV lane (north of the southern bank of the Charles River) toward Route 128 to the northernmost point appropriate. Additionally, the

[1] For example, the regulation elsewhere requires EOTC to study the feasibility of implementing toll pricing, operating water shuttle services, improving rail service among major cities in the region, and indexing transit fares to encourage use of transit facilities. 310 CMR 7.36(6). (See also the types of TCM's enumerated in section 108(f) of the Act.)

[2] Although the transit system improvement regulations and, as discussed below, the HOV regulations are not strictly speaking economic incentive program (EIP) rules under either sections 182 or 187 of the Act, the analogy to so-called "directionally sound" EIPs is useful. In its recent proposal to guide implementation of EIPs, EPA defines directionally sound strategies as "strategies for which adequate procedures to quantify emission reductions . . . are not defined as part of the EIP." 58 FR 11126, § 51.491 (Feb. 23, 1993). The proposal provides that directionally sound strategies that "do not yield quantifiable emissions reductions creditable towards RFP or attainment demonstrations . . . may be included in an area's attainment plan, without credit . . . if the strategy contributes to the area coming into . . . attainment." 58 FR 11113. Similarly, the transit project and HOV regulations do not provide for adequate procedures to quantify emission reductions from substitute projects, but should generally contribute toward attainment.

[3] EPA invites comment on which projects are sufficiently complete to be credited upon approval of this rule, and invites any documentation DEP can provide that any projects should receive credit upon approval of this rule. Additionally, EPA invites comment on how to determine whether a transit project that does not require any construction is "substantially complete." Market-based programs such as congestion tolls may require no construction. EPA proposes to credit such projects when they are ready to implement.

final design of the Charles River crossing on the southbound side of I–93 extending down to the exit ramp to Nashua Street shall include an HOV lane on the southbound side of I–93. Furthermore, by May 31, 1993, MA EOTC shall construct and make available HOV lanes northbound and southbound on I–93 beginning at the intersection of I–93 with I–90 and extending to a point immediately north of the intersection of I–93 and Route 3 if the threshold standards described below are violated for three consecutive months.

(3) Establishment of Roadway Threshold Standards: By October 1, 1991, MA EOTC shall develop roadway threshold standards that represent a significant increase in traffic volume above baseline roadway conditions and that can trigger construction of an HOV lane. Roadway threshold standards shall be calculated to represent an average weekday peak-hour trip time increase of 35 percent from baseline roadway conditions. By December 31, 1991, MA EOTC must document, maintain, and submit such conditions to the MA DEP for I–93 north- and south-bound between I–90 and Rte. 3 in Braintree; and I–93 north-bound between the Charles River crossing and I–95 (Route 128). By December 31, 1991, MTA must establish roadway threshold standards for I–90 east- and west-bound between I–93 and I–95 (Route 128). By December 31, 1993, MA EOTC and the MTA shall each collect such information as is necessary to identify and document baseline roadway conditions for all these roadway segments.

(4) Feasibility Studies: Before December 31, 1992, MA EOTC shall study the feasibility of HOV lanes for the road segments for which threshold standards are set under subsection (3) above. The study shall assess the impact of HOV lanes on emissions, general purpose traffic, and engineering issues.

(5) Additional HOV Facilities: Roadway Threshold Standards: Beginning on January 1, 1992, MA EOTC and the MTA must monitor roadway segments listed in (3) above on a monthly basis to ensure that average trip times do not exceed roadway threshold standards. If the roadway threshold standards are exceeded for any three-month consecutive period, MA EOTC is required to notify MA DEP and to implement certain HOV measures.

MA EOTC's notice to MA DEP will include a schedule for implementing an HOV lane on the road segment violating the roadway threshold standards.[4] There is no requirement limiting the time by which an HOV lane must be implemented. However, the addition of HOV lanes on I–93 in either direction between I–90 and Route 3 and on I–90 in either direction between I–93 and I–95 must be found to be feasible in the study to be conducted under subsection 4, above. As discussed below, if an HOV lane is determined to be infeasible on a roadway where threshold standards are exceeded, MA EOTC can propose a substitute project.

(6) HOV Performance Standards: Performance standards are defined as the range of roadway performance between Level of Service B and a condition of under-utilization. Within 30 days of implementation of an HOV facility, MA EOTC and MTA must submit performance standards for each HOV facility or HOV lane under their respective jurisdiction.

(7) Continuous Attainment of Performance Standards: Beginning on January 1, 1991, MA EOTC and MTA must monitor HOV performance-measuring trip times quarterly. Measurements must be taken on 5–7 weekdays over two consecutive weeks within each quarter. A minimum of three time runs must be made in each direction for each HOV roadway segment on each sample day. MA EOTC and MTA must take all appropriate measures to maintain compliance with the performance standards, including increasing the number of occupants required to be eligible for the HOV lane. If the performance standards are exceeded for each time run, MA EOTC must report the exceedance to the MA DEP within 10 days of the end of the month in which the exceedance took place, including measures necessary to return the roadway or facility to compliance.

(8) Substitute High Occupancy Vehicle Projects: If the feasibility studies provided for in subsection (4) demonstrate that an HOV lane is infeasible, MA EOTC can substitute an alternative project by petitioning MA DEP. The petition must:

* * * include a demonstration that the alternative project achieves equal or greater emission reductions of NMHC, CO, and NOx and would provide a greater improvement in air quality for CO and Nox [sic] in the areas where the required high occupancy vehicle lane was targeted, both short- and long-term.

310 CMR 7.37(8)(a)(1). The MA DEP is then authorized to substitute an alternative project. Similar to the substitution process for transit projects outlined above, EPA must receive a copy of MA EOTC's petition and demonstrations, and MA DEP's petition, determination, and supporting documentation; but EPA has no role in reviewing or approving the substitute before approval by MA DEP.

For the same reasons described above, EPA is prepared to approve 310 CMR 7.37 into the SIP as a directionally sound measure, but not to grant any credit in RFP, attainment, or maintenance demonstrations until the Commonwealth irrevocably commits to specific HOV facilities or substitute measures in a SIP revision. It appears that the first HOV segment, on I–93 southbound, is largely completed. Beyond that segment, however, the rule allows MA DEP to substitute alternative projects for future HOV lanes without any EPA or public scrutiny of the substitute project.

(9) HOV Studies and Further Actions: MA EOTC must take steps to enhance and expand Massachusetts Turnpike Authority HOV facilities including the following: a study to improve air quality and HOV flow between Rte. 128 and Boston and to examine full-scale HOV lanes and mechanisms; and a program of HOV toll booths with demarcated lanes, privileges, and provisions of electronic ID systems to facilitate HOV flow through toll booths.

By December 31, 1992 MA EOTC shall in consultation with MA Highway and MTA submit a study to the MA DEP that defines the feasibility of establishing HOV lanes and HOV incentives for these highways: I–93 northbound and southbound between I–90 and Route 3 in Braintree; I–93 northbound between the Charles River Crossing and I–95; and I–90 eastbound and westbound between I–93 and I–95.

(10) HOV Promotion and Enforcement: By December 31, 1991, MA EOTC and MTA must submit an enforcement program and plan to the MA DEP. By April 1, 1992 MA EOTC and MTA shall submit a program to promote HOV use.

(11) HOV Expansion to the Local Roadway Network: MA EOTC shall encourage the City of Boston to incorporate HOV facilities into the construction and reconstruction of city streets, and shall work with the Massachusetts Port Authority to study HOV needs at Logan Airport.

[4] The requirement for submitting a notice of violation of the roadway threshold standards in section 7.37(5)(b) only refers to EOTC and not the Massachusetts Turnpike Authority as well, whereas several surrounding provisions refer to both (see sections 7.37(5)(a) and (d)). EPA notes that section 7.37(c)(2) creates an obligation to add an HOV lane to the Massachusetts Turnpike if threshold standards are violated. EPA assumes EOTC is fully authorized to submit a notice of violation triggering such an obligation on the Turnpike and the Turnpike Authority.

Air Quality Impacts

As discussed above, EPA believes that the mass transit and HOV facilities promoted by these regulations support air quality goals and assist in the maintenance of projected air quality emissions. EPA's review of this material indicates that the implementation and operation of the mass transit and HOV facilities will result in improved air quality, by reducing vehicle trips, providing increased public transit services, and reducing the number of single occupant motor vehicles. Reducing VMT will also ease traffic congestion. EPA is therefore proposing to approve the Massachusetts SIP revision for Ozone and for Carbon Monoxide, for Transit Systems Improvements and High Occupancy Vehicle Facilities in the Metropolitan Boston Air Pollution Control District, which was submitted on December 10, 1991.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA regional office listed in the **Addresses** section of this document.

Proposed Action

EPA is proposing to approve the SIP amendment for Ozone and for Carbon Monoxide, for Transit Systems Improvements and High Occupancy Vehicle Facilities in the Metropolitan Boston Air Pollution Control District.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.) SIP approvals (or redesignations) do not create any new requirements but simply approve requirements that are already State law. SIP approvals (or redesignations), therefore, do not add any additional requirements for small entities. Moreover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of a flexibility analysis for a SIP approval would constitute Federal inquiry into the economic reasonableness of the state actions. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the this waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP will be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements ofsections 110(a)(2)(A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 20, 1993.

Paul G. Keough,

Acting Regional Administrator, Region I.

[FR Doc. 94–1247 Filed 1–18–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 180

[OPP–300315; FRL–4748–4]

RIN No. 2070–AC18

Alachlor; Proposed Revocation of Certain Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke certain tolerances for residues of the herbicide alachlor and its metabolites in or on various raw agricultural commodities. EPA is initiating this action because registered uses of alachlor on certain food commodities have been canceled.

DATES: Written comments, identified by the document control number [OPP-300315], must be received on or before March 21, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail, Melissa L. Chun, Registration Support Branch (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Westfield Building, 2800 Crystal Drive, Arlington, VA, (703)-308-8318.

SUPPLEMENTARY INFORMATION: This document proposes the revocation of tolerances established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for residues of the herbicide alachlor (2-chloro-2',6'-diethyl-*N*-(methoxymethyl)acetanilide) and its metabolites in or on the following raw agricultural commodities listed in 40 CFR 180.249: Cotton forage, cottonseed, sunflower seed, pea forage, pea hay, peas with the pods removed, and potatoes.

By March 1988, the product registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, for the pesticide products containing the herbicide alachlor were canceled for the above-mentioned raw agricultural commodities. Based on the fact that alachlor is no longer domestically registered for use on these food crops and a tolerance is generally not necessary for a pesticide chemical which is not registered for the particular food use, EPA now proposes to revoke the tolerances listed in 40 CFR 180.249

for residues of alachlor in or on these commodities. Since the product registrations were canceled more than 5 years ago, residues should not appear in any legally treated, domestically produced commodities. These tolerances were obtained in conjunction with the FIFRA registrations.

The Agency is not recommending the establishment of action levels in place of these tolerances because sufficient time has elapsed in order for the residues to dissipate, and EPA does not expect a residue problem due to environmental contamination.

EPA requests that interested persons submit information pertaining to whether these products are used in foreign countries and may be present in commodities grown in those countries and imported to the U.S.

Within 30 days after publication of this document in the **Federal Register**, any person who has registered or submitted an application for registration of a pesticide under FIFRA which contains alachlor may request that this rulemaking proposal to revoke the tolerances be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300315]. All written comments filed in response to this document will be available for public inspection in Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Regulatory Flexibility Act

The proposed regulatory action has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164; 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

This regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide has been used in an unregistered or illegal manner.

Since all registrations for use of alachlor on these food crops were canceled more than 5 years ago, it is anticipated that no economic impact would occur at any level of business enterprises if these tolerances were revoked.

Accordingly, I certify that this proposed regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

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

Dated: January 7, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

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

§ 180.249 [Amended]

2. By amending § 180.249 *Alachlor; tolerances for residues* in the table therein by removing the entries for cotton, forage; cottonseed; peas, forage; peas, hay; peas, pods removed; potatoes; and sunflower seed.

[FR Doc. 94–1242 Filed 1–18–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Parts 180 and 186

[OPP–300316; FRL–4748–5]

RIN No. 2070–AC18

Demeton; Proposed Revocation of Tolerances and Feed Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of tolerances and feed additive regulations listed in 40 CFR 180.105 and 40 CFR 186.1600 for residues of the insecticide demeton in or on various raw agricultural commodities and in animal feeds. EPA is initiating this action because all registered uses of demeton have been canceled.

DATES: Written comments, identified by the document control number [OPP-300316], must be received on or before March 21, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail; Melissa L. Chun, Registration Support Branch (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Westfield Building, 2800 Crystal Drive, Arlington, VA, 703-308-8318.

SUPPLEMENTARY INFORMATION: This document proposes the revocation of tolerances and feed additive regulations established under sections 408 and 409

of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and 348, respectively, for residues of the insecticide demeton (a mixture of *O,O*-diethyl *O* (and *S*)-2-(ethylthio)ethylphosphorothioates) in or on raw agricultural commodities and animal feeds. EPA is initiating this action because all registered uses of this chemical on raw agricultural commodities have been canceled.

By mid-October 1989, all product registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for pesticide products containing the insecticide demeton were canceled. Based on the fact that demeton is no longer domestically registered for use on any food crops, and a tolerance is generally not necessary for a pesticide chemical which is not registered for the particular food use, EPA now proposes to revoke the tolerances and feed additive regulations for residues of demeton as listed 40 CFR 180.105 and 40 CFR 186.1600. Since the product registrations were canceled more than 3 years ago, residues should not appear in any legally treated, domestically produced commodities. These tolerances were obtained in conjunction with the FIFRA registrations.

1. *Section 180.105.* EPA is proposing to revoke the following tolerances for residues of the insecticide demeton in or on the following commodities: 12 parts per million in or on alfalfa hay, clover hay; 5 parts per million in or on almond hulls, barley (green fodder and straw), fresh alfalfa, fresh clover, oats (green fodder and straw), sugar beet tops, and wheat (green fodder and straw); 1.25 parts per million in or on grapes, hops; 0.75 part per million in or on almonds, apples, apricots, barley grain, broccoli, brussels sprouts, cabbage, cauliflower, celery, cottonseed, filberts, grapefruit, lemons, lettuce, muskmelons, nectarines, oat grain, oranges, peaches, pears, peas, pecans, peppers, plums (fresh prunes), potatoes, strawberries, tomatoes, walnuts, wheat grain; 0.5 part per million in or on sugar beets; 0.3 part per million in or on beans, eggplants; 0.2 part per million in or on sorghum grain, sorghum forage.

2. *Section 186.1600.* EPA is proposing to revoke a tolerance of 5 parts per million for residues of demeton in dehydrated sugar beet pulp for livestock feed.

The Agency is not recommending the establishment of action levels in place of these tolerances and feed additive regulations because sufficient time has elapsed in order for the residues to dissipate and does not anticipate a residue problem due to environmental contamination.

EPA has no information at this time to suggest that demeton is used on food commodities exported to the U.S. Therefore, EPA is requesting that interested persons submit information pertaining to whether these products are used in foreign countries and may be present in commodities grown in those countries and imported to the U.S.

Within 30 days after publication of this document in the **Federal Register**, any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains demeton may request that this rulemaking proposal as it pertains to section 408 tolerances be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300316]. All written comments filed in response to this document will be available in the Public Information Branch, at the address given above from 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Regulatory Flexibility Act

The proposed regulatory action has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164; 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

This regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide has been used in an unregistered or illegal manner.

Since all registrations for use of demeton on food crops were canceled more than 3 years ago, it is anticipated that no economic impact would occur at any level of business enterprises if these tolerances were revoked.

Accordingly, I certify that this proposed regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Parts 180 and 186

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

Dated: January 7, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances

Therefore, it is proposed that 40 CFR parts 180 and 186 be amended as follows:

PART 180—[AMENDED]

1. In part 180:

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

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

§ 180.105 [Removed]

b. By removing § 180.105 *Demeton; tolerances for residues.*

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C 348.

§ 186.1600 [Removed]

b. By removing § 186.1600 *Demeton.*

[FR Doc. 94–1243 Filed 2–18–94; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS–133; Notice 1]

RIN 2137—AC 39

Emergency Flow Restricting Devices/ Leak Detection Systems

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: In 1991, the Department issued a report on emergency flow restricting devices (EFRDs) that proposed seeking public input on the placement of EFRDs at certain locations on hazardous liquid pipelines. The Pipeline Safety Act of 1992 mandated that the Department issue regulations prescribing the circumstances under which operators must use EFRDs and other equipment used to detect and locate pipeline ruptures on hazardous liquid pipelines. The regulations are to be issued following a survey and assessment of the effectiveness of such equipment. This advance notice of proposed rulemaking (ANPRM) poses a series of questions in order to solicit public input for the survey process.

DATES: Interested persons are invited to submit written comments in duplicate by April 19, 1994. Late-filed comments will be considered to the extent practicable. Interested persons should submit as part of their written comments all the material that is considered relevant to any statement of fact or argument made.

ADDRESSES: Send comments in duplicate to the Dockets Unit, Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this advance notice. All comments and materials cited in this document will be available in the docket for inspection and copying in room 8421 between 8 a.m. and 4 p.m. each working day. Visitors are admitted to DOT headquarters building through the southwest quadrant at Seventh and E Streets. Commenters may request copies of the questions in a format which can be filled out and returned to the RSPA. Requests should be made to Lloyd W. Ulrich, Office of Pipeline Safety, room 2335, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366–4556 or FAX (202) 366–4566.

FOR FURTHER INFORMATION CONTACT: Lloyd W. Ulrich, (202) 366–4556, regarding the subject matter of this advance notice, or Dockets Unit, (202) 366–5046, for copies of this advance notice or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

The RSPA has been concerned for some time with the issue of more rapid leak detection on hazardous liquid pipelines, and the optimum placement of EFRDs to limit commodity release after the location of the release in the hazardous liquid pipeline has been identified.

Section 203 of the Hazardous Liquid Pipeline Safety Act (codified at 49 U.S.C. app. § 2002(n)) as amended by the Pipeline Safety Act of 1992 (the 1992 Act) (Pub. L. 102–508) mandated the Secretary, within two years of enactment, to conduct a survey and assess the effectiveness of emergency flow restricting devices (EFRDs) and other procedures, systems, and equipment used to detect and locate hazardous liquid pipeline ruptures and minimize product releases from hazardous liquid pipeline facilities. The 1992 amendments further mandated that the Secretary issue regulations within two years of completion of the survey and assessment. These regulations would prescribe the circumstances under which operators of hazardous liquid pipelines would use EFRDs and other procedures, systems, and equipment to detect and locate pipeline ruptures and minimize product release from pipeline facilities. The Secretary has delegated this authority to the Research and Special Programs Administration (RSPA) (See 49 CFR 1.53).

Also, the Department's March 1991 report titled "Emergency Flow Restricting Devices Study" contained proposals that we seek public input on the placement of EFRDs in urban areas, at water crossings, at other critical areas affected by commodity release, and areas in close proximity to the public outside of urban areas.

This ANPRM solicits public input for the survey process mandated by the 1992 Act as well as the proposals from the Department's 1991 EFRD study. The ANPRM requests information and data by posing a series of questions. This approach is utilized rather than conducting a traditional research survey of a selected number of respondents in order to obtain a broader base of data and to accelerate the regulatory process.

Notice on Highly Volatile Liquids—1978

In 1978, the RSPA issued an NPRM (43 FR 39402; September 5, 1978) proposing requirements intended to limit spillage from hazardous liquid pipelines carrying highly volatile liquids (HVL)[1] in inhabited areas by requiring installation of remotely controlled valves (RCVs)[2] or automatically controlled valves (ACVs).[3] This proposal was later withdrawn (46 FR 2130; January 8, 1981) because hazardous liquid pipeline industry studies demonstrated that placement of closely spaced valves over the full length of an HVL pipeline was not a reasonable method of reducing the effects of an accident.

Mounds View Accident

A July 8, 1986, accident on a gasoline pipeline focused interest on EFRDs. The accident, caused by a ruptured pipe seam on a gasoline pipeline in Mounds View, Minnesota, resulted in two deaths, one injury, and property damage well in excess of $1,000,000. The accident was exacerbated by backflow or draining from the pipeline after the manually operated valves on either side of the ruptured section were closed. The spill ignited approximately 20 minutes after the rupture. It took the pipeline operator over 1 hour and 40 minutes from the time of the rupture to isolate the ruptured section. Since this accident, the pipeline company installed a computerized leak-detection system and RCVs on either side of Mounds View (a distance of about 5.7 miles).

Advance Notice on Certain Safety Proposals—1987

In 1987, as a result of the same accident, the RSPA again addressed RCVs and ACVs in an ANPRM (52 FR 4361; February 11, 1987). This ANPRM invited public comment on the merit of certain safety proposals advanced by Congress, the Minnesota Commission on Pipeline Safety, and the National Transportation Safety Board. One safety

[1] The term "HVL" is defined in 49 CFR 195.2 as a hazardous liquid which will form a vapor cloud when released to the atmosphere and which has a vapor pressure exceeding 276 kPa (40 psia) at 37.8°C (100°F). The commodities included in the term "HVL" are LPG, anhydrous ammonia, and certain natural gas liquids.

[2] An RCV is any valve which is operated from a location remote from where the valve is installed. The location is usually at the pipeline control or dispatching center. The linkage between the pipeline control center and the RCV may be by fiber optics, microwave, telephone lines, or satellite.

[3] An ACV is any valve which automatically closes in response to a rate of pressure drop or flow rate in the pipeline which exceeds a preset level.

proposal was to convert shutoff valves required by the pipeline safety regulations on existing pipelines to RCVs or ACVs, and require similar valves on new pipeline construction.

Both gas and hazardous liquid pipeline operators indicated that neither RCVs nor ACVs were installed as shutoff valves as standard practice. They indicated that RCVs and ACVs had little effect to mitigate the extent of the spill because often, especially in populated areas on gas pipelines, ignition occurred before either type of valve could shut down a pipeline.

The specific concern of false closure of ACVs was identified in these comments. There was substantial agreement by both gas and hazardous liquid pipeline operators that ACVs should not be used as EFRDs because of their unreliability. This unreliability was due to the inability of ACV sensors to distinguish between a leak and normal operating fluctuations. Pipeline operators indicated numerous documented cases of unintended closures of ACVs. A false closure of an ACV on a hazardous liquid pipeline can cause an immediate pressure buildup or surge which may result in a pipeline rupture.

On September 23, 1987, the ANPRM was discussed at the joint meeting of the RSPA's Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee. (Both technical committees were established by the Secretary of Transportation to advise the Department on the technical feasibility, reasonableness, and practicability of all proposed gas and hazardous liquid pipeline safety standards and all amendments to existing standards.) The committees recommended that the Department study the selective use of RCVs and ACVs.

Emergency Flow Restricting Devices Study—1991

Section 305 of the Pipeline Safety Reauthorization Act of 1988 (Public Law 100–561), enacted on October 31, 1988, directed a study of the safety, cost, feasibility, and effectiveness of requiring gas and hazardous liquid pipeline operators to install EFRDs in existing and future pipeline systems in varying circumstances and locations.

In March 1991, in response to this Congressional mandate, the Department issued the study titled "Emergency Flow Restricting Devices Study." One of the conclusions in the study was that RCVs and check valves [4] are the only feasible EFRDs. Another conclusion was that requiring the retrofitting of all existing manually operated valves to RCVs on hazardous liquid pipelines in urban locations, as well as new valves in urban areas appeared to be cost effective. Still another conclusion in the study was that for an RCV to be effective, a modern supervisory control and data acquisition (SCADA) system with a well-designed leak detection subsystem was necessary to reduce spills from hazardous liquid pipelines. The study found that there was no significant benefit from installing EFRDs on gas transmission pipelines.

SCADA systems utilize computer technology to analyze data (e.g., pressure, temperature, and delivery flow rates) that are continuously gathered from remote locations on the pipeline. Computer analysis of this data is used to assist in day-to-day operating decisions on the pipeline and to provide input for real-time models of the pipeline operation which can identify and locate leaks.

SCADA-based leak detection subsystems are composed of hardware and software programs that employ a real-time modelling procedure to compare the current operational conditions of a segment of pipe to an "ideal" operating state. This ideal state is sometimes recalibrated during operations to accommodate variations in conditions (e.g., temperature or pressure fluctuations in the pipe that occur due to changes in the materials in transport or external environmental conditions). An "alarm" is sent to a central operator when the software model detects a condition that is "substantially" different from the idealized state. What makes the condition "substantially" different, thereby triggering the alarm, is determined by the model designer and the conditions imposed on the model, as well as by the amount of data available on the "ideal" state and its normal operational variability.

An RCV can operate without a SCADA system installed. However, for an RCV to be used effectively in reducing a spill, the dispatcher must be able to determine that a pipeline failure has occurred, identify the location of the failure, and then quickly initiate closure of the valve. Accomplishing these actions in a timely manner requires the installation of a SCADA system including a well-designed leak detection subsystem. The extensive pollution which resulted from a 1988 pipeline failure in Maries County, Missouri, to be discussed later in this ANPRM, might have been avoided if a leak detection subsystem had been installed with the SCADA system allowing operator personnel to detect the leak.

It is clear from the RSPA's analysis of information and data obtained in conducting the March 1991 EFRD study, that spillage from a pipeline failure can be significantly reduced by RCVs only where a modern SCADA system is equipped with a well-designed leak detection subsystem. The type and sophistication of the control system, installed as part of an existing SCADA system, depends on the age of the control system.

The March 1991 EFRD study contained a number of proposals to address the issue of EFRDs. One of the proposals was that the Department conduct a research study on whether SCADA systems, including well-designed leak detection subsystems, should be required on hazardous liquid pipelines in order to enhance the safe operation of the pipelines. Enhanced safety requirements would include provision for more rapid response following accidents, including valve spacing criteria and initiating the closure of RCVs. This study is presently being conducted by the Volpe National Transportation System Center (VNTSC) and is discussed later in this ANPRM.

Another proposal from this study was for the RSPA to issue a notice of proposed rulemaking proposing to require, on hazardous liquid pipelines with SCADA systems installed, that existing manually operated main line block valves [5] in urban areas be retrofitted to make them RCVs and install RCVs when new valves are installed in urban areas. This ANPRM seeks data on valves located in urban areas.

Other proposals in the study suggested public input on whether the hazardous liquid pipeline safety regulations in 49 CFR part 195 should be revised to require valve spacing criteria for EFRDs at the following locations: (1) Where the valves could most effectively reduce the likelihood of the escaping liquid entering the water at water crossings that are more than 100-feet wide, and on either side of a reservoir holding water for human consumption; (2) At other critical areas affected by commodity release; and (3) At specific locations outside of urban

[4] Check valves are valves that permit fluid to flow freely in one direction and contain a mechanism to automatically prevent flow in the other direction.

[5] A valve which provides a positive shut off of commodity flow both upstream and downstream of the valve is generally known as a "block valve" because it blocks the flow in the pipeline.

areas on hazardous liquid pipelines in proximity to the public.

Some of the questions posed in this ANPRM are designed to provide data on which the RSPA will decide on a further course of action concerning the proposed placement of EFRDs in these locations.

Past Data Collection

To broaden the data base for the March 1991 EFRD study, the RSPA solicited information from the public, including gas and hazardous liquid pipeline operators and equipment manufacturers, through a **Federal Register** notice (54 FR 20945; May 15, 1989). A series of 15 questions addressed a number of EFRD/leak detection-related issues including SCADA technology, establishing a maximum allowable spill value, and criteria for valve spacing. The 72 responses to the notice are contained in Docket PS–104; Notice 1 and are available for review in the Docket Unit, room 8421.

The notice included a series of questions about leak detection subsystems which are part of operators' SCADA systems. The responses to the questions indicated SCADA systems are becoming more sophisticated and leak detection subsystems are becoming more common on hazardous liquid pipelines. The sensitivity of leak detection subsystems on hazardous liquid pipelines was reported to range from 0.5 percent of flow to 5 percent of flow over a 1- to 2-hour period. Once a leak is suspected, the time for the dispatcher to respond by closing valves ranges from a few minutes for an RCV to an average of about 2 hours for manually operated valves.

Commenters to the notice were also asked to discuss the advantages and disadvantages of establishing a valve spacing requirement based on a maximum spill criterion. Two advantages cited by commenters to support establishing a maximum spill criterion on a hazardous liquid pipeline were: (1) Reduction in the exposure to the public of the possible hazard created by a spill and (2) improved contingency plans since the plans could be based on a spill of a set volume. However, commenters cited more disadvantages than advantages.

Most hazardous liquid pipeline operators opposed setting a maximum spill criterion. They indicated a maximum acceptable spill would vary widely along the length of any pipeline depending on spill location. Establishing one criterion for all pipelines would not account for the variables at each spill location. Commenters indicated that more important than establishing an arbitrary spill limit is the need to consider the line profile, drainage gradient, length, and diameter of the hazardous liquid pipeline, susceptibility to outside force damage, population density, and potential hazards to public safety and the environment. Commenters indicated a spill limit would require more valves, particularly on large diameter hazardous liquid pipelines. This would increase the opportunity for inadvertent valve closure, leakage from the valve itself, and vandalism. One commenter stated that protection of the public and environment is related more to exposure of the hazardous liquid pipeline to the public and response time in detecting and responding to a failure, than to setting a limit on the volume of product released. This commenter stated: "The most effective means for mitigating potential pipeline failure hazards is prompt leak identification, rapid pipeline shutdown, and immediate dispatch of response crews to the failure site."

Commenters were asked if the spacing of RCVs and ACVs is determined by a maximum spill from the hazardous liquid pipeline, what should that maximum spill value be? None of the commenters provided a maximum spill value. Hazardous liquid pipeline operators reiterated that the information provided in the responses to the valve spacing question should be used in the context of spill mitigation rather than to establish a single maximum spill criterion. One commenter stated that, in addition to pipe diameter, terrain, and the pipeline's route near or in urban areas, the RSPA should consider the probability of failure, magnitude of the leak, and consequences of the leak in establishing a maximum spill criterion.

December 24, 1988, Failure in Maries County, Missouri

The legislative history for the 1992 Act cites a December 24, 1988, failure in Maries County, Missouri to demonstrate the need of adequate leak detection equipment. The failure resulted in a crude oil spill of approximately 20,554 barrels (863,268 gallons). The cause was the abrupt change in pressure and fluid flow from the switching of flowing, low density crude oil from one pipeline into another containing a substantially heavier oil.

Crude oil released entered a tributary of the Gasconade River, the Gasconade River, the Missouri River, and eventually the Mississippi River near St. Louis, Missouri. In order to control the contamination from the large volume of crude oil released, it was necessary to shut down several water companies along these rivers and a brewery in St. Louis.

Failure of pipeline personnel at the dispatching station to recognize that a rupture had occurred and to shut down the pipeline greatly increased the volume of crude oil spilled.

The Gasconade River and its tributary, into which the crude oil spill first entered, were bracketed by manually operated block valves. The RSPA estimates that the installation of a check valve would have prevented drainage from the 5 mile of pipe on either side of the river, thereby substantially reducing the size of the spill. Also, the installation of a leak detection subsystem on the SCADA system would probably have substantially reduced the size of the spill.

Report From the National Institute of Standards and Technology

The legislative history of the 1992 Act also cites a July 1989 report from the National Institute of Standards and Technology (NIST), U.S. Department of Commerce (Report Number NISTIR 89–4136) which resulted from an investigation of the Maries County, Missouri pipeline failure. In the report, titled "An Assessment of the Performance of Older ERW Pipelines", NIST found that the installation of EFRDs could significantly reduce the damage from pipeline failures and recommended that they be installed in "critical risk locations."

Current SCADA Study by the VNTSC

In May 1992, the RSPA commenced a research study with the VNTSC to analyze SCADA systems and computer-generated leak detection systems. The purpose of the research study is to determine the feasibility and costs of requiring pipeline operators to install a SCADA system including a leak detection subsystem, and determine what impediments exist or what system improvements are needed to minimize the time it takes SCADA systems to detect and locate leaks, and make recommendations to resolve these difficulties. As mentioned previously, this new initiative is based on findings from the Department's March 1991 EFRD study concerning RCVs. These valves maximize the value of SCADA-based leak detection systems by helping to mitigate damages from detected leaks.

The first phase of this study included a literature search on the subject, on-site interviews with seven pipeline operators, interviews with five equipment vendors, and development of a mathematical model describing optimal valve spacing for given annual

pipeline failure rates per mile and costs, and a method to evaluate alternative leak detection system performance characteristics to reduce pipeline spill volumes.

Every pipeline operator surveyed by the contractor used some sort of SCADA system. Most operators had at least one computerized leak detection system, either one purchased from a vendor, custom designed by the operator, or a combination of the two systems. All operators interviewed believed that the condition of high false alarm rates was a major drawback to the installation and operation of leak detection systems. The problem occurs due to the required trade-off between the threshold volume sensitivity of the leak detection system and the resulting false alarm rate when this sensitivity is too high. All the operators interviewed emphasized that the most critical link in leak detection was the interface between the system itself and the pipeline dispatcher, and that there was no substitute for a highly competent pipeline dispatcher.

The VNTSC is drafting a report on the first phase of the study. Once the report is completed, a copy will be placed in the docket to this rulemaking.

Regulatory Analysis and Notices

A. Impact Assessment

This ANPRM is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The ANPRM is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

B. Regulatory Flexibility Act

This ANPRM would not have a significant economic impact on a substantial number of small entities (i.e., small businesses, governmental jurisdictions, and non-for-profit organizations) under the criteria of the Regulatory Flexibility Act. This ANPRM would apply to operators of hazardous liquid pipelines, all of whom are large businesses. Therefore, I certify that this ANPRM will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modification as a result of a review of comments received in response to this ANPRM.

C. Federalism Assessment

The ANPRM has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism"), and does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

D. Paperwork Reduction Act

There are no new information collection requirements in this ANPRM.

Questions

The RSPA is issuing this ANPRM to solicit data from the public through a series of questions as the means of conducting the survey mandated in the 1992 Act. The response from the public to these questions will aid in developing proposals on what circumstances and criteria operators must install EFRDs and other equipment to limit product release from hazardous liquid pipelines. The failures discussed above suggest that releases can be reduced when EFRDs and well-designed leak detection systems are installed on hazardous liquid pipelines.

Assessing the data received from the questions in the ANPRM should accelerate the rulemaking process required by the 1992 Act. The data gathered by this ANPRM, the findings from earlier reports on the subject of EFRDs, including the Department's March 1991 EFRD study, and the work accomplished so far in the SCADA contract with the VNTSC could form the basis for any notice of proposed rulemaking concerning the proposed placement of EFRDs and criteria for leak detection systems.

The RSPA is considering a systems approach to reducing spills from hazardous liquid pipelines. The system involved includes equipment, personnel, software and procedures to accomplish three tasks: (1) Detect that a failure and resultant spill has occurred; (2) Identify the location of the spill; and (3) Shut the pipeline down in order to reduce the amount of the spill. The first two tasks involve computerized leak detection systems, while the third task involves the installation of EFRDs.

Many of the following questions are directed to the operators of hazardous liquid pipelines. They relate to pipeline system operational data in addition to the physical location of pipeline facilities in relation to geographical and topographical features which can only be obtained from pipeline operators. However, the RSPA solicits comments to questions which do not involve data on a particular hazardous liquid pipeline from other members of the public including State agencies, trade associations, and environmental organizations, both private and public. The RSPA believes that State pipeline safety agencies can contribute significantly to this rulemaking because of the States' unique experience with regulating intrastate hazardous liquid pipelines and as the Department's agent on interstate hazardous liquid pipelines. Questions 18 and 19 are directed to the nonregulated public. These commenters are requested also to suggest additional questions, including clarification questions, which may emerge from reviewing this ANPRM.

To aid in analysis of the responses, commenters are requested to respond using the same numbering system which is used in this ANPRM.

SCADA-based Leak Detection System Sensitivity and Reliability

The RSPA needs data on which to base decisions on what should be proposed for SCADA-based leak detection systems. The RSPA is starting from the premise that most if not all hazardous liquid pipeline operators have installed a SCADA system which is used for the everyday efficient operation of the pipeline. The SCADA study by the VNTSC has, so far, found this to be true. (Commenters are requested to indicate if this premise is true.) The RSPA must decide whether to propose: (1) A specific type of leak detection system; (2) whether to propose requiring certain criteria which would embody the attributes of all of the presently recognized computerized leak detection systems; (3) a combination of (1) and (2); or (4) some other leak detection system requirement which at present is unknown to the RSPA but which may emerge from comments to this ANPRM.

The questions are intended to obtain responses which relate to operational data that a hazardous liquid operator has concerning the SCADA-based leak detection system installed on its pipeline system including the sensitivity and reliability of that system.

Questions 1 through 6 primarily relate to the experience on a segment of the operator's hazardous liquid pipeline system which is covered by a SCADA-based leak detection system. If the operator has segments of its hazardous liquid pipeline system covered by more than one SCADA-based leak detection system, please submit responses to the series of questions 1 through 6 for each segment of the covered pipeline system. For instance, a SCADA-based leak detection system may be installed on a 400 mile segment of an interstate pipeline in Texas and another SCADA-based leak detection system on a 200 mile segment in Virginia. The RSPA requests a separate set of responses for each segment, not aggregate responses for all of the SCADA-based leak

detection systems for all parts of the operator's pipeline system.

Several topics will be addressed in the set of questions below. These are: (1) The method(s) of leak detection in use on the segment described in the data submission; (2) leak detection alarms which occur at the hazardous liquid pipeline systems operating center; (3) the leak detection and SCADA system availability; and (4) the actual performance of leak detection systems in identifying and locating leaks on an operational hazardous liquid pipeline.

If the operator does not presently have this data, we encourage the operator to gather the data for at least one month and then submit it to the RSPA. System alarms history should be provided to the RSPA as a log and may be submitted either as a computer printout or on a diskette using standard ASCII format as long as the segment identifying information is clearly noted on the data. Experimental (or simulation-based) data may be provided as well as operational data which only reflect actual operational experience.

The leak detection performance data should be provided as a log and may be submitted either as a computer printout or on a diskette using standard ASCII format. Historical performance data gathered during developmental phases such as system installation and modification also should be submitted.

It would be helpful if commenters group data for each different data collection time period or pipeline segment, so that all data (questions 1–6) relates to only one specific segment and time period. For the purposes of these questions, a pipeline segment is defined as that part of the pipeline between two points where the product can be contained, such as between two pressure pump stations, between a pressure pump station and a terminal, between a pressure pump station and a valve, or between two valves.

Question 1: Provide the following general information about the segment of hazardous liquid pipeline to which the series of questions 1–6 relate:

1.1 Pipeline segment length description covered in this data submission:
- 1.1.1 Starting point (mile post or survey station no.)_____
- 1.1.2 Ending point (mile post or survey station no.)_____
- 1.1.3 Length of segment (miles)_____

1.2 Pipeline nominal diameter (in.)_____

1.3 Number of pumping stations on segment? _____

1.4 Number of injection points on segment?_____

1.5 Number of delivery points on segment?_____

1.6 Commodity(s) transported during this data history_____

1.7 Nominal flow rate (bbls/day) _____

1.8 Beginning date covered by this data history (MM/DD/YY)_____

1.9 Ending date of this data history (MM/DD/YY) _____

Question 2: Classify the leak detection system(s) installed on this pipeline segment (check each that applies and answer questions 4 through 6 for each system checked).

2.1 Mass balance_____

2.2 Pressure wave _____

2.3 External hydrocarbon sensor_____

2.4 Other (specify) _____

Question 3: For each leak detection system checked in Question 2, check whether the system was supplied by an independent vendor or was the system developed within your company.

3.1 For the system in Question 2.1?
- 3.1.1 Vendor (name) _____
- 3.1.2 Internal company developed_____

3.2 For the system in Question 2.2?
- 3.2.1 Vendor (name) _____
- 3.2.2 Internal company developed _____

3.3 For the system in Question 2.3?
- 3.3.1 Vendor (name) _____
- 3.3.2 Internal company developed _____

3.4 For the system in Question 2.4?
- 3.4.1 Vendor (name)_____
- 3.4.2 Internal company developed _____

Question 4: For the alarm history, leak detection system availability history, and performance data of the leak detection system submitted, include answers to the following:

4.1 For the time period reported, at what threshold volume was the leak detection system set to alarm (including any error bandwidth that is incorporated into that amount) (bbls.)?_____

4.2 At that volume how long should detection take (mins.)? _____

4.3 What was the average detection time for that volume (mins.)?_____

4.4 For each alarm during the time period reported in your response to Question 4, include the following data:
- 4.4.1 Alarm Initiated (MM/DD/YR & hours & minutes in military time [6])_____
- 4.4.2 Alarm Cleared (MM/DD/YR & hours & minutes in military time)_____
- 4.4.3 The length of time it took to identify the cause of the alarm (if not equal to the difference between the initiation and cleared time)(mins.)?_____

4.5 For each alarm, was the alarm attributed to one of these causes (Y/N)?
- 4.5.1 A leak _____ (If "yes", go to 4.6)
- 4.5.2 An operational change _____
- 4.5.3 Data errors (associated with telemetry fluctuations) _____
- 4.5.4 Component failure (hardware or telecommunications) _____
- 4.5.5 Human error (e.g., failure to adjust the leak detection software system to commodity-specific parameters) _____
- 4.5.6 Other (specify) _____
- 4.5.7 Undetermined _____

4.6 If a leak was detected—
- 4.6.1 What was the cause of the leak (check)?
  - 4.6.1.1 Corrosion? _____
  - 4.6.1.2 Failed pipe or pipe seam? _____
  - 4.6.1.3 Outside force damage by other than natural forces? _____
  - 4.6.1.4 Outside force damage by natural forces? _____
  - 4.6.1.5 Malfunction of control or relief equipment? _____
  - 4.6.1.6 Operator error? _____
  - 4.6.1.7 Other (specify) _____
- 4.6.2 Was the leak on pipe originally installed on the pipeline segment (Y/N)? _____
- 4.6.3 What year was the pipe originally installed (year)? _____
- 4.6.4 If the answer to 4.6.2 was "no", what year was the pipe replaced or modified (year)? _____
- 4.6.5 What action did you take?
  - 4.6.5.1 Shut pipeline down (Y/N) _____
  - 4.6.5.2 Shut down leak detection system (Y/N) _____
  - 4.6.5.3 Left pipeline and leak detection systems running, conducted visual inspection (Y/N) _____
  - 4.6.5.4 Other (specify) _____

Question 5: For leak detection system availability (SCADA-based or non-SCADA-based), include answers to the following:

5.1 For each instance of leak detection system unavailability reported during the time period, include the following data:
- 5.1.1 Was this a complete shutdown of the SCADA/leak detection

[6] "Military time" is using a 24 hour clock. For instance, 4:00 pm = 1600 hours or 5:15 pm = 1715 hours.

system (Y/N)? _____ (If "no", go to question 5.3)

5.2 If "yes", answer the following (check all that apply):

5.2.1 Date and time the system stopped running (MM/DD/YR & hours & minutes in military time) _____

5.2.2 Date and time the system resumed (MM/DD/YR & hours & minutes in military time) _____

5.2.3 Was the shutdown attributed to one of these causes (Y/N)?

5.2.3.1 Dispatcher decision? _____

5.2.3.2 Input failure (telemetry/telecomm error)? _____

5.2.3.3 Software failure of the SCADA system? _____

5.2.3.4 Software failure of the leak detection system? _____

5.2.3.5 Software failure of both? _____

5.2.3.6 Hardware failure of the SCADA system? _____

5.2.3.7 Hardware failure of the leak detection system? _____

5.2.3.8 Hardware failure of both? _____

5.2.3.9 Undetermined _____

5.3 If the leak detection system itself did not completely shut down, did it issue an alarm (Y/N)? _____

5.4 If an alarm was issued, was the problem attributed to any of the following (Y/N)?

5.4.1 Dispatcher decision? _____

5.4.2 Input failure (telemetry/telecomm error)? _____

5.4.3 Software failure of the SCADA system? _____

5.4.4 Software failure of the leak detection system? _____

5.4.5 Software failure of both? _____

5.4.6 Hardware failure of the SCADA system? _____

5.4.7 Hardware failure of the leak detection system? _____

5.4.8 Hardware failure of both? _____

5.4.9 Undetermined _____

Question 6: Answer the following on leak detection system performance:

6.1 What was the circumstance(s) under which data was collected for this segment and time period?

6.1.1 System development (Y/N) _____

6.1.2 Leak detection system pre-operational demonstrations on a segment of operational pipeline (define segment length) (Y/N) _____

6.1.3 Existing system modification/testing (Y/N) _____

6.1.4 Actual system operation (Y/N) _____

6.1.5 Other (specify) _____

6.2 For *each* leak detected by the system during the time period, include the following data:

6.2.1 The specific detection threshold volume (include any error bandwidth that is incorporated in that amount)(bbls.) _____

6.2.2 Pipeline length between leak detection measuring devices in the pipeline segment on which leak occurred (miles) _____

6.2.3 Commodity transported at the time of the alarm _____

6.2.4 Flow rate at the time of the alarm (bbls/hr) _____

6.2.5 Estimated (or actual) leak volume (bbls.) _____

6.2.6 Estimated (or actual if known) size of hole or rupture (in.) _____

6.2.7 Estimated [7] (or actual) date and time leak occurred (MM/DD/YR & hours & minutes in military time) _____

6.2.8 Date and Time leak detected (MM/DD/YR & hours & minutes in military time) _____

6.2.9 Date and Time leak located (MM/DD/YR & hours & minutes in military time) _____

6.2.10 Location of leak as indicated by leak detection system (mile post or survey station no.) _____

6.2.10.1 Was a leak detection/SCADA system alarm issued (Y/N)? _____

6.2.10.2 If "yes", the date and time alarm issued (MM/DD/YR & hours & minutes in military time) _____

6.2.10.3 If "yes", the date and time alarm cleared (MM/DD/YR & hours & minutes in military time) _____

6.2.10.4 Dispatcher response (check all that apply):

6.2.10.4.1 Pipeline shutdown _____

6.2.10.4.2 Leak detection system shutdown only _____

6.2.10.4.3 Contacted pipeline personnel to check for operational or system explanations for alarm (other than a leak) _____

6.2.10.4.4 Dispatched personnel to approximate leak location _____

6.2.10.4.5 Other (specify) _____

6.2.11 Actual location of leak as determined by field observation (mile post or survey station no.) _____

Placement of EFRDs at water crossings, locations affected by commodity release, and rural areas where the public is in proximity The request for information notice, documented in the Department's March 1991 EFRD study, asked "Where should RCVs and ACVs be placed and why?" The response provided a number of specific locations, e.g., locations where possible ground movement might occur, and densely populated locations, such as near a school or hospital, near an office building or factory, or near a shopping center. River crossings were also specified by some commenters. Although conventional wisdom would seem to suggest installing RCVs at these locations, the RSPA presently has no data which supports requiring the installation of EFRDs at these locations. The number of these locations is unknown, but one of the following questions will solicit data on the number of such areas which might be affected by a pipeline release.

Likewise, the number of failures which have resulted in water pollution is unknown because the Department does not require the occurrence of pollution to be identified on the hazardous liquid pipeline accident report. However, the RSPA knows from research for developing the interim final rule for onshore oil pipeline response plans (58 FR 244, January 5, 1993) under the Oil Pollution Act of 1990, Public Law No. 101–380, 104 Stat. 484, (OPA 90) that of the approximately 2,700 oil pipeline spills reported each year to the Environmental Protection Agency (EPA), about half affect water. The accident effects which would be reduced by the installation of EFRDs are related more to pollution than safety. Once the hazardous liquid mixes with water, the likelihood of a fire or explosion is reduced considerably. Two of the following questions address the issue of water pollution as a result of pipeline failures.

The accidents which occurred in Mounds View, Minnesota and Maries County, Missouri demonstrate that an assessment by the RSPA should be conducted concerning the installation of EFRDs at specific locations along hazardous liquid pipelines where the pipelines are in proximity to the public in rural areas, bodies of water (particularly bodies of water containing drinking water intakes), and other critical locations affected by commodity release. This position is supported by the NIST report (discussed above) which recommended installation of EFRDs in critical risk locations to significantly limit the extent of damage if a failure occurs. Critical risk locations are defined in the NIST report as

[7] Data provided from simulations should include the simulated leak start and end times, however, actual leak start times are not expected from operational data since there is a lag between the actual leak start and when it is detected.

locations where the risk to public safety, property, and the environment is great.

The RSPA is also asking questions to gather data regarding locations where valves are presently required by the regulations to protect bodies of water (49 CFR 195.260 (e) and (f)). The regulations in 49 CFR 195.260 currently require valves to be placed at locations along a hazardous liquid pipeline that will minimize damage or pollution from accidental discharges [8] (Section 195.260 (c)), on either side of a water crossing that is more than 100-feet wide (Section 195.260(e)), and on either side of a reservoir holding water for human consumption (Section 195.260(f)). The American Petroleum Institute has indicated that most of these main line block valves are manually operated. The current regulations do not require that they be EFRDs. The financial impact on the regulated industry, if the RSPA were to require the installation of RCVs, is unknown so cost data will be obtained through responses to questions set forth below.

These questions apply only to hazardous liquid pipelines with leak detection systems since the March 1991 EFRD study concluded RCVs are only effective where leak detection systems are installed. In addition, the questions address valve spacing, particularly whether EFRDs should be installed at other critical locations. Such critical locations would be identified during the rulemaking process after a review of data on water pollution from hazardous liquid pipeline spills collected by agencies, such as the EPA, and as a result of the RSPA implementation of OPA 90. Placement of a check valve on one side of a location and an RCV on the other side could reduce the number of valves that would require remote control capability.

The location of valves would be proposed, as a result of this assessment, only to effectively reduce the amount of liquid entering a body of water depending on the terrain, and would not necessarily be immediately located on either side of the water crossing. For instance, valves placed immediately on either side of a water crossing would be effective in reducing pollution only if the failure was in the water crossing, a rare occurrence according to anecdotal evidence. Valves would only be effective in locations where the hazardous liquid pipeline operator has a SCADA-based leak detection system so that each RCV can be closed soon after a failure is detected.

[8] DOT does not know on what factors hazardous liquid pipeline operators base their judgment on where and how far apart to place such valves.

Past Leak History

Question 7: For the period 1983 through 1992 (10 years), how many failures have occurred on your pipeline system resulting in product release entering a body of water? [9]_____

Question 8: Provide the following information for each failure in Question 7:

8.1 Date of the failure (MM/YY)_____
8.2 What was the cause of the release (check)?
- 8.2.1 Corrosion?_____
- 8.2.2 Failed pipe or pipe seam?_____
- 8.2.3 Outside force damage by other than natural forces?_____
- 8.2.4 Outside force damage by natural forces?_____
- 8.2.5 Malfunction of control or relief equipment?_____
- 8.2.6 Operator error?_____
- 8.2.7 Other (specify)_____

8.3 Answer the following concerning the commodity—
- 8.3.1 At the time of the release what was the total volume of commodity between valves immediately upstream and downstream of the release location (bbls.)?_____
- 8.3.2 How much commodity was released (bbls.)?_____

8.4 How far away from the point of release were the valves referred to in 8.3.1 (miles)?_____
- 8.4.1 Upstream from the release?_____Type of valve (check)?
- 8.4.1.1 manual_____
- 8.4.1.2 Check valve_____
- 8.4.1.3 RCV_____
- 8.4.1.4 ACV_____
- 8.4.2 Downstream from the release?_____Type of valve (check)?
- 8.4.2.1 manual_____
- 8.4.2.2 Check valve_____
- 8.4.2.3 RCV_____
- 8.4.2.4 ACV_____

8.5 Were these valves installed to comply with 49 CFR 195.260 (e) or (f) [10] (Y/N)?_____
8.6 Were these valves EFRDs (RCVs or check valves)(Y/N)?_____
8.7 Was there a leak detection system or systems operating on the pipeline which experienced the release (Y/N)?_____(specify each type):
- 8.7.1 Pressure wave front monitoring?_____
- 8.7.2 Volume monitoring?_____
- 8.7.3 Other (specify)?_____

8.8 Indicate for each activity the time to shut down the pipeline
- 8.8.1 Detection time (mins.)?_____
- 8.8.2 Shutdown time including shutdown of pumping stations and isolation of the pipeline section (mins)?_____
- 8.8.3 Time to drain the pipeline section (mins.)?_____
- 8.8.4 Total time to shut down pipeline from the time release was detected to completion of drainage from the section involved (mins.)?_____

8.9 If the pipeline section did not contain EFRDs, would the installation of EFRDs have reduced the shutdown time and/or amount of the release (Y/N)?_____
- 8.9.1 If "yes", by how much for each (estimate)?
- 8.9.1.1 The total shutdown time of
- 8.8.4 (mins.)?_____
- 8.9.1.2 Amount of the release (bbls.)?_____
- 8.9.2 If "no", why not?_____

8.10 What was the total estimated cost of the release including—
- 8.10.1 Cost of repair or replacement of pipeline facility? $_____
- 8.10.2 Cost of product lost? $_____
- 8.10.3 Cost attributed to loss of use of the pipeline? $_____
- 8.10.4 Cost of damage to property other than the pipeline? $_____
- 8.10.5 Cost of bodily harm and/or loss of life (For analytical purposes, loss of life is valued at $2,500,000 and significant bodily harm reported per Section 195.50(e) is valued at $450,000)? $_____
- 8.10.6 Cost of environmental clean-up (whether or not paid by the operator)? $_____
- 8.10.7 Estimated cost of damage to the environment, i.e., natural resource damage, assessed by a court or State agency (exclusive of clean-up cost)? $_____
- 8.10.8 Cost of litigation? $_____
- 8.10.9 Other costs? (specify) $_____
- 8.10.10 Total cost? $_____

8.11 How far from the release did the commodity enter a body of water (miles)?_____
8.12 Were there other areas of risk, other than a body of water, affected by the release (Y/N):
- 8.12.1 Urban area?_____ If yes, distance from release (miles)_____
- 8.12.2 Rural area in proximity to population?_____ If yes, distance

[9] "Body of water" includes, but is not limited to, creeks, streams, rivers, tributaries to rivers, lakes, reservoirs, and waters which are used for recreation.

[10] 49 CFR 195.260 (e) requires valves to be installed on each side of a water crossing that is more than 100 feet wide from high-water mark to high-water mark. 49 CFR 195.260 (f) requires valves to be installed on each side of a reservoir holding water for human consumption.

from release (miles)_____
8.12.3 Other (specify)_____ Distance from release (miles)_____
8.13 Were there one or more public water intakes affected by the release (Y/N)?_____
8.13.1 If the answer to question 8.13 was "yes", how many?_____
8.13.2 For each response to 8.13.1, approximately how far was the public water intake downstream from where the release entered the body of water (miles)?_____
8.13.3 Did high river flow due to flooding affect the release reaching the water intake(s)(Y/N)?_____

Valves Installed Per 49 CFR 195.260 (e) & (f)

As stated previously, 49 CFR 195.260 (e) and (f) require valves to be placed on hazardous liquid pipelines in order to protect water.[11] The March 1991 EFRD study proposed that the RSPA obtain public comment on whether the valves at these locations should be EFRDs. The next series of questions are posed to obtain data to make that decision.

For this series of questions, operators are requested to provide data *only* on hazardous liquid pipelines which have leak detection systems installed, since the study concluded RCVs are effective only on hazardous liquid pipelines with leak detection systems.

Question 9: How many locations have valves installed to comply with 49 CFR 195.260 (e) and (f)?_____

9.1 How many locations have two block valves installed?_____
9.2 How many locations have one block valve and one check valve installed?_____
9.3 How many locations have two block valves and one check valve installed?_____
9.4 Are any of the block valves RCVs (Y/N)?_____
9.4.1 If "yes", how many locations reported in 9.1 are RCVs?_____
9.4.2 If "yes", how many locations reported in 9.2 are RCVs?_____
9.5 How many block valves which are not RCVs are installed to comply with 49 CFR 195.260 (e) and (f)?_____

Question 10: Estimated cost data to convert the block valves reported in 9.4 to RCVs is requested. Report data to questions 10.1–10.3 for *each* valve size (diameter) in your pipeline system:

10.1 What valve diameter does this series of questions pertain (in.)?_____
10.2 How many block valves are installed of this diameter?_____
10.3 What is the total estimated cost to convert all of these valves to RCVs? _____
10.3.1 Installation cost (material & labor) $_____
10.3.2 Communication system cost $_____
10.3.3 Other installation costs (specify) $_____
10.3.4 Total installation cost $_____
10.3.5 Annual operating cost $_____
10.3.6 Annual maintenance cost $_____
10.3.7 Other annual costs (specify) $_____
10.3.8 Total annual costs $_____

Question 11: Estimated cost data for installing new RCVs on your pipeline system is requested. Report data to questions 11.1–11.6 for *each* valve size (diameter) in your pipeline system:

11.1 What valve diameter does this series of questions pertain (in.)?_____
11.2 Cost of a manually operated block valve $_____
11.3 Cost of an equivalent RCV $_____
11.4 Communication cost $_____
11.5 Other installation costs (specify) $_____
11.6 Total installation costs $_____

Question 12: What factors should the RSPA use in determining when a manually operated valve should be converted to a RCV in order to reduce the effects to bodies of water in case of a release?_____

Locations Affected by Commodity Release

Question 13: Would a release from your pipeline affect the following locations (answer "yes" or "no" and provide rationale for your answer)?

13.1 Wetlands as defined in 40 CFR 230.3?[12]_____
13.2 Critical habitat for endangered/threatened species?_____
13.3 National/State parks?_____
13.4 Marine sanctuaries?_____
13.5 Federal wilderness areas?_____
13.6 Coastal Zone Management Act designated areas?_____
13.7 National monuments?_____
13.8 National seashore/lakeshore recreational areas?_____
13.9 National preserves?_____
13.10 National wildlife refuges?_____
13.11 National conservation areas? _____
13.12 Hatcheries? _____
13.13 Waterfowl management areas? _____
13.14 Public drinking water intakes? _____
13.15 Other areas (specify)? _____

Rural Areas[13] Affected

Question 14: How many of the following areas would be affected by a release from your pipeline (answer 14.1–14.8 with the number of areas)?

14.1 Areas where it would take more than two hours to reach and close a block valve once the location of a release is identified? _____
14.2 Areas of possible ground movement including areas of: known seismic risk, slope instability, landslide, and mine subsidence? _____
14.3 Schools? _____
14.4 Hospitals? _____
14.5 Closely spaced individual dwellings (defined as areas similar to class 2 locations as defined in 49 CFR 192.5(c)[14])? _____
14.6 Office buildings? _____
14.7 Factories or plants, such as power plants? _____

Valves in Urban Areas

The March 1991 EFRD study concluded that it was feasible from a benefit to cost standpoint to retrofit existing manually operated block valves on hazardous liquid pipelines located in urban areas to RCVs and to install RCVs when installing new valves in urban areas. An urban area is one which is not a rural area[15]. A proposal to require RCVs in urban areas would apply to hazardous liquid pipelines which have installed leak detection systems, as the Department found in the March 1991 study that RCVs are effective only where leak detection systems are installed.

The RSPA wants to establish a data base on manually operated block valves

[11] See footnote 10.

[12] 40 CFR 230.3(t) states: The term *wetlands* means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

[13] As defined in 49 CFR 195.2: "*Rural area* means outside the limits of any incorporated of unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, or community development."

[14] 49 CFR 192.5(c) states: A Class 2 location is any class location unit that has more than 10 but less than 46 buildings intended for human occupancy. (A "class location unit" is defined in the regulations in 49 CFR 192.5(a) as an area that extends 220 yards on either side of the centerline of any continuous 1-mile length of pipeline.)

[15] See footnote #13.

located on hazardous liquid pipelines in urban areas to validate the conclusions made in the March 1991 study.

Hazardous liquid pipeline operators are requested to respond to Questions 15–17 for pipelines in their systems which are located in urban areas and on which a leak detection system is installed:

Question 15: For your pipeline system, report the number of manually operated block valves that are installed in urban areas. Report data to questions 15.1–15.4 for *each* pipeline nominal diameter located in urban areas in your pipeline system.

15.1 What nominal pipeline diameter does this series of questions pertain (in.)? _____

15.2 How many block valves are installed of this nominal diameter? _____

15.3 For the total reported by nominal diameter, how many valves are installed to limit release of the commodity transported? _____

15.4 For each total reported by nominal diameter, how many are installed for pipeline maintenance purposes? _____

Question 16: For the period 1983 through 1992 (10 years), how many failures have occurred on your pipeline system in urban areas? _____

Question 17: Provide the following information for each failure in Question 16:

17.1 Date of the failure (MM/YY)_____

17.2 What was the cause of the release (check)?

17.2.1 Corrosion? _____

17.2.2 Failed pipe or pipe seam? _____

17.2.3 Outside force damage by other than natural forces? _____

17.2.4 Outside force damage by natural forces? _____

17.2.5 Malfunction of control or relief equipment? _____

17.2.6 Operator error? _____

17.2.7 Other? (specify) _____

17.3 How much product was released (bbls.)?_____

17.4 How far away from the point of release were there block or check valves located on either side of the release (miles)

17.4.1 Upstream from the release?_____

17.4.2 Downstream from the release?_____

17.5 What was the total estimated cost of the release including—

17.5.1 Cost of repair or replacement of pipeline facility? $_____

17.5.2 Cost of product lost? $_____

17.5.3 Cost attributed to loss of use of the pipeline? $_____

17.5.4 Cost of damage to property other than the pipeline? $_____

17.5.5 Cost of bodily harm and/or loss of life (For analytical purposes, loss of life is valued at $2,500,000 and bodily harm reported per Section 195.50(e) is valued at $450,000)? $_____

17.5.6 Cost of environmental clean-up (whether or not paid by the operator)? $_____

17.5.7 Estimated cost of damage to the environment, i.e., natural resource damage, assessed by a court or State agency (exclusive of clean-up cost)? $_____

17.5.8 Cost of litigation? $_____

17.5.9 Other costs? (specify) $_____

17.5.10 Total cost? $_____

Questions for the Nonregulated Public

The preceding 17 questions relate to the gathering of pipeline system operational data which can be answered only by hazardous liquid pipeline operators. However, as stated earlier, the RSPA is also soliciting comments and ideas from the nonregulated public including State agencies, trade associations, and environmental organizations. The following 2 questions are directed to these members of the public.

Question 18: The RSPA is attempting to determine which critical locations should be protected from hazardous liquid pipeline releases by the installation of EFRDs. From the locations listed below, please provide a ranking by probability with a ranking of "1" representing the location which poses the greatest probability of combined safety and environmental risk to the public. (Questions 18.10–18.12 are left blank for the commenter to specify locations of risk not listed in questions 18.1–18.9.)

18.1 Locations where valves are required to be placed by 49 CFR 195.260 (e) and (f) on hazardous liquid pipelines in order to protect water? [16]_____

18.2 Locations where it would take more than two hours to reach and close a block valve once the location of a release is identified?_____

18.3 Locations of possible ground movement including areas of: known seismic risk, slope instability, landslide, and mine subsidence?_____

18.4 Schools?_____

18.5 Hospitals?_____

18.6 Closely spaced individual dwellings (defined as areas similar to class 2 locations as defined in 49 CFR 192.5(c)?) [17]_____

18.7 Shopping malls and similar locations?_____

18.8 Office buildings?_____

18.9 Factories or plants, such as power plants?_____

18.10 Other location (specify)_____

18.11 Other location (specify)_____

18.12 Other location (specify)_____

Question 19: From the locations listed below, please provide a ranking of consequences from a hazardous liquid pipeline release with a ranking of "1" representing the location that would result in the greatest combined public safety and environmental consequences from a release of hazardous liquid from a pipeline. (Questions 19.10–19.12 are left blank for the commenter to rank the benefits for the risk locations specify in questions 18.10–18.12.)

19.1 Locations where valves are required to be placed by 49 CFR 195.260 (e) and (f) on hazardous liquid pipelines in order to protect water? [18]_____

19.2 Locations where it would take more than two hours to reach and close a block valve once the location of a release is identified?_____

19.3 Locations of possible ground movement including areas of: known seismic risk, slope instability, landslide, and mine subsidence?_____

19.4 Schools?_____

19.5 Hospitals?_____

19.6 Closely spaced individual dwellings (defined as areas similar to class 2 locations as defined in 49 CFR 192.5(c)?) [19]_____

19.7 Shopping malls and similar locations?_____

19.8 Office buildings?_____

19.9 Factories or plants, such as power plants?_____

19.10 Other location (specify)_____

19.11 Other location (specify)_____

19.12 Other location (specify)_____

Issued in Washington, DC on January 12, 1994.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 94–1177 Filed 1–18–94; 8:45 am]

BILLING CODE 4910–60–P

[16] See footnote #10.

[17] See footnote #14.

[18] See footnote #10.

[19] See footnote #14.

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. MC–94–1]

RIN 2125–AD27

Parts and Accessories Necessary for Safe Operation; Lighting Devices, Reflectors, and Electrical Equipment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: This document announces that the FHWA is considering proposing measures for reducing the incidence and severity of collisions with large trailers during conditions of darkness or reduced visibility. Specifically, the agency is considering issuing a proposal to establish requirements for the use of retroreflective sheeting or reflex reflectors for certain trailers manufactured prior to December 1, 1993, the effective date of the National Highway Traffic Safety Administration's final rule on conspicuity for newly manufactured trailers.

DATES: Comments must be received on or before March 21, 1994.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–94–1, room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey J. Van Ness, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Charles E. Medalen, Office of Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 1992, the National Highway Traffic Safety Administration (NHTSA) published a final rule (49 CFR 571.108) requiring that trailers manufactured on or after December 1, 1993, which have an overall width of 80 inches or more and a gross vehicle weight rating (GVWR) of more than 10,000 pounds, be equipped on the sides and rear with means for making them more visible on the road.[1] Trailers manufactured exclusively for use as offices or dwellings are exempt.

Trailer manufacturers may install either retroreflective sheeting or reflex reflectors. Manufacturers of retroreflective sheeting or reflectors are required to certify compliance of their product with Federal Motor Vehicle Safety Standard (FMVSS) No. 108 (49 CFR 571.108) whether the product is for use as original or as replacement equipment.

NHTSA Rulemaking

The NHTSA first requested comments concerning the use of reflective material to make heavy vehicles more visible on May 27, 1980 (45 FR 35405). Forty-two comments were received, most of which favored the concept.

Between 1980 and 1985, the NHTSA conducted a fleet study in which retroreflective material was placed on van-trailer combinations in a manner designed to increase their conspicuity during conditions of darkness or reduced visibility. The treatment of trailers consisted of outlining the rear perimeter, and delineating the lower side. No reflectorized mud flaps were used. The study concluded that truck-trailer combinations equipped with this material were involved in 15 percent fewer crashes (in which a trailer was struck in the side or rear) than combinations lacking the material. A copy of the report, "Improved Commercial Vehicle Conspicuity and Signalling Systems—Task III Field Test Evaluation of Vehicle Reflectorization Effectiveness," September 1985 (DOT HS 806 923) is included in the docket.

On September 18, 1987 (52 FR 35345), the NHTSA published a notice of request for comments. The notice presented results of NHTSA's fleet study and sought comments on the test results as well as experiences motor carriers may have had with the use of reflective material to enhance conspicuity. Thirty-seven comments were received, most agreeing that a 15 percent reduction in accidents could be expected when all large vehicles were so equipped with reflective material.

As part of the Motor Carrier Safety Act of 1990 (sec. 15, Pub. L. 101–500, 104 Stat. 1218), the Congress included a provision directing the Secretary of Transportation "to initiate a rulemaking proceeding on the need to adopt methods for making trucks or any category of trucks more visible to motorists * * *" not later than February 3, 1991, and to complete the rulemaking proceeding not later than November 3, 1992. On December 4, 1991, the NHTSA published a notice of proposed rulemaking (NPRM) at 56 FR 63474. The NHTSA regarded its NPRM as responsive to the congressional mandate and the final rule as the completion of the rulemaking.

Prior to the issuance of the final rule, the NHTSA published the results of additional research on heavy vehicle conspicuity. The purpose of the research program was to define a range of minimally acceptable large vehicle conspicuity enhancements that could be used as a basis for revised Federal regulations. A number of laboratory and field studies were carried out to assess the value of using a pattern in the marking material, the form the pattern should take, the placement of the treatment on the trailer, the effect of retroreflective markings on the detection and identification of stop and turn signals, and the trade-off between the width and retroreflective intensity of the treatment material. In addition, field surveys were conducted to assess the effect of environmental dirt on the performance of the marking systems and the durability of retroreflective materials when used on trucks.

The results of the research support the red and white pattern, retroreflective intensity and width of materials in NHTSA's final rule. With regard to durability, the study indicated on page 166 that:

> The typical service life of a trailer is estimated at 14 years. It would be desirable that retroreflective treatments provide adequate performance for at least that long. The limited data collected * * * indicate that it is possible to use retroreflective materials in a trucking environment and suffer very little, if any loss in performance for ten or more years * * *. Until more definitive data are available, it is recommended that performance loss due to aging be established at 80 percent retention over the fourteen-year period.

Relationship Between FHWA and NHTSA Requirements for Lamps and Reflective Devices

The NHTSA is responsible for establishing manufacturing standards for motor vehicles. Manufacturers of motor vehicles and certain motor vehicle equipment must certify that their products meet all applicable Federal Motor Vehicle Safety Standards (FMVSSs). The standards for lamps and reflective devices are contained under FMVSS No. 108 (49 CFR 571.108).

[1] A copy of the NHTSA final rule and NPRM are included for inspection and copying in FHWA Docket No. MC–94–1, room 4232, 400 Seventh Street, SW., Washington, DC 20590.

The FHWA is responsible for establishing standards for commercial motor vehicles used in interstate commerce. Commercial motor vehicles subject to the Federal Motor Carrier Safety Regulations must meet the requirements of 49 CFR Parts 393 (Parts and Accessories Necessary for Safe Operation) and 396 (Inspection, Repair, and Maintenance). Generally, part 393 does not establish vehicle or equipment manufacturing standards per se, but rather establishes requirements for certain equipment necessary for the safe operation of commercial motor vehicles. The requirements for lamps and reflective devices are contained under §§ 393.11 through 393.26.

The requirements in §§ 393.11 through 393.26 are generally consistent with the manufacturing standards in FMVSS No. 108. Manufacturers are required to equip newly manufactured commercial motor vehicles in accordance with FMVSS No. 108. Commercial motor vehicles subject to the FMCSRs must be equipped with lamps and reflective devices as required under part 393.

Current FMCSRs Requirement for Conspicuity Treatment

Section 393.11 requires that all lighting devices on motor vehicles placed in operation after March 7, 1989, meet the requirements of FMVSS No. 108 in effect at the time the vehicle is manufactured. Therefore, trailers manufactured on or after December 1, 1993, the effective date of the FMVSS No. 108 requirement for retroreflective tape or reflex reflectors, must have such reflective devices of the type and in the locations specified in FMVSS No. 108.

Request for Comments

The FHWA specifically requests comments that address the application of conspicuity requirements to trailers manufactured before December 1, 1993. In a separate rulemaking, the FHWA will discuss maintenance and testing of conspicuity treatments on trailers manufactured on or after December 1, 1993. The FHWA made a distinction between the two categories of vehicles because the technical and economic issues associated with the consideration of retrofitting trailers with the conspicuity treatment are much more complex than those associated with a requirement that motor carriers maintain the conspicuity treatment with which the trailer was originally equipped.

The FHWA requests that commenters address the specific issues below. However, the FHWA encourages commenters to include a discussion of any other issues that the commenters believe are relevant to this rulemaking.

1. Many motor carriers have been using retroreflective sheeting or reflex reflectors which are not of the colors, retroreflective intensity, width, or configuration of the conspicuity treatment in the NHTSA's final rule. The FHWA seeks information on the type of conspicuity treatments in use and quantitative data on the cost and effectiveness of those treatments in preventing and/or mitigating accidents.

2. What types of technical problems (e.g., tape not adhering to the surface of the trailer) have motor carriers encountered when applying conspicuity materials to in-service trailers? Are any problems unique to certain types of trailers, or to certain types of paints, coatings, or surfaces?

3. What is the approximate cost (parts and labor) to apply conspicuity treatments to trailers? Is special training required for employees performing this task? What cost differences may exist between having this task performed by the motor carrier's own maintenance department or by third parties?

4. How long must a trailer be taken out of service to have the conspicuity material applied to its surfaces?

5. With regard to conspicuity treatments that differ from those in the NHTSA final rule, a retrofitting requirement could result in many motor carriers having to replace their current conspicuity treatments with one that is consistent with the requirements of FMVSS No. 108. The FHWA believes that some form of conspicuity treatment (even certain forms which may be less effective than that covered in the NHTSA's final rule) is better than no conspicuity treatment. What different types of conspicuity treatment are currently being used by motor carriers? What results have been experienced by motor carriers using conspicuity treatments?

6. If this rulemaking proceeds, should the FHWA propose requiring the same red/white color combination, retroreflective intensity, width and configuration as the NHTSA's final rule, or should alternative requirements be considered? If alternatives are considered, do commenters foresee problems in the enforcement of a retrofitting requirement?

7. If this rulemaking proceeds, should the FHWA consider an effective date which is several (2, 3, 4, or 5) years after the date of publication of the final rule?

Rulemaking Analysis and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket room at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. Due to the preliminary nature of this document and lack of necessary information on costs, the FHWA is unable to evaluate the economic impact of the potential regulatory changes being considered in this rulemaking. Based on the information received in response to this notice, the FHWA intends to carefully consider the costs and benefits associated with various alternative requirements. Comments, information, and data are solicited on the economic impact of the potential changes.

Regulatory Flexibility Act

Due to the preliminary nature of this document and lack of necessary information on costs, the FHWA is unable to evaluate the effects of the potential regulatory changes on small entities. Based on the information received in response to this notice, the FHWA intends, in compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601 *et seq.*), to carefully consider the economic impacts of these potential changes on small entities. The FHWA solicits comments, information, and data on these impacts.

Executive Order 12612 (Federalism Assessment)

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

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372

regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 392 and 393

Highways and roads, Motor carriers, Motor vehicle safety.

Authority: 49 U.S.C. 3102; 49 U.S.C. app. 2505; 49 CFR 1.48; sec. 15(f); Public Law 101–500, 104 Stat. 1220 (1990).

Issued on: January 11, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94–1211 Filed 1–18–94; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 940101–4001; 121393A]

RIN 0648–AG14

Atlantic Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce (Secretary) issues this proposed rule governing the Atlantic bluefin tuna (bluefin) fisheries to: Establish fishing category quota allocations for the 1994 fishing season; amend the specified amount of other species to be landed as a condition for landing an incidental bycatch of bluefin in the southern longline fishery; adjust the line that separates the northern and southern regulatory areas for vessels using longline gear and possessing an Incidental Catch permit for bluefin; make technical corrections to clarify the regulatory text; and request comments on the use of curved length measurements to identify bluefin size classes and on additional means to provide notice of fishery closures. This action is necessary to implement the recently adopted quota recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT), to improve management and monitoring of the U.S. bluefin fisheries, to facilitate enforcement, and to enhance collection of data to improve assessment of the impacts of the fisheries.

DATES: Comments on this proposed rule must be received on or before February 8, 1994.

ADDRESSES: Comments on this proposed rule should be sent to, and copies of the Draft Background Document/ Environmental Assessment/ Regulatory Impact Review are available from, Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service (NMFS), 1315 East-West Highway, Silver Spring, MD 20910. Comments regarding the burden-hour estimate or any other aspect of the collection-of-information requirement contained in this rule should be sent to NMFS and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301–713–2347.

SUPPLEMENTARY INFORMATION: The bluefin fisheries are managed under the implementing regulations at 50 CFR part 285, under the authority of the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 et seq. The ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary to carry out the recommendations of ICCAT. The authority to implement ICCAT recommendations is delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Purpose of Current Action

The proposed action for the 1994 fishing season is limited in scope. It is intended to meet existing obligations to implement ICCAT recommendations and to improve the efficiency of the domestic fishery management program.

Pursuant to ATCA requirements, action is currently needed to ensure that the 1994 ICCAT-recommended quota of 1,235 metric tons (mt) is not exceeded. Also, action is needed to adjust management measures for the 1994 fishery to improve monitoring of bluefin tuna catch and facilitate enforcement. In addition, the proposed measures would enhance NMFS' ability to meet the stated management objectives for the domestic fishery: provide data to monitor the stock, minimize economic displacement, maximize the use of the resource, and spread fishing opportunity among as many users as possible.

Proposed Management Measures

This proposed rule would implement the ICCAT quota recommendation for 1994 and allocate the total quota among the several permitted fishing categories. In addition, NMFS received input regarding proposed changes to the Incidental Catch category from 13 scoping meetings held during September 13–17, 1993, and from written comments received during the comment period that ended November 5, 1993. Commenters suggested various proposals, some of which were adopted in the proposed measures and others that may be considered for future rulemaking. NMFS considered all comments received during the scoping process while formulating this proposed rule. NMFS believes that these proposed changes would further the management objectives for the domestic bluefin fisheries. NMFS also requests comments on the use of curved length measurements to identify bluefin size classes and on additional means to provide notice of fishery closures.

Fishing Category Quota Allocations for 1994

At the November 8–12, 1993, meeting, ICCAT adopted a recommendation for new quotas for bluefin in the western Atlantic. The total catch for the western Atlantic region for 1994 would be reduced by approximately 15 percent from the 1992/1993 annual level to 1,995 mt. Despite this overall quota reduction, U.S. fishermen have been allocated nearly the same amount of bluefin in 1994 (1,235 mt) as they were allocated in 1993 (1,248 mt). This results from Japan's agreement to reduce its share of the total western Atlantic quota from its historical 26 percent to 12.5 percent during 1994 and 1995.

NMFS proposes to take the 13-mt reduction in the U.S. quota from the 31 mt reserve, thereby continuing or

slightly modifying the 1992/1993 quota allocations. The following quota allocations would be established for 1994: General category—531 mt; Harpoon Boat category—53 mt; Purse Seine category—301 mt; Incidental Catch category—southern longline subcategory quota of 86 mt, northern longline subcategory quota of 23 mt, and "other" subcategory quota of 4 mt; Angling category—219 mt (no more than 99 mt of this quota may be school bluefin of which 47 mt may be landed south of 38°47′ N. latitude and 52 mt may be landed north of 38°47′ N. latitude). The Angling category quota for school bluefin is reduced from 100 mt to 99 mt because it is based, per ICCAT recommendation, on 8 percent of the total U.S. quota (including reserve), which is lower for 1994.

Also at the November 1993 meeting, ICCAT recommended a quota of 1,200 mt for the western Atlantic for 1995 (of which U.S. fishermen would receive 743 mt). This reduction of over 50 percent from the 1991 western Atlantic quota is based upon scientific assessments that indicate that present harvest levels are resulting in a decrease in the size of the western Atlantic bluefin stock. The relatively higher 1994 allocation resulted from a 1-year provision to allow additional time for scientific research, a review of data and methodologies used in the western Atlantic bluefin stock assessment, and to reduce the short-term economic impact on fishermen. As a member of ICCAT, the United States is obligated to adopt domestic regulations to comply with these recommendations. This proposed rule would establish quota allocations by fishing categories for 1994 only. The quota reduction for 1995, being of greater magnitude and likely to have significant impacts on the human environment, will be addressed in future rulemaking, which will include preparation and public review of an environmental impact statement.

Change in Bycatch Conditions for Southern Longline Subcategory

In 1982, ICCAT recommended a ban on a directed bluefin tuna fishery in the Gulf of Mexico spawning area out of concern for protection of the spawning stock. NMFS examination of available longline fishery data regarding discarded bluefin in the Gulf of Mexico revealed that more than 80 percent of those bluefin released were dead. Thus, in the interest of reducing waste, NMFS allowed landing of bluefin tuna but implemented longline fishery restrictions to preclude directed harvest.

In a final rule dated January 26, 1981 (46 FR 8012), NMFS implemented an incidental catch limit of two giant bluefin per trip in the area south of 36° N. latitude and 2 percent by weight of all other fish on board per trip in the area north of that latitude. The reason for the disparity in the catch limits between the two regions was that the 2 percent by weight limit was believed to be unenforceable in southern ports due to the lack of weighing facilities in many areas where bluefin were landed. On January 6, 1992 (57 FR 365), NMFS determined that the incidental catch limit of two giant bluefin per trip in the southern area was not effective at reducing bluefin bycatch and changed the restriction for this area to one bluefin per trip, provided the vessel landed, offloaded, and sold at least 2,500 lbs (1,134 kg) of other species. NMFS believed that the majority of trips directed at other species met or exceeded the threshold, making accurate weighing unnecessary in most cases.

NMFS has received several comments indicating that the current bycatch restriction in the southern area is causing an increase in bluefin discard and waste. Fishermen have reported that when a bluefin is caught early in a trip, they are forced to continue fishing at the risk of deteriorating quality and price and at the risk of having to discard additional bluefin in order to meet the target catch requirement of 2,500 lbs (1,134 kg). Examination of 1993 domestic observer data indicates that of 15 bluefin caught during observed trips, only four were retained (27 percent). Thus, reducing the target catch requirement could lead to a reduction in bluefin mortality.

NMFS examined several options, none of which would change the allocation for the total longline bycatch. The options that were discussed at the scoping meetings were: (1) Require special gear; (2) set a requirement of a minimum number of days between a vessel's landings; and (3) revise the minimum target catch requirement of 2,500 lbs (1,134 kg). Recommendations also included prohibiting bluefin catches in the spawning grounds in the Gulf of Mexico or, conversely, to work through ICCAT to rescind the prohibition and establish a limited directed fishery.

Special gear restrictions, such as breakaway leaders and circle hooks, are a management option, but further study is required to define exact specifications and enforcement methods. NMFS considered setting a minimum number of days between allowable landing of a bluefin by individual vessels but rejected this option because it could foster a periodic directed fishery for bluefin while not necessarily eliminating the problems of bluefin bycatch on longline trips directed at yellowfin tuna, swordfish, or sharks. NMFS also considered prohibiting the landing of bluefin by longliners during the spawning season in the Gulf of Mexico but rejected this option because it would have precluded retention of unavoidable bycatch that in many cases could not be released alive. NMFS also rejected a limited directed fishery, which would be inconsistent with the ICCAT recommendation. Given the depleted status of the bluefin resource and the significance of the Gulf of Mexico spawning grounds, NMFS does not consider a directed fishery to be warranted at this time.

NMFS believes that requiring threshold amounts to be landed ensures that bluefin are harvested only as bycatch incidental to fishing for other species. NMFS examined landings of Gulf of Mexico longline trips where no bluefin were taken to determine if the current target catch requirement of 2,500 lbs (1,134 kg) is appropriate. The data indicate that for years 1989 through 1991, the median values of landings for trips where no bluefin were sold were slightly above 1,500 lbs (680 kg) for the months of January through April, and about 3,500 lbs (1,588 kg) for the months of May through December. Therefore, NMFS proposes to amend the minimum poundage requirement so that for the southern management area for the Incidental Catch category one bluefin tuna may be landed per vessel per fishing trip, provided that for the months of January through April at least 1,500 lbs (680 kg) and for the months of May through December at least 3,500 lbs (1,588 kg), either dressed or round weight, of species other than Atlantic bluefin tuna are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout as sold. This change should reduce waste and mortality of bluefin tuna, while preserving the quality and value of legitimate bluefin bycatch that is landed.

NMFS believes it is possible to conduct directed fishing on species other than bluefin, with only a limited amount of bluefin bycatch. However, if evidence indicates this is not true, NMFS may consider more stringent measures, such as area or season closures or gear restrictions, in future rulemaking.

Adjust the Longline Incidental Catch Boundary Line

NMFS proposes to move the 36 °N. latitude line that separates the northern and southern longline fisheries to 34 °N.

latitude. Several comments were received requesting such a change. A traditional longline fishing area off Cape Hatteras straddles the current line at 36 °N. latitude. The current boundary, which is a very dynamic oceanographic regime, creates a problem because of the uncertainty of drifts in the cyclonic and anti-cyclonic eddies and currents that occur in the area. Fishermen may take bluefin in an open area and drift to a closed area, whereupon they are not able to land these fish because of the prohibition on capture, retention, possession, and offloading of bluefin when an area is closed to fishing. NMFS believes adjustment of the boundary line to 34 °N. latitude is appropriate because this a less dynamic oceanographic environment close to shore with the Florida Current located further offshore. This modification should reduce waste of fish and enforcement problems in this area without increasing bluefin mortality. The total bluefin quotas for the northern and southern management areas for incidental longline catch would remain unchanged by this adjustment.

Request for Comments Regarding the Use of Curved Length Measurements of Bluefin

NMFS proposes to amend the regulations to include definitions of straight fork length, and curved fork length and to clarify that straight length is the sole criterion for determination of bluefin tuna size class. Additionally, NMFS proposes to amend the regulatory text regarding dealer reporting to clarify the existing requirements to report weights and lengths of bluefin tuna purchased from fishermen.

Currently, the size classes for bluefin are based on straight lengths (lengths taken along a straight line between lines perpendicular to the body). If proper equipment is used, straight length provides a more accurate measurement for bluefin than curved length (lengths taken along the curvature of the body) because of short-term variations in the girth of the fish as a result of recent feeding rates. Frequently, however, calipers or similar instruments are not available for measuring the straight length of bluefin. Measurements are often reported as curved length taken with a tape measure held along the body of the fish. Illegal fish may be retained when commercial fishermen and recreational anglers use curved length instead of straight length for determination of size classes and enforcement actions have resulted.

NMFS is not proposing to define size classes in terms of curved length at this time. However, after analysis of length data is completed, NMFS could amend the size-class definitions to make curved length an acceptable criterion for determination of bluefin tuna size class. NMFS requests comments on the use of curved length in conjunction with, or in place of, straight length for determining size classes of bluefin.

Request for Comments Regarding Additional Means To Provide Notice of Fishery Closures

Under current regulations, closures are announced via notice in the **Federal Register**, with the closures generally effective some time after filing the notice. Fishermen who do not have access to these notices may consult NMFS weekly catch reports, consult notices issued over the highly migratory species fax network, listen for updates on NOAA weather radio, or call 301–713–2347 or 508–281–9260 for current information. NMFS received comments during the 1993 fishing season that sufficient notice was not provided for all closures. While existing regulations do not require advance notice of closure, NMFS recognizes the importance of making every effort to notify the affected public as far in advance as possible.

Although NMFS endeavors to provide advance notice, quota monitoring is difficult when allowable catch levels are small relative to the level of fishing effort. Based on current and historical catch rates, NMFS attempts to project when quotas are likely to be reached for all fishing categories. While the overriding concern is to maintain catch within each category's quota, it is also important that NMFS afford the maximum economic benefits to be gained from full use of allocated quotas. Unfortunately, reliance on projected catch figures may result in premature closures or short notification periods. Given the increasingly restrictive bluefin quotas in years 1995 and beyond, NMFS anticipates that quota monitoring and notification of closures will become even more difficult. NMFS requests comments on alternative means to provide notice of closures so as to minimize disruption to fishing activities and allow participants to plan accordingly.

Technical Changes to the Regulations

NMFS proposes two revisions to correct and clarify the regulatory text and to improve the effectiveness of management. A technical revision to the regulatory text is proposed to omit obsolete references contained in § 285.31(a)(30). Also, NMFS proposes to specify in § 285.31(a)(37) that, in order to retain fish less than 70 inches, vessels must have an Angling category permit or must have taken the small bluefin pursuant to the incidental catch allowance of the Purse Seine category fishery. This change is needed due to the implementation of the Angling category permit promulgated in a prior rulemaking dated August 27, 1993 (58 FR 45286).

Classification

This proposed rule is published under the authority of the ATCA, 16 U.S.C. 971 *et seq.* The AA has preliminarily determined that this proposed rule is necessary to implement the recommendations of ICCAT and is necessary for management of the Atlantic tuna fisheries.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities because the fishing category quotas proposed for 1994 will remain the same as current quotas. Also, the proposed changes to the Incidental Catch category would alleviate some of the restrictions imposed on fishermen landing bluefin taken incidental to longlining for swordfish, sharks and other tunas. These changes should facilitate enforcement of bluefin regulations, would have a modest positive economic impact for some longline fishing trips and should help prevent waste of bluefin tuna which would otherwise be discarded dead. Since the proposed changes would not significantly affect a substantial number of small entities, a regulatory flexibility analysis was not prepared. This proposed rule is not subject to review under E.O. 12866.

This rule involves a clarification of an existing collection-of-information requirement subject to the Paperwork Reduction Act that has been approved by OMB (control number 0648–0239). This change, in reference to the daily dealer report, clarifies the requirement to indicate the type of measurement recorded for bluefin tuna weights and lengths. Public reporting burden for this collection of information is estimated to average 3 minutes per response for completing the requirement and faxing to NMFS. Send any comments regarding this burden estimate or any other aspect of this requirement, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: January 12, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 285 is proposed to be amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. In § 285.2, the definition of *fork length* is removed and definitions of *curved fork length* and *straight fork length* are added, in alphabetical order, to read as follows:

§ 285.2 Definitions.

* * * * *

Curved fork length means a measurement of the length of Atlantic bluefin tuna taken in a line tracing the contour of the body along the middle of the lateral surface from the tip of the snout to the fork of the tail.

* * * * *

Straight fork length means a measurement of the length of Atlantic bluefin tuna taken in a straight line along the middle of the lateral surface from a line perpendicular to the tip of the snout to a line perpendicular to the fork of the tail.

* * * * *

3. Section 285.22 is revised to read as follows:

§ 285.22 Quotas.

The total annual (January 1–December 31) amount of Atlantic bluefin tuna that may be caught, retained, possessed or landed by persons and vessels subject to U.S. jurisdiction in the regulatory area is subdivided as follows:

(a) *General.* The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the General category under § 285.21(b) is 531 mt, of which 65 mt is set aside for a late-season fishery beginning September 15. On the basis of the statistics referenced at § 285.20(b)(1), the Assistant Administrator will project a date when the catch of Atlantic bluefin tuna will equal the annual quota minus 65 mt, and will publish notification in the **Federal Register** stating that fishing for, retaining, possessing or landing Atlantic bluefin tuna under the early-season quota must cease on that date at a specified hour, and not recommence until September 15, whereupon a quota equal to the difference between the annual quota and the estimated catch prior to September 15 will become available. If the Assistant Administrator determines (based on dealer reports, availability of large medium or giant Atlantic bluefin tuna on the fishing grounds, and any other relevant information) that variations in seasonal distribution, abundance, or migration patterns of Atlantic bluefin tuna, and the catch rate, may prevent fishermen in an identified area from harvesting their share of the quota, the Assistant Administrator may set aside an allocation of the late-season quota for such area. The amount of any allocation shall not exceed the greater of 20 mt or the maximum reported landings in the identified area in any of the preceding 3 years. The Assistant Administrator will publish notification of any set-aside allocation and its basis in the **Federal Register**. The daily catch limit for the identified area will be set at one large medium or giant Atlantic bluefin tuna per day per vessel.

(b) *Harpoon Boat.* The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the Harpoon Boat category under § 285.21(b) is 53 mt.

(c) *Purse Seine.* The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the Purse Seine category under § 285.21(b) is 301 mt.

(d) *Angling.* The total annual amount of school, large school, and small medium Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by anglers is 219 mt. No more than 99 mt of this quota may be school Atlantic bluefin tuna. This quota is further subdivided as follows:

(1) 47 mt of school Atlantic bluefin tuna may be caught, retained, possessed or landed south of 38°47′ N. latitude.

(2) 52 mt of school Atlantic bluefin tuna may be caught, retained, possessed or landed north of 38°47′ N. latitude.

(e) *Incidental.* The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the Incidental Catch category under § 285.21(b) is 113 mt. This quota is further subdivided as follows:

(1) 109 mt for longline vessels. No more than 86 mt may be caught, retained, possessed, or landed in the area south of 34°00′ N. latitude.

(2) For vessels fishing under § 285.23 (a) and (d), 4 mt may be caught, retained, possessed, or landed in the regulatory area.

(f) *Inseason adjustment amount.* The total amount of Atlantic bluefin tuna that will be held in reserve for inseason adjustments is 18 mt. The Assistant Administrator may allocate any portion (from 0 to 100 percent) of this amount to any category or categories of the fishery, including research activities authorized under § 285.1(c). The Assistant Administrator will publish a notification of allocation of any inseason adjustment amount in the **Federal Register** before such allocation is to become effective. Before making any such allocation, the Assistant Administrator will consider the following factors:

(1) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock;

(2) The catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made;

(3) The projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season; and

(4) The estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

(g) The catching or retention of school, large school or small medium Atlantic bluefin tuna is prohibited except as allowed under paragraph (d) of this section.

(h) In any year, if the Assistant Administrator determines, based on landing statistics and other available information, that the prior year's quota in any category, or as appropriate, subcategory, has been exceeded or has not been reached, the Assistant Administrator will subtract the overharvest from or add the underharvest to that quota for the subsequent year; provided that the total of allocations and the reserve does not exceed the annual quota determined by ICCAT. The Assistant Administrator will publish any amounts to be subtracted or added and the basis for the quota reductions or increases in the **Federal Register**.

(i) Transfers between categories. The Assistant Administrator is authorized to make adjustments to quotas involving transfers between vessel categories or, as appropriate, subcategories if the Assistant Administrator determines, based on historical landing statistics, present year catch rates and effort, and other available information, that any

category, or as appropriate, subcategory, is not likely to take its entire quota as previously allocated for that year. Given that determination, the Assistant Administrator may transfer, inseason, any portion of the quota of any fishing category to any other fishing category or to the reserve after considering the four factors indicated at paragraphs (f) (1) through (4) of this section, and the probability that any transfers between categories will not result in the total quota being exceeded. The Assistant Administrator shall file a notification of transfer of any inseason adjustment amount with the Office of the Federal Register before such transfer is to become effective.

4. Section 285.23 is amended by revising paragraph (c) to read as follows:

§ 285.23 Incidental catch.

* * * * *

(c) *Longlines.* Subject to the quotas in § 285.22, any person operating a vessel using longline gear possessing an Incidental Catch permit issued under § 285.21 may retain or land large medium and giant Atlantic bluefin tuna as an incidental catch. The amount of Atlantic bluefin tuna retained or landed may not exceed:

(1) One fish per vessel per fishing trip landed south of 34°00′ N. latitude, provided that for the months of January through April at least 1,500 pounds (680 kg), and for the months of May through December at least 3,500 pounds (1,588 kg), either dressed or round weight, of species other than Atlantic bluefin tuna are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout as sold; and

(2) Two percent by weight, either dressed or round weight, of all other fish legally landed, offloaded and documented on the dealer weighout as sold at the end of each fishing trip, north of 34°00′ N. latitude.

* * * * *

5. In § 285.26, the text preceding the table is revised to read as follows:

§ 285.26 Size classes.

Straight fork length will be the sole criterion for determining the size class of Atlantic bluefin tuna. For any Atlantic bluefin tuna found with the head removed, it is deemed, for purposes of this subpart, that the tuna, when caught, fell into a size class in accordance with the following formula: Total straight fork length equals pectoral fin straight fork length multiplied by a factor of 1.35. For this purpose, all measurements must be taken in a straight line along the middle of the lateral surface from a line perpendicular to the dorsal insertion of the pectoral fin of the beheaded fish to a line perpendicular to the fork of the tail (PF, see Figure 1). The pectoral fin straight fork length will be the sole criterion for determining the size class of a beheaded Atlantic bluefin tuna. Total straight fork length will be the sole criterion for determining the size class of whole (head on) Atlantic bluefin tuna. Atlantic bluefin tuna are deemed to fall into a size class according to the following table; approximate round weights are given for illustrative purposes only.

* * * * *

6. Section 285.29 is amended by revising paragraph (a) to read as follows:

§ 285.29 Dealer recordkeeping and reporting.

* * * * *

(a) Must submit to the Regional Director via both electronic facsimile (FAX) and the existing postal system a daily report on a reporting card provided by NMFS, within 24 hours of the purchase or receipt of each Atlantic bluefin tuna from the person or vessel that harvested the fish. A FAX of said card must be received at the NMFS NE Regional Office (FAX 508–281–9135) within 24 hours of the purchase or receipt of each Atlantic bluefin tuna. Additionally, said card must be postmarked and mailed within 24 hours of the purchase or receipt of each Atlantic bluefin tuna. Each reporting card must be signed by the vessel permit holder or vessel operator to verify the name of the vessel that landed the fish and must show the Atlantic bluefin tuna vessel permit number, metal tag number affixed to the fish by the dealer or assigned by an authorized officer, the date landed, the port where landed, the round and/or dressed weight (indicating which weight(s) measured), the total or pectoral fin straight and/or curved fork length (indicating which length(s) measured), gear used, and area where the fish was caught.

* * * * *

7. Section 285.31 is amended by revising paragraphs (a)(30) and (a)(37) to read as follows:

§ 285.31 Prohibitions.

(a) * * *

(30) Fish for, catch, retain, possess or land Atlantic bluefin tuna from the Gulf of Mexico except as specified under § 285.23 (c) and (d);

* * * * *

(37) Fish for, catch, retain, possess or land any Atlantic bluefin tuna less than 178 cm from a vessel other than one issued an Angling Category permit under § 285.21, or a Purse Seine category permit and operating under § 285.23(e).

* * * * *

[FR Doc. 94–1185 Filed 1–13–94; 1:30 pm]
BILLING CODE 3510–22–P

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50 CFR Parts 672 and 675

[Docket No. 940102–4002, I.D. 122293D]

RIN 0648–AF17

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations that would implement Amendment 25 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI). This amendment proposes to eliminate the primary Pacific halibut prohibited species catch (PSC) limit that, when reached, requires NMFS to close Bycatch Limitation Zones 1 and 2H of the Bering Sea. NMFS also proposes regulations that would authorize the release of vessel-specific observer data on bycatch of prohibited species, and prohibit the discard of salmon taken as bycatch in the BSAI groundfish trawl fisheries until each salmon has been counted by a NMFS-certified observer. This action is necessary for effective management of the halibut PSC limit established for BSAI trawl fisheries and to provide better information on salmon and other prohibited species bycatch. This action is intended to promote management and conservation of groundfish and other fish resources and to further the goals and objectives contained in the FMP for the Groundfish Fishery of the BSAI and the FMP for Groundfish of the Gulf of Alaska (GOA).

DATES: Comments must be received by 4:30 p.m., Alaska local time, February 28, 1994.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel). Copies of the environmental assessment/regulatory impact review (EA/RIR) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (telephone 907–271–2809).

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fisheries Management Division, Alaska Region, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the GOA and the BSAI is managed by the Secretary of Commerce (Secretary) according to the FMP for Groundfish of the GOA and the FMP for the Groundfish Fishery of the BSAI. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*) (Magnuson Act), and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to U.S. fisheries are codified at 50 CFR part 620.

This action proposes regulations to implement Amendment 25 to the FMP for the Groundfish Fishery of the BSAI. If approved by the Secretary, this amendment would eliminate the primary halibut PSC limit established for BSAI trawl fisheries. This action also proposes two regulatory amendments that would (1) authorize the release of vessel-specific observer data on bycatch of prohibited species, and (2) prohibit the discard of salmon taken as bycatch in the BSAI groundfish trawl fisheries until each salmon has been counted by a NMFS-certified observer. A description of, and reasons for, each of the proposed measures is presented below.

Amendment 25 to the FMP for the Groundfish Fishery of the BSAI

A 4,400-mt primary halibut PSC limit was established for specified BSAI trawl fisheries under Amendment 12a to the FMP for the Groundfish Fishery of the BSAI (54 FR 32642, August 9, 1989). When the primary halibut PSC limit was reached, Bycatch Limitation Zones 1 and 2H were closed to directed fishing for specified groundfish species. The intent of this closure was to reduce halibut bycatch rates experienced by the trawl fisheries without prohibiting the groundfish trawl fisheries access to the entire BSAI groundfish resource. When the secondary halibut bycatch limit established under Amendment 12a (5,333 mt) was reached, the entire BSAI was closed to directed fishing for specified groundfish species. A justification for and intent of the primary halibut PSC limit was discussed in the preamble to the final rule implementing Amendment 12a. Amendment 12a expired December 31, 1990, and was superseded by Amendment 16 to the FMP. Amendment 16 and its implementing regulations (56 FR 2700, January 24, 1991) maintained the primary and secondary halibut PSC limits at 4,400 mt and 5,333 mt, respectively. Amendment 19 to the FMP maintained the primary halibut PSC limit at 4,400 mt, but reduced the secondary limit to 5,033 mt. This adjustment was effective only for the 1992 fishing year (57 FR 43926, September 23, 1992).

Under Amendment 19, the smaller difference between the primary and secondary halibut PSC limits frustrated NMFS' ability to monitor the primary halibut PSC limit in a manner to allow closures before the secondary limit was reached. As a result, trawl closures ensuing from halibut bycatch restrictions increasingly were implemented under the secondary limit rather than the primary limit. This situation continues under Amendment 21 to the FMP, which superseded Amendment 19 and converted the primary and secondary halibut PSC limits established for trawl gear fisheries from catch limits to mortality limits (3,300 mt mortality and 3,775 mt mortality, respectively) (58 FR 14524, March 18, 1993).

Questions have been raised regarding the effectiveness of the primary PSC mortality limit to reduce halibut bycatch rates for two reasons. First, the minor difference between the primary and secondary limits constrains NMFS' ability to implement fishery closures under the primary limit before the secondary limit is reached. Second, observer data on halibut bycatch rates do not indicate that closure of Bycatch Limitation Zones 1 and 2H under the primary limit necessarily reduces halibut bycatch rates to allow more groundfish to be harvested before the secondary limit is reached. To the contrary, closure of Zones 1 and 2H often increases bycatch rates by forcing fisheries to move to areas with lower groundfish catch per unit of effort and higher halibut bycatch rates. Once the secondary limit is reached, the entire BSAI is closed to directed fishing for specified groundfish species by vessels using non-pelagic trawl gear (50 CFR 675.21(c)(1)(iv)).

To respond to these concerns, NMFS prepared a draft analysis for a proposed FMP amendment to eliminate the primary halibut PSC limit. The draft analysis was reviewed by the Council and its Advisory Panel (AP) and Scientific and Statistical Committee (SSC) during the Council's September 1992 meeting and adopted for public review. At its December 1992 meeting, the Council considered the testimony and recommendations of the AP, SSC, fishing industry representatives, and the general public on the proposed action to eliminate the primary halibut PSC mortality limit. The Council adopted the proposed action under Amendment 25 to the FMP and requested NMFS to prepare a proposed rule to implement the action. The action would not affect the secondary halibut bycatch mortality limit established for the BSAI trawl fisheries (3,775 mt).

Mandatory Retention of Salmon Until Counted by a NMFS-certified Observer

At its September 1993 meeting, the Council requested that NMFS prepare a proposed rule for review and approval that would prohibit the discard of salmon taken in the BSAI groundfish trawl fisheries until a NMFS-certified observer has counted each fish and collected any scientific data or biological samples that the observer had been requested by NMFS to obtain. Regulations to prohibit the discard of all salmon taken in groundfish trawl operations until an observer has counted each salmon would provide the opportunity to collect better data on salmon bycatch. These data could be used to assess the quality of bycatch rate estimates derived from existing observer sampling procedures and provide additional information with which to assess the magnitude of salmon bycatch in the Alaska trawl fisheries. Additional data collected on salmon taken as bycatch in the BSAI trawl fisheries also could be used to assess long-term management measures that may be developed to address the salmon bycatch problem. Mandatory retention of salmon until counted by an observer also would support independent industry initiatives to explore factors that may be correlated with salmon bycatch and identify changes in fishing operations that could reduce salmon bycatch rates.

NMFS concurs that additional information on salmon bycatch would be desirable and is necessary to develop management actions to address the salmon bycatch problem in the Alaska groundfish trawl fisheries. Regulations implementing the Council's request would require operators of vessels carrying observers whose fishing operation allows for sorting of groundfish catch to sort all salmon from the groundfish catch and store the salmon in a separate bin or other location on the vessel that allows the observer free and unobstructed physical access to each salmon for observation and collection of scientific data or

biological samples. Operators of vessels not carrying observers onboard or whose fishing operation does not allow for sorting of groundfish catch for salmon must ice, freeze, or store in a refrigerated saltwater tank all salmon taken as bycatch in trawl operations for delivery to the processor receiving the vessel's groundfish catch.

Processors receiving groundfish from trawl vessels participating in a directed fishery for BSAI groundfish would be required to retain all salmon delivered by each vessel during a weekly reporting period in separate bins marked with the vessel's name and Alaska Department of Fish and Game (ADF&G) fish ticket number(s) until a NMFS-certified observer has counted each salmon and collected any scientific data or biological samples that are requested by the NMFS Observer Program. Processors without observer coverage immediately available would be required to store all salmon until a NMFS-certified observer is available to count each fish. Salmon must be stored at a location that allows an observer free and unobstructed access to each salmon.

NMFS proposes to require vessel operators and managers of shoreside processing operations to designate a crew person or employee who would be responsible for proper sorting, retention, and storage of salmon until a NMFS-certified observer has notified the vessel operator or manager of the shoreside operation that the number of salmon and any biological samples have been obtained. Upon the request of the observer, the designated crew person or employee also would be responsible to help count salmon and take biological samples from retained salmon under the direction of the observer. The intent of this proposed requirement is to support industry initiatives to obtain better data on salmon bycatch and to facilitate the collection of these data in a manner that does not jeopardize the collection of other scientific or catch data that NMFS-certified observers currently are required to obtain.

Processors without observer coverage would be required to freeze salmon until such time as an observer is available to count retained fish. Some processors are never required to obtain an observer because their groundfish processing operation never exceeds 500 metric tons (mt) during a single month. Mandatory retention would require these processing operations to freeze salmon carcasses for an unknown period of time until an observer is obtained to count the fish. Although not quantified, the associated costs to unobserved processing operations resulting from long-term storage of salmon likely are unreasonable relative to the amounts of groundfish processed and corresponding salmon bycatch that could be expected from the small amounts of groundfish delivered to these processing operations. Therefore, NMFS proposes to exempt processors from mandatory retention of salmon during those months that the processor is exempt from obtaining observer coverage under regulations implementing the Observer Program (50 CFR 672.27 and 675.25). Currently, this exemption applies to mothership processors and shoreside processing facilities that receive less than 500 mt of groundfish during a month.

All salmon, regardless of whether possessed at sea or at land-based processors, would be required to be returned to Federal waters immediately with a minimum of injury regardless of condition, following notice by a NMFS-certified observer that salmon have been counted and the collection of any scientific data or biological samples has been completed. The discard of any salmon prior to notification by a NMFS-certified observer that salmon have been counted would constitute a violation of regulations authorized under the Magnuson Act. Such violations would be subject to enforcement action under the Magnuson Act.

Release of Observer Data on Vessel Bycatch Amounts of Salmon and Bycatch Rates of Other Prohibited Species

Observer data may be protected from public disclosure under the Freedom of Information Act (FOIA) because it is considered commercial or financial information (5 U.S.C. 552(b)(4)). Release of such information may be facilitated by regulatory action.

At its September 1993 meeting, the Council requested NMFS to prepare a proposed rule that would authorize the release of certain weekly observer data: The name and Federal permit number of each vessel participating in a directed fishery for Alaska groundfish; the number of chinook salmon and other salmon species taken by each vessel; and the observed bycatch rates of Pacific halibut, Pacific herring, king crab, and *C. bairdi* Tanner crab of vessels participating in the BSAI or GOA groundfish fisheries. Members of the groundfish industry have requested that vessel bycatch amounts or rates be made available in as timely a manner as possible to support independent industry initiatives to address the bycatch problem.

To further support industry initiatives to reduce prohibited species bycatch rates in the groundfish trawl fisheries, members of the groundfish industry have submitted a separate request to NMFS for the release of additional observer data on prohibited species bycatch in most BSAI and GOA groundfish trawl fisheries. NMFS believes that disclosure of these observer data collected since 1992 could facilitate research by industry on salmon and other prohibited species bycatch that hopefully would lead to more informed decisions by vessel operators on alternative fishing practices to minimize bycatch rates of these species. These data would not be identified by vessel and would include the following data for observed hauls in the trawl fisheries:

Date;
Time of day gear is deployed;
Latitude and longitude at beginning of haul;
Bottom Depth;
Fishing depth of trawl;
Rate chinook salmon (number of salmon/mt groundfish);
Rate other salmon (number of salmon/mt groundfish);
Rate Pacific halibut (kilograms halibut/mt groundfish;
Rate Pacific herring (kilograms herring/mt groundfish);
Rate king crab (number of crab/mt groundfish);
Rate bairdi Tanner crab (number of crab/mt groundfish);
Sea surface temperature (where available); and
Sea temperature at fishing depth of trawl (where available).

Representatives of the Alaska trawl industry have requested that the above observer data on specific hauls not be released for vessels participating in the rockfish, Greenland turbot, or Atka mackerel trawl fisheries because substantial competitive harm could result. These fisheries are conducted by a small number of vessels, involve relatively small amounts of quota, and are geographically specific in nature. Releasing observer data on individual hauls could effectively disclose commercial information of the current participants and cause them to suffer substantial competitive harm. The rockfish, Greenland turbot, and Atka mackerel fisheries generally have low salmon bycatch rates and contribute relatively little to the overall salmon bycatch amounts annually experienced in the Alaska trawl fisheries. Consequently, excluding from disclosure the observer data collected onboard vessels participating in the rockfish, Greenland turbot, or Atka mackerel fisheries is not anticipated to impair the effectiveness of industry

initiatives to address the salmon bycatch problem.

Trawl industry representatives have not presented to NMFS concerns about the release of observer data that includes vessel name and prohibited species bycatch amounts or rates or haul-specific observer data for groundfish fisheries other than the rockfish, Greenland turbot, or Atka mackerel fisheries. Other participants in the groundfish fisheries may perceive that the release of these observer data may cause substantial competitive harm to vessel operators, owners, or other persons involved in the groundfish fishing industry because the disclosure of haul location and depth data for these fisheries involves the release of traditionally closely held commercial information. Therefore, the disclosure of observer data on prohibited species bycatch and associated haul location and depth information could possibly be expected to divulge information on specific fishing operations in a manner that would result in substantial competitive harm.

Pursuant to a request for information under the FOIA, NMFS has determined that the disclosure of observer data for vessel haul location and depth in the BSAI pollock and cod fisheries collected during 1993 is not reasonably expected to result in competitive harm. This disclosure is based on the determination that trawl operations for pollock and cod in the BSAI occur within fairly well demarcated areas that have consistently supported historic foreign, joint venture, and domestic fisheries for these species. Given the established nature of these fisheries and the relative concentration of fishing effort to known fishing grounds, NMFS does not expect that the release of haul position and depth would result in the identification of unique fishing operations for pollock and cod that are not already known by the participants in these fisheries. However, NMFS still is concerned about whether the conditions allowing for the disclosure of observer data collected in the BSAI pollock and Pacific cod fisheries will continue in the future. Accordingly, NMFS has not exempted the BSAI pollock and Pacific cod fisheries from this proposed rule.

This proposed rule is in accordance with Department of Commerce regulations relating to the disclosure of commercial or financial information (15 CFR 4.7(h)). Under these regulations, NMFS may disclose commercial or financial information if (1) a notice of intent to disclose such information is adopted by NMFS pursuant to notice and public comment, (2) NMFS specifies narrow classes of records submitted to it that are to be released under the FOIA, and (3) NMFS provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted, that disclosure of the information could reasonably be expected to cause substantial competitive harm.

Consistent with 15 CFR 4.7(h), in exceptional circumstances, vessel owners and operators may provide to the Regional Director written justification at the time the observer data are submitted, or within a reasonable time thereafter (such as 24 hours), that disclosure of the information could reasonably be expected to cause substantial competitive harm. The Regional Director would consider objections and specific grounds for nondisclosure prior to determining whether to release the observer data. An example of an exceptional circumstance that would warrant Regional Director consideration of observer data would be when fewer than three vessels participate in a particular trawl fishery during a weekly reporting period and release of location or depth data for individual hauls observed onboard those vessels would result in substantial competitive harm. Exceptional circumstances that would result in the nondisclosure of observer data on vessel name and weekly bycatch amounts or rates of prohibited species have not been identified by NMFS. Public comment is specifically encouraged on additional exceptional circumstances that may justify nondisclosure.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has initially determined that this proposed rule is necessary for the conservation and management of the groundfish fishery off Alaska and that, pending Secretarial approval of Amendment 25, it would be consistent with the Magnuson Act and other applicable laws.

The RIR prepared for the proposed action concludes that this proposed rule, if adopted, would not have significant impacts on a substantial number of small entities. A copy of this analysis is available from the Council (see **ADDRESSES**). Every vessel operator participating in the Alaska groundfish fisheries and every processor receiving BSAI groundfish would be affected by the proposed action. Most operators of catcher vessels harvesting groundfish off Alaska meet the definition of a small entity under the Regulatory Flexibility Act. In 1992, 180 catcher vessels landed groundfish from the BSAI. All these vessel operators would be affected by the preferred alternatives, particularly those that participate in the pollock fishery (about 123 vessels). The economic impact on small entities under the proposed action would not result in a reduction in annual gross revenues by more than 5 percent, annual compliance costs that increase total costs of production by more than 5 percent, or compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping.

Dated: January 12, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

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

2. In § 672.7, paragraph (n) is added to read as follows:

§ 672.7 Prohibitions.

* * * * *

(n) Discard any salmon taken as bycatch in a directed fishery for Bering Sea and Aleutian Islands Area groundfish by vessels using trawl gear until notified by a NMFS-certified observer that all salmon have been counted and the collection of any scientific data or biological samples has been completed as provided at 50 CFR 675.20(c)(6).

3. In § 672.27, a new paragraph (g) is added to read as follows:

§ 672.27 Observers.

* * * * *

(g) *Disclosure of observer data to the public.* (1) The following information collected by observers for each catcher processor and catcher vessel may be made available to the public:

(i) Vessel name and Federal permit number;

(ii) Number of chinook salmon and "other salmon" observed during a weekly reporting period;

(iii) The ratio of total round weight of halibut or Pacific herring to the total round weight of groundfish in sampled hauls during a weekly reporting period; and

(iv) The ratio of number of king crab or *C. bairdi* Tanner crab to the total round weight of groundfish in sampled hauls during a weekly reporting period.

(2) The following information for observed hauls collected by observers onboard vessels using trawl gear to participate in a directed fishery for groundfish other than rockfish, Greenland turbot, or Atka mackerel may be made available to the public:

(i) Date;

(ii) Time of day gear is deployed;

(iii) Latitude and longitude at beginning of haul;

(iv) Bottom depth;

(v) Fishing depth of trawl;

(vi) Rate chinook salmon (number of salmon/mt groundfish);

(vii) Rate other salmon (number of salmon/mt groundfish);

(viii) Rate Pacific halibut (kilograms halibut/mt groundfish);

(ix) Rate Pacific herring (kg herring/mt groundfish);

(x) Rate king crab (number of crab/mt groundfish);

(xi) Rate C. *bairdi* Tanner crab (number of crab/mt groundfish);

(xii) Sea surface temperature (where available); and

(xiii) Sea temperature at fishing depth of trawl (where available).

(3) In exceptional circumstances, the owners and operators of vessels may provide to the Regional Director written justification at the time observer data are submitted or within a reasonable time thereafter, that disclosure of the information listed in paragraphs (g)(1) or (g)(2) of this section could reasonably be expected to cause substantial competitive harm. The determination whether to disclose the information will be made pursuant to 15 CFR 4.7.

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

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

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

§ 675.2 [Amended]

5. In § 675.2, the definition of *Bycatch Limitation Zone 2H* is removed.

6. In § 675.7, paragraph (o) is added to read as follows:

§ 675.7 General prohibitions.

* * * * *

(o) Discard any salmon taken as bycatch in a directed fishery for groundfish by vessels using trawl gear until notified by a NMFS-certified observer that all salmon have been counted and the collection of any scientific data or biological samples has been completed as provided at § 675.20(c)(6) of this part.

7. In § 675.20, paragraphs (c)(3) and (c)(4) are revised and new paragraph (c)(6) is added to read as follows:

§ 675.20 General limitations.

* * * * *

(c) * * *

(3) The operator of each vessel regulated under this part must sort its catch as soon as possible after retrieval of the gear and, except as provided under paragraph (c)(6) of this section, must return all prohibited species or parts thereof to the sea immediately with a minimum of injury, regardless of its condition, after allowing for sampling by an observer if an observer is onboard.

(4) Except as provided under paragraph (c)(6) of this section, it will be a rebuttable presumption that any prohibited species retained onboard a fishing vessel regulated under this part was caught and retained in violation of this section.

* * * * *

(6) *Retention of salmon.*—(i) Except as provided in paragraph (c)(6)(v) of this section, the operator of a vessel and the manager of a shoreside processing operation must not discard any Pacific salmon species taken incidental to any directed fishery for groundfish using trawl gear until all salmon have been counted by a NMFS-certified observer and the collection of any scientific data or biological samples from the salmon has been completed.

(ii) Operators of vessels carrying observers onboard and whose fishing operations allow for sorting of groundfish catch for salmon must retain all salmon bycatch in a separate bin or other location that allows an observer free and unobstructed physical access to the salmon to count each fish and collect any scientific data or biological samples.

(iii) Operators of vessels not carrying observers onboard or whose fishing operations do not allow for sorting of groundfish catch for salmon must ice, freeze, or store in a refrigerated saltwater tank all salmon taken as bycatch in trawl operations for delivery to the processor receiving the vessel's groundfish catch.

(iv) Processors receiving groundfish harvested in a directed fishery for groundfish using trawl gear must retain all salmon delivered by each trawl vessel during a weekly reporting period in separate bins marked with the vessel's name and ADF&G fish ticket number(s) for each delivery until a NMFS-certified observer has counted each salmon and collected any scientific data or biological samples from the salmon delivered to the processor by that vessel. Processors without an observer present must store whole salmon in an iced or frozen state until an observer is available to count each fish. Salmon must be stored at a location that allows an observer free and unobstructed physical access to each salmon.

(v) Mothership processor vessels and shoreside processing facilities that are exempt from obtaining observer coverage during a month under § 675.25 of this part or 50 CFR part 672.27 are exempt from mandatory retention of salmon under this paragraph (c)(6).

(vi) Operators of vessels and managers of shoreside processing operations that are required to retain salmon under paragraph (c)(6)(i) of this section must designate and identify to the NMFS-certified observer onboard the vessel or at the shoreside operation a crew person or employee to be responsible for sorting, retention, and storage of salmon consistent with this paragraph (c)(6). Upon the request of the NMFS-certified observer, the designated crew person or employee also is responsible for counting salmon and taking biological samples from retained salmon under the direction of the observer.

(vii) Salmon must be returned to Federal waters immediately with a minimum of injury regardless of condition, following notice by a NMFS-certified observer that salmon have been counted and the collection of any scientific data or biological samples has been completed.

8. In § 675.21, paragraphs (a)(4) and (c)(1)(iii) are removed; paragraphs (a)(5) through (a)(7) are redesignated paragraphs (a)(4) through (a)(6), respectively; paragraph (c)(1)(iv) is redesignated as paragraph (c)(1)(iii); and paragraphs (b)(1) introductory text, (b)(2)(i) and newly redesignated paragraphs (a)(4) and (c)(1)(iii) are revised to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

(a) * * *

(4) The PSC limit of Pacific halibut caught while conducting any trawl fishery for groundfish in the Bering Sea and Aleutian Islands Management Area during any fishing year is an amount of Pacific halibut equivalent to 3,775 mt of halibut mortality.

* * * * *

(b) * * *

(1) *Apportionment to trawl fishery categories.* NMFS, after consultation with the Council, will apportion each PSC limit set forth in paragraphs (a)(1) through (a)(5) of this section into

bycatch allowances for fishery categories specified in paragraph (b)(1)(iii) of this section, based on each category's proportional share of the anticipated incidental catch during a fishing year of prohibited species for which a PSC limit is specified and the need to optimize the amount of total groundfish harvested under established PSC limits. The sum of all bycatch allowances of any prohibited species will equal its PSC limit.

* * * * *

(2) * * *

(i) The Secretary, after consultation with the Council, may apportion the halibut PSC limit for non-trawl gear set forth in paragraph (a)(6) of this section into bycatch allowances for fishery categories specified in paragraph (b)(2)(ii) of this section, based on each category's proportional share of the anticipated bycatch mortality of halibut during a fishing year and the need to optimize the amount of total groundfish harvested under the non-trawl halibut PSC limit. The sum of all halibut bycatch allowances will equal the halibut PSC limit specified at paragraph (a)(6) of this section.

* * * * *

(c) * * *

(1) * * *

(iii) *Halibut bycatch allowance.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the trawl fishery categories listed in paragraphs (b)(1)(iii)(B) through (F) of this section in the Bering Sea and Aleutian Islands Management Area will catch the halibut bycatch allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (b) of this section, NMFS will publish in the **Federal Register** the closure of the entire Bering Sea and Aleutian Islands Management Area to directed fishing for the species and/or species group that comprises that fishery category (which together constitute a species or species group for purposes of the directed fishing standards) for the remainder of the year or for the remainder of the season, except that when a bycatch allowance, or seasonal apportionment thereof, specified for the pollock/Atka mackerel/"other species" fishery category is reached, only directed fishing for pollock is closed to trawl vessels using non-pelagic trawl gear.

* * * * *

9. In § 675.25, a new paragraph (g) is added to read as follows:

§ 675.25 Observers.

* * * * *

(g) *Release of observer data to the public.* (1) The following information collected by observers for each catcher processor and catcher vessel may be made available to the public:

(i) Vessel name and Federal permit number;

(ii) Number of salmon observed during a weekly reporting period;

(iii) The ratio of total round weight of halibut or Pacific herring to the total round weight of groundfish in sampled hauls during a weekly reporting period; and

(iv) The ratio of the number of king crab or *C. bairdi* Tanner crab to the total round weight of groundfish in sampled hauls during a weekly reporting period.

(2) The following information for observed hauls collected by observers onboard vessels using trawl gear to participate in a directed fishery for groundfish other than rockfish, Greenland turbot, or Atka mackerel may be made available to the public:

(i) Date;

(ii) Time of day gear is deployed;

(iii) Latitude and longitude at beginning of haul;

(iv) Bottom depth;

(v) Fishing depth of trawl;

(vi) Rate chinook salmon (number of salmon/mt groundfish);

(vii) Rate other salmon (number of salmon/mt groundfish);

(viii) Rate Pacific halibut (kilograms halibut/mt groundfish);

(ix) Rate Pacific herring (kg herring/mt groundfish);

(x) Rate king crab (number of crab/mt groundfish);

(xi) Rate *C. bairdi* Tanner crab (number of crab/mt groundfish);

(xii) Sea surface temperature (where available); and

(xiii) Sea temperature at fishing depth of trawl (where available).

(3) In exceptional circumstances, the owners and operators of vessels may provide to the Regional Director written justification at the time observer data are submitted or within a reasonable time thereafter, that disclosure of the information listed in paragraphs (g)(1) or (g)(2) of this section could reasonably be expected to cause substantial competitive harm. The determination whether to disclose the information will be made pursuant to 15 CFR 4.7.

[FR Doc. 94–1165 Filed 1–13–94; 2:10 pm]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 59, No. 12
Wednesday, January 19, 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 COMMERCE

International Trade Administration

[C-201-003]

Ceramic Tile From Mexico; Final Results of Countervailing Duty Administrative Review and Revocation In Part of the Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review and Revocation in Part of the Countervailing Duty Order.

SUMMARY: On June 3, 1993, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on ceramic tile from Mexico (58 FR 31505). We have now completed this review and determine the total bounty or grant to be zero or *de minimis* for the period January 1, 1991 through December 31, 1991. In addition, because we have determined that the following companies have met the requirements for partial revocation from the order, the Department is revoking the countervailing duty order with respect to these companies: Azulejos Orion, S.A., Ceramica Santa Julia, Eduardo Garcia de la Pena, Jesus Garza Arocha, Ladrillera Monterrey, S.A., Pisos Coloniales de Mexico, S.A., Reynol Martinez Chapa, and Teofilo Covarrubias.

EFFECTIVE DATE: January 19, 1994.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 31505) the preliminary results of its administrative review of the countervailing duty order on ceramic tile from Mexico (47 FR 20012; May 10, 1982). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of Mexican ceramic tile, including non-mosaic, glazed, and unglazed ceramic floor and wall tile. During the review period, such merchandise was classifiable under the Harmonized Tariff Schedule (HTS) item numbers 6907.10.0000, 6907.90.0000, 6908.10.0000 and 6908.90.0000. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1991 through December 31, 1991, sixty-one companies, and the following programs: (1) FOMEX; (2) BANCOMEXT Financing for Exporters; (3) PITEX; (4) NAFINSA Long-term Loans; (5) Other BANCOMEXT preferential financing; (6) CEPROFI; (7) import duty reductions and exemptions; (8) state tax incentives; (9) NAFINSA FONEI-type financing; and (10) NAFINSA FOGAIN-type financing.

Calculation Methodology for Assessment and Cash Deposit Purposes

In calculating the benefits received during the review period, we followed the methodology described in the preamble to 19 CFR 355.20(d) (53 FR 52306, and 52325; December 27, 1988). We calculated a country-wide rate, weight-averaging the benefits received by the sixty-one companies subject to review to determine the overall subsidy from all countervailing programs benefitting exports of the subject merchandise to the United States. Because the overall weighted-average country-wide rate was *de minimis*, as defined by 19 CFR 355.7, we did not proceed any further in the calculation methodology.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from two respondents, Ceramica Regiomontana and Ceramica Santa Julia.

Comment 1: As in past reviews, Ceramica Regiomontana contends that the Department does not have the legal authority to impose countervailing duties on ceramic tile from Mexico and must revoke the countervailing duty order. Effective April 23, 1985, the date of the "Understanding Between the United States and Mexico Regarding Subsidies and Countervailing Duties" (the Understanding), Mexico became a "country under the Agreement". Therefore, Ceramica Regiomontana argues that 19 U.S.C. 1671 requires an affirmative injury determination as a prerequisite to the imposition of countervailing duties on any Mexican merchandise imported on or after April 23, 1985, regardless of whether the countervailing duty order was published before or after the date.

Ceramica Regiomontana further contends that the Department's failure to revoke this order is inconsistent with past practice. In two previous countervailing duty administrative reviews, Certain Fasteners from India; Final Results of Administrative Review and Partial Revocation of Countervailing Duty Order (47 FR 44129; October 6, 1982) and Carbon Steel Wire Rod from Trinidad and Tobago; Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Countervailing Duty Order (50 FR 19561; May 9, 1985), where an outstanding countervailing duty order was issued pursuant to 19 U.S.C. 1303(a) without benefit of an ITC injury determination, the Department determined that it did not have the authority to impose countervailing duties when events subsequent to the issuance of the order required an affirmative ITC injury determination prior to imposition of countervailing duties. Since the ITC has indicated that it does not have the legal authority to conduct an injury investigation concerning merchandise already subject to a countervailing duty order, the Department has in the past concluded that it could not impose countervailing duties and revoked, or preliminarily determined to revoke, the order effective

the date the affirmative injury determination became a requirement. Therefore, the Department should revoke the countervailing duty order on ceramic tile and refund all deposits of estimated countervailing duties by Ceramica Regiomontana during the 1991 review period.

Department's Position: We fully addressed this issue in a previous administrative review of this countervailing duty order. See Ceramic Tile from Mexico; Final Results of Countervailing Duty Administrative Review (55 FR 50744; December 10, 1990). The U.S. Court of International Trade and the U.S. Court of Appeals for the Federal Circuit (CAFC) have sustained the Department's legal position that Mexican imports subject to an outstanding countervailing duty order already in effect when Mexico entered into the Understanding are not entitled to an injury test pursuant to section 701 of the Tariff Act and paragraph 5 of the Understanding (*Cementos Anahuac del Golfo, S.A.* v. *U.S.*, 879 F.2d 847 (Fed. Cir. 1989), cert. denied, 110 S. CT. 1318 (1989)). The countervailing duty order on ceramic tile from Mexico was published prior to Mexico's entering into the Understanding, therefore, imports of ceramic tile are not entitled to an injury test pursuant to section 701 of the Tariff Act. Ceramica Regiomontana has provided neither new evidence nor new arguments on this issue.

Comment 2: As in the last administrative review of ceramic tile, Ceramica Regiomontana contests the Department's determination that BANCOMEXT and FOMEX loans taken out by the company were countervailable. The respondent contends that the use of a commercial rate as a benchmark in the Department's calculation is inconsistent with Item (k) of the Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (GATT). Item (k) of the Illustrative List defines an export subsidy as the granting of export credits by governments at interest rates below the cost of funds to the government. BANCOMEXT and FOMEX financing meets the cost to government standard and therefore do not provide countervailable subsidies.

Department's Position: We disagree. Although FOMEX was examined in this administrative review, there were no outstanding loans under this program during the review period. Therefore comments on this program are moot. With regard to BANCOMEXT, the Department fully addressed this issue in the previous administrative review of this countervailing duty order. See Ceramic Tile From Mexico; Final Results of Countervailing Duty Administrative Review (57 FR 24247; June 8, 1992). The cost to government standard which defines an export subsidy in Item (k) of the Illustrative List does not limit the United States in applying its own national countervailing duty law to determine the countervailability of benefits bestowed on merchandise exported from Mexico. See Certain Textile Mill Products From Mexico; Final Results of Countervailing Duty Order Administrative Review (54 FR 36841, 36843–36844; September 5, 1989) and Certain Textile Mill Products From Mexico; Final Results of Countervailing Duty Administrative Review (56 FR 12175, 12177; March 22, 1991). BANCOMEXT loans have been determined to be countervailable because they are limited to exporters. Ceramic Tile From Mexico; Preliminary Results of Countervailing Duty Review (57 FR 5997, February 19, 1992) and Ceramic Tile From Mexico; Final Results of Countervailing Duty Review (57 FR 24247, June 8, 1992). Furthermore, when we compared our benchmark with the interest rates reported under the BANCOMEXT financing, we found countervailable benefits. Ceramica Regiomontana has not provided any new evidence or arguments on this issue.

Comment 3: As in past administrative review, Ceramica Regiomontana contends that the Department incorrectly treated the benefit from the PITEX program as a grant and this overstated the company's net benefits. Ceramica Regiomontana claims that after five years the company will have to pay the import duties and should be treated as an interest-free loan instead of an outright grant.

Department's Position: We fully addressed this issue in the previous administrative review of this case. See Ceramic Tile From Mexico; Final Results of Countervailing Duty Administrative Review (57 FR 24247; June 8, 1992). Although exporters anticipate re-export of machinery after five years under PITEX, an exporter may choose to keep the machinery as a permanent import. It appears that after the five year period, any reimbursement made to the Mexican Government of import duties previously exempted would not be significant. Therefore, duty exemptions under PITEX are properly treated as grants and we expensed them in full at the time of importation, when the exporters otherwise would have paid duties on the imported machinery. Id.; Final Negative Countervailing Duty Determination; Silicon Metal From Brazil (56 FR 26988; June 12, 1991). Ceramica Regiomontana has presented us with no new evidence or arguments on this issue.

Comment 4: Ceramica Santa Julia contests the Department's determination not to revoke the countervailing duty order with respect to them. Ceramica Santa Julia contends that they should be revoked because: (1) Ceramica Santa Julia met all regulatory requirements for a company-specific revocation; (2) the administrative record contains sufficient evidence of non-use of export subsidies by Ceramica Santa Julia; and (3) the administrative record contains sufficient evidence that Ceramica Santa Julia will not apply for or receive countervailable benefits in the future.

Department's Position: Upon further examination of Ceramica Santa Julia's record, we agree that the company should be revoked.

For the purpose of revoking a countervailing duty order in part pursuant to 19 CFR 355.25(a)(3), the Department's current policy is that administrative reviews must be requested and conducted for each of five consecutive years, with the year of request for revocation being the fifth consecutive year of review. See Memorandum to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, Basis for Revocation of Individual Companies from Countervailing Duty Orders under 19 CFR 355.25(a)(3) regarding Ceramica Santa Julia in the Countervailing Duty Administrative Review of Ceramic Tile From Mexico, dated January 10, 1994. This is consistent with the Department's recently established policy for revocation of countervailing duty orders in full pursuant to 19 CFR 355.25(a)(1), set forth in Roses and Other Cut Flowers from Colombia; Preliminary Results of Countervailing Duty Administrative Review and Intent Not to Terminate Suspended Investigation (58 FR 52272; October 7, 1993).

Although Ceramica Santa Julia did not participate in the administrative review the year prior to it's request for revocation, the Department chose to review whether Ceramica Santa Julia had met the minimum requirements for revocation because the above-stated policy had not been clearly articulated prior to their revocation request.

Due to the unique circumstances in this case, the Department concludes that Ceramica Santa Julia has met the requirements of § 355.25(a)(3) based on the following facts: First, both the

Government of Mexico and Ceramica Santa Julia have submitted certifications stating that the company had not applied for or received any net subsidy during the review period and would not apply for or receive any net subsidy in the future; second, Ceramica Santa Julia has agreed to the immediate suspension of liquidation and reinstatement of the order if the Department determines that subsequent to revocation the company received a net subsidy; third, in the current review period, we verified the company and found no evidence that they had applied for or received subsidies, and; fourth, the record shows that prior to the year for which there was no review, Ceramica Santa Julia was found to have received no net subsidies in seven consecutive reviews.

Based on these unique facts and circumstances, and because there was no clearly articulated policy detailing the requirements of 19 CFR 355.25(a)(3), the Department has decided to revoke Ceramica Santa Julia. The Department finds that under the current regulations, Ceramica Santa Julia clearly would have met requirements for revocation after the seven consecutive reviews in which the Department found no receipt of subsidies. Furthermore, the eight years of non-receipt of subsidies coupled with the company and government certifications of non-receipt are sufficient evidence for a finding of no past subsidy receipt or no likelihood of receipt of subsidies in the future.

Final Results of Review

After reviewing all of the comments received, we determine the total bounty or grant to be *de minimis* for all companies for the period January 1, 1991 through December 31, 1991.

The Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from all companies exported on or after January 1, 1991 and on or before December 31, 1991.

The Department will instruct the Customs Service to collect cash deposits of zero estimated countervailing duties, as provided by section 751(a)(1) of the Act, on shipments of this merchandise from all companies entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

In addition, we have determined that the following companies have met the requirements for revocation from the order: Azulejos Orion, S.A., Ceramica Santa Julia, Eduardo Garcia de la Pena, Jesus Garza Arocha, Ladrillera Monterrey, S.A., Pisos Coloniales de Mexico, S.A., Reynol Martinez Chapa, and Teofilo Covarrubias. We have determined that these companies have not applied for or received any net subsidy for five consecutive years and they have filed the certifications and agreement required by 19 CFR 355.25(b)(3). Based on the foregoing, we also determine that there is no likelihood that these companies will apply for or receive any net subsidy in the future. Therefore, the Department will instruct the Customs Service to terminate suspension of liquidation on entries from these companies and to liquidate, without regard to countervailing duties, merchandise exported by these companies on or after January 1, 1992.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), 19 CFR 355.22 and 19 CFR 355.25.

Dated: January 10, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–1263 Filed 1–18–94; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC. 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 93–149. *Applicant:* The George Washington University Medical Center, 2300 I Street, NW., Washington, DC 20037. *Instrument:* Mass Spectrometer, Model Delta S. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used to investigate just how much the range of applications have been expanded by evaluating a wide variety of compound classes. It is proposed that intact biological macromolecules can be analyzed for isotopic content directly by the CRI-IRMS. This will greatly improve analyses in biological systems where either ^{14}C would have been a tracer or where the tedious sequence of hydrolysis followed by chromatographic separation and MS analysis of selected monomers would be required. *Application Received by Commissioner of Customs:* December 1, 1993.

Docket Number: 93–150. *Applicant:* Centers for Disease Control and Prevention, 4770 Buford Highway, NE., Mailstop F17, Atlanta, GA 30341–3724. *Instrument:* Mass Spectrometer, Model VG AutoSpec. *Manufacturer:* VG Analytical, United Kingdom. *Intended Use:* The instrument will be used for studies of extremely low levels of toxic organic compounds found in human serum to determine health effects associated with exposure to polychlorinated dibenzo dioxins/furnans, PCB's and polyaromatic hydrocarbons isolated from human serum. *Application Received by Commissioner of Customs:* December 9, 1993.

Docket Number: 93–151. *Applicant:* Smithsonian Environmental Research Center, P.O. Box 28, 647 Contees Wharf Road, Edgewater, MD 21037. *Instrument:* Chlorophyll Fluorometer, Model PAM-101. *Manufacturer:* Heinz Walz, GmbH, Germany. *Intended Use:* The instrument will be used to study plant responses to light stress (visible and ultraviolet light), nutrient availability and changes in atmospheric carbon dioxide concentration. Measurements will be made using terrestrial plant communities at SERC, phytoplankton from the Rhode River and Chesapeake Bay, and greenhouse plants and algal cultures. *Application Received by Commissioner of Customs:* December 9, 1993.

Docket Number: 93–152. *Applicant:* Texas A&M University, Health and Kinesiology Department, College Station, TX 77843. *Instrument:* Muscle Research System, Model OPT1S. *Manufacturer:* Scientific Instruments, Germany. *Intended Use:* The instrument will be used in research to isolate mouse soleus and EDL muscle fibers and measure their force production upon exposure to varying concentrations of calcium. *Application Received by Commissioner of Customs:* December 9, 1993.

Docket Number: 93–153. *Applicant:* University of California, Los Alamos National Laboratory, P.O. Box 990, Los Alamos, NM 87545. *Instrument:* Mass Spectrometer, Model PlasmaQuad. *Manufacturer:* VG Instruments, Inc., United Kingdom. *Intended Use:* The instrument will be used in an experiment to investigate the chemical

and physical factors related to migration of the Actinides in Bentonite salt deposits. Samples will be injected into the mass spectrometer and the spectrometer will separate each element on the basis of mass-to-charge ratios. The final results will give concentrations of each element in the original sample. *Application Received by Commissioner of Customs:* December 15, 1993.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 94–1264 Filed 1–18–94; 8:45 am]

BILLING CODE 3510–DS–F

Southern Illinois University at Edwardsville; Notice of Decision on Application for Duty-free Entry of Scientific Instrument

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Decision: Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

Docket Number: 93–087. *Applicant:* Southern Illinois University at Edwardsville, Supporting Services Building, L.D. #2, Campus Box 1012, Edwardsville, IL 62026-1012. *Instrument:* Rotating Fatique Machine, HSM.19. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Date of Denial without Prejudice to Resubmission:* October 29, 1993.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 94–1265 Filed 1–18–94; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

[I.D. 011194B]

Mid-Atlantic Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council's Scup Industry Advisory Subcommittee (SIA) and Black Sea Bass Industry Advisory Subcommittee (BSBIA) will meet on February 3, 1994, in the Spring Room of the Ramada Inn, 76 Industrial Highway, Essington, PA. The SIA will meet from 9 a.m. until 12 noon. The BSBIA will meet from 1 p.m. until 4 p.m.

The following topics will be discussed at each meeting for each of the species:

(1) Status of the resource;
(2) Proposed minimum size limits;
(3) Mesh restrictions;
(4) Possession limits;
(5) Seasons;
(6) Entry limitation provisions; and
(7) Special Management concerns (for example, Special Management Zones).

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis on telephone (302) 674–2331 at least five (5) days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, 300 South New Street, room 2115, Dover, DE 19901; telephone: (302) 674–2331.

Dated: January 12, 1994.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–1189 Filed 1–18–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 011194A]

Pacific Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's Groundfish Management Team (GMT) will hold public meetings on January 25–27, 1994, at the Hatfield Marine Science Center, in the large conference room of the library in Newport, OR. On January 25 the meeting will begin at 8 a.m. and run into the evening. At 10 a.m. on January 25, the GMT will hold a workshop with members of the groundfish fishing industry. On January 26–27 the meetings will begin at 8 a.m. each morning and continue into the evening.

The major focus of the workshop with the groundfish fishing industry will be on how to use information gathered by the fleet in stock assessments and other fishery management activities.

For the remainder of the meeting the GMT will review the following:

(1) Status of implementation of the license limitation program;
(2) The 1993 fisheries;
(3) The management priorities for the year; and
(4) The individual transferrable quota proposal for the fixed gear sablefish fishery.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer on (503) 326–6352 at least five (5) days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, suite 420, Portland, OR 97201; telephone: (503) 326–6352.

Dated: January 12, 1994.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–1190 Filed 1–18–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 011194C]

Pacific Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Klamath River Fall Chinook Review Team (Team) will meet on February 3–4, 1994, in room 200 of the Stewart School building at 1125 16th Street, Arcata, CA. The meeting will begin on February 3 at 2 p.m. and on February 4 at 8 a.m. The meetings will not adjourn until the business for each day is completed and may go into the evening hours.

The purpose of these meetings is to examine the causes which have led to a failure in meeting spawning escapement objectives for naturally produced Klamath River fall chinook. This stock has been below its floor

spawning escapement level (35,000) for the past three years. The Team report will be reviewed by the Council at its March meeting in Portland, OR.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer on (503) 326–6352 at least five (5) days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: John Coon, Coordinator (Salmon), Pacific Fishery Management Council, 2000 SW. First Avenue, suite 420, Portland, OR 97201; telephone: (503) 326–6352.

Dated: January 12, 1994.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–1191 Filed 1–18–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 011194D]

South Atlantic Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) and its Committees will hold public meetings on February 7–11, 1994, at The Ponce de Leon, 4000 U.S. Highway 1 North, St. Augustine, FL; telephone: (904) 824–2821. The following items are on the agenda:

(1) A public scoping meeting on February 7 to solicit input from spiny lobster harvesters on potential changes to the current regulations affecting recreational and commercial fishermen in north Florida through North Carolina. The Spiny Lobster Committee will discuss necessary options for the formation of a new amendment to the Spiny Lobster Fishery Management Plan (FMP);

(2) An informal meeting on February 7 to allow harvesters of gag grouper to discuss management options with Council members;

(3) A Snapper-Grouper Committee meeting to approve Amendment #7 to the Snapper-Grouper FMP for submission to the Secretary of Commerce and to set the 1994 wreckfish total allowable catch. The Committee will discuss enforcement problems resulting from fishermen possessing filleted snapper and grouper in South Atlantic Federal waters, which were harvested in Bahamian waters. The Committee also will review the status of Amendment #6 to the Snapper-Grouper FMP which now is under Secretarial review;

(4) A Controlled Access Committee meeting to discuss controlled access management options for the Spanish mackerel fishery off east Florida. The Committee also will review the limited entry program established for the wreckfish fishery;

(5) A Mackerel Committee meeting to approve Amendment #7 to the Mackerel FMP for submission to the Secretary of Commerce;

(6) A public scoping meeting on February 9 to solicit input on developing regulations for the rock shrimp fishery. The Shrimp Committee will discuss rock shrimp options for the formation of an amendment to the Shrimp FMP; and

(7) A Habitat Committee meeting to approve Amendment #2 to the Coral FMP (Live Rock) for submission to the Secretary of Commerce.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carrie Knight on (803) 571–4366 at least five (5) days prior to the meeting date.

FOR MORE INFORMATION CONTACT: Carrie Knight, Public Information Officer; South Atlantic Fishery Management Council; One Southpark Circle, suite 306; Charleston, SC 29407; telephone: (803) 571–4366.

Dated: January 12, 1994.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–1192 Filed 1–18–94; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment and Amendment of Import Restraint Limits and Amendment of Restraint Periods for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

January 14, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing and amending limits and amending restraint periods.

EFFECTIVE DATE: January 19, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the United Arab Emirates agreed to amend and extend their Bilateral Textile Agreement of February 23, 1991 for two consecutive one-year periods, beginning on January 1, 1994 and extending through December 31, 1995.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend and extend the current limits for various categories and to establish limits for the 1994 period. The limit for Category 369–S shall fill with the implementation of the amended level. The 1994 levels for Categories 315 and 361 are zero.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notices 57 FR 54976, published on November 23, 1992; and 58 FR 62645, published on November 29, 1993).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 14, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on May 12, 1993, March 4, 1993, December 6, 1993 and October 22, 1993, by the Chairman, Committee for the Implementation of Textile Agreements.

Those directives concern imports of certain cotton and man-made fiber textile products, produced or manufactured in the United Arab Emirates during the periods December 28, 1992 through December 27, 1993 (Category 219); March 1, 1993 through February 28, 1994 (Category 313); July 28, 1993 through July 27, 1994 (Category 317); October 28, 1993 through October 27, 1994) (Categories 326, 335/635 and 369–S).

Effective on January 19, 1994, you are directed to establish and amend the limits for the categories listed below. The new restraint period for Category 219 shall be December 27, 1992 through December 31, 1994. The restraint period for the remaining categories shall be extended through December 31, 1994. Import charges already made to Categories 219, 313, 317, 326, 335/635 and 369–S shall be retained. Import charges for Categories 226 and 835 will be made at a later date.

Category	Amended limit [1]
219	1,871,157 square meters.
226/313	2,921,111 square meters.
317	36,659,399 square meters.
326	1,767,123 square meters.
335/635/835	153,151 dozen.
369–S [2]	81,996 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 26, 1992 (Category 219); February 28, 1993 (Category 313); July 27, 1993 (Category 317); and October 27, 1993 (Categories 326, 335/635, 369–S).

[2] Category 369–S: only HTS number 6307.10.2005.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement of February 23, 1991, as amended and extended, between the Governments of the United States and the United Arab Emirates; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended and extended, you are directed to prohibit, effective on January 19, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in the United Arab Emirates and exported during the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
315	–0–.
334/634	189,372 dozen.
336/636	164,122 dozen.
338/339	468,379 dozen of which not more than 312,252 dozen shall be in Categories 338–S/339–S [1].
340/640	290,370 dozen.
341/641	254,263 dozen.
342/642	201,997 dozen.
347/348	347,939 dozen of which not more than 173,969 dozen shall be in Categories 347–T/348–T [2].
351/651	145,185 dozen.
352	267,645 dozen.
361	–0–.
363	5,000,000 numbers.
369–O [3]	500,572 kilograms.
638/639	189,372 dozen.
647/648	271,433 dozen.
847	170,434 dozen.

[1] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022.

[2] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.4020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.3010, 6112.11.0050, 6113.00.0038, 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.3020, 6210.40.2033, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.2030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.3022, 6112.11.0060, 6113.00.0042, 6117.90.0042, 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.3010, 6204.69.9010, 6210.50.2033, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050.

[3] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

Imports charged to these category limits, except Categories 315, 361 and 369–O, for the period beginning January 1, 1993 and extending through December 31, 1993 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–1327 Filed 1–14–94; 11:38 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Principles for High Quality National Service Programs; Draft Technical Assistance Handbook

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of draft technical assistance handbook.

SUMMARY: The Corporation for National and Community Service announces the availability of a first draft of a technical assistance handbook, "Principles for High Quality National Service Programs, January 1994 (Proposed)." The Corporation invites comments and suggestions on the draft handbook from interested members of the public.

The draft handbook is the product of an ongoing collaboration between the Corporation and members of the national service community. It contains examples, suggestions, and principles to assist potential Corporation grantees in developing high quality national service programs. As part of the Corporation's technical assistance for applicants, the draft handbook will be included in the application packages for all national service programs. In addition, it may be provided as background reading to the Corporation's grant application reviewers. However, the principles in the draft handbook are not the criteria by which reviewers will assess grant applications. Applications will be assessed based on the requirements and criteria in the application and the Corporation's regulations.

DATES: In order to ensure consideration of comments prior to distribution of the handbook in final application packages for grants for fiscal year 1994, comments on the draft handbook must be received by February 18, 1994. Comments received after February 18, 1994 will be considered for incorporation into future drafts of the handbook.

ADDRESSES: Comments on the draft handbook should be mailed to the Corporation for National and Community Service, room 12101–P–TA, 1100 Vermont Avenue NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Terry Russell, (202) 606–4949 (Voice); (202) 606–5256 (TDD) between the hours of 9 a.m. and 6 p.m. Eastern Standard Time. Copies of the draft handbook and information about electronic access may be obtained by calling these phone numbers. For individuals with disabilities, the draft handbook will be made available in alternative formats, upon request.

Dated: January 13, 1994.

Terry Russell,

Acting General Counsel.

[FR Doc. 94–1231 Filed 1–18–94; 8:45 am]

BILLING CODE 6820–BA–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Defense Acquisition Reform (Phase II)

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Defense Acquisition Reform (Phase II) will meet in closed session on March 11, April 6, and May 24, 1994 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will further define the elements of pilot industry initiatives for jet engines and a segment of electronics, further define the elements of pilot initiatives for two unified commands, and assess the DoD review comments on our Phase I report and recommended changes in approach if appropriate.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: January 12, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–1156 Filed 1–18–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Advisory Committee on Women in the Services (DACOWITS)

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review unresolved recommendations made by the Committee at the DACOWITS 1993 Fall Conference, review the Subcommittee Issues Agenda, and discuss other issues relevant to women in the Services.

All meeting sessions will be open to the public.

DATES: February 7, 1994, 8:30 a.m.–4 p.m.

ADDRESSES: SECDEF Conference Room 3E869, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Martha C. Gillette, USN, Office of DACOWITS and Military Women Matters, OASD (Personnel and Readiness), The Pentagon, room 3D769, Washington, DC 20301–4000, telephone (703) 697–2122.

Dated: January 12, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–1157 Filed 1–18–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Contract Audit Agency

Privacy Act of 1974; Notice to Amend Systems of Records

AGENCY: Defense Contract Audit Agency, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Defense Contract Audit Agency proposes to amend five existing systems of records to its inventory of systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

EFFECTIVE DATE: The proposed actions will be effective on January 19, 1994, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Defense Contract Audit Agency, Information Resources Management Branch, CMR, 25 South Quaker Lane, Alexandria, VA 22304–6178.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall at (703) 274–4400 or DSN 284–4400.

SUPPLEMENTARY INFORMATION: The Defense Contract Audit Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the above address.

The amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of altered systems reports. The specific changes to the systems of records notices are set forth below followed by the systems notices, as amended, published in their entirety.

Dated: January 13, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

RDCAA 152.2

SYSTEM NAME:

Personnel Security Data Files *(February 22, 1993, 58 FR 10841).*

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete from entry 'all military personnel assigned, detailed, or attached to DCAA' and 'who require access to classified information.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Second paragraph, replace 'military service, or' with 'eligibility for assignment to sensitive duties, and.'

* * * * *

RETENTION AND DISPOSAL:

Delete from entry 'military personnel' and 'transfer of military personnel from DCAA.'

* * * * *

RDCAA 152.2

SYSTEM NAME:

Personnel Security Data Files.

SYSTEM LOCATION:

Primary System: Security Officer, Headquarters, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

Decentralized Segment: Director of Personnel, Defense Contract Audit Agency; Chiefs of Personnel Divisions and Regional Security Officers at DCAA Regional Offices. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All applicants for employment with Defense Contract Audit Agency (DCAA); all DCAA employees; all persons hired on a contractual basis by, or serving in an advisory capacity to DCAA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Section One contains copies of individual's employment applications, security investigative questionnaires, requests for, and approval or disapproval of, emergency appointment authority; requests for investigation or security clearance; interim and final security clearance certificates.

Section Two contains verification of investigations conducted to determine suitability, eligibility or qualifications for Federal civilian employment, eligibility for assignment to sensitive duties, and access to classified information.

Section Three contains summaries of reports of investigation, internal Agency memorandums and correspondence furnishing analysis of results of investigations in so far as their relationship to the criteria set forth in the E.O. 10450, in the Federal Personnel Manual and in Department of Defense and DCAA Directives and Regulations; comments and recommendations of the DCAA Central Clearance Group to the Director, DCAA, and determination by the Director, DCAA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 133; 50 U.S.C. 781; E.O. 10450, 10865, and E.O. 12356, National Security Information; and DoD Directive 5105.36 (32 CFR part 357).

PURPOSE(S):

To provide a basis for requesting appropriate investigations; to permit determinations on employment or retention; to authorize and record access to classified information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Sections One and Three are on paper records stored in file folders. Section Two is on paper records and microfiche which are stored in file folders.

RETRIEVABILITY:

Folders are filed by file series then by organizational element (DCAA Headquarters or DCAA field activities) and then alphabetically by last name of individual concerned.

SAFEGUARDS:

Records are stored in locked filing cabinets after normal business hours. Records are accessible only to authorized personnel who are properly cleared and trained and who require access in connection with their official duties.

RETENTION AND DISPOSAL:

Records pertaining to Federal employees and persons furnishing services to DCAA on a contract basis are destroyed upon separation of employees, and upon termination of the contracts for contractor personnel. Records pertaining to applicants are destroyed if an appointment to DCAA is not made.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Headquarters, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178. Telephone (703) 274–4400.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

Written requests for information should contain the full name of the individual, current address and telephone number and current business address.

For personal visits, the individual should be able to provide some acceptable results of investigations received from Federal agencies and recommendations for action from appropriate DCAA Headquarters staff elements.

Acceptable identification, that is, driver's license or employing offices' identification card. Visits are limited to those offices (Headquarters and 6 regional offices) listed in the official mailing addresses published as an appendix to DCAA's compilation of record system notices.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Instruction 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Security Officer and the Director of Personnel at Headquarters, DCAA; Chiefs of Personnel Divisions, Regional Security Officers, Chiefs of Field Audit Offices at the DCAA Regional Offices and the individual concerned.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 152.5

SYSTEM NAME:

Regional and DCAI Security Clearance Request Files *(February 22, 1993, 58 FR 10842).*

CHANGES:

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete from entry 'all military personnel assigned, detailed, or attached to DCAA' and 'who require access to classified information.'

* * * * *

PURPOSE(S):

Insert 'requests for security investigations,' between 'positions' and 'for security clearance.' Delete 'and' before 'for security clearance.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete 'Chiefs of DCAA Field Audit Offices, and.'

* * * * *

RDCAA 152.6

SYSTEM NAME:

Regional and DCAI Security Clearance Request Files.

SYSTEM LOCATION:

Primary System: Security Officers of Defense Contract Audit Agency Regional Offices and Security Control Officers, Defense Contract Audit Institute. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

Decentralized Segment: Security Officer, Headquarters, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All applicants for employment with Defense Contract Audit Agency (DCAA); all DCAA employees; all persons hired on a contractual basis by, or serving in an advisory capacity to DCAA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain personnel security data forms submitted by employees and applicants required in the processing of security investigations; requests for

various types of security clearance actions; and requests for and approvals/disapprovals of appointments to sensitive positions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 133; 50 U.S.C. 781; E.O. 10450, 10865, and 12356; and DoD Directive 5105.36 which is published in 32 CFR part 357.

PURPOSE(S):

To prepare necessary paperwork and documentation upon which to base requests to Headquarters, DCAA for appointments to sensitive positions, requests for security investigations, for security clearance and to retain support documents pending approval of appointment and/or granting clearance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by last name of individual concerned.

SAFEGUARDS:

Records are accessible only to those authorized personnel required to prepare, review, process, and type necessary documents. Records are stored in locked filing cabinets after normal business hours and are stored in locked rooms and buildings after normal business hours.

RETENTION AND DISPOSAL:

These are transitory files at DCAA Regional Offices and DCAI level and are maintained only during processing and pending final action on requests. Upon receipt of final action taken on request, files are destroyed.

Segments of the system held by the Security Officer, DCAA are destroyed upon separation of the employee or after non-appointment of an applicant.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Headquarters, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

Regional Security Officers, DCAA and Security Control Officers, Defense Contract Audit Institute. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178. Telephone (703) 274–4400.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

The request should contain the full name of the individual, current address and telephone number, and current business address.

Personal visits may be made but are limited to those offices (Headquarters and 6 Regional Offices) listed in DCAA's official mailing addresses published as an appendix to DCAA's compilation of record system notices. In personal visits, the individual should be able to provide acceptable identification, that is, driver's license or employing offices' identification card.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Instruction 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Chiefs of Personnel Divisions and Regional Security Officers at the DCAA Regional Offices; the Manager, Defense Contract Audit Institute and the individual concerned.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 152.7

SYSTEM NAME:

Clearance Certification *(February 22, 1993, 58 FR 10843).*

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete from entry 'who require access to classified information' and replace 'employed by the agency.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Insert 'and eligibility' between 'clearance' and 'certificates attesting to.'

Insert 'supervisor suitability/security statements' between 'acknowledgment certificates' and 'and special access.'

* * * * *

PURPOSE(S):

Insert 'and eligibility' between 'clearance' and 'status.'

* * * * *

RETENTION AND DISPOSAL:

Delete 'military personnel' and 'or military personnel.'

* * * * *

RDCAA 152.7

SYSTEM NAME:

Clearance Certification.

SYSTEM LOCATION:

Primary System: Regional Security Officers at Defense Contract Audit Agency (DCAA) Regional Offices; Security Control Officers at DCAA Field Audit Offices; Field Detachment and Defense Contract Audit Institute (DCAI). Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

Decentralized Segments: Security Officer and Director of Personnel at Headquarters, DCAA and Chiefs of Personnel Divisions at DCAA Regional Offices. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DCAA personnel employed by the Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain interim and final security clearance and eligibility certificates attesting to type of investigation conducted and degree of access to classified information which is authorized copies, of security acknowledgement certificates supervisor suitability/security statements and special access briefing statements executed by individuals upon being granted security clearances or access to special access information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 133; 50 U.S.C. 781; E.O. 10450, 10865, and E.O. 12365, National

Security Information; and DoD Directive 5105.36 which is published in 32 CFR part 357.

PURPOSE(S):

To maintain a record of the security clearance and eligibility status of all DCAA personnel as well as certification of briefings for access to classified information and special access information.

To DoD contractors to furnish notice of security clearance and access authorization of DCAA employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Retrieved by last name of individual concerned.

SAFEGUARDS:

Records are stored in locked filing cabinets after normal business hours and stored in locked rooms or buildings. Records are accessible only to those authorized personnel required to act upon a request for access to classified defense information.

RETENTION AND DISPOSAL:

Files pertaining to Federal employees and persons furnishing services to DCAA on a contract basis are destroyed upon separation or transfer of employees and upon termination of contractor personnel.

Files of individuals transferring within DCAA are transferred to security control office of gaining element for maintenance.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Headquarters, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178 and Regional Security Officers in DCAA Regional Offices. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

The request should contain the full name of the individual, current address and telephone number, and current business address.

Personal visits may be made but are limited to those offices (Headquarters and 6 Regional Offices) listed in DCAA's official mailing addresses published as an appendix to DCAA's compilation of systems of records notices. In personal visits, the individual should be able to provide acceptable identification, that is, driver's license or employing offices' identification card.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Instruction 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Chiefs of Personnel Divisions and Regional Security Officers at the DCAA Regional Offices; Chiefs of DCAA field audit offices; the Manager, Defense Contract Audit Institute and the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 152.17

SYSTEM NAME:

Security Status Master List *(February 22, 1993, 58 FR 10844).*

CHANGES:

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete the entry and replace with 'All employees of DCAA; all persons hired on a contractual basis by or serving in an advisory capacity to DCAA.'

* * * * *

RECORD ACCESS PROCEDURES:

Third paragraph, delete first sentence and replace with 'Personal visits are limited to the Headquarters listed in the appendix to DCAA's compilation of systems of records notices.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete 'Chiefs of DCAA Field Audit Offices.'

* * * * *

RDCAA 152.17

SYSTEM NAME:

Security Status Master List.

SYSTEM LOCATION:

Security Office, Headquarters, Defense Contact Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of DCAA; all persons hired on a contractual basis by or serving in an advisory capacity to DCAA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record contains type of investigation, date completed, file number, agency which conducted investigation, security clearance data information, name, Social Security Number, date and place of birth, organizational assignment, dates interim and final clearance issued, position sensitivity and related data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 133; 50 U.S.C. 781; E.O. 10450, 10865, and E.O. 12356, National Security Information; and DoD Directive 5105.36 which is published in 32 CFR part 357.

PURPOSE(S):

To maintain a ready reference of security clearances on DCAA personnel, to include investigative data and position sensitivity.

To provide security clearance data to DoD contractors and other Federal agencies on DCAA employees assigned to or visiting a contractor facility or visiting or applying for employment with another Federal agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in a card file.

RETRIEVABILITY:

Cards are filed alphabetically by last name of individual concerned for all DCAA regional personnel. Separate file maintained alphabetically by last name of individual concerned for DCAA Headquarters elements.

SAFEGUARDS:

Cards are accessible only to those authorized personnel required to prepare, process, and type necessary documents; and answer authorized inquiries for information contained therein. Cards are stored in locked filing cabinets after normal business hours and are stored in a locked room and building which is protected by a guard force system after normal business hours.

RETENTION AND DISPOSAL:

These cards are destroyed two years after an individual is separated from DCAA.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Headquarters, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

Written requests for information should contain the full name of the individual, current address and telephone number, and current business address.

Personal visits are limited to the Headquarters listed in the appendix to DCAA's compilation of systems of records notices. For personal visits, the individual should be able to provide some acceptable identification, that is driver's license or employing office's identification card.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Instruction 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Security Officer, Headquarters, DCAA; Director of Personnel, Headquarters, DCAA; Chiefs of Personnel Divisions, DCAA regional offices; Regional Security Officers, DCAA Regional Offices; Manager, DCAI; the individual concerned; and reports of investigation conducted by Federal investigative agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 590.8

SYSTEM NAME:

Field Audit Office Management Information System (FMIS) *(February 22, 1993, FR 58 10852).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'DCAA Management Information System (FMIS/AMIS)'.

SYSTEM LOCATION:

Delete entry and replace with 'Primary system: Field Audit Office Management Information System (FMIS) is located at all DCAA Headquarters, regional and field audit offices. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

Secondary system: Agency Management Information System (AMIS) is located at the Naval Computer and Telecommunications Station, Washington, (Code N23), Washington Navy Yard, Washington, DC 20374–1435.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'To provide managers and supervisors with timely, on-line information regarding audit requirements, programs, and performance.'

* * * * *

RDCAA 590.8

SYSTEM NAME:

DCAA Management Information System (FMIS/AMIS).

SYSTEM LOCATION:

Primary system: Field Audit Office Management Information System (FMIS) is located at all DCAA Headquarters, regional and field audit offices. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

Secondary system: Agency Management Information System (AMIS) is located at the Naval Computer and Telecommunications Station, Washington, (Code N23), Washington Navy Yard, Washington, DC 20374–1435.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DCAA employees and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to audit work performed in terms of hours expended by individual employees, dollar amounts audited, exceptions reported, and net savings to the government as a result of those exceptions; records containing contractor and contract information; records containing reimbursable billing information; name, Social Security Number, pay grade and (optionally) address information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and E.O. 9397.

PURPOSE(S):

To provide managers and supervisors with timely, on-line information regarding audit requirements, programs, and performance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in automated data systems.

RETRIEVABILITY:

Records are retrieved by organizational levels, name of employee, Social Security Number, office symbol, audit activity codes, or any other combination of these identifiers.

SAFEGUARDS:

Automated records are protected by restricted access procedures. Access to records is strictly limited to authorized officials with a bona fide need for the records.

RETENTION AND DISPOSAL:

Records are retained for two to five years and then destroyed by erasure.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Network Operations Branch, Technical Services Center, Headquarters, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Network Operations Branch, Technical Services Center, Headquarters, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

Individuals must furnish name, Social Security Number, approximate date of record, and geographic area in which consideration was requested for record to be located and identified. Official mailing addresses are published as an appendix to the DCAA's compilation of systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Network Operations Branch, Technical Services Center, Headquarters, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178. Official mailing addresses are published as an appendix to the DCAA's compilation of systems notices.

Individuals must furnish name, Social Security Number, approximate date of record, and geographic area in which consideration was requested for record to be located and identified.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Instruction 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual employees, supervisors, audit reports and working papers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94–1221 Filed 01–18–94; 8:45 am]
BILLING CODE 5000–04–F

Department of the Navy

Privacy Act of 1974; Notice to Delete and Amend Record Systems

AGENCY: Department of the Navy, DOD.

ACTION: Notice to delete and amend record systems.

SUMMARY: The Department of the Navy proposes to delete one and amend one system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The deletion and amendment will be effective on February 18, 1994, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Head, PA/FOIA Branch, Office of the Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn Aitken at (703) 614–2004 or DSN 224–2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy Privacy Act systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The deletion and amendment are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports. The specific changes to the system of records is set forth below followed by the system of records notice published in its entirety, as amended.

Dated: January 13, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION

N01500–1

SYSTEM NAME:

Naval Education Development Records (February 22, 1993, 58 FR 10714).

Reason: Information is being consolidated into Department of the Navy Privacy Act system of records N01500–2, entitled Student Records.

N01500–2

SYSTEM NAME:

NAVSCOLS/TIS, USMC Training Supsys (February 22, 1993, 58 FR 10715).

CHANGES:

SYSTEM NAME:

Delete entry and replace with 'Student Records.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations and E.O. 9397.'

PURPOSE(S):

Delete entry and replace with 'To record course and training demands, requirements, and achievements; analyze student groups or courses; provide academic and performance evaluation in response to official inquiries; provide guidance and counseling to students; prepare required reports; and for other training administration and planning purposes.'

* * * * *

STORAGE:

Delete entry and replace with 'Manual records may be stored in file folders, card files, file drawers, cabinets, or other filing equipment. Automated records may be stored on magnetic tape, discs, or in personal computers.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Destroy after completion of training, transfer, or discharge, provided the data has been recorded in the individual's service record or on the student's record card.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete 'To the Department of Education as required.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Individuals, schools and educational institutions; Chief of Naval Personnel; Chief of Naval Education and Training; Commandant of the Marine Corps; Commander, Naval Recruiting Command; and instructor personnel.'

* * * * *

N01500–2

SYSTEM NAME:

Student Records.

SYSTEM LOCATION:

Schools and other training activities or similar organizational elements of the Department of the Navy and Marine Corps. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records of present, former, and prospective students at Navy and Marine Corps schools and other training activities or associated educational institution of Navy sponsored programs; instructors, staff and support personnel; participants associated with activities of the Naval Education and Training Command, including the Navy Campus for Achievement and other training programs; tutorial and tutorial volunteer programs; dependents' schooling.

CATEGORIES OF RECORDS IN THE SYSTEM:

Schools and personnel training programs administration and evaluation records. Such records as basic identification records i.e., Social Security Number, name, sex, date of birth, personnel records i.e., rank/rate/grade, branch of service, billet, expiration of active obligated service, professional records i.e., Navy enlisted classification, military occupational specialty for Marines, sub-specialty codes, test scores, basic test battery scores, and Navy advancement test scores. Educational records i.e., education levels, service and civilian schools attended, degrees, majors, personnel assignment data, course achievement data, class grades, class standing, and attrition categories. Academic/training records, manual and mechanized, and other records of educational and professional accomplishment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To record course and training demands, requirements, and achievements; analyze student groups or courses; provide academic and performance evaluation in response to official inquiries; provide guidance and counseling to students; prepare required reports; and for other training administration and planning purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual records may be stored in file folders, card files, file drawers, cabinets, or other filing equipment. Automated records may be stored on magnetic tape, discs, or in personal computers.

RETRIEVABILITY:

Social Security Number and name.

SAFEGUARDS:

Access is provided on a 'need-to-know' basis and to authorized personnel only. Records are maintained in controlled access rooms or areas. Data is limited to personnel training associated information. Computer terminal access is controlled by terminal identification and the password or similar system. Terminal identification is positive and maintained by control points. Physical access to terminals is restricted to specifically authorized individuals. Password authorization, assignment and monitoring are the responsibility of the functional managers. Information provided via batch processing is of a predetermined and rigidly formatted nature. Output is controlled by the functional managers who also control the distribution of output.

RETENTION AND DISPOSAL:

Destroy after completion of training, transfer, or discharge, provided the data has been recorded in the individual's service record or on the student's record card.

SYSTEM MANAGER(S) AND ADDRESS:

The commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Requester should provide his full name, Social Security Number, military or civilian duty status, if applicable, and other data when appropriate, such as graduation date. Visitors should present drivers license, military or Navy civilian employment identification card, or other similar identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Requester should provide his full name, Social Security Number, military or civilian duty status, if applicable, and other data when appropriate, such as graduation date. Visitors should present drivers license, military or Navy civilian employment identification card, or other similar identification.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals, schools and educational institutions; Chief of Naval Personnel; Chief of Naval Education and Training; Commandant of the Marine Corps; Commander, Naval Recruiting Command; and instructor personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94–1220 Filed 01–18–94; 8:45 am]
BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

[CFDA No. 84.170]

Jacob K. Javits Fellowship Program; Notice Extending the Closing Date for Transmittal of Applications for New Awards for Fiscal Year (FY) 1994

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: On September 24, 1993, a notice was published that established the closing date for transmittal of applications for the FY 1994 competition under the Jacob K. Javits Fellowship Program (58 FR 50141). The purpose of this notice is to extend the closing date for transmittal of applications. Due to a printing error in the original application that needed correcting, applications were not available for mailing prior to the published closing date. The closing date for applications is extended from January 18, 1994 to February 25, 1994. The revised applications will be available for mailing on January 24, 1994.

FOR APPLICATIONS OR INFORMATION CONTACT: Ms. Maxine Robinson, Program Officer, Jacob K. Javits Fellowship Program, U.S. Department of Education, 400 Maryland Avenue SW., room 3022, ROB–3, Washington, DC 20202–5251. Telephone: (202) 708–9428. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

Program Authority: 20 U.S.C. 1134, 1134h–k.

Dated: January 13, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–1299 Filed 1–14–94; 10:07 am]

BILLING CODE 4000–01–P

National Education Commission on Time and Learning; Meeting

AGENCY: National Education Commission on Time and Learning, Education.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming public Meeting of the National Education Commission on Time and Learning. This notice also describes the functions of the Commission. Notice of this Meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE, TIME AND LOCATION: February 4, 1994 from 1 p.m. to 2 p.m., National Education Commission on Time and Learning, Headquarters Offices—The Conference Room, 1255 22nd Street, NW—suite 502, Washington, DC 20037, Telephone: (202) 653–5019.

FOR FURTHER INFORMATION CONTACT: Julia Anna Anderson, Deputy Executive Director, 1255 22nd Street NW., suite 502, Washington, DC 20202–7591.

SUPPLEMENTARY INFORMATION: The National Education Commission on Time and Learning is established under section 102 of the Education Council Act of 1991 (20 U.S.C. 1221–1). The Commission is established to examine the quality and adequacy of the study and learning time of elementary and secondary students in the United States, including issues regarding the length of the school day and year, how time is being used for academic subjects, the use of incentives, how time is used outside of school, the extent and role of homework, year-round professional opportunities for teachers, the use of school facilities for extended learning programs, if appropriate a model for adopting a longer day or year, suggested changes for state laws and regulations, and an analysis and estimate of the additional costs.

The meeting of the Commission is open to the public. The proposed agenda includes a discussion of procedures for assuring expeditious completion of Commission tasks. Records are kept of all Commission proceedings, and are available for public inspection at the Office of the Commission at 1255 22nd Street NW., suite 502, Washington, DC 20202–7591 from the hours of 9 a.m. to 5:30 p.m.

Dated: January 13, 1994.

John Hodge Jones,

Chairman, National Education Commission on Time and Learning.

[FR Doc. 94–1252 Filed 1–18–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant to New York University Medical Center

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criterion set forth at 10 CFR 600.7(b)(2)(i)(D) to the New York University Medical Center (NYUMC), Tuxedo, New York, under Grant Number DE–FG01–94EH89435. The DOE intends to make a noncompetitive financial assistance award. The purpose of the proposed grant is to support a one-year project during which NYUMC will generate a comprehensive monograph on chelation therapy to be used in the case of nuclear accidents or major chemical spills. This effort will have a total estimated cost of $89,023 to be provided by the DOE.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Jeffrey R. Dulberg, HR–531.24, 1000 Independence Avenue SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The proposed grant will provide funding to NYUMC to generate a comprehensive monograph on chelation therapy to be used in the case of nuclear accidents or major chemical spills. After completion of the monograph and the grant, the DOE plans to print and distribute the monograph very widely and make it instantly available to the general public and to any public national or international institution where radiation or chemical contamination may occur and is a concern. This includes the general medical community, physicians specializing in nuclear medicine, local, state, and Federal public health officials, power generating stations, universities, and major hospitals. The material will be used not only as an emergency reference manual, but also for teaching purposes at teaching and training centers such as the Radiation Emergency Assistance Center/Training Site (REAC/TS). This project is planned for a one-year period of performance commencing on or about April 1, 1994.

The project is meritorious because of its relevance to the accomplishment of an important public purpose—providing a reference source for any physician treating any person who has been in an accident involving radionuclides or chemical exposures. A prime example of this would be people exposed as a result of a nuclear leak or accident during transport of an atomic weapon or of highly radioactive waste on public roads. This means that any member of the public could benefit from this effort. The monograph will be a preventive measure to allow public institutions to deal rapidly and effectively with such an accident, should one occur. In addition, the monograph will be used as a teaching source in universities and medical schools training students on the methods used to treat radiation or chemical exposures. NYUMC is recognized as a leading national training center in medicine with well recognized training programs in fields like environmental health, radiation biology, and environmental pollution. NYUMC is one of the Nation's oldest and foremost centers for research in the health effects of environmental pollution. NYUMC has the full-time faculty, supporting staff, graduate students, and post-doctoral fellows to produce the monograph. The faculty is among the most knowledgeable in the Nation in areas like biomarkers and the use of chelation for the treatment of radiation or chemical accidents. The applicant has exclusive domestic capability to perform the activity successfully, based upon experience and technical expertise in chelation therapy as applied to nuclear accidents or major chemical spills. The DOE knows of no other entity which is conducting or is planning to conduct such an activity.

Based on the evaluation of relevance to the accomplishment of a public purpose, it is determined that the proposal represents a beneficial method

and approach to disseminate to the public information on chelation therapy.

Issued in Washington, DC, on January 12, 1994.

Scott Sheffield,

Director, Headquarters Operations Division B, Office of Placement and Administration.

[FR Doc. 94–1250 Filed 1–18–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER93–259–000, et al.]

Northern States Power Co., et al., Electric Rate and Corporate Regulation Filings

January 11, 1994.

Take notice that the following filings have been made with the Commission:

1. Northern States Power Company (Minnesota)

[Docket Nos. ER93–259–000 ER93–630–000]

Take notice that on December 29, 1993, Northern States Power Company (Minnesota) (NSP) tendered for a proposed cost support formula for the Municipal System Power Service Schedule contained in NSP's Municipal Interconnection and Interchange Agreements with ten municipal electric utilities (Cities) located in the states of Minnesota and South Dakota. The Commission previously accepted the Agreements for filing effective January 1, 1993. The proposed rates formula is effective January 1, 1994; NSP requests that the first proposed rate increase under the formula be allowed to be effective January 1, 1994.

The ten cities and their existing FERC Rate Schedule No. are as follows:

Customer city	Rate schedule No.
City of Ada, Minnesota	474
City of Buffalo, Minnesota	475
City of East Grand Forks, Minnesota	476, 483
City of Fairfax, Minnesota	477
City of Kasota, Minnesota	478
City of Kasson, Minnesota	479
City of Kenyon, Minnesota	480
City of Madelia, Minnesota	481
City of Melrose, Minnesota	482
City of Sioux Falls, South Dakota	413

Comment date: January 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Portland General Electric Company

[Docket Nos. ER93–462–000 and ER93–703–000]

Take notice that on December 30, 1993, Portland General Electric Company (PGE) tendered for filing an amendment to its original filing under Docket Nos. ER93–462–000 and ER93–703–000. The nature of the amendment is a revision of tariff language and an update to costs support for rate ceiling components in the tariff. Copies of this filing have been served on the parties included in the distribution list contained in the filing letter.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993, in Docket No. PL93–2–002, PGE respectfully requests that the Commission grant waiver of the notice requirements of 18 CFR 35.3 to allow the amended PGE–1 tariff and the service agreements with Vernon and Chelan to become effective May 20, 1993; and to allow the service agreement with Dreyfus to become effective July 10, 1993.

Comment date: January 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Western Resources, Inc.; Kansas Gas and Electric Company

[Docket Nos. ER93–523–002 and ER93–533–002]

Take notice that on December 22, 1993, Western Resources, Inc. (Western Resources) on its behalf and on behalf of its wholly owned subsidiary Kansas Gas and Electric Company (KG&E), tendered for filing compliance tariff sheets in response to the Commission's October 22, 1993 order in these consolidated dockets. The tariff sheets tendered are to become effective October 22, 1993.

Copies of the filing were served upon all parties of record in these consolidated dockets.

Comment date: January 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Central Hudson Gas & Electric Corporation

[Docket No. ER93–732–000]

Take notice that on December 29, 1993, Central Hudson Gas and Electric Corporation (CHG&E) tendered for filing an amendment to FERC Docket No. ER93–732–000 which is the Marcy South Agreement between CHG&E and the New York Power Authority (NYPA).

The amended filing includes Exhibit 14 through Exhibit 18 which provide the following information: Diagrams of the Marcy South Facilities, Summary of Materials Added to Build the Marcy South Facilities, Description of the Cost by Source Amount and Summary of the Annual Charges for the Period August 1, 1987 through July 1, 1993.

Comment date: January 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Gas and Electric Company

[Docket No. ER94–139–000]

Take notice that on January 5, 1994, Pacific Gas and Electric Company (PG&E) tendered an amended filing under Federal Energy Regulatory Commission Docket No. ER94–139–000, regarding an agreement between PG&E and the Sacramento Municipal Utility District (SMUD).

PG&E's amended filing is made in response to FERC Staff's inquiry regarding the need for the agreement filed in this docket.

Copies of this filing have been served upon SMUD and the California Public Utilities Commission.

Comment date: January 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Louis Dreyfus Electric Power Inc.

[Docket No. ER94–141–000]

Take notice that on January 5, 1994, Louis Dreyfus Electric Power Inc. (LDEP) tendered for filing information in response to a request from the Commission Staff.

LDEP requests an effective date of September 7, 1993.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: January 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. PacifiCorp

[Docket No. ER94–150–000]

Take notice that PacifiCorp, on January 3, 1994, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, an amendment to its November 10, 1993 filing in this Docket.

PacifiCorp renews its request that an effective date, sixty (60) days from the date the original filing was received by the Commission, be assigned to the Emergency Interconnection Agreement.

Copies of this filing were supplied to the Idaho Public Utilities Commission, the Public Utilities Commission of Oregon and Fall River Rural Electric Cooperative, Inc.

Comment date: January 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. North American Energy Conservation, Inc.

[Docket Nos. ER94–152–000 and EL94–9–000]

Take notice that on December 28, 1993, North American Energy Conservation, Inc. (NAEC) filed with the Commission additional information requested by Commission Staff in regard to NAEC's filing of November 12, 1993. NAEC renews its request for an effective date of January 1, 1994 as set forth in its original application.

Comment date: January 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Puget Sound Power & Light Company

[Docket No. ER94–200–000]

Take notice that on December 28, 1993, Puget Sound Power & Light Company (Puget), tendered for filing supplemental information to its original filing in the above-referenced docket.

Comment date: January 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Puget Sound Power & Light Company

[Docket No. ER94–203–000]

Take notice that on December 23, 1993, Puget Sound Power & Light Company (Puget) tendered for filing in the above-referenced docket an initial rate schedule between the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville) and Puget (the Agreement).

In connection with that filing, Puget submitted a draft Notice for publication in the **Federal Register** which erroneously stated the Agreement's execution date as "December 30, 1987"; the correct date, as was indicated in the filing letter itself, is October 25, 1991.

Comment date: January 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Portland General Electric Company

[Docket No. ER94–254–000]

Take notice that on December 30, 1993, Portland General Electric Company (PGE) tendered for filing a Certificate of Concurrence under Docket No. ER94–254–000, relating an agreement, with amendment, for interconnection between PacifiCorp and Portland General Electric and a supplemental agreement for temporary use of facilities. Copies of these agreements and amendments have been served on the parties included in the distribution list defined in the filing letter.

Comment date: January 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Northwestern Public Service Company

[Docket No. ER94–274–000]

Take notice that on December 16, 1993, Northwestern Public Service Company tendered for filing various agreements for interconnection, emergency interconnection, wheeling and emergency type service, along with associated certificates of concurrence involving Northwestern Public Service Company, Rushmore Electric Power Cooperative, Inc., West Central Electric Cooperative, East River Electric Power Cooperative and the United States Department of Energy—Western Area Power Administration.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. PacifiCorp

[Docket No. ER94–280–000]

Take notice that PacifiCorp, on December 29, 1993, tendered for filing, in accordance with Commission's Order an amendment to its filing in the above referenced Docket No. ER94–280–000, an agreement regarding the installation of capacitors at Jim Bridger and Kinport substation dated August 6, 1992.

Copies of this filing were supplied to Idaho Power Company, the Public Utility Commission of Oregon, the Utah Public Service Commission, the Idaho Public Utilities Commission and the Wyoming Public Service Commission.

Comment date: January 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Public Service Corporation

[Docket No. ER94–327–000]

Take notice that on December 20, 1993, Wisconsin Public Service Corporation ("the Company") of Green Bay Wisconsin, filed a proposed Supplement No. 4 to Supplement No. 9 to the Company's Service Agreement with WPPI which relates to WPPI peak shaving for the period January 1, 1996 through October 15, 1997.

WPPI is the only customer currently peak shaving under the Company's W–1 full requirements tariff. WPPI supports the filing and the proposed effective date of January 1, 1996.

The filing does not change the level of the Company's rates. The Company states that it has furnished copies of the filing to WPPI, its other customers who are served under the full requirements tariff, the Michigan Public Service Commission and the Public Service Commission of Wisconsin.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. Tiger Bay Limited Partnership

[Docket No. QF93–15–001]

On January 10, 1994, Tiger Bay Limited Partnership tendered for filing an amendment to its initial filing in this docket.

The amendment pertains to the ownership structure of the cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: January 31, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–1233 Filed 1–18–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EL91–2–002, et al.]

Northern States Power Company, et al.; Electric Rate and Corporate Regulation Filings

January 10, 1994.

Take notice that the following filings have been made with the Commission:

1. Northern States Power Company

[Docket No. EL91–2–002]

Take notice that on December 30, 1993, Northern States Power Company (Northern States) tendered for filing its refund report in the above-referenced docket.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Public Service Corporation

[Docket No. EL93–54–000]

Take notice that on December 20, 1993, Wisconsin Public Service Corporation (WPSC) tendered for filing an amendment to its petition for waiver of the Commission's fuel clause regulations in this docket. WPSC's petition sought waiver to permit the refund to its wholesale customers of Spent Nuclear Fuel Disposal Costs that have been and will be refunded to WPSC by the United States Department of Energy. WPSC states that the amendment modifies the method of calculating the refunds to be provided to its wholesale customers.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of Oklahoma

[Docket No. EL94–14–000]

Take notice that the Notice of Filing issued in Docket No. ER94–233–000 on December 16, 1993 (58 FR 68403, December 27, 1993), should have been issued under Docket No. EL94–14–000.

4. Commonwealth Edison Company

[Docket No. ER93–777–002]

Take notice that on December 30, 1993, Commonwealth Edison Company (Edison) tendered for filing a revised FERC Transmission Service Tariff TS–1 in compliance with the Commission's order issued in Docket No. ER93–777–000 on November 30, 1993.

A copy of the filing has been served on the Illinois Commerce Commission and all parties to the proceeding.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Potomac Electric Power Company

[Docket No. ER94–111–000]

Take notice that on December 28, 1993, The Potomac Electric Power Company (Pepco) tendered for filing answers to questions from the Commission's Staff regarding the filing submitted on November 3, 1993, which answers supplement the filing.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Pacific Gas and Electric Company

[Docket No. ER94–134–000]

Take notice that on January 4, 1994, Pacific Gas and Electric Company (PG&E) tendered an amended filing under Federal Energy Regulatory Commission Docket No. ER94–134–000, regarding a rate schedule change to Rate Schedule FERC No. 79, between PG&E, the Western Area Power Administration (Western), and the Trinity Public Utilities District (TPUD).

PG&E's amended filing is made in response to FERC Staff inquiries regarding an Operating Agreement, filed as part of Docket No. ER94–134–000. In this amended filing PG&E provided information regarding the cost and ownership of certain switches to be installed under the Operating Agreement, and has explained why TPUD provided PG&E an Agreement, and has explained why TPUD provided PG&E an indemnification against possible damages resulting from an islanding procedure discussed in the Operating Agreement.

Copies of this filing have been served upon Western, TPUD and the California Public Utilities Commission.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Midwest Power Systems Inc.

[Docket No. ER94–157–000]

Take notice that on January 4, 1994, Midwest Power Systems, Inc. (MPSI) tendered for filing Amendment No. 1 to the filing of a Peaking Participation Agreement (Agreement) dated March 14, 1991, between Corn Belt Power Cooperative (Corn Belt) and Iowa Power Inc., n/k/a MPSI. This Agreement's main emphasis is for MPSI to purchase capacity and energy from Corn Belt from May 1 through October 31 for the years 1991, 1992, 1993, and 1994. Paragraph 6 of the Agreement allows for MPSI to sell capacity and energy to Corn Belt, at Corn Belt's sole option, in the month of October of each respective year. Amendment No. 1 contains supporting schedules and information, requested by FERC staff, that clarifies paragraph 6 of the Agreement.

MPSI states that copies of this filing were served on Corn Belt and the Iowa Utilities Board.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp

[Docket No. ER94–254–000]

Take notice that PacifiCorp on December 15, 1993, tendered for filing Letter Agreements between PacifiCorp and Portland General Electric Company (Portland), dated August 23, 1973 and June 19, 1975, which provide for a temporary/emergency interconnection between PacifiCorp's and Portland's systems and a use-of-facilities charge for Portland's use of a portion of PacifiCorp's facilities which are not a part of PacifiCorp's main grid transmission system to provide a radial circuit for the purpose of serving Portland's own retail load.

PacifiCorp requests an effective date of May 1, 1974, for the emergency interconnection. In addition, PacifiCorp requests that the Commission disclaim jurisdiction over the use-of-facility charge contained in the Letter Agreements. However, if the Commission determines such charge to be jurisdictional, that a waiver of prior notice be granted pursuant to the Commission's Final Order in Docket No. PL93–2–002 and that an effective date of May 1, 1974 be assigned to such charge.

Copies of this filing were supplied to Portland and the Public Utility Commission of Oregon.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Kentucky Utilities Company

[Docket No. ER94–301–000]

Take notice that on December 20, 1993, Kentucky Utilities Company (KU) tendered for filing copies of seven Service Agreements between KU and East Kentucky Power Cooperative, Inc. (EKPC). KU describes the service agreements as providing for certain wheeling services to EKPC.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corporation

[Docket No. ER94–330–000]

Take notice that on December 21, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Cornwall Street Railway, Light and Power Company Limited, operating as Cornwall Electric (CE) dated November 1, 1989, providing for firm and transmission service from Canadian Niagara Power Company to CE.

The effective date of November 1, 1989, is requested by Niagara Mohawk.

Copies of this filing were served upon CE and the New York State Public Service Commission.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corporation

[Docket No. ER94–331–000]

Take notice that on December 21, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement

between Niagara Mohawk and the Village of Richmondville (Richmondville) dated November 9, 1992, providing for certain borderline sales to Richmondville. Niagara Mohawk is filing this under the general amnesty announced by the Commission in its final order issued on July 30, 1993 in Docket No. PL93–2–002.

The November 9, 1992, agreement provides for Niagara Mohawk sales to Richmondville at various points of delivery near the border of Niagara Mohawk's and Richmondville's service territories in the Village of Richmondville and County of Schoharie, State of New York. The rates contained in the agreement are Niagara Mohawk's standard borderline rates approved by the New York State Public Service Commission under Niagara Mohawk's PSC Tariff No. 207, SC No. 2.

The effective date of November 9, 1992, is requested by Niagara Mohawk.

Copies of this filing were served upon Richmondville and the New York State Public Service Commission.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Niagara Mohawk Power Corporation

[Docket No. ER94–332–000]

Take notice that on December 21, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and the Village of Andover (Andover) dated November 1, 1977, providing for certain borderline sales to Andover. Niagara Mohawk is filing this under the general amnesty announced by the Commission in its final order issued on July 30, 1993 in Docket No. PL93–2–002.

The November 2, 1977, agreement provides for Niagara Mohawk sales to Andover at various points of delivery near the border of Niagara Mohawk's and Andover's service territories in Southwestern New York State. The rates contained in the agreement are Niagara Mohawk's standard borderline rates approved by the New York State Public Service Commission under Niagara Mohawk's PSC Tariff No. 207, SC No. 2.

The effective date of November 2, 1977, is requested by Niagara Mohawk.

Copies of this filing were served upon Andover and the New York State Public Service Commission.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice

13. Niagara Mohawk Power Corporation

[Docket No. ER94–333–000]

Take notice that on December 21, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Rochester Gas & Electric Corporation (RG&E) dated November 16, 1993, providing for the terms and conditions of a loss compensation for control area transactions.

The effective date of January 1, 1988, is requested by Niagara Mohawk.

Copies of this filing were served upon RG&E and the New York State Public Service Commission.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. Niagara Mohawk Power Corporation

[Docket No. ER94–334–000]

Take notice that on December 21, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Orange and Rockland Utilities, Inc. (O&R) dated November 16, 1993, providing for loss compensation for control area transactions.

The effective date of January 1, 1988, is requested by Niagara Mohawk.

Copies of this filing were served upon O&R and the New York State Public Service Commission.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. San Diego Gas & Electric Company

[Docket No. ER94–335–000]

Take notice that on December 21, 1993, San Diego Gas & Electric Company (SDG&E) tendered for filing a Certificate of Concurrence in respect of SDG&E's scheduling of energy to Southern California Edison Company for losses, in accordance with §§ 35.1 and 131.52 of the Commission's regulations, 18 CFR 35.1 and 131.52.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. San Diego Gas & Electric Company

[Docket No. ER94–336–000]

Take notice that on December 21, 1993, San Diego Gas & Electric Company (SDG&E) tendered for filing a Certificate of Concurrence for the Arizona Transmission System Participation Agreement between SDG&E and Arizona Public Service Company.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

17. San Diego Gas & Electric Company

[Docket No. ER94–337–000]

Take notice that on December 21, 1993, San Diego Gas & Electric Company (SDG&E) tendered for filing a Certificate of Concurrence concurring in the rate schedule supplement, consisting of Rulings of the California Power Pool Board of Control, which Pacific Gas & Electric Company has filed.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

18. San Diego Gas & Electric Company

[Docket No. ER94–338–000]

Take notice that on December 21, 1993, San Diego Gas & Electric Company (SDG&E) tendered for filing a Certificate of Concurrence concurring in the Long Term Power Sales Agreement and Long Term Transmission Service Agreement which Portland General Electric has filed.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

19. San Diego Gas & Electric Company

[Docket No. ER94–339–000]

Take notice that on December 21, 1993, San Diego Gas & Electric Company (SDG&E) tendered for filing a Certificate of Concurrence concurring in the fall/winter 1993/1994 California Simultaneous Import Nomogram, Southern California Import Transmission Nomogram, and PNW–PSW Import Nomogram filings which Southern California Edison Company has made.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

20. San Diego Gas & Electric Company

[Docket No. ER94–340–000]

Take notice that on December 21, 1993, San Diego Gas & Electric Company (SDG&E) tendered for filing a Certificate of Concurrence concurring in rate Pacific Gas and Electric Company of California Companies Pacific Intertie Coordination Committee Rulings.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

21. Nevada Power Company

[Docket No. ER94–341–000]

Take notice that Nevada Power Company (NPC), on December 21, 1993, tendered for filing rate changes to the

Agreement for the Sales of Electric Power and for Transmission Service (Agreement) between Nevada Power Company and the City of Needles, California (Needles). This Agreement provides for the wheeling of power and associated energy by NPC from the Mead Substation 230 kV Bus to Needles.

Pursuant to 18 CFR 35.11, NPC requests waiver of the Commission's notice requirements, 18 CFR 35.3, to allow for effective dates of January 1, 1988, November 26, 1991 and July 27, 1992. Additionally, pursuant to the Commission's findings in FERC Docket No. PL93–2–002, NPC requests that all amnesty provisions be allowed.

Copies of this filing were served on Needles and the Nevada Public Service Commission.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

22. Nevada Power Company

[Docket No. ER94–342–000]

Take notice that on December 21, 1993, Nevada Power Company (NPC), tendered for filing the Transmission Service Agreement (Agreement) between NPC and Basic Management, Inc. (BMI). This Agreement provides for the transmission of BMI's energy entitlement to its pumping facilities, and the lease of a 69 Kv BMI transmission line to NPC.

Pursuant to 18 CFR 35.11, NPC requests waiver of the Commission's notice requirements, 18 CFR 35.3, to allow for an effective date of November 1, 1980. Additionally, pursuant to the Commission's findings in FERC Docket No. PL93–2–002, NPC requests that all amnesty provisions be allowed.

Copies of this filing were served on BMI and the Nevada Public Service Commission.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

23. Nevada Power Company

[Docket No. ER94–343–000]

Take notice that on December 21, 1993, Nevada Power Company (NPC), tendered for filing the Transmission Service Agreement (Agreement) between NPC and the United State of America (United States). This Agreement provides for the transmission of 370 Kw of power and associated energy by NPC from the Mead Substation 230 Kv Bus to the 69 Kv Bus at the Mohave Generating Station.

Pursuant to 18 CFR 35.11, NPC requests waiver of the Commission's notice requirements, 18 CFR 35.3, to allow for an effective date of January 1, 1984. Additionally, pursuant to the Commission's findings in FERC Docket No. PL93–2–002, NPC requests that all amnesty provisions be allowed.

Copies of this filing were served on Western Area Power Administration (on behalf of the United States) and the Nevada Public Service Commission.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

24. Western Resources, Inc.

[Docket No. ER94–344–000]

Take notice that on December 21, 1993, Western Resources, Inc. (WRI) tendered for filing a First Revised Exhibit B to the Electric Power, Transmission and Service Contract between WRI and Kansas Electric Power Cooperative, Inc., (KEPCo). WRI states the filing is to update Exhibit B to reflect the installation of the Manhattan K–177 point of delivery and to remove the Hunter's Island point of delivery. This filing is proposed to become effective January 3, 1994.

A copy of this filing was served upon KEPCo and the Kansas Corporation Commission.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

25. Arizona Public Service Company

[Docket No. ER94–345–000]

Take notice that on December 21, 1993, Arizona Public Service Company (APS) tendered for filing the Arizona Transmission System Participation Agreement between APS and San Diego Gas & Electric Company (SDG&E), Amendment No. 1 thereto and the Southwestern Arizona Communications Agreement between APS and SDG&E (collective Agreements).

The Agreements provide for the construction and operation of the joint 500 kV transmission line to supply transmission from the Palo Verde Nuclear Generating Station to southwestern Arizona and onto California and the associated communications system. APS requested that the Commission disclaim jurisdiction over all or certain portions of the Agreements.

Copies of this filing have been served upon SDG&E, Imperial Irrigation District, the Arizona Corporation Commission and the California Public Utilities Commission.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

26. Metropolitan Edison Company

[Docket No. ER94–346–000]

Take notice that on December 21, 1993, Metropolitan Edison Company (Met-Ed) tendered for filing pursuant to Rule 205 of the Commission's Rules of Practice and Procedure (18 CFR 385.205) in response to the Commission's Orders of July 30, 1993, and October 19, 1993, relating to Prior Notice and Filing Requirements under the Federal Power Act, proposed rate schedule changes concerning minor adjustments in charges for facilities involved in Met-Ed's Interconnection Agreement with Pennsylvania Power & Light Company.

Copies of the filing have been furnished to the Pennsylvania Public Utility Commission.

Comment date: January 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

27. Eastman Chemical Company

[Docket No. QF92–13–001]

On December 28, 1993, Eastman Chemical Company (Eastman Chemical) of Kingsport, Tennessee submitted for filing an application for recertification of a facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility is located at the Tennessee Eastman Division plant in Kingsport, Tennessee. The Commission previously certified the facility as a qualifying cogeneration facility, Eastman Chemical Company, 59 FERC ¶ 62,058 (1992). The instant application for recertification is due to a change in the ownership structure of the facility.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

28. Resource Technology Corporation

[Docket No. QF94–54–000]

On January 3, 1994, Resource Technology Corporation of 175 West Jackson, Suite A243, Chicago, Illinois 60604, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the small power production facility will be located in the Town of Belvidere, in Boone County, Illinois. The facility will consist of internal combustion engine generator sets with a maximum net

electric power production capacity of 3.68 MW. The primary energy source will be biomass in the form of landfill gas. Construction of the facility is expected to commence on January 30, 1994.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–1232 Filed 1–18–94; 8:45 am]

BILLING CODE 6717–01–P

[Project Nos. 2451–004, 2452–007, and 2468–003 Michigan]

Consumers Power Co.; Availability of Final Multiple Project Environmental Assessment

January 12, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the three applications for major license for the existing Rogers, Hardy, and Croton Hydroelectric Projects, located on the Muskegon River in Mecosta and Newaygo Counties, in southwest Michigan, and has prepared a final Multiple Project Environmental Assessment (MPEA) for the projects in cooperation with the U.S. Department of Agriculture, Forest Service, Huron-Manistee National Forests.

On September 8, 1993, a draft MPEA was issued and distributed to all parties, and comments were requested on the draft MPEA to be filed within 45 days. All comments that were filed have been considered in the final MPEA.

In the final MPEA, the Commission and Forest Service staffs analyzed the site-specific and cumulative environmental effects of the existing projects, as proposed in a Settlement Agreement reached between Consumers Power Company and the state and Federal resource agencies. The Commission staff has concluded that approval of the applications for new license, with appropriate enhancement measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the final MPEA are available in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–1178 Filed 1–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–142–000, et al.]

Northern Natural Gas Company, et al.; Natural Gas Certificate Filings

January 10, 1994.

Take notice that the following filings have been made with the Commission:

1. Northern Natural Gas Company

[Docket No. CP94–142–000]

Take notice that on December 20, 1993, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP94–142–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon, by sale to Hobbs Processing Company (HPC), a wholly owned subsidiary of Enron Operations Corp., certain compression, treating, dehydrating, processing and pipeline facilities, with appurtenances, located in Lea, Eddy and Chaves Counties, New Mexico and services rendered thereby. Northern also requests approval concurrent with the conveyance of said facilities to HPC, to abandon, pursuant to section 7(b) of the Natural Gas Act, certain agreements and services, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern states that it would convey the following Eddy County System facilities:

(1) Eddy County No. 1 compressor station, consisting of two units totaling 715 horsepower; Eddy County No. 2 compressor station, consisting of two units totaling 1,119 horsepower; and Eddy County No. 3 compressor station, consisting of one unit totaling 110 horsepower.

(2) A total of approximately 172 miles of pipe, consisting of approximately .6 miles of 2″ pipe, 21 miles of 4″ pipe, 34 miles of 6″ pipe, 23 miles of 8″ pipe, .04 miles of 10″ pipe, and 93 miles of 12″ pipe and appurtenant facilities.

Northern states that it would convey the following Lea County System facilities:

(1) Hobbs No. 5 compressor station, consisting of four units totalling 7,600 horsepower; Hobbs No. 1 compressor station, consisting of five units totaling 10,400 horsepower; Hobbs No. 3 compressor station, consisting of two units totaling 4,400 horsepower; and Hobbs No. 2 compressor station, consisting of four units totaling 7,200 horsepower.

(2) A total of approximately 447 miles of pipe consisting of approximately 40 miles of 2″ pipe, .7 miles of 3″ pipe, 173 miles of 4″ pipe, 60 miles of 6″ pipe, 46 miles of 8″ pipe, 19 miles of 10″ pipe, 29 miles of 12″ pipe, 52 miles of 16″ pipe, 6 miles of 20″ pipe, 16 miles of 24″ pipe, and 6 miles of 26″ pipe and appurtenant facilities.

Northern states that it would convey the following Buckeye System facilities:

(1) Hobbs No. 4 compressor station, consisting of one unit totaling 772 horsepower.

(2) A total of approximately 58 miles of pipe, consisting of approximately .4 miles of 2″ pipe, 22 miles of 4″ pipe, 15 miles of 6″ pipe, 6 miles of 8″ pipe, and 15 miles of 10″ pipe and appurtenant facilities.

Northern states that it would convey the following Hobbs Plant Complex which consists of the following:

(1) Hobbs Plant Complex compressor station, consisting of seven units totaling 9,630 horsepower.

(2) Gas processing plant, capable of processing 200 Mmcf/day of natural gas and extracting liquefiable hydrocarbons from the gas stream.

(3) Treating plant facilities, capable of treating 200 Mmcf/day of natural gas and reducing the hydrogen sulfide and carbon dioxide content of the gas.

(4) Dehydration facilities capable of dehydrating 180 Mmcf/day of gas.

(5) Other appurtenant facilities.

Northern says that the facilities would be conveyed to HPC at the net book value as of the date of coming.

Comment date: January 25, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Hobbs Processing Company

[Docket No. CP94–145–000]

Take notice that on December 20, 1993, Hobbs Processing Company (Hobbs Processing), P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP94–145–000 a petition for declaratory order requesting that the Commission declare that facilities to be acquired from Northern Natural Gas Company (Northern) are gathering facilities exempt from the Commission's Regulations pursuant to section 1(b) of the Natural Gas Act (NGA), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Hobbs Processing states that it would, pursuant to a Contract for Sale and Purchase of Assets dated December 17, 1993, between Hobbs Processing and Northern, acquire the Hobbs Plant Complex located in Lea County, New Mexico, as well as the Lea County Gathering System, the Eddy County Gathering System and the Buckeye Gathering System (collectively "Hobbs Facilities").

Hobbs Processing states that Northern would convey the following Eddy County System facilities:

(1) Eddy County No. 1 compressor station, consisting of two units totaling 715 horsepower; Eddy County No. 2 compressor station, consisting of two units totaling 1,119 horsepower; and Eddy County No. 3 compressor station, consisting of one unit totaling 110 horsepower.

(2) A total of approximately 172 miles of pipe, consisting of approximately .6 miles of 2" pipe, 21 miles of 4" pipe, 34 miles of 6" pipe, 23 miles of 8" pipe, .04 miles of 10" pipe, and 93 miles of 12" pipe and appurtenant facilities.

Hobbs Processing states that Northern would convey the following Lea County System facilities:

(1) Hobbs No. 5 compressor station, consisting of four units totalling 7,600 horsepower; Hobbs No. 1 compressor station, consisting of five units totaling 10,400 horsepower; Hobbs No. 3 compressor station, consisting of two units totaling 4,400 horsepower; and Hobbs No. 2 compressor station, consisting of four units totaling 7,200 horsepower.

(2) A total of approximately 447 miles of pipe consisting of approximately 40 miles of 2" pipe, .7 miles of 3" pipe, 173 miles of 4" pipe, 60 miles of 6" pipe, 46 miles of 8" pipe, 19 miles of 10" pipe, 29 miles of 12" pipe, 52 miles of 16" pipe, 6 miles of 20" pipe, 16 miles of 24" pipe, and 6 miles of 26" pipe and appurtenant facilities.

Northern states that it would convey the following Buckeye System facilities:

(1) Hobbs No. 4 compressor station, consisting of one unit totaling 772 horsepower.

(2) A total of approximately 58 miles of pipe, consisting of approximately .4 miles of 2" pipe, 22 miles of 4" pipe, 15 miles of 6" pipe, 6 miles of 8" pipe, and 15 miles of 10" pipe and appurtenant facilities.

Northern states that it would convey the following Hobbs Plant Complex which consists of the following:

(1) Hobbs Plant Complex compressor station, consisting of seven units totaling 9,630 horsepower.

(2) Gas processing plant, capable of processing 200 Mmcf/day of natural gas and extracting liquefiable hydrocarbons from the gas stream.

(3) Treating plant facilities, capable of treating 200 Mmcf/day of natural gas and reducing the hydrogen sulfide and carbon dioxide content of the gas.

(4) Dehydration facilities capable of dehydrating 180 Mmcf/day of gas.

(5) Other appurtenant facilities.

Hobbs Processing says that the Hobbs Plant Complex and Hobbs Facilities are an integrated system used to perform services in the production area prior to transportation in interstate commerce. Hobbs Processing states that these facilities and services are within the production and gathering exemption of the NGA. As a result, Hobbs Processing says that they should be declared wholly exempt from the Commission's jurisdiction under the NGA.

Comment date: January 25, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

3. Transcontinental Gas Pipe Line Corporation

[Docket No. CP94–150–000]

Take notice that on December 20, 1993, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP94–150–000 a request under section 7(b) of the Commission's Regulations under the Natural Gas Act for a certificate permitting and approving abandonment of interruptible transportation services provided to the Joint Venture Participants (Joint Venture Participants), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically TGPL proposes to abandon interruptible transportation service provided to the following Joint Venture Participants under the following rate schedules:

1. Carolina Pipeline Company—Rate Schedule X–137
2. Delmarva Energy Company, an affiliate of Delmarva Power and Light Company—Rate Schedule X–154
3. Eastern Shore Natural Gas Company—Rate Schedule X–155
4. NCNG Exploration Corporation, an affiliate of North Carolina Natural Gas Corporation—Rate Schedule X–130
5. Pennsylvania Gas and Water Company—Rate Schedule X–156
6. Eastern Pennsylvania Exploration Company—Rate Schedule X–139
7. Piedmont Exploration Company, Inc., an affiliate of Piedmont Natural Gas Company, Inc.—Rate Schedule X–132
8. Rockingham Exploration Company, an affiliate of North Carolina Gas Service Division of Pennsylvania and Southern Gas Company—Rate Schedule X–133
9. Tar Heel Energy Corporation, an affiliate of Public Service Company of North Carolina, Inc.—Rate Schedule X–134
10. United Cities Gas Company; North and South Carolina Divisions—Rate Schedule X–135
11. South Jersey Exploration Company—Series of interruptible transportation agreements.

TGPL states that in order to reduce the administrative burden of executing and filing new transportation agreements each year and to provide additional receipt point flexibility, TGPL and the Joint Venture Participants have agreed to terminate existing interruptible transportation agreements and to enter into any necessary new interruptible transportation agreements pursuant to TGPL's Rate Schedule IT.

Comment date: January 31, 1994, in accordance with Standard Paragraph F at the end of this notice.

4. Tennessee Gas Pipeline Company

[Docket No. CP94–153–000]

Take notice that on December 22, 1993, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP94–153–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon seven interruptible storage transportation services under its Rate Schedule ISST-NE, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Tennessee proposes to abandon seven interruptible services to the following customers:

Granite State Gas, CP80–65–007 [1]
Connecticut Natural Gas Corp. CP80–65 [2]
Essex County Gas Company CP80–65 [3]
Colonial Gas Company CP80–65 [4]
The Connecticut Light & Power Company CP80–65 [5]
Boston Gas Company CP80–65 [6]
Boston Gas Company CP80–65 [7]

Tennessee does not propose to abandon any facilities as a result of or in conjunction with this proposal.

Comment date: January 31, 1994, in accordance with Standard Paragraph F at the end of this notice.

5. Koch Gateway Pipeline Company

[Docket No. CP94–167–000]

Take notice that on December 30, 1993, Koch Gateway Pipeline Company (Gateway) (formerly United Gas Pipe Line Company (United)), P.O. Box 1478, Houston, Texas 77251–1478, filed a prior-notice request with the Commission in Docket No. CP94–167–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to modify an existing receipt point meter station in order to transport and deliver gas for the account of Koch Gas Service Company (KGS), under United's blanket certificates issued in Docket Nos. CP82–430–000 and CP88–6–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

Gateway proposes to reverse the meter tube, check valve, and tap valve at an existing receipt side meter in Wharton County, Texas. Gateway would transport and deliver up to 50 MMBtu equivalent of natural gas per day to KGS for service to Transfuel Resources Company (Transfuel). Gateway would provide service to KGS under its FERC Rate Schedule ITS. Gateway states that Transfuel would reimburse Gateway for the estimated $7,500 in modification costs of the facilities. Gateway also states that its tariff permits the proposed modification of facilities and that it has sufficient capacity to render this service without detriment or disadvantage to its other existing customers.

Comment date: February 24, 1994, in accordance with Standard Paragraph G at the end of this notice.

6. Equitrans, Inc.

[Docket No. CP94–169–000]

Take notice that on January 4, 1994, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP94–169–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install one delivery tap under Equitrans's blanket certificate issued in Docket No. CP83–508–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans proposes to install the delivery tap on its transmission Line F–194 in Clarksville, Pennsylvania to provide gas service to Richard Larosa (Larosa) of Clarksville. Equitrans projects approximately 1 Mcf of natural gas to be delivered to Larosa on a peak day and Equitrans proposes to provide such service under its Rate Schedule FTS.

Comment date: February 24, 1994, in accordance with Standard Paragraph G at the end of this notice.

7. Northwest Pipeline Corporation

[Docket No. CP94–170–000]

Take notice that on January 4, 1994, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed an application with the Commission in Docket No. CP94–170–000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon approximately 7.7 miles of 10-inch pipeline and a meter station in Grady County, Oklahoma, by transfer to Williams Natural Gas Company (WNG), all as more fully set forth in the application which is open to the public for inspection.

Northwest proposes to abandon by transfer 7.7 miles of 10-inch pipeline and a meter station, known as the "Mustang Line," in Grady County to WNG. Northwest used the Mustang Line to transport residue gas from the outlet of the Conoco-Mustang Processing Plant to WNG's 16-inch Cement Line; however, Northwest's gas purchase contracts with Conoco, Inc. and NGL Production Company have expired. Northwest contends that the Mustang Line is located several hundred miles from its mainline transmission system and uneconomical to continue to own and operate. WNG could operate the Mustang Line as part of its system and provide shippers with access at the Conoco-Mustang Plant without incurring the additional expense of contracting with Northwest.

Northwest proposes to abandon the Mustang Line by a dividend at its net book value [8] to The Williams Companies (TWC), the corporate parent of both Northwest and WNG, and TWC would make an immediate capital contribution to WNG. TWC would not hold title to the Mustang Line other than as necessary to effectuate the transfer. Northwest states that WNG would operate the Mustang Line under its blank certificate authorization pursuant to subpart F of part 157 of the Commission's Regulations.

Comment date: January 31, 1994, in accordance with Standard Paragraph F at the end of this notice.

8. Northern Natural Gas Company

[Docket No. CP94–171–000]

Take notice that on January 6, 1994, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000 filed, in Docket No. CP94–171–000, a request pursuant to §§ 157.205(b) and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205(b) and 157.212) for authorization to install and operate one small volume measuring station and appurtenant facilities and upgrade one existing delivery point to provide increased natural gas deliveries to Peoples Natural Gas Company, a Division of UtiliCorp United Inc. (Peoples), under Northern's blanket certificate granted September 1, 1982, at Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it requests authority to install a delivery point to accommodate natural gas deliveries under Northern's existing Rate Schedule to Peoples for Craig Dachtera, a residential end-user located in Washington, Minnesota. It is further stated that the upgraded delivery point is commercial and will provide for increased incremental deliveries to the Minnesota Corn Processors town border station located in Platte County, Nebraska.

Northern also states that the estimated total volumes delivered to Peoples at the delivery points will be 1.5 MMBtu on peak day and 200 MMBtu annually for residential and 12,000 peak day and 3,000,000 annually for the upgrade. It is stated that the estimated cost to install

[1] Authorization granted at 18 FERC ¶61,013 (1982).
[2] Authorization granted at 15 FERC ¶61,151 (1981).
[3] Id.
[4] Id.
[5] Id.
[6] Id.
[7] Id.

[8] Northwest states that the net book value of the Mustang Line, as of October 31, 1993, was $732,844 with an associated deferred tax liability of $223,770.

the new delivery point is $993 and to upgrade the town border station is $4,779.

Comment date: February 24, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

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 a grant of the certificate and/or 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 applicant to appear or be represented at the hearing.

G. Any person on the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–1234 Filed 1–18–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP90–95–007]

Colorado Interstate Gas Co.; Compliance Filing

January 12, 1994.

Take notice that on December 20, 1993, Colorado Interstate Gas Company (CIG) tendered for filing a semiannual compliance filing consisting of work papers detailing accrued interest payments made by CIG to its affected customers related to the unused portion of transportation credits in the instant docket.

CIG states that copies of the filing were served upon all of the parties to this proceeding and affected state commissions as well as all of CIG's firm sales customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before January 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–1179 Filed 1–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ94–3–23–001 and TM94–5–23–001]

Eastern Shore Natural Gas Co; Proposed Changes in FERC Gas Tariff

January 12, 1994.

Take notice that on January 10, 1994 Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheet included in Appendix A attached to the filing. Such sheet is proposed to be effective November 1, 1993.

ESNG states that the above referenced tariff sheet is being filed due to the improper carrying forward of the CWS and CFSS Demand Charges, calculated correctly on the back-up sheets, but keypunched incorrectly on Substitute Forty-Second Revised Sheet No. 6.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before January 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–1180 Filed 1–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–185–010]

El Paso Natural Gas Co; Compliance Filing

January 12, 1994.

Take notice that on January 7, 1994, El Paso Natural Gas Company (El Paso) tendered for filing, pursuant to Part 154 of the Federal Energy Regulatory Commission's (Commission Regulations Under the Natural Gas Act and in compliance with the Commission's Order Accepting Certain Tariff Sheets Subject To Conditions issued December 23, 1993 (December 23, 1993 Order) at Docket Nos. RP92–185–003 and 005, certain tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1–A.

El Paso states that by order issued December 3, 1992 at Docket Nos. RP92–185–000, 001 and 002, the Commission among other things, accepted El Paso's revised cash-out and unauthorized gas tariff provisions, subject to El Paso revising certain tariff sheets. On December 30, 1992, El Paso filed the required revised tariff sheets at Docket No. RP92–185–003, with a proposed effective date of February 1, 1993. El Paso states that on May 6, 1993, the Commission issued its rehearing order at Docket No. RP92–185–004. As a result, El Paso was required to further

revise certain of the tariff sheets submitted on December 30, 1992. El Paso states that on June 3, 1993, it filed such further revised tariff sheets at Docket No. RP92–185–005, proposing an effective date of August 1, 1993.

Subsequently, on August 31, 1993 at Docket No. RS92–60–011, et al., the Commission issued an order which, among other things, accepted El Paso's cash-out and unauthorized gas tariff provisions filed at Docket No. RP92–185–000, et al. El Paso states that on September 14, 1993 at Docket No. RS92–60–016, it filed tariff sheets which included its cash-out provisions, to be effective October 1, 1993. El Paso states that by order issued October 29, 1993 at Docket No. RS92–60–016, et al., the Commission accepted, among other things, the cash-out and unauthorized gas tariff sheets effective October 1, 1993.

El Paso states that the December 23, 1993 Order addresses El Paso's compliance filings made on December 30, 1992 and June 3, 1993 and establishes effective dates of February 1, 1993 and August 1, 1993 for the revised tariff sheets. El Paso states that ordering paragraph (B) of the December 23, 1993 Order requires El Paso to file revised tariff sheets within fifteen (15) days of the date of the order. El Paso states that it believes that the proper effective date for all tariff sheets related to the cash-out and unauthorized gas provisions in its tariff should be October 1, 1993.

El Paso requested all necessary waivers of the Commission's regulations so as to permit the tendered tariff sheets to become effective October 1, 1993 and supersede the counterpart tariff sheets accepted by the Commission in its October 29, 1993 order at Docket No. RS92–60–016, et al.

El Paso states that copies of the filing were served upon all parties of record at Docket No. RP92–185–000, et al., and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests should be filed on or before January 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–1181 Filed 1–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR91–1–001]

Tejas Gas Pipeline Co., successor to Exxon Gas System, Inc.; Motion To Modify Settlement

January 12, 1994.

Take notice that on December 3, 1993, Tejas Gas Pipeline Company (Tejas), successor to Exxon Gas System, Inc., filed a motion for limited modification of the February 11, 1991, Stipulation and Agreement in Docket No. PR91–1–000. The purpose of the requested modification is to permit Tejas to seek to establish an appropriate rate before the Texas Railroad Commission (TRC) and to elect to utilize a rate based thereon for Natural Gas Policy Act of 1978 (NGPA) section 311(a)(2) service, pursuant to § 284.123(b)(1) of the Commission's regulations, rather than filing with the Commission for rate approval under § 284.123(b)(2), as required by the settlement.

Further, on January 3, 1994, Tejas notified the Commission that on the same date, Tejas filed with the TRC for approval of the transportation component of a city-gate rate which it states will be eligible to be the basis for a rate under § 284.123(b)(1)(i) of the regulations. Tejas states it will collect the filed-for rate subject to refund, effective January 1, 1994.

Any person desiring to participate in this proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before February 2, 1994. The motion is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–1182 Filed 1–18–94; 8:45 am]

BILLING CODE 6717–01–M

Tennessee Gas Pipeline Co.; Compliance

[Docket No. RP94–69–001]

January 12, 1994.

Take notice that on January 10, 1994, Tennessee Gas Pipeline Company (Tennessee) tendered for filing (1) a schedule indicating the level of Tennessee's filed take-or-pay costs in relation to the overall cap on Tennessee's take-or-pay cost recovery, and (2) Substitute First Revised Sheet No. 39, which reflects the allocation of take-or-pay costs to Equitable Gas Company rather than Equitrans, Inc. The revised tariff sheet is proposed to be effective January 1, 1994.

Tennessee submits that the schedule and revised tariff sheet are filed in compliance with the Commission's December 30, 1993 order accepting for filing and suspending, with conditions, Tennessee's take-or-pay recovery filing in Docket No. RP94–69–000. See Tennessee Gas Pipeline Co., 65 FERC 61,428.

Tennessee states that copies of the filing are being served on all participants to this proceeding and all affected customers and state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before January 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–1183 Filed 1–18–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Arms Control and Nonproliferation

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement", under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the following retransfer: RTD/JA(EU)–72, for the transfer of 4.5 grams of uranium

containing 4.2 grams of the isotope uranium–235 (93.33 percent enrichment) from Belgium to Japan for measurement of the fission rate in the fast critical assembly at the Japan Atomic Energy Research Institute.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on January 13, 1994.

Salvador N. Ceja,

Acting Director, Office of Nonproliferation Policy, Office of Arms Control and Nonproliferation.

[FR Doc. 94–1251 Filed 1–18–94; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4827–8]

Acid Rain Program; Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final permits.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing a five-year Acid Rain permit, according to the Acid Rain Program regulations [40 CFR part 72], to the Eastlake plant in Ohio.

FOR FURTHER INFORMATION CONTACT: Franklin Echevarria at (312) 886–9653. Air and Radiation Division, EPA Region 5 (AE–17J), Ralph H. Metcalfe Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

Dated: January 11, 1994.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94–1248 Filed 1–18–94; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–400084; FRL–4757–1]

Emergency Planning and Community Right-to-Know; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: EPA will hold a one half day public meeting to discuss the options the Agency is considering for developing an exemption to the Emergency Planning and Community Right-to-Know Act (EPCRA), section 313 reporting requirements for chemical reports of small release amounts. In connection with this meeting, the Agency has prepared an issues paper that will be available at no charge through the address or telephone number listed under **FOR FURTHER INFORMATION CONTACT.**

DATES: The meeting will take place on Wednesday, February 16, 1994, at 9 a.m. and adjourn by 12 noon.

ADDRESSES: The meeting will be held at the: Environmental Protection Agency, Auditorium, Education Center, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Samuel K. Sasnett, Chief, Toxic Release Inventory Branch, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop 5101, 401 M St., SW., Washington, DC 20460, Toll Free: 1–800–535–0202, Washington, DC and Alaska (703) 920–9877, Attention: Docket No. 400084.

SUPPLEMENTARY INFORMATION: In 1986, Congress enacted the Emergency Planning and Community Right-to-Know Act (EPCRA). Section 313 of EPCRA requires certain businesses to submit reports each year on the amounts of toxic chemicals their facilities release into the environment. The purpose of this requirement is to inform the public and government officials about releases of specified toxic chemicals.

The current reporting requirements apply to facilities in the manufacturing sector (Standard Industrial Classification codes 20-39), that have 10 or more full-time employees, and that manufacture, process, or otherwise use 1 or more chemicals on the section 313 list of toxic chemicals above certain thresholds.

In conjunction with expansion of the TRI reporting requirements, the Agency has been considering whether other adjustments are needed in the scope of the TRI program. EPA received petitions from the Small Business Administration and the American Feed Industry Association seeking an exemption for "small sources" (i.e., those facilities that file TRI forms with zero or small release estimates). EPA previously put those petitions out for public comment and, on review, believes there is substantial merit to the general concerns raised in the petitions.

EPA is examining four options for establishing a small release exemption from the TRI reporting obligation: Cut-offs at zero, 500 pounds, 1,000 pounds, and 5,000 pounds. EPA has developed a paper that presents findings from analyses conducted on several low-release level options. This paper describes background information in greater detail and issues related to exemption options being considered. Copies of this paper will be available on or before Monday, January 31, 1994, from the address or telephone number listed under **FOR FURTHER INFORMATION CONTACT.** Oral statements will be scheduled on a first come first serve basis by calling the telephone number listed under **FOR FURTHER INFORMATION CONTACT.** All statements will be made part of the public record and will be considered in the development of any proposed rule amendment.

Dated: January 12, 1994.

Mark A. Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94–1236 Filed 1–18–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4828–3]

Environmental Information and Assessment Committee of the National Advisory Council for Environmental Policy and Technology; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, Pub. L. 92–463, EPA gives notice of two one-day meetings of the Environmental Information and Assessment (EIA) Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues, and the EIA Committee examines issues associated with the gathering, dissemination, and use of environmentally related data and information.

The meetings are being held to discuss recommendations EPA should consider as it develops an Information Resources Management (IRM) Strategic Plan.

Scheduling constraints preclude oral comments from the public during the meetings. Written comments can be submitted by mail, and will be transmitted to Committee members for consideration.

DATES: The public meetings will be held on Thursday, February 3, 1994, and on Wednesday, February 23, 1994, from 9 a.m. to 5 p.m. in Room 283 at the

National Governors' Association Hall of the States, 444 North Capitol Street, Washington, DC.

ADDRESSES: Written comments should be sent to: Mark Joyce 1601E, Office of Cooperative Environmental Management, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Designated Federal Official, Direct line (202) 260–6889, Secretary's line (202) 260–6892.

Dated: January 11, 1994.

Mark Joyce,

Designated Federal Official.

[FR Doc. 94–1393 Filed 1–18–94; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180912; FRL–4750–5]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 11 States as listed below and one quarantine exemption granted to the California Environmental Protection Agency. There were also eight crisis exemptions initiated by various States. These exemptions were issued during the months of July to September 1993, except for those in February, 1993, and are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied a specific exemption request from the Idaho Department of Agriculture. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific, crisis, and quarantine exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA, (703–308–8417).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. California Environmental Protection Agency for the use of bifenthrin on leaf lettuce to control the sweet potato whitefly; October 22, 1993, to April 30, 1994. (Andrea Beard)

2. California Environmental Protection Agency for the use of cypermethrin on sugar beets to control granulate cutworms; October 7, 1993, to May 1, 1994. California had initiated a crisis exemption this use. (Andrea Beard)

3. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of Pro-Gro (30% carboxin/thiram 50%) on onion seed to control onion smut; October 22, 1993, to May 31, 1994. (Susan Stanton)

4. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of naled on swiss chard to control aphids; September 21, 1993, to September 20, 1994. (Susan Stanton)

5. Florida Department of Agriculture and Consumer Services for the use of avermectin on tomatoes to control leafminers; October 25, 1993, to October 24, 1994. (Libby Pemberton)

6. Florida Department of Agriculture and Consumer Services for the use of imazethapyr on lettuce, escarole, and endives to control pigweed; August 31, 1993, to August 30, 1994. Florida had initiated a crisis exemption for this use. (Margarita Collantes)

7. Florida Department of Agriculture and Consumer Services for the use of propiconazole on sweet corn to control rust and leaf blight; September 1, 1993, to September 1, 1994. (Margarita Collantes)

8. Florida Department of Agriculture and Consumer Services for the use of lactofen on green peppers and tomatoes to control nightshade and parthenium; August 31, 1993, to August 31, 1994. (Margarita Collantes)

9. Florida Department of Agriculture and Consumer Services for the use of avermectin B_1 on celery and lettuce to control leafminers; October 7, 1993, to October 6, 1994. (Larry Fried)

10. Florida Department of Agriculture and Consumer Services for the use of avermectin B_1 on strawberries to control two-spotted spider mites; October 7, 1993, to June 31, 1994. (Larry Fried)

11. Florida Department of Agriculture and Consumer Services for the use of avermectin on potatoes to control leafminers; September 23, 1993, to September 22, 1994. (Libby Pemberton)

12. Georgia Department of Agriculture for the use of chlorothalonil on collards, mustards, and turnips to control the fungal leafspot complex of diseases; October 18, 1993, to June 30, 1994. (Susan Stanton)

13. Georgia Department of Agriculture for the use of sethoxydim on canola to control Italian ryegrass; October 21, 1993, to April 15, 1994. (Susan Stanton)

14. Idaho Department of Agriculture for the use of imazalil on sweet corn seed to control damping-off and dieback diseases; October 4, 1993, to October 1, 1994. (Andrea Beard)

15. Idaho Department of Agriculture for the use of chlorpyrifos on hops to control aphids; September 3, 1993, to September 15, 1993. Idaho had initiated a crisis exemption for this use. (Larry Fried)

16. Louisiana Department of Agriculture and Forestry for the use of lambda cyhalothrin on sorghum to control sorghum midge; September 16, 1993, to October 30, 1993. Louisiana had initiated a crisis exemption for this use. (Libby Pemberton)

17. Michigan Department of Agriculture for the use of sethoxydim on canola to control volunteer grains and grasses; October 25, 1993, to November 30, 1993. (Susan Stanton)

18. New Jersey Department of Agriculture for the use of Pro-Gro (30% carboxin/thiram 50%) on onion seed to control onion smut; October 22, 1993, to June 1, 1994. (Susan Stanton)

19. Oregon Department of Agriculture for the use of chlorpyrifos on hops to control aphids; September 3, 1993, to September 15, 1993. Oregon had initiated a crisis exemption for this use. (Andrea Beard)

20. Pennsylvania Department of Agriculture for the use of *Pseudomonas fluorescens*, biotype G, strain NCIB 12089, on mushrooms to control bacterial blotch; September 9, 1993, to June 30, 1994. A notice published in the **Federal Register** of August 18, 1993 (58 FR 43893), and no comments were received. The exemption was issued because of a dramatic increase in bacterial blotch at the Moonlight Mushrooms Facility in Worthington, PA, which has resulted in an urgent nonroutine situation. There are no effective pesticides or alternative practices available to control the disease, and a significant economic loss is expected this year. The use is not expected to result in unreasonable adverse effects on human health or the environment. (Susan Stanton)

21. Pennsylvania Department of Agriculture for the use of chlorothalonil on mushrooms to control verticillium diseases; October 2, 1993, to October 1, 1994. (Susan Stanton)

22. Texas Department of Agriculture for the use of avermectin B_1 on bell, chili, and jalapeno peppers to control broad mites; October 25, 1993, to October 13, 1994. (Larry Fried)

23. Washington Department of Agriculture for the use of chlorpyrifos on hops to control aphids; September 3, 1993, to September 15, 1993.

Washington had initiated a crisis exemption for this use. (Andrea Beard)

Crisis exemptions were initiated by the:

1. Arkansas State Plant Board on October 6, 1993, for the use of paraquat on sorghum to control weeds. This program has ended. (Susan Stanton)

2. Arkansas State Plant Board on October 6, 1993, for the use of dicamba on cotton to control redvine. This program has ended. (Susan Stanton)

3. California Environmental Protection Agency on September 27, 1993, for the use of cypermethrin on sugar beets to control granulate cutworms. This program is expected to last until May 1, 1994. (Andrea Beard)

4. California Environmental Protection Agency on September 3, 1993, for the use of avermectin on melons to control leafminers. This program has ended. (Larry Fried)

5. Florida Department of Agriculture and Consumer Services on February 12, 1993, for the use of imazethapyr on lettuce, escarole, and endives. This program is expected to last year-round. (Margarita Collantes)

6. Iowa Department of Agriculture and Land Stewardship on July 20, 1993, for the use of propiconazole on corn to control several fungal diseases. This program has ended. (Andrea Beard)

7. Mississippi Department of Agriculture and Commerce on September 27, 1993, for the use of dicamba on cotton to control redvine. This program has ended. (Susan Stanton)

8. Ohio Department of Agriculture on August 17, 1993, for the use of dimethoate on radishes to control queen peach aphids. This program has ended. (Margarita Collantes)

EPA has granted a quarantine exemption to the California Environmental Protection Agency for the use of carbaryl on home grown crops for use in the Gypsy moth and Japanese beetle eradication program; September 21, 1993, to September 21, 1994. (Andrea Beard)

EPA has denied a specific exemption request from the Idaho Department of Agriculture for the use of difenoconazole on winter wheat seed to control dwarf bunt. The Agency denied the exemption because an emergency condition does not exist. (Libby Pemberton)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: December 22, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–1005 Filed 1–18–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180918; FRL 4754–2]

Receipt of Application for Emergency Exemption to use Imidacloprid; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Florida Department of Agriculture and Consumer Services (hereafter referred to as the "Applicant") to use the pesticide Imidacloprid (CAS 105827–78–9) to treat up to 20,000 acres of peppers to control melon thrips *Thrips palmi*. The Applicant proposes the use of a new chemical; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before February 3, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180918," should be submitted by mail to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703–308–8791).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of imidacloprid on peppers to control melon thrips. Information in accordance with 40 CFR part 166 was submitted as part of this request.

The Applicant states that the melon thrip has developed into a devastating pest in peppers since its discovery in Florida in December 1990. The Applicant states that this pest has spread throughout Florida's lower east coast in less than two years, and is expected to spread throughout the entire state within a few years. The feeding activities of melon thrips cause damage to peppers by stunting growth, crinkling and deformation of leaves, shortening of internodes, and deformation and scarring of fruit. The health of the foliage affects the plant's photosynthetic ability, ultimately affecting yield. Deformation and scarring of the fruit can render the fruit unmarketable. The Applicant states that melon thrips populations must be kept at manageable levels throughout the entire pepper season, and claims that registered alternatives are not providing adequate control. The Applicant states that, if not adequately controlled, this pest could cause yield losses of up to 100 percent, depending upon level of infestation. In a survey of pepper growers in Palm Beach County, yield losses from this pest for the 1992-93 season were 40 to 100 percent, and translated to a dollar value of over $5 million. The Applicant states that if comparable losses were to occur over the entire pepper-growing range, losses could reach over $18 million state-wide.

The Applicant proposes to apply imidacloprid at a maximum rate of 0.5 lb. active ingredient (a.i.), or 32 fluid oz. of product, per acre with one application allowed, on up to 20,000 acres of peppers. This amounts to a possible total of 10,000 lbs. of a.i., or 5,000 gal. of product. This is the first time that the Applicant has applied for

the use of imidacloprid on peppers. This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Florida Department of Agriculture and Consumer Services.

List of Subjects

Environmental protection, Pesticide and pests, Crisis exemptions.

Dated: January 6, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–1241 Filed 1–18–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180916; FRL 4753–9]

Receipt of Application for Emergency Exemption to use Imidacloprid; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Washington Department of Agriculture (hereafter referred to as the "Applicant") to use the pesticide Imidacloprid (CAS 105827–78–9) to treat up to 160,980 acres of apples to control aphids. The Applicant proposes the use of a new chemical; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before February 3, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180916," should be submitted by mail to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703–308–8791).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of imidacloprid on apples to control aphids. Information in accordance with 40 CFR part 166 was submitted as part of this request.

The Applicant states that aphids have been a chronic pest of apples in Washington. Aphids feed on the plant tissues of young trees, which can stunt growth and possibly affect future productivity of the tree. On large, vigorous trees, the primary concern is fruit damage. Aphids excrete such large amounts of honeydew that it drips on the fruit, causing russetting or providing a substrate for the growth of sooty mold. The value of such damaged fruit is considerably reduced, as it is diverted to a processing market. The Applicant states that some of the registered alternative pesticides, while once effective, have lost much of their effectiveness due to build-up of resistant aphid populations. Others are said to only provide suppression, and not adequately control aphids. One of the registered alternatives phosphamidon that is still somewhat effective for this pest problem was withdrawn from the market in 1991, due to non-support for re-registration, and existing stocks have been mostly depleted. Another chemical mevinphos was previously used for this pest, but cases of occupational poisoning of farm workers using this material led to a ban for use on Washington tree fruits, in 1993, because of human risk concerns. Therefore, the Applicant claims that Washington apple growers are left without adequate means to control aphids. The Applicant states that information collected last year for one sampling of apples indicated a 33 percent loss in crop value due to aphid damage.

The Applicant proposes to apply imidacloprid at a maximum rate of 0.1 lb. active ingredient (a.i.), or 6.4 fluid oz. of product, per acre with a maximum of 5 applications on up to 160,980 acres of apples, with no more than 0.5 lb. a.i. (32 fluid oz. of product) applied per year. This amounts to a possible total of 80,490 lbs. of a.i., or 40,245 gal. of product. This is the first time that the Applicant has applied for the use of imidacloprid on apples. This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Washington Department of Agriculture.

List of Subjects

Environmental protection, Pesticide and pests, Crisis exemptions.

Dated: January 6, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–1240 Filed 1–18–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180915; FRL 4753–6]

Receipt of Application for Emergency Exemption to use Iprodione; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Georgia Department of Agriculture (hereafter referred to as the "Applicant") for use of the pesticide iprodione (CAS 36734–19–7) to control target spot on up to 940 acres of tobacco transplants in Georgia. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before February 3, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180915," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Stanton, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC. 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202 (703–308–8327).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of the fungicide, iprodione, available as Rovral 4 Flowable Fungicide (EPA Reg. No. 264–482) and Rovral Fungicide (EPA Reg. No. 264–453) from Rhone Poulenc Ag Company, to control target spot, caused by *Rhizoctonia solani*, on up to 940 acres of tobacco transplants in Georgia. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, target spot became a statewide disease problem on flue-cured tobacco for the first time in 1991. Under conditions conducive to disease development, the disease may cause serious losses in transplant beds and field tobacco plantings. Growers who raise their own transplants could be faced with a shortage or complete lack of planting material if a severe outbreak occurs, since other sources of planting material are generally not available unless contracted for prior to the growing season. Also, the disease may spread to the field and cause tobacco yield losses if transplants become infected. The Applicant claims that none of the registered pesticides is effective against this disease and that, without an effective control, growers will incur a significant economic loss during the 1994 growing season.

Applications would be made under the proposed exemption at 0.5 to 1.0 pound of active ingredient per acre of transplants in plant beds and greenhouses. Applications would begin when watersoaked spots first appear on leaves and be repeated 7 to 14 days later if conditions are favorable for disease development. A maximum of 3.0 pounds of active ingredient per acre would be applied per year. Applications would be made between February 1, 1994 and May 1, 1994.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if an emergency exemption has been requested or granted for that use in any 3 previous years, and a complete application for registration of that use has not been submitted to the Agency [40 CFR 166.24 (a)(6)]. Exemptions for the use of iprodione on tobacco transplants have been requested and granted for the past three years, and an application for registration of this use has not been submitted to the Agency.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Georgia Department of Agriculture.

List of Subjects

Environmental protection, Pesticide and pests, Crisis exemptions.

Dated: January 6, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–1238 Filed 1–18–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180917; FRL 4754–1]

Receipt of Application for Emergency Exemption to use Imidacloprid; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Michigan Department of Agriculture (hereafter referred to as the "Applicant") for use of the insecticide imidacloprid (trade name Admire 2 Flowable) (CAS No. 105827–78–9) to manage insecticide resistance in Colorado potato beetle on up to 30,000 acres of potatoes in Michigan. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before February 3, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180917," should be submitted by mail to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with

procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: CS#1, Room 52, 6th Floor, 2800 Jefferson Davis Highway, Arlington, VA (703–308–8326).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of the insecticide, imidacloprid, available as Admire 2 Flowable, from Miles Inc., to control pesticide resistant Colorado potato beetle (CPB) on up to 30,000 acres of potatoes in Michigan. Information in accordance with 40 CFR part 166 was submitted as part of this request. According to the Applicant, this emergency is the direct result of severe insecticide resistance problems and the extreme population levels built up because of the growers' inability to control CPB.

The Applicant states that year-to-year changes in weather and varieties make it difficult to track long term trends in potato beetle injury. However, there is no visible increase in yields during this period in spite of major improvements in average yield of new varieties and widespread increases in use of irrigation. Under current severe insecticide resistance and defoliation by Colorado potato beetles, average production of potatoes per acre in Michigan has not increased significantly in the past eight years. Losses plus control costs in 1993 were $10.53 million - more than 13 percent of the entire industry's expected gross profits. Under the proposed exemption, one application of Admire 2 Flowable would be made at the rate of 0.9 to 1.3 fl. oz. per 1,000 feet of row. This is equivalent to 13.8 to 20 fl. oz. of formulated product per acre with 34 inches between the rows.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide) [40 CFR 166.34 (a)(1)]. Imidacloprid is a new chemical. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Michigan Department of Agriculture.

List of Subjects

Environmental protection, Pesticide and pests, Crisis exemptions.

Dated: January 6, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–1239 Filed 1–18–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

January 12, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0012

Title: Application for Additional Time to Construct a Radio Station (Under 47 CFR parts 21, 23, and 25)

Form Number: FCC Form 701

Action: Revisions of a currently approved collection

Respondents: Businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting requirement

Estimated Annual Burden: 200 responses; 2 hours average burden per response; 400 hours total annual burden

Needs and Uses: FCC Form 701 is used when applying for additional time to construct a radio or satellite station. In addition to the requirements contained in the form, applicants may be subject to other requirements contained in the Rules. FCC Form 701 is used by agency staff personnel to determine whether to grant the applicant's request for an additional period of time to construct a station. The agency could not determine whether the applicant's request for additional time should be granted without the information collection. Other showings may be necessary in addition to those specified in the application form to comprise a complete filing. The form has been revised to include the certification required by the Commission's rules implementing the provisions of section 5301 of the Anti-Drug Abuse Act of 1988.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–1204 Filed 1–18–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Port of Oakland/Marine Terminals Corporation Agreement(s) Filed; et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–004008–014.

Title: Port of Oakland/Marine Terminals Corporation Terminal Agreement.
Parties:
Port of Oakland ("Port").
Marine Terminals Corporation ("MTC").
Synopsis: The proposed amendment would permit the Port to assign certain marine terminal facilities to MTC. It also deletes two container cranes used by MTC.
Agreement No.: 224–200164–009.
Title: Port of Oakland/Norsul Internacional S.A. Terminal Agreement.
Parties:
Port of Oakland.
Norsul Internacional S.A.
Synopsis: The proposed amendment extends the term of the Agreement to June 30, 1994.
Agreement No.: 224–200580–001.
Title: Port of Oakland/Marine Terminals Corporation Terminal Agreement.
Parties:
Port of Oakland ("Port").
Marine Terminals Corporation ("MTC").
Synopsis: The proposed amendment provides that MTC will receive reduced dockage and wharfage payments from certain vessels which have previously called at other of the Port's public terminals in lieu of the compensation to MTC provided elsewhere in the Agreement.
Agreement No.: 224–200710–001.
Title: Port of Oakland/Canadian Transport Company Terminal Agreement.
Parties:
Port of Oakland ("Port").
Canadian Transport Company ("CTC").
Synopsis: The proposed amendment provides for CTC to transfer its operations and rights and obligations to the Port's Ninth Avenue Terminal.
Agreement No.: 224–200819.
Title: The Port Authority of New York & New Jersey/Bermuda Container Line Ltd. Incentive Agreement.
Parties:
The Port Authority of New York & New Jersey ("Port").
Bermuda Container Line Ltd. ("BCLL").
Synopsis: The Agreement provides for the Port to pay BCLL a container incentive of $20.00 for each import container and $30.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1994, provided each container is shipped by rail to or from points more than 260 miles from the Port.
Agreement No.: 224–200820.
Title: The Port Authority of New York & New Jersey/Contship Containerlines, Inc. Incentive Agreement.
Parties:
The Port Authority of New York & New Jersey ("Port").
Contship Containerlines Inc. ("Contship").
Synopsis: The Agreement provides for the Port to pay Contship a container incentive of $20.00 for each import container and $30.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1994, provided each container is shipped by rail to or from points more than 260 miles from the Port.
Agreement No.: 224–200821.
Title: The Port Authority of New York & New Jersey/Croatia Line Incentive Agreement.
Parties:
The Port Authority of New York & New Jersey ("Port").
Croatia Line ("Croatia").
Synopsis: The Agreement provides for the Port to pay Croatia a container incentive of $20.00 for each import container and $30.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1994, provided each container is shipped by rail to or from points more than 260 miles from the Port.
Agreement No.: 224–200822.
Title: The Port Authority of New York & New Jersey/Ivaran Agencies, Inc. Incentive Agreement.
Parties:
The Port Authority of New York & New Jersey ("Port").
Ivaran Agencies, Inc. ("Ivaran").
Synopsis: The Agreement provides for the Port to pay Ivaran a container incentive of $20.00 for each import container and $30.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1994, provided each container is shipped by rail to or from points more than 260 miles from the Port.
Agreement No.: 224–200823.
Title: The Port Authority of New York & New Jersey/Mitsui O.S.K. Lines Incentive Agreement.
Parties:
The Port Authority of New York & New Jersey ("Port").
Mitsui O.S.K. Lines ("Mitsui").
Synopsis: The Agreement provides for the Port to pay Mitsui a container incentive of $20.00 for each import container and $30.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1994, provided each container is shipped by rail to or from points more than 260 miles from the Port.
Agreement No.: 224–200824.
Title: The Port Authority of New York & New Jersey/Neptune Orient Lines Ltd. Incentive Agreement.
Parties:
The Port Authority of New York & New Jersey ("Port").
Neptune Orient Lines Ltd. ("NOL").
Synopsis: The Agreement provides for the Port to pay NOL a container incentive of $20.00 for each import container and $30.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1994, provided each container is shipped by rail to or from points more than 260 miles from the Port.
Agreement No.: 224–200825.
Title: The Port Authority of New York & New Jersey/Orient Overseas Container Lines USA Inc. Incentive Agreement.
Parties:
The Port Authority of New York & New Jersey ("Port").
Orient Overseas Container Lines USA Inc. ("OOCL").
Synopsis: The Agreement provides for the Port to pay OOCL a container incentive of $20.00 for each import container and $30.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1994, provided each container is shipped by rail to or from points more than 260 miles from the Port.
Agreement No.: 224–200826.
Title: The Port Authority of New York & New Jersey/Solar International Shipping Incentive Agreement.
Parties:
The Port Authority of New York & New Jersey ("Port").
Solar International Shipping ("SIS").
Synopsis: The Agreement provides for the Port to pay SIS a container incentive of $20.00 for each import container and $30.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1994, provided each container is shipped by rail to or from points more than 260 miles from the Port.
Agreement No.: 224–200827.
Title: The Port Authority of New York & New Jersey/Maersk Inc. Incentive Agreement.
Parties:
The Port Authority of New York & New Jersey ("Port").

Maersk, Inc. ("Maersk").

Synopsis: The Agreement provides for the Port to pay Maersk a container incentive of $20.00 for each import container and $30.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1994, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Agreement No.: 224–200828.

Title: The Port Authority of New York & New Jersey/Evergreen America Corp. Incentive Agreement.

Parties:

The Port Authority of New York & New Jersey ("Port").
Evergreen American Corp. ("Evergreen").

Synopsis: The Agreement provides for the Port to pay Evergreen a container incentive of $20.00 for each import container and $30.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1994, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Agreement No.: 224–200829.

Title: The Port Authority of New York & New Jersey/Gdynia America Line, Inc. Incentive Agreement.

Parties:

The Port Authority of New York & New Jersey ("Port").
Gdynia America Line, Inc. ("GALI").

Synopsis: The Agreement provides for the Port to pay GALI a container incentive of $20.00 for each import container and $30.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1994, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Agreement No.: 224–200830.

Title: The Port Authority of New York & New Jersey/Safbank Line, Ltd. Incentive Agreement.

Parties:

The Port Authority of New York & New Jersey ("Port").
Safbank Line. Ltd. ("Safbank").

Synopsis: The Agreement provides for the Port to pay Safbank a container incentive of $20.00 for each import container and $30.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1994, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Agreement No.: 224–200831.

Title: The Port Authority of New York & New Jersey/Hapag Lloyd (America) Inc. Incentive Agreement.

Parties:

The Port Authority of New York & New Jersey ("Port").
Hapag Lloyd (America) Inc. ("Hapag").

Synopsis: The Agreement provides for the Port to pay Hapag a container incentive of $20.00 for each import container and $30.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1994, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Agreement No.: 224–200832.

Title: The Port Authority of New York & New Jersey/Nedlloyd Lines USA Incentive Agreement.

Parties:

The Port Authority of New York & New Jersey ("Port").
Nedlloyd Lines USA ("Nedlloyd").

Synopsis: The Agreement provides for the Port to pay Nedlloyd a container incentive of $20.00 for each import container and $30.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1994, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Agreement No.: 224–200833.

Title: The Port Authority of New York & New Jersey/Lykes Brothers Steamship Co. Container Incentive Agreement.

Parties:

The Port Authority of New York & New Jersey ("Port").
Lykes Brothers Steamship Co. ("Lykes").

Synopsis: The Agreement provides for the Port to pay Lykes a container incentive of $20.00 for each import container and $30.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1994, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Agreement No.: 224–200834.

Title: The Port Authority of New York & New Jersey/NYK Line (North America), Inc. Container Incentive Agreement.

Parties:

The Port Authority of New York & New Jersey ("Port").
NYK Line (North America), Inc. ("NYK"),

Synopsis: The Agreement provides for the Port to pay NYK a container incentive of $20.00 for each import container and $30.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1994, provided each container is shipped by rail to or from points more than 260 miles from the Port.

By Order of the Federal Maritime Commission.

Dated: January 12, 1994.

[FR Doc. 94–1153 Filed 1–18–94; 8:45 am]
BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Federal Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for a three-year approval of Form ACF–118 as proposed in this package. This request entitled: "Child Care and Development Block Grant Preprint" was previously approved under OMB Control Number 0970–0114. This request is sponsored by the Division of Child Care of the Administration for Children and Families (ACF).

ADDRESSES: Copies of this information collection may be obtained from Stephen R. Smith of the Office of Information Systems Management, ACF, by calling 202–401–6964.

Written comments and questions regarding this information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Plan for Child Care and Development Block Grant Form ACF–118.

OMB NO.: 0980–0241.

Description: The Child Care and Development Block Grant (the Block Grant) program provides funds to States, Territories, and Tribal Organizations to increase the affordability, availability and quality of child care services. Section 658E of the Child Care and Development Block Grant Act of 1990 (section 5082 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508) requires lead agencies responsible for administering the Block

Grant program to biennially submit a plan to the Secretary of the Department of Health and Human Services. The plan constitutes an agreement between the grantee and the Federal government as to how the Block Grant program will operate within the area served by the grantee. The plan also provides assurances that the program will be administered in conformance with the Act, pertinent Federal regulations, and other applicable instructions or guidelines issued by the Department.

The preprint assists and guides lead agencies in submitting Block Grant plans. The plan preprint is arranged in five sections:

Part 1—Assurances; Part 2—Lead Agency Responsibilities; Part 3—Child Care Services; Part 4—Activities to Improve the Quality of Child Care and to Increase the Availability of Early Childhood Development and Before- and After-School Services; and Part 5—Program Operations. The standardized format will ensure that complete program information is submitted; provide usable information needed to compile and compare program data; and expedite timely reviews.

Annual Number of Respondents: 269.

Annual Frequency: 6.

Average Burden Hours Per Response: 20.8.

Total Burden Hours: 33,625.

(Note: Block Grant Plans are submitted biennially.)

Dated: January 10, 1994.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 94–1195 Filed 1–18–94; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 93P–0464]

Canned Tuna Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Bumble Bee Seafoods, Inc., to market test products designated as "Chunk Light Tuna with Jalapeno in Water" and "Chunk Light Tuna with Jalapeno in Oil" that deviate from the U.S. standard of identity for canned tuna (21 CFR 161.190). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the products, identify mass production problems, and assess commercial feasibility.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than April 19, 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: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that it has issued a temporary permit to Bumble Bee Seafoods, Inc., P.O. Box 85362, San Diego, CA 92186–5362.

The permit covers limited interstate marketing tests of canned tuna products formulated by adding chopped or diced jalapeno peppers that have been previously prepared and packed in brine. The foods deviate from the U.S. standard of identity for canned tuna in that the products contain diced or chopped green jalapeno peppers. The amount of jalapeno peppers added will not exceed 10 percent of the water capacity of the can. Jalapeno peppers will replace part of the liquid packing medium (water or oil) and will not affect the tuna fish fill portion. The test products meet all requirements of the standard with the exception of this deviation.

The firm previously held a temporary permit for these products which expired on March 1, 1993. Notice of issuance of the permit and a subsequent amendment of the permit were published in the **Federal Register** of September 24, 1991 (56 FR 48212), and of July 21, 1992 (57 FR 32226), respectively.

FDA finds that issuance of the new permit is in the interest of consumers because it will provide for a wider variety of tuna products and allow for collection of additional data in support of a petition to amend the standard of identity for canned tuna.

For the purpose of this permit, the names of the products are "Chunk Light Tuna with Jalapeno in Water" and "Chunk Light Tuna with Jalapeno in Oil." The information panels of the labels will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 300,000 cases containing 24 cans of tuna with jalapeno peppers in spring water and 400,000 cases containing 24 cans of tuna with jalapeno peppers in soybean oil, each can weighing 175 grams (6 1/8 ounces). The products will be manufactured at Bumble Bee Seafoods, Inc., Santa Fe Springs, CA 90067, and Bumble Bee International, Inc., Malecon Industrial Zone, Mayaguez, PR 00708. The products will be distributed throughout the United States and its territories and possessions.

Each of the ingredients used in the food must be declared on the labels as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the foods are introduced or caused to be introduced into interstate commerce, but not later than April 19, 1994.

Dated: January 10, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–1155 Filed 1–18–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Division of Research Grants; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6). Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meeting and roster of panel members.

Meeting To Review Individual Grant Applications

Scientific Review Administrator: Dr. Leonard Jacubczak (301) 594–7198.

Date of Meeting: January 19, 1994.
Place of Meeting: Westwood Bldg, Rm325C, NIH, Bethesda, MD (Telephone Conference).
Time of Meeting: 2 p.m.
This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 13, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–1406 Filed 1–18–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Statement of Organization, Functions, and Delegations of Authority; Office of the Assistant Secretary for Health

Part H, Public Health Service (PHS), chapter HA (Office of the Assistant Secretary for Health), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 58 FR 7140–41, February 4, 1993) is amended to reflect changes in the Office of Research Integrity (ORI), Office of the Assistant Secretary for Health (OASH), as required by the National Institutes of Health Revitalization Act of 1993, Public Law 103–43. Section 161 of the law amended section 493 of the Public Health Service Act, 42 U.S.C. section 289B, in several respects. Specifically, section 493, as amended, requires that the ORI be an independent entity in DHHS and that the Director, ORI, report to the Secretary. This revision accomplishes the statutory mandate while leaving ORI organizationally within the OASH for budget and general administrative purposes.

This notice does not affect the authority of the Food and Drug Administration to conduct investigations of alleged misconduct solely involving regulated research.

Office of the Assistant Secretary for Health

Under chapter HA, Office of the Assistant Secretary for Health, section HA–20, *Functions,* delete in its entirety the titles and statements for the Office of Research Integrity (HAG), the Division of Policy and Education (HAG2), and the Division of Research Investigations (HAG3), and add the following:

Office of Research Integrity (HAG)

The Director reports to the Secretary and will: (1) Oversee and direct PHS research integrity activities on behalf of the Secretary with the exception of the regulatory research integrity activities of the Food and Drug Administration; (2) evaluate and monitor research integrity operations activities, including case investigations and evaluations, institutional assurance programs, and prevention and education activities; (3) coordinate the development of research integrity policies designed to ensure that subjects of investigations and whistleblowers are treated fairly, including clear specification of what constitutes misconduct, a fair hearing process, appropriate time limits on pursuing allegations, specific whistleblower protection and guidelines to discourage malicious allegations of misconduct; and (4) manage the financial resources and provide overall administrative guidance in carrying out the activities.

Division of Policy and Education (HAG2).

The Director and staff: (1) Develop policies, procedures, and regulations for review by the Director, Office of Research Integrity, and recommendations to the Secretary; (2) administer, review, and approve institutional assurances; (3) administer the PHS ALERT system which provides pertinent information on research misconduct findings and administrative actions to PHS officials; (4) develop and implement research misconduct prevention and education activities for PHS extramural and intramural programs; (5) coordinate the dissemination of research integrity policies, procedures, and regulations; (6) conduct policy analyses and studies to improve DHHS research integrity policies and procedures; and (8) coordinate Freedom of Information (FOI) and Privacy Act responsibilities relating to research misconduct issues.

Division of Research Investigations (HAG3)

The Director and staff: (1) Review and monitor investigations conducted by applicant and awardee institutions; (2) conduct investigations involving extramural and intramural research programs when necessary; (3) develop and recommend findings of misconduct and proposed administrative actions against those who committed misconduct; (4) evaluate investigations and investigatory findings of awardee and applicant institutions and develop and recommend findings and propose administrative actions; (5) assist the Office of the General Counsel (OGC) in preparing and presenting cases in hearings before the Research Integrity Adjudications Panel of the DHHS Departmental Appeals Board; (6) provide information on DHHS policies and procedures, as requested, to individuals who have made an allegation or have been accused of research misconduct; and (7) assure that DHHS policies and procedures are properly implemented in research misconduct cases.

Under Chapter HA, Section HA–30, Delegations of Authority

All delegations and redelegations of authority to officials of the Office of Research Integrity that were in effect prior to the effective date of this reorganization shall continue in effect pending further redelegation.

Dated: January 10, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–1163 Filed 1–18–94; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–010–4210–01, CACA 33715]

Realty Action; Recreation and Public Purposes Act Classification, Yuba County, CA

SUMMARY: The following described public land has been examined and found suitable for classification for lease or conveyance to the County of Yuba under the provisions of the Recreation and Public Purposes (R&PP) Act, as Amended (43 U.S.C. 869 *et seq.*). The County of Yuba proposes to utilize the land for recreation in conjunction with the county's Hammond Grove Park which adjoins the subject tract.

T. 16N, R. 5E., M.D.M.
Sec. 22: lot 5 (24.25-acres, more or less)

Upon publication of this notice in the **Federal Register** the above land is segregated from settlement, location and entry under the public land laws and from the mining laws—except for lease or conveyance under the Recreation and Public Purposes Act. The previous Recreation and Public Purposes classification, S 066805, and R&PP lease, CACA 3564, are hereby terminated.

The land is not needed for Federal purposes. Lease or conveyance is

consistent with current BLM land use planning and is considered to be in the public interest.

SUPPLEMENTARY INFORMATION: The lease/patent, would be subject to the following terms, conditions and reservations: (1) provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior; (2) a right-of-way for ditches and canals constructed by the authority of the United States; (3) all minerals shall be reserved to the United States.

ADDRESSES: Interested parties may submit comments concerning the classification and/or the county's R&PP application to the District Manager, c/o Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630; comments must be received no later than 45 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this action is available at the Folsom Resource Area Office. Contact Mike Kelly at (916) 985–4474 or at the address listed above.

D.K. Swickard,

Area Manager.

[FR Doc. 94–1197 Filed 1–18–94; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Service announces the dates and locations of the 1994 Federal Duck Stamp Contest, and the public is invited to attend.

DATES: 1. This action is effective July 1, 1994, the beginning of the 1994–1995 contest.

2. The public may view the 1994 Federal Duck Stamp Contest entries on Sunday, October 30, from 1–5 p.m., and Monday, October 31, 1994, from 10 a.m. to 2 p.m., in the Department of the Interior Auditorium.

3. This year's contest will be held from November 1–2, 1994, beginning at 10:30 a.m. on Tuesday and continuing at 9 a.m. on Wednesday.

4. Persons wishing to enter this year's contest may submit entries anytime after July 1, but all must be postmarked no later than midnight September 15.

ADDRESSES: Requests for complete copies of the regulations, reproduction rights and the display and participation agreements should be addressed to: Federal Duck Stamp Contest, U.S. Fish and Wildlife Service, Department of the Interior, 1849 C Street, NW., suite 2058, Washington, DC 20240.

Location of contest: Department of the Interior Building Auditorium (C Street Entrance), 1849 C Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Federal Duck Stamp Office, U.S. Fish and Wildlife Service, Washington, DC 20240, Telephone: (202) 208–4354 or (202) 208–5508.

SUPPLEMENTARY INFORMATION: The five eligible species for the 1994–1995 duck stamp contest are listed below:

(1) Canada Goose.
(2) Greater Scaup.
(3) Mallard.
(4) Green-winged Teal.
(5) Northern Pintail.

The primary author of this document is Lita Poole, U.S. Fish and Wildlife Service.

Dated: January 10, 1994.

Bruce Blanchard,

Acting Director.

[FR Doc. 94–1222 Filed 1–18–94; 8:45 am]

BILLING CODE 4310–55–M

INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT

Request for Nominations to the Board of Trustees

AGENCY: Institute of American Indian and Alaska Native Culture and Arts Development (aka Institute of American Indian Arts).

ACTION: Request for nominations.

SUMMARY: The Board direct the Administration of the Institute of American Indian and Alaska Native Culture and Arts Development, including soliciting, accepting, and disposing of gifts, bequests, and other properties for the benefit of the Institute. The Institute, established under Public Law 99–498 (20 U.S.C. 4411 *et seq.*), provides scholarly study of and instruction in Indian art and culture, and establishes programs which culminate in the awarding of degrees in the various fields of Indian art and culture.

The Board consists of thirteen members appointed by the President of the United States, by and with the consent of the U.S. Senate, who are American Indians or persons knowledgeable in the field of Indian art and culture. This notice requests nominations to fill five appointments on the Board of Trustees.

DATES: Nominations will be accepted until February 18, 1994.

ADDRESSES: Nominations may be sent to the Chairman, Board of Trustees, Institute of American Indian Arts, Post Office Box 1836, Santa Fe, New Mexico 87504.

FOR FURTHER INFORMATION CONTACT: Ken Blankenship, Chairman of the Board of Trustees, Institute of American Indian Arts, Post Office Box 20006, Santa Fe, New Mexico 87504; 505–988–6278.

SUPPLEMENTARY INFORMATION: Public Law 99–498 (20 U.S.C. 4412(a)(2)(b), requires the President to publish in the **Federal Register** an announcement regarding nominations of the Presidentially appointed members of the Board of Trustees of the Institute. On February 22, 1991 (56 FR 8099, February 26, 1991), the President delegated to the Chairman of the Board of Trustees the responsibility to publish an announcement regarding these nominations in the **Federal Register**. All nominations submitted will be forwarded to the President for consideration.

Dated: December 30, 1993.

Ken Blankenship,

Chairman, Board of Trustees, Institute of American Indian and Alaska Native Culture and Arts Development.

[FR Doc. 94–1217 Filed 1–18–94; 8:45 am]

BILLING CODE 0000–00–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32440]

Louisville & Indiana Railroad Company; Acquisition and Operation Exemption; Consolidated Rail Corporation

Louisville & Indiana Railroad Company (LIRC), a noncarrier, has filed a notice of exemption to acquire and operate approximately 115 miles of rail line of Consolidated Rail Corporation. The transaction is expected to be consummated on or about March 12, 1994.

The 115 miles of rail line being acquired (the Louisville Cluster), include: (1) The Louisville Secondary Track from Indianapolis, IN (milepost 4.0) to Louisville, KY (milepost 110.6); (2) the Dutch Lane Runner Track from Jeffersonville, IN (milepost 0.0) to the end of the track (milepost 2.7); (3) the South Columbus Running Track at Columbus, IN (milepost 0.0) to the end

of the track (milepost 3.0); (4) the Kentucky Street Secondary Track in Louisville, 0.7 miles in length; and (5) the Louisville Industrial Lead Track in Louisville, 1.5 miles in length.

This transaction is related to a notice of exemption in Finance Docket No. 32441, Peter A. Gilbertson, et al.—Continuance in Control Exemption—Louisville & Indiana Railroad Company, filed December 23, 1993, in which the applicants seek to acquire control of LIRC and continue in control of Chicago SouthShore & South Bend Railroad.

Any comments must be filed with the Commission and served on: Adam M. Mycyk, 1350 New York Avenue, NW., suite 800, Washington, DC 20005–4797.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 11, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–1253 Filed 1–18–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32428]

Morris Leasing Co., Ltd.; Acquisition and Operation Exemption; Lines of Consolidated Rail Corporation

Morris Leasing Co., Ltd. (Morris), a noncarrier, has filed a verified notice of exemption to acquire and operate the following rail lines owned by Consolidated Rail Corporation (Conrail), in St. Joseph County, MI: (1) The Quincy Secondary Track, between milepost 421.2, at or near White Pigeon and milepost 406.84, at or near Sturgis; (2) the GR&I Industrial Track, between milepost 146.4 and milepost 150.7, at or near Sturgis; and (3) the Goshen Industrial Track, between milepost 28.4 and milepost 29.3, at or near Sturgis. The line segments total a distance of approximately 19.56 miles. Morris indicates that it will enter into an agreement with Michigan Southern Railroad Company, Inc. (Michigan Southern) to operate as a contract carrier over the lines. Morris will retain the common carrier service obligation. The parties expected to consummate the transaction on or after the December 30, 1993 effective date of the exemption.

The transaction is related to a petition for exemption filed concurrently in Finance Docket No. 32429, Gordon Morris—Cont. in Control Exempt.—Morris Leasing Co., Ltd., in which Gordon Morris, a noncarrier individual, seeks to continue in control of Morris and Michigan Southern, a class III shortline rail carrier upon Morris becoming a class III rail carrier.[1]

Any comments must be filed with the Commission and served on: Thomas F. McFarland, Jr., 20 North Wacker Drive, suite 3118, Chicago, IL 60606–3101.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 11, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–1254 Filed 1–18–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

Revised Schedule of Remuneration for the UCX Program

Under section 8521(a)(2) of title 5 of the United States Code, the Secretary of Labor is required to issue from time to time a Schedule of Remuneration specifying the pay and allowances for each pay grade of members of the military services. The schedules are used to calculate the base period wages and benefits payable under the program of Unemployment Compensation for Ex-servicemembers (UCX Program).

The revised schedule published with this Notice reflects increases in military pay and allowances which were effective in January 1994.

Accordingly, the following new Schedule of Remuneration, issued pursuant to 20 CFR 614.12, applies to "First Claims" for UCX which are effective beginning with the first day of the first week which begins after April 2, 1994.

Pay grade	Monthly rate
(1) Commissioned Officers:	
O–10	$10,525
O–9	9,752
O–8	8,942
O–7	8,053
O–6	6,845
O–5	5,730
O–4	4,717
O–3	3,793
O–2	3,018
O–1	2,266
(2) Commissioned Officers With Over 4 Years Active Duty As An Enlisted Member Or Warrant Officer:	
O–3E	4,343
O–2E	3,633
O–1E	2,987
(3) Warrant Officers:	
W–5	5,100
W–4	4,354
W–3	3,654
W–2	3,104
W–1	2,576
(4) Enlisted Personnel:	
E–9	3,937
E–8	3,346
E–7	2,905
E–6	2,515
E–5	2,145
E–4	1,785
E–3	1,564
E–2	1,436
E–1	1,231

The publication of this new Schedule of Remuneration does not revoke any prior schedule or change the period of time any prior schedule was in effect.

Signed at Washington, DC, on January 12, 1994.

Doug Ross,

Assistant Secretary.

[FR Doc. 94–1229 Filed 1–18–94; 8:45 am]

BILLING CODE 4510–30–M

LEGAL SERVICES CORPORATION

Solicitation for Proposals for the Provision of Civil Legal Services to the Fort Apache Area of Arizona

AGENCY: Legal Services Corporation.

ACTION: Withdrawal of request for proposals.

SUMMARY: This document withdraws the Legal Services Corporation's (LSC) request for proposals to provide civil legal services in 1994 to the LSC-eligible Native American client population in the Fort Apache Indian Reservation Area.

DATES: The solicitation is withdrawn as of January 19, 1994.

FOR FURTHER INFORMATION CONTACT: Phyllis Doriot, Manager, Grants and Budget Division, Office of Program Services, Legal Services Corporation 750 First Street, NE., 11th Floor,

[1] To avoid an unlawful control violation pursuant to 49 CFR 1013, Mr. Morris has placed the stock of Morris in an irrevocable voting trust with an independent voting trustee.

Washington, DC 20002–4250, (202) 336–8825.

SUPPLEMENTARY INFORMATION: Since publication of the notice of a solicitation for proposal on Jan. 7, 1994, (59 FR 1034), the Corporation has learned that a proposed merger between two current LSC recipients, to serve the indicated population better, may be concluded shortly. Therefore, LSC is withdrawing its request for proposals, which had a submission deadline date of Feb. 17, 1994.

Dated: January 13, 1994.

Charles T. Moses,

Deputy Director, Office of Program Services.

[FR Doc. 94–1262 Filed 1–18–94; 8:45 am]

BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

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 23, 1993, through January 6, 1994. The last biweekly notice was published on January 5, 1994 (59 FR 615).

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 18, 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: October 26, 1993

Description of amendment requests: The proposed amendment would change the maximum nominal enrichment of the fuel allowed to be used in the reactor core. Specifically, in Technical Specification 5.3.1, "Fuel Assemblies," the fuel enrichment would change from "a maximum enrichment of 4.05 weight percent U-235" to "a maximum radially averaged enrichment of 4.30 weight percent U-235 at any axial location."

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:

Standard 1 -- Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The adequacy of a given core design must be demonstrated for each core prior to core reloading. The fuel enrichment is only one of the factors that must be considered in this determination. The fuel enrichment does not directly impact the results of the plant safety analysis.

The Unit 1, 2, and 3 fuel and storage areas have been analyzed for a maximum radially averaged enrichment of any axial enrichment zone with a fuel assembly of 4.30 w/o U-235. The criticality analysis for Palo Verde's spent fuel pool is presented in Section D.3, Criticality Safety Analysis. The results of these analyses indicate that handling and storage of such fuel assemblies do not involve an unreviewed safety question. The results of these analyses are within the acceptance criteria defined in TS 5.6.1, "Criticality."

The applicable codes, standards and regulations of criticality safety for spent fuel and new fuel storage include the following:

- General Design Criterion 62 - Prevention of Criticality in Fuel Storage and Handling.
- NUREG -0800, USNRC Standard Review Plan, Section 9.1.2, Spent Fuel Storage and Section 9.1.1, New Fuel Storage.
- ANSI/ANS-57.2-1983, "Design Requirements for Light Water Reactor Spent Fuel Storage Facilities at Nuclear Power Plants," Section 6.4.2
- ANSI/ANS-57.3-1983, "Design Requirements for New Fuel Storage Facilities at Light Water Reactor Plants," Section 6.2.4
- Qualification of Analytical Methodology Used In Spent Fuel Storage Rack Analyses, CE Benchmark, 590962-PHD-004 Revision 0 dated December 3, 1979.

These regulations and guides require that for spent fuel racks the maximum calculated k_{eff}, including margin for uncertainty in calculational method and mechanical tolerances, be less than or equal to 0.95 with a 95% probability at a 95% confidence level.

In order to assure the true reactivity will always be less than the calculated reactivity, the following conservative assumptions were made for spent fuel rack criticality analysis:

- Pure, unborated water at 68 degrees Fahrenheit is used in all calculations,
- An infinite array with no radial or axial leakage is modeled, and
- Neutron absorption from spacer grids is neglected, i.e., replaced by water.

For the new fuel vault, a dual criteria applies in which the maximum calculated k_{eff}, including uncertainties, is less than or equal to 0.95 when flooded and less than or equal to 0.98 under conditions of "optimum moderation."

Because the new fuel vault is normally dry, and low density moderation of "optimum moderation" produces strong coupling between assemblies, the following conservative assumptions are used:

- The storage array was enclosed on all six sides by a tight fitting two foot concrete reflector,
- Unborated water is introduced uniformly throughout the storage array and the space between fuel pins,
- Water density is varied uniformly from flooded to dry,
- Neutron absorption from spacer grids is neglected, i.e., replaced by water.

In the new fuel vault criticality analysis, leakage is explicitly modeled, because the assumption of an infinite array with no radial or axial leakage is unrealistic under conditions of low density moderation. Leakage suppresses criticality at low moderator density. Without 3-D modeling of the array, erroneously high values of k_{eff} are calculated. Thus, the assumption on array

leakage is relaxed, but reflection from the walls, floor and ceiling is included.

In addition to the above discussion of the new fuel vault criticality analysis, the following conservative assumptions are applied to both analyses:

- No credit is taken for the presence of burnable poison rods. These rods displace fuel rod positions and are an integral part of selected fuel assemblies.
- An upper bound for the fuel density was included in the nominal configuration of the fuel densities.
- The upper statistical bound of the fuel assembly enrichment, as based on the fuel fabrication specification, is included in the statistical evaluation of uncertainties.

The criticality analysis of the Palo Verde new and spent fuel racks shows that the maximum radially averaged fuel enrichment of any axial enrichment zone within a fuel assembly which meets the appropriate NRC limit with uncertainties is higher than 4.30 w/o U-235.

Although a higher enrichment fuel cycle may result in fuel burnup consisting of a slightly different mixture of nuclides and inventory, the effect is insignificant because the isotopic mixture and inventory of an irradiated assembly is relatively insensitive to the fuel assembly's initial enrichment. Therefore, the doses from postulated accidents are not significantly affected and continue to be acceptable.

Standard 2 -- Create the possibility of a new or different kind of accident from any accident previously analyzed.

Operation of Palo Verde with the proposed enrichment limit change will not create any new or different kinds of accidents from those previously evaluated.

The adequacy of a given core design shall be demonstrated for each core prior to reloading. The fuel enrichment is only one of the factors that must be considered in this determination.

Fuel handling and storage of fuel with radially averaged enrichment of any axial enrichment zone within a fuel assembly of 4.30 w/o U-235 does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3 -- Involve a significant reduction in a margin of safety.

This amendment request will not involve a significant reduction in a margin of safety.

The evaluation performed for each reload core assures that the core design meets appropriate safety limits, including a consideration of a significant reduction in the margin of safety. See response provided in Standard 1 for information pertaining to the demonstration of the adequacy of each core design.

Criticality analyses for fuel assemblies with a maximum radially averaged enrichment (of any axial enrichment zone) of 4.30% U-235 for the Palo Verde Fuel Pool configurations presented in this proposed Technical Specification amendment meet the criticality acceptance criterion for K_{eff} listed in Technical Specification 5.6.1.1. Technical Specification 5.6.1.1 states:

The spent fuel storage racks are designed and shall be maintained with:

a. A K_{eff} equivalent to less than or equal to 0.95 when flooded with unborated water, which includes a conservative allowance of 2.6% delta k/k for uncertainties as described in Section 9.1 of the FSAR.

. . .

Based on the above evaluation, this proposed change does not constitute a significant hazards consideration.

The NRC staff has reviewed the licensee's 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 licensee: 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

Arizona Public Service Company, et al., Docket Nos. STN 50-528 and STN 50-529, Palo Verde Nuclear Generating Station, Units 1 and 2, Maricopa County, Arizona

Date of amendment requests: October 27, 1993

Description of amendment requests: The proposed amendment would revise Technical Specification (TS) 6.9.1.8 to change the frequency for submitting the Radioactive Effluent Release Report from semiannual to annual, as allowed by the revised 10 CFR 50.36a requirements.

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:

Standard 1 -- Involve a significant increase in the probability or consequences of an accident previously evaluated.

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 that is 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, it can be concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Standard 2 -- Create the possibility of a new or different kind of accident from any accident previously analyzed.

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 that is 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. Also, there will be no change in the types or increase in the amount of effluents released offsite. Therefore, it can be concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3 -- Involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes are administrative in nature and do not adversely impact the plant's ability to meet applicable regulatory requirements related to liquid and gaseous effluents, and solid waste releases. The proposed changes would also eliminate an unnecessary burden of governmental regulation without reducing protection for public health and safety. Therefore, it can be concluded that 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 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 licensee: 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

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: December 8, 1993

Description of amendments request: As an active participant in the industry-NRC improved Standard Technical Specifications (STS) implementation effort, Baltimore Gas and Electric Company (BG&E) volunteered to

develop criteria for determining what requirements are appropriate for inclusion in the Design Features section of the Technical Specifications (TSs), and to submit a lead plant license amendment applying those criteria. This proposed license amendment justifies the adoption of the "Design Features" section of the Combustion Engineering STS for the Calvert Cliffs Nuclear Power Plant and then applies the developed criteria to the STS. The proposed criteria for determining what requirements should be placed in the Design Features section of the TSs are:

1. The amount, kind, and source of special nuclear material required;

2. The place of the use of the special nuclear material; and

3. Those features of the facility such as materials of construction and geometric arrangements, which, if altered or modified, would have an immediate and significant effect on safety and are not covered in the safety limits, limiting conditions for operation or surveillance requirements of the Technical Specifications.

The Design Features section is Section 5.0 for the Calvert Cliffs TS and Section 4.0 for the STS. Specifically, the following changes are proposed to the Calvert Cliffs TSs and the STS for the Design Features section.

Section 5.1 Site

Sections 5.1.1 and 5.1.2 contain maps of the site boundary and low population zones, respectively. These maps also show the major structures, effluent release points, meteorological tower location, and the minimum exclusion area radius. The STS requires inclusion of the site and exclusion area boundaries and the low population zone and allows descriptions instead of maps. These maps or descriptions do not meet any of the criteria. However, Criteria 2 requires that the place of use of the special nuclear material be described. BG&E proposes to delete the existing Sections 5.1.1 and 5.1.2 and to create Section 5.1, entitled "Site Location," and to include a text description of the location of the site. The current information and maps in the sections will be relocated to the Updated Final Safety Analysis Report (UFSAR). This change is also proposed for Section 4.1 of the STS.

Section 5.2 Containment

This section does not meet Criteria 1, 2 or 3 in that modification of the containment would not create an immediate and significant effect on safety. Furthermore, containment integrity is covered in the Limiting Conditions for Operation and Surveillance Requirements sections of the TS. This Section is not included in the STS. BG&E proposes to eliminate it from the Calvert Cliffs Design Features.

Section 5.3 Reactor Core

Calvert Cliffs TS Section 5.3 and corresponding STS Specification 4.2.1 and meets Criteria 1, e.g., state the amount, kind, and source of special nuclear material. For consistency with the STS, BG&E proposes to adopt the STS titles and wording.

Section 5.3.3 Control Element Assemblies

Calvert Cliffs Section 5.3.3, "Control Element Assemblies," and the corresponding STS Section 4.2.2 does not meet Criteria 1, 2 or 3. The safety significant aspects of control rods, e.g., the reactivity worth of control rods and their required insertion times, are included in other portions of the TSs. Therefore, control rods do not fall under the Criteria 3 as features not described in other sections of the TSs. BG&E proposes that this section be eliminated from the Calvert Cliffs Design Features and the STS.

Section 5.4 Reactor Coolant System

This section does not meet any of the criteria and is not included in the STS. It does not meet Criteria 3 in that the requirements on degradation, pressure, and temperature are contained in other portions of the TS and changes in the total water and steam volume would not have an immediate and significant impact on safety. BG&E proposes that it be eliminated from the Calvert Cliffs Technical Specifications.

Section 5.5 Meteorological Tower Location

This section does not meet any of the criteria and is not included in the STS. BG&E proposes to eliminate this section from the Calvert Cliffs Design Features section.

Section 5.6 Fuel Storage

Calvert Cliffs Section 5.6.1, "Criticality - Spent Fuel," specifies the minimum center-to-center distance, a K_{eff} limit, and the maximum enrichment for fuel in the spent fuel storage racks. These requirements are also contained in STS Section 4.3.1.1, Items a, b, and c. Section 5.6.2, "Criticality - New Fuel," specifies the minimum center-to-center distance, a k_{eff} limit, and a maximum enrichment for fuel in the new fuel racks. These requirements are contained in STS Section 4.3.1.2, Items a, b, c, and d. These sections meet Criteria 3, e.g., geometries which, if altered, would have an immediate and significant impact on safety. These requirements do not appear in other sections of the TS. The STS language contains the same restrictions as the Calvert Cliffs Design Features while introducing no new requirements. BG&E proposes adopting the STS language and we will add information on uncertainties of the referenced sections of the UFSAR.

Section 5.6.3 Drainage

This section in the Calvert Cliffs Design Features section and the corresponding STS Section 4.3.2 does not meet any of the criteria. It does not meet Criteria 3 in that it does not describe geometry or materials of construction and because the requirements are contained in another portion of the TS. BG&E proposes that this section be eliminated from the Calvert Cliffs Design Features section and from the STS.

Section 5.6.4 Capacity

Section 5.6.4, "Capacity," states the maximum spent fuel storage capacity. This meets Criteria 1 in that it limits the amount of special nuclear material that may be stored on site. The Calvert Cliffs TS language varies slightly from the STS language in that it makes clear that the storage capacity limit applies to the combined storage pool for Units 1 and 2. Therefore, we propose to retain the Calvert Cliffs TS language.

Section 5.7 Component Cyclic or Transient Limits

This section is not included in the STS and does not meet any of the criteria. We propose that it be eliminated from the Calvert Cliffs Design Features section.

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. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the Design Features section adopts language from the Design Features section of the Standard Technical Specifications (STS) for Combustion Engineering Plants (NUREG-1432, September, 1992), based on the Commission's Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors (July 16, 1993). Some requirements in the current Technical Specifications have been eliminated or relocated to the UFSAR based on the STS as evidence that the NRC no longer considers those requirements to meet the criteria for Design Features in 10 CFR 50.36(c)(4). In some cases, we have proposed elimination of some requirements in the STS and the Calvert Cliffs Technical Specifications based on a determination that they have no legal or regulatory basis.

We propose eliminating the "Site" sections, present in the Calvert Cliffs and the STS Design Features sections, which contain maps or descriptions of the site boundary and low population zone. There are no legal or regulatory requirements for including this information in the Technical Specifications

and this information will be relocated to the UFSAR. We propose adding a "Site Location" section which contains a description of the Calvert Cliffs location as required by the Atomic Energy Act of 1954 [,as amended]. The "Containment," "Reactor Coolant System," "Meteorological Tower Location," and "Component Cyclic or Transients Limits" sections do not meet the legal or regulatory requirements for inclusion in the Design Features section, are not included in the STS, and have been deleted. The information in these sections is or will be contained in the UFSAR and will be controlled under 10 CFR 50.59. The "Control Element Assemblies" and "Fuel Storage - Drainage" sections are included in the STS and Calvert Cliffs Technical Specifications but eliminated in this change as these sections do not meet any of the legal or regulatory requirements for the Design Features section. This information is contained in the UFSAR and will be controlled under 10 CFR 50.59. We propose adopting the STS wording for the "Reactor Core" and "Fuel Storage" sections with no changes in the present limits or controls. Some information in the Calvert Cliffs Technical Specifications is not contained in the STS "Reactor Core" section. This information is contained in the UFSAR and will be controlled under 10 CFR 50.59.

All information eliminated from the Design Features section of the Technical Specifications is or will be located in the UFSAR and will be controlled under 10 CFR 50.59. The design and operation of the plant have not changed. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed change does not represent a change in the configuration or operation of the plant. All information eliminated from the Technical Specifications will continue to be controlled under 10 CFR 50.59. All legal and regulatory requirements for the Design Features section continue to be met. Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The proposed change does not represent a change in the configuration or operation of the plant. All information eliminated from the Technical Specifications will continue to be controlled under 10 CFR 50.59. All legal and regulatory requirements for the Design Features section continue to be met. 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 amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: December 10, 1993

Description of amendment request: The proposed amendment would extend existing plant surveillance intervals to 24 months from 18 months. This is the third of three submittals and it changes specific setpoints to accommodate a 24 month fuel cycle and provides a justification for extending the surveillance interval for those components and systems that are not related to instrument setpoint changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

This submittal results in changes to various equipment surveillance intervals and related instrument calibration frequencies and setpoints.

The impact of lengthening the current 18 month interval to 24 months was evaluated and identified no significant system or component degradation as a consequence of lengthening the interval to 24 months; therefore, systems and components will continue to perform their design function. In some cases, the 24 month interval required setpoint changes to ensure instrument drift associated with the extended interval would not result in exceeding an instrument's acceptable setpoint tolerance. In other cases, justification of an extended interval was not developed because the surveillance could be performed on-line. In these cases, the "once/cycle" surveillance requirement is changed to the currently allowed 18 months.

The proposed changes were developed using the guidance provided in Generic Letter 91-04 and Note 1 of Table 4.2.A through 4.2.G of Pilgrim's technical specifications. The proposed changes do not degrade the performance or increase the challenges to the associated safety systems assumed to function in the accident analysis.

The impact of lengthening the current calibration/functional test interval from 1 to 3 months for certain components was also evaluated. The evaluation used the guidance in Generic Letter 91-04 and Note 1 of Table 4.2.A through 4.2.G of Pilgrim's technical specifications. No significant system or component degradation was identified as a consequence of lengthening the interval to 3 months.

The proposed changes do not affect the availability of equipment or systems required to mitigate the consequences of an accident, and do not affect the availability of redundant systems or equipment. The plant will continue to operate within the limits specified in the Core Operating Limits Report (COLR) and will continue to take the same actions if setpoint limits are exceeded.

Therefore, both the proposed setpoint and non-setpoint changes do not significantly increase the probability or consequences of an accident previously evaluated.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed changes with one exception, do not add or remove active components and, therefore, do not introduce failure mechanisms of a different type than those previously evaluated. In one case, the EDG breaker time delay relays will be replaced with more accurate relays to ensure the specified time sequence for starting and accepting the emergency load remains within specification for the extended cycle. The replacement relays will be similar in size, weight, voltage and temperature operating range as those being replaced; therefore, the possibility of a new or different kind of accident is not created. In addition, the surveillance test requirements and the way surveillance tests are performed will remain unchanged. Since the intended operation and function of the analyzed systems do not change as a result of the setpoint and non-setpoint analyses, no new initiators are introduced capable of initiating an accident that would render these systems unable to provide their required protection. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

Although the proposed Technical Specification changes will result in an increase in the interval between surveillance tests, the existing margins of safety are maintained through our proposed setpoint revisions. The proposed setpoint changes either increase the plant safety margin or maintain the existing margin and do not significantly impact the availability, performance, or intended function of the affected systems. In the case of non-setpoint changes, evaluation of the affected systems indicates lengthening the interval to 24 months does not have significant impact on performance. Therefore, the assumptions in Pilgrim's accident analyses are not impacted, and the proposed Technical Specification changes do not significantly 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 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: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Walter R. Butler

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: March 26, 1993

Description of amendment request: The proposed amendment is a part of Commonwealth Edison Company's (CECo's) Technical Specification Upgrade Program (TSUP) to improve the quality of the current Technical Specifications (TS) for Dresden and Quad Cities. The proposed amendment would for both Dresden and Quad Cities, upgrade the requirements of Section 3.9/4.9, "Auxiliary Electrical Systems," to include operating and shutdown Limiting Condition(s) for Operation (LCO) and Surveillance Requirement(s) (SR) that are consistent with the Standard Technical Specifications (STS) and later operating plant provisions. Within the upgrade to Section 3.9/4.9, Emergency Diesel Generator (EDG) reliability provisions are added to implement the recommendations of Generic Letter(s) 84-15 and 91-09; Information Notice(s) 84-69 and 91-62; and Regulatory Guide 1.9, draft Revision 3. Other Generic Letters considered in the proposed TS include 83-26, 83-30, and 87-09.

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:

Involve a significant increase in the probability or consequences of an accident previously evaluated because:

In general, the proposed changes represent the conversion of current requirement to a more generic format, or the addition of requirements which are based on the current safety analyses. Implementation of these changes will provide increased reliability of equipment assumed to operate in the current safety analyses, or provide continued assurance that specified parameters remain within their acceptance limits, and as such, will not significantly increase the probability or consequences of a previously evaluated accident.

Some of the proposed changes represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. These proposed changes are consistent with the current safety analyses and have been previously determined to represent sufficient requirements for the assurance and reliability of equipment assumed to operate in the safety analyses, or provide continued assurance that specified parameters remain within their acceptance limits. As such, these changes will not significantly increase the probability or consequences of a previously evaluated accident.

A.C. Sources - Operating: The proposed modifications for Section 3/4.9.A, "A.C. Sources - Operating", administratively incorporate the requirements of STS, where applicable to Dresden and Quad Cities Stations. Most deviations from the STS requirements are based upon generic guidance and other approved requirements at other sites. Dresden and Quad Cities Station are retaining the current seven day allowed outage time from their current specifications for loss of an EDG. However, an additional verification of EDG operability has been proposed for approximately midway through the seven day AOT. The additional verification and additional details in the surveillances will significantly improve the overall safety of both Dresden and Quad Cities Station.

Both Dresden and Quad Cities Station's EDG history have shown them to be very reliable. This can be demonstrated by the excellent pass/fail rate observed during the monthly surveillance tests. As stated previously, the addition of several new STS enhancements to fuel storage and transfer requirements and other miscellaneous EDG surveillances recommended by ASTM codes will improve EDG reliability. Therefore, because the EDG's for Dresden and Quad Cities Station do not act as accident initiators, the probability of an accident previously evaluated for the sites is not increased by the incorporation of the proposed requirements.

Other changes based upon STS guidance are more restrictive and limit operation of the site with respect to all A.C. power sources. A.C. power sources do not act as initiators of accidents. Therefore, the probability of an accident previously evaluated for the sites is also not increased by the incorporation of the STS requirements.

The consequences of any previously evaluated accidents are not increased as more restrictions and limitations are added to the current versions of both Dresden and Quad Cities specifications. The retention of the seven day allowed outage times for the EDG's and the offsite power sources does not increase the consequences of any previously analyzed accident for both sites as these are the current requirements. Therefore, the consequences of any previously evaluated accident is not increased as a result of the proposed changes.

A.C. Sources - Shutdown: The proposed modification for Section 3/4.9.B, "A.C. Sources - Shutdown", administratively incorporate the requirements of STS where applicable to Dresden and Quad Cities Station. The STS requirements add additional provisions not in the current Technical Specifications for EDG fuel storage capability that will reduce the consequences of a previously analyzed accident. The probability of any previously evaluated accident is reduced during shutdown by the additional STS restrictions proposed for fuel handling type of activities. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of any previously evaluated accident for Dresden and Quad Cities Station.

D.C. Sources - Operating: The proposed modifications for Section 3/4.9.C, "D.C. Sources - Operating", incorporate the requirements of STS where applicable for Dresden and Quad Cities Stations. Dresden and Quad Cities are proposing to retain the current provisions specified in the current version of Quad Cities Technical Specifications that allow the 125 and 250 VDC systems to be out-of-service for a period up to 72 hours. This 72-hour AOT may be extended, when applied to the 125 VDC systems, for up to a maximum period of 7 days with both units operating if the alternate 125 VDC battery is operable. These changes introduce a difference when compared to the STS requirements. However, the STS requirements as applied to Dresden and Quad Cities battery systems would prove to be overly burdensome requiring dual unit shutdowns to perform most maintenance or testing activities. The additional batteries in the design of the stations, with their surveillances, charger requirements, and breaker verifications, compensate for any STS deviations. The proposed requirements are comparable to the existing requirements and AOTs for Quad Cities Station; therefore, the consequences of any previously evaluated accident are not increased. The proposed changes add additional surveillance requirements to the D.C. systems at Dresden and Quad Cities to enhance their reliability and operational readiness. This also ensures the consequences of any previously evaluated accident are not increased. Because the D.C. system is not assumed as an accident initiator, the probability of any previously evaluated accident is not increased.

D.C. Sources - Shutdown: The proposed modifications for Section 3/4.9.D, "D.C. Sources - Shutdown", administratively incorporate the requirements of STS where applicable to Dresden and Quad Cities Station. The proposed changes add additional surveillance requirements and more explicitly clarify the LCO's. The additional provision for fuel handling type of activities reduces the probability of previously evaluated accidents from occurring. The additional surveillance activities also improve D.C. reliability and thus, reduce the probability of D.C. system unavailability and hence, reduce the consequences of previously evaluated accidents. Because the D.C. system is not considered as an accident initiator, the probability of any previously evaluated accident is not increased.

Distribution - Operating: The proposed modifications for Section 3/4.9.E, "Distribution - Operating", administratively incorporate the requirements of STS where applicable to Dresden and Quad Cities Station. The proposed changes add additional surveillance requirements and LCO's. The proposed requirements/actions for the D.C. distribution system are retained to be consistent to the proposed AOTs for the D.C. system. The STS requirements as applied to the Dresden/Quad Cities D.C. distribution system would prove to be overly burdensome, requiring plant shutdowns to perform maintenance or testing activities. The additional distribution system surveillance and LCO's compensate for the STS deviations. The proposed requirements are comparable to the existing requirements and AOTs for Quad Cities Station; therefore, the consequences of any previously evaluated accident are not increased. The additional surveillances and STS-type requirements ensures the reliability and operational readiness of the Distribution System and ensures the consequences of any previously evaluated accident are not increased. Because the Distribution System is not assumed as an accident initiator, the probability of any previously evaluated accident is not increased.

Distribution - Shutdown: The proposed modification for Section 3/4.9.F, "Distribution - Shutdown", administratively incorporate the requirements of STS where applicable for Dresden and Quad Cities Station. The proposed changes add additional requirements that ensure the consequences and the probability of any previously evaluated accident are not increased.

RPS Power Monitoring: The proposed modifications for Section 3/4.9.G, "RPS Power Monitoring". administratively incorporate the requirements of STS for Dresden and Quad Cities Station. The proposed changes add additional requirements for Dresden and clarify the existing requirements at Quad Cities. Therefore, the consequences and the probability of any previously evaluated accident are not increased.

Create the possibility of a new or different kind of accident from any previously evaluated because:

In general, the proposed changes represent the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analyses. Others represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. These changes do not involve revisions to the design of the station. Some of the changes may involve revision in the operation of the station; however, these provide additional restrictions which are in accordance with the current safety analyses, or are to provide for additional testing or surveillances which will not introduce new failure mechanisms beyond those already considered in the current safety analyses. The retention of the current AOTs for EDGs, offsite power sources, and DC systems maintain the existing assumptions from the current accident analyses; therefore, these changes will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes for Dresden and Quad Cities Station's Technical Specification Section 3/4.9 are based on STS guidelines or later operating BWR plants' NRC accepted changes. These proposed changes have been reviewed for acceptability at the Dresden and Quad Cities Nuclear Power Stations considering similarity of system or component design versus the STS of later operating BWRs. No new modes of operation are introduced by the proposed changes, considering the acceptable operational modes in present specifications, the STS, or later operating BWRs. Surveillance requirements are changed to reflect improvements in technique, frequency of performance or operating experience at later plants. Proposed changes to action statements in many places add requirements that are not in the present technical specifications or adopt requirements that have been used successfully at other operating BWRs with designs similar to Dresden and Quad Cities. The proposed changes maintain at least the present level of operability. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Involve a significant reduction in the margin of safety because:

In general, the proposed changes represent the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analyses. Others represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. Some of the later individual items may introduce minor reductions in the margin of safety when compared to the current requirements. However, other individual changes are the adoption of new requirements which will provide significant enhancement of the reliability of the equipment assumed to operate in the safety analyses, or provide enhanced assurance that specified parameters remain with their acceptance limits. These enhancements compensate for the individual minor reductions, such that taken together, the proposed changes will not significantly reduce the margin of safety.

The proposed changes to the Technical Specification Section 3/4.9 implement present requirements, or the intent of present requirements in accordance with the guidelines set forth in the STS. The proposed changes are intended to improve readability, usability, and the understanding of technical specification requirements while maintaining acceptable levels of safe operation. The proposed changes have been evaluated and found to be acceptable for use at Dresden and Quad Cities based on system design, safety analyses requirements and operational performance. The retention of the current AOTs for EDGs, offsite power sources, and DC systems maintain the existing assumptions from the current accident analyses. Since the proposed changes are based on NRC accepted provisions at other operating plants that are applicable at Dresden and Quad Cities and maintain necessary levels of system, component or parameter readability, the proposed changes do 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: for Dresden, the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450, and for Quad Cities, the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: 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: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: 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: December 6, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to add provisions to allow repair of steam generator tubes by the sleeving process.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change will allow the use of specific steam generator tubing sleeves to repair Waterford 3 steam generator tubes which exhibit degradation and can be sleeved (in the tube sheet crevice area and egg crate supports). The technical specification change is proposed to reference the following reports [following NRC approval], which qualify the use of steam generator tube sleeves as an alternative to tube plugging,

Combustion Engineering Report CEN-605-P, "Waterford 3 Steam Generator Tube Repair Using Leak Tight Sleeves", Revision 00-P, dated December, 1992.

Westinghouse Report WCAP-13698, "Laser Welded Sleeves For 3/4 Inch Diameter Tube Feedring-Type and Westinghouse Preheater Steam Generators", Revision 1, dated May, 1993.

Babcock & Wilcox Report 51-1223750-00, "BWNS Kinetic Sleeve Design For CE SGs with 0.048" Wall Tubes", Revision 00, dated June 29, 1993.

These reports demonstrate that the repair of degraded steam generator tubes using tube sleeves will result in tube bundle integrity consistent with the original design basis.

Sleeve design, materials, and joints were designed to the applicable ASME Boiler and Pressure Vessel Codes. Extensive analyses and testing were performed to demonstrate the adequacy of the tube sleeves. The analyses were performed using design and operating transient parameters which enveloped loads imposed during normal operating, upset and accident conditions. Mechanical testing was performed to demonstrate leak resistance and joint strength, including fatigue resistance.

Corrosion testing was also performed to assess the corrosion resistance of the sleeve and joint. Based upon the results of the analytical and test programs described in detail in the above mentioned reports, these tube sleeves meet or exceed all the established design and operating criteria.

Utilization of tube sleeves not only reduces the risk of primary to secondary leakage in the steam generator, but can also provide for more margin in the safety analysis. Sleeving a tube results in a primary flow reduction which has no significant effect on the steam generator performance with respect to heat transfer or system flow resistance and pressure drop. The cumulative impact of multiple sleeved tubes has been evaluated to ensure the effects remain within the design bases. The installation of tube sleeves can be accomplished within the tube plugging analysis.

Based on the extensive analysis and test program performed and the ability to monitor and remove degraded sleeves from service, this change does not significantly increase the probability or consequences of an accident previously evaluated.

A sleeved tube performs the same function in the same passive manner as the unsleeved tube. Tube sleeves are designed, qualified, and maintained under the stress and pressure limits of ASME Section III and Regulatory Guide 1.121. Eddy current testing is performed following installation of each sleeve in order to verify the proper installation of the tube sleeve and to obtain baseline eddy current data. This baseline data is used to monitor any subsequent degradation.

Therefore, the use of tube sleeves does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Steam generator tube integrity is maintained under the same limits for sleeved tubes as for unsleeved tubes in accordance with ASME Section III and Regulatory Guide 1.1.21. The degradation limit at which a tube is considered inoperable remains unchanged and is detectable for sleeves as well as tubes. The technical specifications continue to require monitoring and restriction of primary to secondary system leakage through the steam generators, such that there remains reasonable assurance that a significant increase in leakage, due to failure of a sleeved (or unsleeved) tube, will be detected. The slight reduction in reactor coolant system flow, due to sleeving, is considered to have an insignificant impact on steam generator operation during normal operation and accident conditions and is clearly bounded by tube plugging evaluations. The technical specifications will continue to contain reporting requirements for tubes which have had their degradation spanned regardless of whether the tube is plugged or sleeved.

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: December 14, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to revise the Azimuthal Power Tilt limit from less than or equal to 0.10 (10%) to less than or equal to 0.03 (3%) and to revise the action statement for control element assembly (CEA) misalignment to allow 24 hours to restore the tilt to less than 3%.

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 additional time for recovery from a CEA misalignment is acceptable for the following reasons:

Consistent with the safety analyses, this TS, places a limit on tilt for steady state operation as an initial condition for the safety analyses. It is not a limit to be applied during transients. This is because accident analyses are initiated from steady state conditions and are not required to assume a core power distribution transient simultaneous with or immediately prior to the accident. This would in effect be two accidents occurring simultaneously.

The probability of having an accident immediately after a CEA drop during the 24 hour period allowed for tilt to be restored to less than 3% is very low.

Technical Specification 3/4.1.3 addresses the CEA misalignments and requires a 30% power reduction within one hour if the CEA cannot be restored to its proper position.

Reducing power as required in TS 3.2.3 action b.2 will tend to increase the azimuthal tilt, making the transient worse. A lower power reduces the rate at which xenon near the dropped CEA can be burned out. Maintaining power will quicken the process and keep the tilt as low as possible.

The additional time is only allowed for a confirmed CEA misalignment which operators have procedures to respond to. The change in tilt is expected and is not indicative of anomalous core power distribution behavior that might require more immediate action.

This change conservatively reduces the Azimuthal Power Tilt technical specification limit to agree with the assumptions used in the safety analysis. The lower tilt represents a more even power distribution in the core. A CEA drop event may temporarily cause the azimuthal power tilt to exceed the 3% limit. However, for the reasons identified above and since the probability of having another event within the 24 hours allowed for recovery after the CEA drop is extremely low, this change does not involve a significant increase in the probability or consequences of any accident.

The change in technical specification limit on tilt does not involve any change to any equipment or the manner in which the plant will be operated. This change will further restrict unevenness in the core power distribution. Therefore, this change does not create the possibility of a new or different kind of accident previously evaluated.

The proposed change incorporates an Azimuthal Power Tilt technical specification limit to agree with the assumptions used in the safety analysis. Implementation of this change will preserve the margin of safety and be consistent with the safety analyses. Therefore, this change does not involve a significant reduction in 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: December 14, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) by removing the reactor vessel material specimen withdrawal schedule and by updating the reactor coolant system pressure-temperature (P-T) curves. The specimen withdrawal schedule will be relocated to the Updated Final Safety Analysis Report (UFSAR).

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:

Although the Reactor Vessel material specimens withdrawal schedule will be removed from the Technical Specifications, the Technical Specifications bases will continue to provide background information on the use of the data obtained from material specimens. Also, updates to the schedule will continue to be submitted to the NRC for approval prior to implementation.

Operating the plant in accordance with the new, updated P-T Curves will assure preserving the structural integrity of the reactor vessel over the life of the plant. The pressure and temperature limits were developed in accordance with 10 CFR [Part] 50 Appendix G requirements.

Removing the requirements associated with the previous exemption to Appendix H (TS 4.4.8.1.2 items a & b) is purely an administrative change.

Therefore, the proposed changes will not significantly increase the probability or consequences of any accident previously evaluated.

Removal of the Reactor Vessel material specimen schedule from the Technical Specifications has no impact on accidents at the plant. Updates to the schedule will still be required to be submitted to the NRC prior to implementation per Section II.B.3 of Appendix H to 10 CFR Part 50.

Also, updates to the P-T Curves will not create a new or different type [of] accident. The reactor vessel beltline P-T limits were revised applying the general guidance of the ASME Code, Appendix G procedures with the necessary margins of safety for heatup, cooldown and inservice hydro test conditions.

The change to TS 4.4.8.1.2 items a & b is a purely administrative.

Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Removal of the schedule for Reactor Vessel material specimen withdrawal from the Technical Specifications does not impact the margin of safety. The schedule will continue to receive NRC review and approval prior to implementation of updates to the schedule.

Updates to the P-T Curves are provided to preserve the margin to [sic] safety to assure that when stressed under operating, maintenance and testing the boundary behaves in a non-brittle manner and the probability of rapidly propagating fracture is minimized.

The change to TS 4.4.8.1.2 items a & b is a purely administrative.

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: November 30, 1993

Description of amendment request: The purpose of the request is to change the plant Technical Specifications (TS) by removing the protective and maximum allowable setpoint limits for axial power imbalance and the trip setpoint for nuclear overpower based on reactor coolant system (RCS) flow (flux-to-flow) from the TS and relocating them to the existing TMI-1 Core Operating Limits Report (COLR). The proposed change is in accordance with Generic Letter 88-16 guidance with regard to placing cycle-dependent parameters into the COLR and the NRC-approved Babcock and Wilcox Fuel Company (BWFC) Topical Report BAW-10179P-A, "Safety Criteria and Methodology for Acceptable Cycle Reload Analyses." The TMI-1 Cycle 10 COLR, submitted to the NRC on November 7, 1993, includes these protective and maximum allowable setpoint limits and nuclear overpower trip setpoints to support this Technical Specifications change.

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 consequences of an accident previously evaluated. The proposed amendment relocates protective and maximum allowable setpoint limits from Technical Specifications, and design nuclear power peaking factors and the maximum allowable local linear heat rate limit from

Technical Specification Bases, to the TMI-1 Core Operating Limits Report in accordance with NRC-approved Topical Report BAW-10179P-A. The proposed amendment provides continued control of the values of these limits and assures these values remain consistent with all applicable limits of the safety analyses addressed in the TMI-1 FSAR [Final Safety Analysis Report]. The Technical Specifications retain the requirement to maintain the plant within the appropriate bounds of these limits. Therefore, the proposed amendment has no effect on the probability of occurrence or consequences of an accident previously evaluated.

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 proposed amendment relocates protective and maximum allowable setpoint limits, design nuclear power peaking factors and maximum allowable local linear heat rate limit to the TMI-1 Core Operating Limits Report. The Technical Specifications retain the requirement to maintain the plant within the appropriate bounds of these limits. Therefore, the proposed amendment has no effect on the possibility of creating a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed amendment provides continued control of the values of these limits and assures these values remain consistent with all applicable limits of the safety analyses addressed in the TMI-1 FSAR. Therefore, it is concluded that operation of the facility in accordance with the proposed amendment 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, 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

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: December 14, 1993

Description of amendment request: The amendment would revise Technical Specification (TS) 3/4.8.2, "DC Sources," to delete two notes that indicate that two 125-volt full capacity battery chargers are required when the Uninterruptible Power Supply is powered by its backup DC power supply. These notes apply to the Divisions I and II DC sources during operating and shutdown conditions. The licensee has determined that only one battery charger is required to meet current design requirements and the criteria delineated in Regulatory Guide 1.32, "Criteria for Safety-Related Electric Power Systems for Nuclear Power Plants." The amendment would also revise TS 3/4.8.2 to increase the minimum allowable electrolyte temperature for the 125-volt batteries from 60°F to 65°F. This proposed change would establish consistency between the TSs, the Updated Safety Analysis Report, and applicable battery capacity calculations. The amendment would also make administrative changes to TS 3/4.8.4, "Electrical Equipment Protective Devices," and the TS Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The existing "notes" at the bottom of pages 3/4 8-14 and 3/4 8-19 indicate that two (2) 125-volt full capacity chargers are required when the Uninterruptible Power Supply is powered by its backup DC power supply. These "notes" were based on an overly conservative calculation which determined that both chargers were required to supply adequate power to connected loads including an Uninterruptible Power Supply. More recent calculations indicate that one (1) charger is adequate to supply power to connected loads and an Uninterruptible Power Supply. Based on these more recent calculations, Niagara Mohawk proposes to delete these "notes." Because it has been determined adequate power will be provided to connected loads with one (1) charger, deletion of these "notes" will not affect the reliability of connected loads nor their ability to perform their intended function. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Existing Technical Specification 4.8.2.1 requires that the 125-volt batteries be demonstrated to be operable by verifying that the average electrolyte temperature of one out of five connected cells is above 60°F. The Nine Mile Point Unit 2 Updated Safety Analysis Report and current battery capacity calculations assume a battery electrolyte temperature of at least 65°F. The change from 60°F to 65°F is conservative in that battery capacity is increased. Increasing the capacity of the batteries will not adversely affect the reliability of connected loads nor their ability to perform their intended function. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes made to Technical Specification 3/4.8.4 and to the Bases of Specifications 3/4.6.3 and 3/4.8.4 are administrative changes and do not affect plant systems or operation. Accordingly these changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The function of the battery chargers is to provide adequate power to connected loads. Since it has been determined that one (1) battery charger is sufficient to provide adequate power, deletion of these "notes" which require that two (2) chargers be available does not affect the capability of the chargers to perform their function. The proposal to change the required electrolyte temperature from 60°F to 65°F increases the capacity of the batteries and therefore improves the capability of the batteries to perform their intended function. The remaining changes are administrative changes and do not affect plant systems or operation.

The proposed changes do not introduce any new accident precursors and do not involve any physical alterations to plant configurations which could initiate a new or different kind of accident. The changes do not adversely affect the design or performance characteristics of the batteries, battery chargers or connected loads. The proposed change to increase the required electrolyte temperature will increase battery capacity. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety

Niagara Mohawk proposes to delete the existing "notes" that indicate that two (2) 125-volt full capacity chargers are required when the Uninterruptible Power Supply is powered by its backup DC power supply. Niagara Mohawk engineering has determined that one (1) battery charger is adequate to meet the maximum DC load demands including the Uninterruptible Power Supply. The proposed change to increase the required electrolyte temperature will increase battery capacity. The remaining changes are administrative.

These changes will not adversely affect the design or performance characteristics of the batteries, battery chargers, or connected loads nor will they affect the capability of the batteries, battery chargers, or connected loads to perform their intended function. 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 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: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Pacific Gas and Electric Company, Docket No. 50-133, Humboldt Bay Power Plant, Unit 3, Humboldt County, California

Date of application for amendment: July 7, 1993 (Reference LAR 93-01)

Brief description of amendment: The proposed amendment would revise the Technical Specifications (TS) for the Humboldt Bay Power Plant Unit No. 3. This proposed revision would change TS VII.H.3, "Semiannual Radioactive Effluent Release Report," to extend the reporting period from semiannually to annually and to change the report submission date from 60 days after January 1 and July 1 of each year to before April 1 of each year.

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?

The proposed TS changes are administrative in nature. The proposed changes to TS VII.H.3 are consistent with 10 CFR 50.36a report requirements. The proposed changes do not affect accident evaluations. The proposed changes are administrative in nature, should result in improved administrative practices, and do not affect plant operations.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes are administrative in nature, do not result in physical alterations or changes to the operation of the plant, and cause no change in the method by which any safety-related system performs its function.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

These administrative changes do not alter the basic regulatory requirements and do not affect any safety analyses.

The proposed change to TS VII.H.3. does not alter any administrative controls over radioactive effluent, nor does the proposed change involve any physical alterations to the plant with respect to radioactive effluents. Therefore, the proposed change would not affect the meaning, application, and function of the TS requirements.

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 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

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: January 27, 1993

Description of amendment request: The proposed amendment, by Portland General Electric Company, PGE or the licensee, would change the Trojan Nuclear Plant (Trojan) Appendix A Technical Specifications to reflect the permanently defueled status of the facility. The permanent cessation of power generation at Trojan and the May 5, 1993 amendment to the license which granted the licensee a Possession Only License for the facility has rendered many of the existing provisions of the current Appendix A Technical Specifications inappropriate. PGE has developed Permanently Defueled Technical Specifications (PDTS) for Trojan using NUREG-1431, "Standard Technical Specifications, Westinghouse Plants," as a basis for the PDTS scope and format.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided an analysis of the issue of no significant hazards consideration based upon the following:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment shows that the worst case design basis accident for this plant, in its permanently shutdown defueled state, is a postulated spent fuel handling accident at the Trojan facility. The licensee has also identified a second postulated design basis accident scenario, a loss of forced cooling to the spent fuel pool. Other Trojan Final Safety Analysis Report (FSAR) accident scenarios addressed in Chapter 15 are no longer applicable to Trojan in the permanently defueled mode. The proposed amendment does not lessen any of the requirements associated with handling spent fuel and therefore, the probability of a fuel handling accident occurring is unchanged. The licensee has analyzed the a loss of forced spent fuel pool cooling accident and has shown that this scenario would not result in a radiological release. The proposed amendment does not change the consequences of the accident since it does not affect the magnitude, detection, or mitigation of either accident scenario. Additionally, the ability of the spent fuel pool to withstand other applicable FSAR events, natural phenomena, and fires is either unchanged from the existing licensing basis or is improved during the permanently defueled condition.

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.

Maintaining the permanently defueled facility in accordance with the PDTS does not create the possibility of a new or different kind of accident from any previously considered. Most of the existing plant systems and functions will not be operational in the permanently defueled condition since power operations are prohibited and all of the fuel at Trojan is stored in the spent fuel pool. However, all structures, systems and components that are necessary for safe fuel handling and storage activities will be maintained operable during the permanently defueled condition. The proposed PDTS provide operation and surveillance requirements and administrative controls which are sufficient to ensure that the required structures, systems and components will be maintained operable in the permanently defueled condition.

3. Operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The proposed PDTS are sufficient to ensure no reduction in a margin of safety, in part, because of the reduced range of design basis accidents against which the facility must be protected now that the facility is prohibited from power operations and is permanently defueled. Only a fuel handling accident or a loss of forced cooling to the spent fuel pool are relevant during the permanently defueled condition. The margins of safety for both of these accidents will remain the same or improve by maintaining the facility in accordance with the proposed PDTS. None of the other Chapter 15 FSAR accidents are applicable since power operations are prohibited and the facility is permanently defueled. Additionally, the margins of safety

for other applicable FSAR events, natural phenomena, and fires are either unchanged from the existing licensing basis or are improved during the permanently defueled condition.

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: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Attorney for licensees: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRR Project Director: Seymour H. Weiss

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: December 20, 1993

Description of amendment request: The licensee has requested an amendment to the Technical Specifications (TS) to revise Section 3.3.D (Weld Channel and Penetration Pressurization System) to allow certain portions of the Weld Channel Pressurization System (WCPS) to be disconnected if they are determined to be inoperable and not practicably accessible for repair. The WCPS continuously pressurizes channels over welds in the steel liner of the containment building. To be disconnected, an inoperable portion of the WCPS must be covered by concrete such that repairs would involve removal of part of the containment structure or the inoperable portion of the system is located behind plant equipment inside the containment building such that repairs would involve relocation of the equipment. The licensee has requested this TS amendment since one portion of the WCPS has become inoperable and, since it is buried in concrete below the containment floor, cannot be practically repaired. In addition, administrative changes would be made to TS Section 3.3.B (Containment Cooling and Heat Removal) and TS Section 3.3.E (Component Cooling System) to correct typographical errors. Specifically, TS Section 3.3.B.3.b references 3.3.A.3 when is should reference 3.3.B.1 and TS Section 3.3.E.3.b references 3.3.A.3 when it should reference 3.3.E.1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the criteria of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The consequences of an accident previously evaluated would not be affected by the disconnection of portions of the WCPS [Weld Channel Pressurization System] because the accident analyses do not assume the operation of any portion of the WC & PPS [Weld Channel & Penetration Pressurization System]. Additionally, operation of the WC & PPS is not taken credit for in any offsite accident dose calculations. The probability of an accident previously evaluated would not be increased because the disconnection of any portion of the WCPS could not initiate an accident. The administrative changes correct errors in the technical specifications and technical specification bases. These administrative changes have no affect on the probability or consequences of an accident previously evaluated.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The allowance for the disconnection of sections of the WCPS will allow the Authority [Power Authority of the State of New York] to avoid repairs that can potentially degrade containment integrity or the condition of vital equipment. The proposed license amendment does not create the possibility of a new accident because the disconnection of any portion of the WCPS could not initiate an accident. The administrative changes correct errors in the technical specifications and technical specification bases. These administrative changes can not [cannot] create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed amendment would not involve a significant reduction in a margin of safety. The allowance for the disconnection of sections of the WCPS will allow the Authority to avoid repairs that can potentially degrade containment integrity or the condition of vital equipment. The WC & PPS will still provide continuous pressurization and monitoring of leak-tightness for the zones incorporated into the containment penetrations and for at lease 80% of the channels over the welds in the steel inner of the containment building. The WC & PPS will continue to provide assurance that the containment leak rate in the event of an accident is lower than that assumed in the accident analyses because the accident analyses do not assume that any section of the WC & PPS is operating. The administrative changes correct errors in the technical specifications and technical specification bases. These administrative changes have no affect on any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

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 amendment request: December 8, 1993. The December 8, 1993 request supersedes an earlier request dated November 17, 1992, which was previously noticed (58 FR 52994). This notice supersedes the previous notice.

Description of amendment request: The proposed amendments would revise the Technical Specifications for Salem Units 1 and 2 to incorporate the guidance provided by the staff in Generic Letter 90-06 (GL 90-06) as follows:

1. Specification 3/4.4.3 and 3/4.4.5 for Salem 1 and Salem 2, respectively, "RELIEF VALVES", will incorporate the guidance of GL 90-06 with the following exceptions:

a. The surveillance requirement to test the emergency power supply for the power operated relief valves (PORVs) and block valves has not been incorporated. The PORVs and block valves are powered from the emergency busses.

b. The entry conditions for one or both PORVs inoperable will not be based on excessive seat leakage alone. Entry conditions will be based on the capability of the PORV to be manually cycled consistent with the Action Statements contained in NUREG-1431, Standard Technical Specifications for Westinghouse Plants.

c. With both PORVs inoperable in Modes 1, 2, or 3 and not capable of

being manually cycled, or both block valves are inoperable, an allowed outage time of 6 hours to restore on block valve or PORV to operable status has been requested.

2. Specification 3.4.9.3 and 3.4.10.3 for Salem 1 and Salem 2, respectively, "OVERPRESSURE PROTECTION SYSTEMS" will incorporate the guidance of GL 90-06.

3. In addition to the guidance provided by GL 90-06, the following changes have also been proposed.

a. For Salem 1, the reference to the specific American Society of Mechanical Engineers (ASME) valve category would be deleted from Specification 3.4.9.3.1.

b. Specification 3.5.3. "ECCS SUBSYSTEMS - T_{AVE} < 350°F" would be revised to clarify the applicability of the surveillance requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident or malfunction of equipment important to safety previously evaluated. This change will instill administrative restrictions on the Low Temperature Overpressure Protection System and the PORVs thereby improving reliability and availability to respond to a Steam Generator Tube Rupture and overpressure transient. The proposed amendment requires that power be maintained to block valves that are closed should a PORV be inoperable, but still capable of being manually cycled. This change ensures that the block valves can be opened on demand from the control room. Power is maintained to the block valves so that it is operable and may be subsequently opened to allow the PORV to be used to control reactor pressure. The capability to manually cycle the PORV is consistent with the Action Statement contained in NUREG-1431. This change actually improves overall plant safety. Therefore, the proposed amendment does not involve a procedural or physical change to any structure, system or component that significantly affects accident/malfunction probabilities or consequences previously evaluated in the UFSAR.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment does not involve any physical changes to plant structures, components, or systems. With the exception of maintaining power to a block valve closed to isolate a PORV that is inoperable but capable of being manually cycled, which does not create the possibility of a new or different kind of accident, the proposed change will not impose any different requirements on plant operation. Therefore, the proposed changes do not create the possibility of a new or different accident from any previously evaluated.

3. Will not involve a significant reduction in a margin of safety. The proposed changes actually increase the overall margin of safety by improving the availability and reliability of the PORVs and Block valves in response to Steam Generator Tube Rupture events, and the PORVs in response to overpressure transients.

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: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket No. 50-311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey

Date of amendment request: January 25, 1993

Description of amendment request: The amendment revises the pressure-temperature limit curves for heatup, cooldown, hydrostatic tests and criticality from 10 effective full power years (EFPY) to 15 EFPY.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed Technical Specification changes:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes assure that existing safety limits are not exceeded due to changing Reactor Vessel conditions. These changes reflect the latest material testing results per 10CFR50, Appendix H. Clearly defining the pressure and temperature limits decreases the probability of nonductile failures.

Therefore, it may be concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do not create the possibility of a new or different kind of accident from any accident previously evaluated.

No physical plant modifications or new operating configurations result from these changes. These changes do not adversely affect the design or operation of any system or component important to safety, rather, they establish limits to assure that operation remains within acceptable boundaries.

Therefore, no new or different accident from any previously evaluated will be created.

3. Do not involve a significant reduction in a margin of safety.

Capsule "X" analysis concluded that the Reactor Vessel has sufficient fracture toughness for continued safe operation, providing operation remains within acceptable limits. The heatup and cooldown curves define these acceptable limits. The proposed changes maintain existing margins of safety by modifying operating requirements based on specimen Capsule "X" analysis. This analysis accounts for the actual chemistry data associated with the limiting weld, rather than the previously used default values, thus providing some additional operating margin with no reduction in the margin of safety. Actual weld chemistry data is specified in existing Technical Specification Table B 3/4.4-1.

Therefore, it may be concluded that 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: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Southern Nuclear Operating Company, Inc., Docket No. 50-348, Joseph M. Farley Nuclear Plant, Unit 1, Houston County, Alabama

Date of amendment request: December 9, 1993

Description of amendment request: The proposed amendment would modify Technical Specification (TS) 3/4.4.6, Steam Generators, and TS 3/4.4.9, Specific Activity, and their associated bases. The steam generator plugging/repair limit will be modified to establish a methodology for determining serviceability for tubes with outside diameter stress corrosion cracking at the tube support plate that more realistically assesses structural integrity. For Unit 1, the operational leakage requirement will be modified to reduce the total allowable primary-to-secondary leakage for any one steam generator from 500 gallons per day to 140 gallons per day. In addition, the TS limit for specific activity of dose equivalent I^{131}

and its transient dose equivalent I^{131} reactor coolant specific activity will be reduced by a factor of 4 in order to increase the allowable leakage in the event of a steam line break.

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 Farley 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 standing tubes at room temperature conditions show burst pressures as high as approximately 5000 psi [per square inch] for indications of outer diameter stress corrosion cracking with voltage measurements as high as 26.5 volts. Burst testing performed on pulled tubes with up to 7.5 volt indications show burst pressures in excess of 5900 psi at room temperature. As stated earlier, tube burst criteria are inherently satisfied during normal operating conditions by the presence of the tube support plate. Furthermore, 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 R.G. [Regulatory Guide] 1.121 criterion requiring the maintenance of a margin of 1.43 times the steam line break pressure differential on tube burst if through-wall cracks are present without regard to the presence of the tube support plate. Based on the existing data base this criterion is satisfied with bobbin coil indications with signal amplitudes over twice the 2.0 volt interim repair criteria, regardless of the indicated depth measurement. This structural limit is based on a lower 95 [percent] confidence level limit of the data. The 2.0 volt criteria provides an extremely conservative margin of safety to the structural limit considering expected growth rates of outside diameter stress corrosion cracking at Farley. Alternate crack morphologies can correspond to a voltage so that a unique crack length is not defined by a burst pressure to voltage correlation. However, relative to expected leakage during normal operating conditions, no field leakage has been reported from tubes with indications with a voltage level of under 7.7 volts for a 3/4 inch tube with a 10 volt correlation to 7/8 inch tubing (as compared to the 2.0 volt proposed interim tube repair limit). Thus, the proposed amendment does not involve a significant increase in the probability or consequences of an accident.

Relative to the expected leakage during accident condition loadings, the accidents that are affected by primary-to-secondary leakage and steam release to the environment are Loss of External Electrical Load and/or Turbine Trip, Loss of All AC Power to Station Auxiliaries, Major Secondary System Pipe Failure, Steam Generator Tube Rupture, Reactor Coolant Pump Locked Rotor, and Rupture of a Control Rod Drive Mechanism Housing. Of these, the Major Secondary System Pipe Failure is the most limiting for Farley in considering the potential for off-site doses. The offsite dose analyses for the other events which model primary-to secondary leakage and steam release from the secondary side to the environment assume that the secondary side remains intact. The steam generator tubes are not subjected to a sustained increase in differential pressure, as is the case following a steam line break event. This increase in differential pressure is responsible for the postulated increase in leakage and associated offsite doses following a steam line break event. In addition, the steam line break event results in a bypass of containment for steam generator leakage. Upon implementation of the interim repair criteria, it must be verified that the expected distribution of cracking indications at the tube support plate intersections are such that primary-to-secondary leakage would result in site boundary dose within the current licensing basis. Data indicate that a threshold voltage of 2.8 volts would result in through-wall cracks long enough to leak at steam line break conditions. Application of the proposed repair criteria requires that the current distribution of a number of indications versus voltage be obtained during the refueling outages. The current voltage is then combined with the rate of change in voltage measurement and a voltage measurement uncertainty to establish an end of cycle voltage distribution and, thus, leak rate during steam line break pressure differential. The leak rate during a steam line break is further increased by a factor related to the probability of detection of the flaws. If it is found that the potential steam line break leakage for degraded intersections planned to be left in service coupled with the reduced specific activity levels allowed result in radiological consequences outside the current licensing basis, then additional tubes will be plugged or repaired to reduce steam line break leakage potential to within the acceptance limit. Thus, the consequences of the most limiting design basis accident are constrained to present licensing basis limits.

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 interim tube support plate elevation steam generator tube repair criteria does not introduce any significant changes to the plant design basis. Use of the criteria does not provide a mechanism which could result in an accident outside of the region of the tube support plate elevations. Neither a single or multiple tube rupture event would be expected in a steam generator in which the repair criteria has been applied (during all plant conditions). The bobbin probe signal amplitude repair criteria is established such that operational leakage of excessive leakage during a postulated steam line break condition is not anticipated. Southern Nuclear has previously implemented a maximum leakage rate limit of 140 gpd [gallons per day] per steam generator on Unit 1. The R.G. 1.121 criterion for establishing operational leakage rate limits that require plant shutdown are based upon leak-before-break considerations to detect a free span crack before potential tube rupture. The 140 gpd limit provides 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. R.G. 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 factor of safety of 1.43 against bursting at steam line break pressure differential. A voltage amplitude approximately 9 volts for typical outside diameter stress corrosion cracking corresponds to meeting this tube burst requirement at the 95 [percent] prediction interval on the burst correlation. Alternate crack morphologies can correspond to a voltage so that a unique crack length is not defined 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.

The single through-wall crack lengths that result in tube burst at 1.43 times steam line break pressure differential and steam line break conditions are about 0.53 inch and 0.84 inch, respectively. Normal leakage for these crack lengths would range from about 0.4 gallons per minute to 4.5 gallons per minute respectively while lower 95 [percent] confidence level leak rates would range from about 0.06 gallons per minute to 0.6 gallons per minute, respectively.

An operating leak rate of 140 gpd per steam generator has been implemented on Unit 1. This leakage limit provides for detection of 0.4 inch long cracks at nominal leak rates and 0.6 inch long cracks at the lower 95 [percent] confidence level and for three times normal operating pressure differential at less than nominal leak rates.

Based on the above, the implementation of interim plugging criteria will not create the possibility of a new or different kind of accident from any previously evaluated.

3) The proposed license amendment does not involve a significant reduction in margin of safety.

The use of the interim tube support plate elevation repair criteria is demonstrated to maintain steam generator tube integrity commensurate with the requirements of R.G. 1.121. R.G. 1.121 describes a method acceptable to the NRC staff for meeting [General Design Criteria] 2, 14, 15, 31, and 32 by reducing the probability of 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 outside diameter stress corrosion cracking at the tube support plate elevations is not expected to lead to a steam generator tube rupture event during normal or faulted plant conditions. The most limiting effect would be

a possible increase in leakage during a steam line break event. Excessive leakage during a steam line break event, however, is precluded by verifying that, once the criteria are applied, the expected end of cycle distribution of crack indications at the tube support plate elevations would result in minimal, and acceptable primary to secondary leakage during the event and hence help to demonstrate radiological conditions are less than an appropriate fraction of the 10 CFR [Part] 100 guideline.

The margin to burst for the tubes using the interim repair criteria is comparable to that currently provided by existing technical specifications.

In addressing the combined effects of LOCA [loss-of-coolant accident] + SSE [safe shutdown earthquake] 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 tube support plates may become deformed as a result of lateral loads at the wedge supports at the periphery of the plate due to either the LOCA rarefaction wave and/or 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 [reactor coolant system] flow area through the tubes. The reduction in flow area 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 the partial through-wall cracks in tubes could progress to through-wall cracks during tube deformation or collapse or that short through-wall indications would leak at significantly higher leak rates than included in the leak rate assessments.

Consequently, a detailed leak-before-break analysis was performed and it was concluded that the leak-before-break methodology (as permitted by GDC 4) is applicable to the Farley Unit 1 [RCS] primary loops and, thus, the probability of breaks in the primary loop piping is sufficiently low that they need not be considered in the structural design basis of the plant. Excluding breaks in RCS primary loops, the LOCA loads from the large branch line breaks were analyzed at Farley Unit 1 and were found to be of insufficient magnitude to result in steam generator tube collapse or significant deformation.

Regardless of whether or not leak-before-break is applied to the primary loop piping at Farley, any flow area reduction is expected to be minimal (much less than 1 [percent]) and PCT margin is available to account for this potential effect. Based on analyses results, no tubes near wedge locations are expected to collapse or deform to the degree that secondary to primary in-leakage would be increased over current expected levels. For all other steam generator tubes, the possibility of secondary-to-primary leakage in the event of a LOCA + SSE event is not significant. In actuality, the amount of secondary-to-primary leakage in the event of a LOCA + SSE is expected to be less than that currently allowed, i.e., 500 gpd per steam generator. Furthermore, secondary-to-primary in-leakage for the same pressure differential since the cracks would tend to tighten under a secondary-to-primary pressure differential. Also the presence of the tube support plate is expected to reduce the amount of in-leakage.

Addressing the R.G. 1.83 considerations, implementation of the tube repair criteria is supplemented by 100 [percent] inspection requirements at the tube support plate elevations having outside diameter stress corrosion cracking indications, reduced operating leak rate limits, eddy current inspection guidelines to provide consistency in voltage normalization, and rotating pancake coil inspection requirements for the larger indications left in service to characterize the principal degradation mechanism as outside diameter stress corrosion cracking.

As noted previously, implementation of the tube support plate elevation repair criteria will decrease the number of tubes which must be taken out of service with tube plugs or repaired. The installation of steam generator tube plugs or tube sleeves would reduce the RCS flow margin, thus implementation of the interim repair criteria will maintain the margin of flow that would otherwise be reduced through increased tube plugging or sleeving.

Based on the above, it is concluded that the proposed change does not result in a significant reduction in margin with respect to plant safety as defined in the Final Safety Analysis Report or any bases 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 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

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: December 10, 1993

Description of amendment request: The proposed changes would modify the surveillance frequency of the auxiliary feedwater system pumps and valves from monthly to quarterly. Various administrative changes are being proposed such as 1) punctuation and grammar, 2) correction of system or component names, and 3) capitalization of defined words.

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 Surry 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 frequency of the Auxiliary Feedwater System pumps and valves does not significantly affect the probability of occurrence or consequences of any previously evaluated accidents. The probability of an accident occurrence is not increased in itself by the proposed changes in surveillance testing of the Auxiliary Feedwater System pumps and valves. [A]uxiliary feedwater pump testing is performed through a full-flow test line, thereby not affecting normal plant operations. Changes to the testing therefore do not affect the probability of an accident occurrence. Redundant trains of the Auxiliary Feedwater System remain available during surveillance testing, therefore, the consequences of an accident are unchanged by the proposed changes in the Auxiliary Feedwater System surveillance test frequencies. Quarterly testing of the pumps and valves will continue to assure that the Auxiliary Feedwater System is capable of performing its intended functions for either unit if called upon. Consistent with Generic Letter 93-05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation," the new testing frequency should reduce Auxiliary Feedwater System unavailability resulting from failures and equipment degradation during testing, thereby resulting in improved system reliability. Invoking ASME Section XI as the acceptance criteria for testing the Auxiliary Feedwater Pumps is an enhancement to the acceptance criteria presently specified. Furthermore, the operability requirements for the Auxiliary Feedwater System remain unchanged. Therefore, the probability or consequences of any previously analyzed accident are not increased by the proposed changes in surveillance requirements for the Auxiliary Feedwater System.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Changes in test frequency and acceptance criteria for the Auxiliary Feedwater System pumps and valves do not involve any physical modification of the plant or result in a change in a method of operation. Quarterly testing of the pumps and valves during both operation and shutdown will continue to assure that the Auxiliary Feedwater System will be capable of performing its intended function for either unit. Invoking ASME Section XI acceptance criteria for testing the Auxiliary Feedwater System pumps is an enhancement to the acceptance criteria presently specified. The

operability requirements for the Auxiliary Feedwater System remain unchanged. Furthermore, new or different failure modes are not introduced by these changes in surveillance requirements. Therefore, a new or different type of accident is not created by these proposed changes in surveillance requirements for the Auxiliary Feedwater System.

3. Involve a significant reduction in a margin of safety.

Changing the surveillance requirements of the Auxiliary Feedwater System pumps and valves does not affect any safety limits or limiting safety system settings. System operating parameters are unaffected. This reduced pump and valve testing frequency should reduce Auxiliary Feedwater System unavailability due to actual testing, as well as failures and equipment degradation during testing. Thus reduced testing results in an improved system reliability. Quarterly testing of the pumps and valves during operation and shutdown will continue to assure that the Auxiliary Feedwater System will be capable of performing its intended functions for either unit. Therefore, the reduction in surveillance testing requirements for the Auxiliary Feedwater System pumps and valves does not reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 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: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

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

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: September 17, 1993

Description of amendment request: The proposed amendment would revise the Kewaunee Nuclear Power Plant (KNPP) Technical Specifications (TS) by incorporating technical and administrative changes to TS 4.5, Emergency Core Cooling System and Containment Air Cooling System Tests; TS 4.7, Main Steam Isolation Valves; and Table TS 4.1-3, Minimum Frequencies for Equipment Tests. Changes are proposed for the safety injection (SI) system automatic initiation test; the internal containment spray system (ICS) flow blockage test; the SI, ICS and residual heat removal pumps' periodic tests; the main steam isolation valves' test; and the periodic control rod functional test.

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) TS 4.5.a.1.A

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1) involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of an accident previously evaluated is not increased by the TS change. The changes do not affect any structure, system, or component that initiates an accident analyzed in the Updated Safety Analysis Report (USAR). The probability of an accident occurring is independent of the availability of emergency core cooling components used to mitigate an accident.

The consequences of an accident previously evaluated will not be increased by this TS change. Revising the TS wording to clarify that the pumps may be operated during the periodic surveillance tests does not decrease their availability and therefore does not decrease their ability to mitigate the consequences of accidents previously evaluated in the USAR.

Clarifying the TS wording will not increase the probability or consequences of an accident previously evaluated.

2) create the possibility of a new or different kind of accident from any accident previously evaluated.

A new or different kind of accident from those previously evaluated in the USAR will not be created by this TS change.

The automatic SI actuation is designed to respond to various events analyzed in the USAR which take credit for SI in the event mitigation. The test required by TS 4.5.a.1.A verifies that the valves, pump circuit breakers, and automatic circuitry receive the SI signal in the proper sequence. The procedural prerequisites for the performance of this test ensure that an adequate flow path and overpressure protection are available for the pumps during the test.

This proposed amendment does not alter the plant configuration, operating setpoints, or overall plant performance. It simply provides clarification that the pumps may start and operate in conjunction with the automatic circuitry test; however, the pumps are not required to start and operate for this test. Therefore, the possibility or a new or different accident from any previously evaluated is not created.

3) involve a significant reduction in the margin of safety.

The intent of the TS, i.e., verify each component receives the SI signal in the proper sequence, is not altered by this proposed change. Clarifying that the pumps are allowed to operate during the performance of this surveillance requirement does not adversely affect the ability of the surveillance to demonstrate system actuation. Therefore, this proposed change will not reduce the margin of safety.

(b) TS 4.5.a.2.B

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1) involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change does not affect the probability of an accident previously evaluated. The ICS system is designed to respond to various events analyzed in the USAR which take credit for spray for event mitigation. The probability of an accident occurring is independent of the availability of containment air cooling systems used to mitigate an accident.

This proposed change does not affect the consequences of an accident previously evaluated. The proposed change allows the use of surveillance methods that provide assurance of system capability to perform required design functions in the event of an accident. The configuration of containment air cooling components used to mitigate the consequences of accidents previously evaluated is not being changed.

Therefore, the proposed changes do not increase the probability or consequences of accidents previously evaluated.

2) create the possibility of a new or different kind of accident from any accident previously evaluated.

A new or different kind of accident from those previously evaluated will not be created by this TS change. The proposed changes do not alter the operation, function or modes of plant or equipment operation. Allowing the use of equivalent surveillance methods does not create the probability of a new or different kind of accident.

3) involve a significant reduction in the margin of safety.

This proposed change does not alter the intent of the specification. The use of equivalent test methods to demonstrate component functionality does not reduce the margin of safety. The proposed change does remove a requirement to verify 100% (i.e. 168) of the installed nozzles are unobstructed; however, as noted in the safety evaluation, the original system was overdesigned by approximately 5%. Verification of the number of required nozzles to satisfy design assumptions is assured by the design requirements stated in the USAR. Since the minimum design requirements stated in the USAR are demonstrated by surveillance, the margin of safety is not reduced. Consistent with Section 3.6.6A and associated basis statements of NUREG 1431, "Westinghouse Standard Technical Specifications," Revision 0, performing surveillance at ten year intervals assures the required number of spray nozzles are capable of functioning in the event of an accident. Therefore, there is no adverse effect on public health and safety.

(c) TS 4.5.b.1.B

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1) involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will not increase the probability of accidents previously evaluated. The probability of an accident occurring is independent of the availability of the systems used to mitigate an accident.

The proposed change will not increase the consequences of an accident previously evaluated. The consequences of previously evaluated accidents requiring SI, RHR, and containment spray for event mitigation are independent of the surveillance testing of these systems.

The SI, RHR, and ICS pumps are designed to operate in response to various events analyzed in the USAR which initiate on a SI or high-high containment pressure signal. The proposed change is intended to allow the use of full flow quarterly testing for the ICS pumps and retain the existing quarterly miniflow requirements for the SI and RHR pumps. Surveillance testing verifies proper operation of the components and thereby ensures the consequences of the accident are consistent with the evaluations of the USAR.

Therefore, the proposed change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2) create the possibility of a new or different kind of accident from any accident previously evaluated.

A new or different kind of accident from those previously evaluated will not be created by this TS change. The proposed amendment does not alter the plant configuration, operating setpoints, or overall plant performance.

3) involve a significant reduction in the margin of safety.

The margin of safety will not be reduced by verifying the pump's performance through full flow testing or miniflow testing. The intent of the TS, i.e. verifying no degradation of the ICS pump is satisfied by performing a full flow test on a quarterly basis.

(d) Administrative changes to TS Section 4.5

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated, or

(2) create the possibility of a new or different kind of accident from any accident previously evaluated, or

(3) involve a significant reduction in the margin of safety.

The proposed changes are administrative in nature and do not alter the intent or interpretation of the TS. Therefore, no significant hazards exist.

(e) TS Section 4.7

The proposed changes were reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1) involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of an accident previously evaluated will not be increased by this TS change. The MSIVs are designed to limit the cooldown rate of the RCS and prevent structural damage to the containment, resulting from a SLB incident, by closing to isolate the SGs. The probability of a SLB occurring is independent of MSIV operability.

The consequences of an accident previously evaluated will not be increased by this TS change. This TS change allows testing of the MSIVs when operating temperature and pressure conditions exist that are consistent with the conditions under which the acceptance criteria were generated. The acceptable closure time for the MSIVs is not being modified by this TS change, therefore the consequences of accidents relying on the closure of the MSIVs are not increased.

An evaluation of the Updated Safety Analysis Report (USAR) SLB analyses was performed. The existing core power and reactor coolant system transient analyses assumed initial hot shutdown conditions for all cases analyzed since this represents the most conservative initial conditions for the accident. The analysis of the containment pressure transient also assumed initial hot shutdown conditions (at which time the steam pressure is highest and there is the greatest inventory of water in the steam generator). The containment pressure analysis also conservatively delayed the MSIV closures such that steam flow from both steam generators existed for the first ten seconds. It has been determined that the proposed change in mode for surveillance testing is enveloped by the existing analyses, therefore the consequences of an accident remained unchanged.

2) create the possibility of a new or different kind of accident from any accident previously evaluated.

A new or different kind of accident from those previously evaluated will not be created by this TS change. The proposed amendment does not alter the plant configuration, operating setpoints or overall plant performance.

3) involve a significant reduction in the margin of safety.

The margin of safety will not be reduced by this TS change. Changing the plant conditions under which this surveillance is performed does not alter the acceptance criterion for closure time. Changing the operating mode for the surveillance test is based on engineering judgement which recognizes the importance of demonstrating the capability of the components to perform in a steam environment.

(f) Table TS 4.1-3

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1) involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change will not alter the intent of this specification which is to ensure that the control rods are operable and capable of performing their safety-related function during a USAR analyzed event. Control rods fully inserted into the core are already performing their safety-related function and therefore, by definition, are operable. Revising the specification clarifies that the control rods fully inserted into the core need not be tested. Therefore, the probability or consequences of an accident previously evaluated will not be increased.

2) create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not alter the plant configuration, operating setpoints, or overall plant performance. Therefore, a new or different kind of accident from those previously evaluated will not be created by this TS change.

3) involve a significant reduction in the margin of safety.

Rods which are fully inserted into the core are already performing their safety function and therefore, by definition, are already operable. Exempting these control rods from a partial movement test will not reduce the margin of safety.

(g) Administrative changes to Table TS 4.1-3

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated, or

(2) create the possibility of a new or different kind of accident from any accident previously evaluated, or

(3) involve a significant reduction in the margin of safety.

The proposed changes are administrative in nature and do not alter the intent or interpretation of the TS. Therefore, no significant hazards exist.

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 Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497.

NRC Project Director: John N. Hannon

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: November 23, 1993

Description of amendment request: The proposed amendments would change the operating conditions and limiting conditions for operation for containment systems, and revise corresponding definitions and tests. In

addition, related bases would be updated.

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 amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will add operating conditions and limiting conditions for operation to Section 15.3.6, "Containment System," of the Point Beach Nuclear Plant (PBNP) Technical Specifications (TS). This change also proposes revisions to Sections 15.1, "Definitions," and 15.4.4, "Containment Tests," to support the changes to Section 15.3.6. Additionally, the change will add explanatory text to the bases for Section 15.3.6 to support the revisions.

The proposed revisions will add more specific limiting conditions for operation (LCOs) for containment isolation valves, air locks, overall containment air leakage, and internal pressure. The proposed LCOs state more clearly the requirements for operability and the actions to be taken if the requirements are not met. The proposed LCOs reflect the intent of the Westinghouse Improved Standard Technical Specifications, NUREG-1431. None of the existing LCOs are being removed.

As most of the existing LCOs in Section 15.3.6 do not specify completion times for required actions, Section 15.3.0, "General Considerations," applies. Section 15.3.0 states that if an LCO does not prescribe a time period, the affected unit shall be placed in hot shutdown within three hours of discovering the situation. If the conditions which prompted the shutdown cannot be corrected, the unit shall be placed in cold shutdown within 48 hours of discovering the situation. The proposed revisions to Section 15.3.6 specify appropriate completion times for each LCO to eliminate the need to default to the generic time requirements given in Section 15.3.0. If the required actions and associated completion times are not met, the plant must be brought to at least hot shutdown within 6 hours and to cold shutdown within 36 hours. The slightly longer time to hot shutdown is more than offset by the shorter time to cold shutdown, thereby reducing the consequences of a release from containment. These times are reasonable, based on operating experience, to reach the required plant conditions from full power conditions in an orderly manner without challenging plant systems.

There is no physical change to the facility, its systems, or its operation. Therefore, there is no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendments will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed changes will add operating conditions and limiting conditions for operation to Section 15.3.6, "Containment System," of the Point Beach Nuclear Plant (PBNP) Technical Specifications (TS). This change also proposes revisions to Sections 15.1, "Definitions," and 15.4.4, "Containment Tests," to support the changes to Section 15.3.6. Additionally, the change will add explanatory text to the bases for Section 15.3.6 to support the revisions.

The proposed revisions will add more specific LCOs for containment isolation valves, air locks, overall containment air leakage, and internal pressure. The proposed LCOs state more clearly the requirements for operability and the actions to be taken if the requirements are not met. The proposed LCOs reflect the intent of the Westinghouse Improved Standard Technical Specifications, NUREG-1431. None of the existing LCOs are being removed.

As most of the existing LCOs in Section 15.3.6 do not specify completion times for required actions, Section 15.3.0, "General Considerations," applies. Section 15.3.0 states that if an LCO does not prescribe a time period, the affected unit shall be placed in hot shutdown within three hours of discovering the situation. If the conditions which prompted the shutdown cannot be corrected, the unit shall be placed in cold shutdown within 48 hours of discovering the situation. The proposed revisions to Section 15.3.6 specify appropriate completion times for each LCO to eliminate the need to default to the generic time requirements given in Section 15.3.0. If the required actions and associated completion times are not met, the plant must be brought to at least hot shutdown within 6 hours and to cold shutdown within 36 hours. The slightly longer time to hot shutdown is more than offset by the shorter time to cold shutdown, thereby reducing the consequences of a release from containment. These times are reasonable, based on operating experience, to reach the required plant conditions from full power conditions in an orderly manner without challenging plant systems.

There is no physical change to the facility, its system, or its operation. Thus, a new or different kind of accident cannot occur.

3. The proposed amendments will not involve a significant reduction in the margin of safety.

The proposed changes will add operating conditions and limiting conditions for operation to Section 15.3.6, "Containment System," of the Point Beach Nuclear Plant (PBNP) Technical Specifications (TS). This change also proposes revisions to Sections 15.1, "Definitions," and 15.4.4, "Containment Tests," to support the changes to Section 15.3.6. Additionally, the change will add explanatory text to the bases for Section 15.3.6 to support the revisions.

The proposed revisions will add more specific LCOs for containment isolation valves, air locks, overall containment air leakage, and internal pressure. The proposed LCOs state more clearly the requirements for operability and the actions to be taken if the requirements are not met. The proposed LCOs reflect the intent of the Westinghouse Improved Standard Technical Specifications, NUREG-1431. None of the existing LCOs are being removed.

As most of the existing LCOs in Section 15.3.6 do not specify completion times for required actions, Section 15.3.0, "General Considerations," applies. Section 15.3.0 states that if an LCO does not prescribe a time period, the affected unit shall be placed in hot shutdown within three hours of discovering the situation. If the conditions which prompted the shutdown cannot be corrected, the unit shall be placed in cold shutdown within 48 hours of discovering the situation. The proposed revisions to Section 15.3.6 specify appropriate completion times for each LCO to eliminate the need to default to the generic time requirements given in Section 15.3.0. If the required actions and associated completion times are not met, the plant must be brought to at least hot shutdown within 6 hours and to cold shutdown within 36 hours. The slightly longer time to hot shutdown is more than offset by the shorter time to cold shutdown, thereby reducing the consequences of a release from containment. These times are reasonable, based on operating experience, to reach the required plant conditions in an orderly manner without challenging plant systems.

There is no physical change to the facility, its systems, or its operation. Thus, a significant reduction in a margin of safety cannot occur. In fact, by adding more specific LCOs for containment integrity and allowing for a more orderly unit shutdown when required, an increased margin of safety may be realized.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

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 22, 1993, as revised October 28, 1993.

Brief description of amendment: The amendment (1) removes the title-specific organizational listing of the Plant Nuclear Safety Committee (PNSC) membership in TS 6.5.2.2 and replaces it with a functional description of the PNSC composition, (2) adds specific member qualification requirements in TS 6.5.2.3, and (3) revises Section 6.5.2.2 to stipulate that PNSC members shall be designated by the plant general manager and shall be limited in number to between seven and nine members.

Date of issuance: December 28, 1993

Effective date: December 28, 1993

Amendment No.: 41

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: November 24, 1993 (58 FR 62152) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 28, 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 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois; Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois; and Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendments: November 10, 1993

Brief description of amendments: The amendments revised the "Radioactive Effluent Controls Program" described in Section 6.0 of the Braidwood, Byron, LaSalle, and Zion Technical Specifications (TS) to be consistent with the revised 10 CFR Part 20. The changes specifically address the limitation on radioactive material release of liquid and gaseous effluents.

Date of initial notice in Federal Register: November 24, 1993 (58 FR 62152) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 30, 1993, and an environmental assessment noticed in the Federal Register December 30, 1993 (58 FR 69412).

Date of issuance: December 30, 1993

Effective date: December 30, 1993

Amendment Nos.: For Byron, 57 and 57; for Braidwood, 45 and 45; for LaSalle, 93 and 77; for Zion, 152 and 140.

Facility Operating License Nos. NPF-37, NPF-66, NPF-72, NPF-77, NPF-11, NPF-18, DPR-39, and DPR-48. The amendments revise the Technical Specifications. No significant hazards consideration comments received: No

Local Public Document Room locations: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481; for LaSalle, the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348; for Zion, the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: June 2, 1993

Brief description of amendments: The amendments would include Commonwealth Edison Company's Topical Report NFSR-0091, in Section 6.6 of the Technical Specifications. Topical Report NFSR-0091 has been reviewed and approved by the NRC staff.

Date of issuance: December 28, 1993

Effective date: Immediately, to be implemented within 45 days.

Amendment Nos.: 124 and 118

Facility Operating License Nos. DPR-19 and DPR-25. The 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 28, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

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: May 5, 1993, as revised by letter dated August 27, 1993, and supplemented by letter dated December 21, 1993.

Brief description of amendment: The amendment revises surveillance intervals for the Containment Pressure Channels, the Steam Pressure Channels, and the Reactor Coolant Temperature Channels 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 28, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 167

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 13, 1993 (58 FR 52981) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 28, 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.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: March 23, 1993

Brief description of amendment: The amendment revises the operability requirements and the surveillance frequency for periodic testing of suppression chamber (torus) to drywell vacuum breakers. All, vice 10 of 12, vacuum breakers are required to be operable and periodic testing will be done each cold shutdown (if not performed within the last 92 days) vice monthly.

Date of issuance: January 4, 1994

Effective date: January 4, 1994, with full implementation within 45 days.

Amendment No.: 96

Facility Operating License No. NPF-43. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 26, 1993 (58 FR 30191) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 4, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: July 22,1993

Brief description of amendment: The amendment relocated the containment isolation valve table from the containment systems specification to plant procedures, in accordance with Generic Letter 91-08.

Date of issuance: December 22, 1993

Effective date: December 22, 1993

Amendment No.: 154

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 1, 1993 (58 FR 46231) 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: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

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: September 23, 1993

Brief description of amendment: The amendment deleted the surveillance requirement for jet pump differential pressure measurement for operating loops when power is less than or equal to 25% rated thermal power (RTP) and replaces the requirement with a provision which, during operation at more than 25% RTP, allows continued operation if the jet pump surveillance is performed within 24 hours after RTP exceeds 25% or within 4 hours after an associated recirculation loop is placed in service.

Date of issuance: January 4, 1994

Effective date: January 4, 1994

Amendment No: 110

Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** October 13, 1993 (58 FR 52984) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 4, 1994. 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.

GPU Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station, Unit No. 2, (TMI-2), Dauphin County, Pennsylvania

Date of application for amendment: August 16, 1988, as supplemented September 19, 1988; February 9, March 31, June 26, October 10, and November 22, 1989; June 21, October 15, and November 7, 1990; February 19, April 19, June 21, August 28, and October 9, 1991; January 13, 1992; January 18, May 28, October 24, and November 12, 1993.

Brief description of amendment: This amendment replaces the TMI-2 Appendix A and B Technical Specifications with the Post-Defueling Monitored Storage (PDMS) Technical Specifications to facilitate long term storage of the facility.

Date of issuance: December 28, 1993

Effective date: December 28, 1993

Amendment No.: 48

Facility Operating License No. DPR-73: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 25, 1991 (56 FR 19128). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 28, 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.

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 application for amendment: October 21, 1993

Brief description of amendments: The amendments change the technical specifications by revising Technical Specification 6.5.2.8, "Audits," by removing the prescriptive frequency of the required audits. The frequency has been removed in order to allow performance-based inspection frequencies. This is consistent with NUREG-1431, "Standard Technical Specifications - Westinghouse Plants," September 1992.

Date of issuance: December 27, 1993

Effective date: December 27, 1993, to be implemented within 10 days of issuance.

Amendment Nos.: Unit 1 - Amendment No. 56; Unit 2 - Amendment No. 45

Facility Operating License Nos. NPF-76 and NPF-80. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 10, 1993 (58 FR 59752). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 27, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

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: September 15, 1993, as supplemented by letter dated November 30, 1993.

Brief description of amendments: The amendments consist of changes to the technical specifications to implement the new requirements of 10 CFR Part 20 which were issued on May 21, 1991. The changes are either editorial changes that provide consistency between the technical specifications and the revised 10 CFR Part 20 or are changes to the effluent limits cross referenced to the former 10 CFR Part 50, Appendix I limits.

Date of issuance: December 30, 1993

Effective date: December 30, 1993, to be implemented on January 1, 1994.

Amendment Nos.: Unit 1 - Amendment No. 57; Unit 2 - Amendment No. 46

Facility Operating License Nos. NPF-76 and NPF-80: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 27, 1993 (58 FR 57854) The November 30, 1993, submittal provided additional clarifying information and did not change the original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 30, 1993, and an environmental assessment noticed in the **Federal Register** December 27, 1993 (58 FR 68445). No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: July 28, 1993

Brief description of amendment: The amendment revised the Technical Specifications by incorporating the new requirements of 10 CFR Part 20. The revision includes changing the release rate limits for gaseous and liquid effluents, the monitoring and reporting requirements, the definitions and the record retention requirements.

Date of issuance: December 27, 1993

Effective date: December 27, 1993

Amendment No.: 194

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 15, 1993 (58 FR 48384) The Commission's related evaluation of the amendment is contained in an Environmental Assessment dated December 23, 1993 (58 FR 68179), and a Safety Evaluation dated December 27, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: September 10, 1993, as supplemented November 12, 1993

Brief description of amendment: The amendment changes the Technical Specifications to provide consistency with the guidance of Generic Letter 90-09 that relates to the revision of the surveillance requirements for snubbers.

Date of issuance: December 28, 1993

Effective date: December 28, 1993

Amendment No.: 71

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 29, 1993 (58 FR 50969). The November 12, 1993, letter provided clarifying information 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 28, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: July 7, 1993 (Reference LAR 93-05)

Brief description of amendments: The amendments revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 by changing the gaseous effluent limit of TS 6.8.4.g., "Radioactive Effluent Controls Program," and the Bases for TS 3/4.11.1.4, "Liquid Holdup Tanks," to conform to recent revisions to 10 CFR 20.

Date of issuance: January 6, 1994

Effective date: January 6, 1994

Amendment Nos.: 84, 85

Facility Operating License Nos. DPR-80 and DPR-82 The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 18, 1993 (58 FR 43930) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 6, 1994, and an environmental assessment noticed in the **Federal Register** January 5, 1994 (59 FR 606). No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: October 19, 1993

Brief description of amendment: The amendment revises Technical Specification (TS) 6.5.2.2 to change the membership of the Safety Review Committee (SRC). The proposed amendment also modifies TS 6.5.2.10 to change the time limit for providing the Executive Vice President - Nuclear Generation with SRC meeting minutes and reports of review.

Date of issuance: December 28, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 141

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 10, 1993 (58 FR 59755) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 28, 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.

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 24, 1993

Brief description of amendment: The amendment revises Technical Specification Table 4.2-2, "Minimum Test and Calibration Frequency for Core and Containment Cooling Systems," to delete the requirement for calibration of time delay relays and timers in the logic system functional test for the containment cooling subsystem.

Date of issuance: December 28, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 201

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 24, 1993 (58 FR 62155) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 28, 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.

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: October 18, 1993

Brief description of amendment: The amendment modifies Technical Specification (TS) 6.5.2.2 to change the membership requirements for the Safety Review Committee (SRC). The amendment also modifies TS 6.5.2.10 to change the time limit for providing the Executive Vice President - Nuclear Generation with SRC meeting minutes and reports of review.

Date of issuance: December 28, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 202

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 24, 1993 (58 FR 62156) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 28, 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.

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 24, 1993

Brief description of amendment: The amendment makes miscellaneous administrative changes including typographical and editorial corrections to the Appendix A Technical Specifications (TSs) and Appendix B Radiological Effluent TSs. These administrative changes do not result in any substantive changes to the TSs. The erroneous surveillance requirement in Appendix A, TS 4.3.C.3.b, has also been deleted.

Date of issuance: December 29, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 203

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 24, 1993 (58 FR 62155) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 29, 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 No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: April 1, 1993, as supplemented on July 2, 1993.

Brief description of amendment: This amendment revises Technical Specifications surveillance requirements to extend the surveillance test intervals and allowed out-of-service times for the emergency core cooling system and reactor core isolation cooling system actuation instrumentation.

Date of issuance: December 27, 1993

Effective date: As of the date of issuance, and shall be implemented within 60 days of the date of issuance.

Amendment No.: 62

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1993 (58 FR 25864) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 27, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Southern California Edison Company, et al, Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: May 12, 1993, and supplemented June 30, and November 23, 1993. The supplemental information submitted June 30, and November 23, 1993, did not affect the proposed no significant hazards consideration determination.

Brief description of amendment: This amendment adds a new license condition 2.C.(9) concerning the San Onofre, Unit 1, Fire Protection Program. The licensee proposed this new license condition in accordance with Generic Letters 86-10 and 88-12, and as part of a request to replace in its entirety the existing set of operating technical specifications incorporated in

Facility Operating License No. DPR-13 as Appendix A with a set of permanently defueled technical specifications.

Date of issuance: December 28, 1993

Effective date: As of the date of issuance, to be fully implemented no later than 120 calendar days from the date of issuance of this amendment.

Amendment No.: 155

Facility Operating License No. DPR-13: The amendment adds a new license condition and replaces in its entirety the existing set of Technical Specifications with a set of Permanently Defueled Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34093) and supplemented July 7, 1993 (58 FR 36445). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 28, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

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: September 13, 1993

Brief description of amendments: The amendments change the Technical Specifications to eliminate the low feedwater reactor trip and reduce the steam generator low-low water level reactor trip and safeguard actuation setpoint from 17 percent to 15 percent of narrow range span with a corresponding reduction in allowable value from 16 percent to 14.4 percent.

Date of issuance: December 29, 1993

Effective date: December 29, 1993
Amendment Nos.: 104 and 97
Facility Operating License Nos. NPF-2 and NPF-8. Amendments revise the Technical Specifications.
Date of initial notice in **Federal Register:** November 24, 1993 (58 FR 62157) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 29, 1993. No significant hazards consideration comments received: No
Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: June 16, 1993; supplemented November 10, 1993 (TS 93-05)
Brief description of amendments: The amendments change the lifting force specified in the surveillance requirements for the ice condenser intermediate deck doors to less restrictive values that are based on Westinghouse Electric Corporation analysis.
Date of issuance: January 3, 1994
Effective date: January 3, 1994
Amendment Nos.: 175 - Unit 1 and 166 - Unit 2
Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.
Date of initial notice in **Federal Register:** August 4, 1993 (58 FR 41513) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 3, 1994. No significant hazards consideration comments received: None
Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: August 30, 1993
Brief description of amendment: This amendment adds a Technical Specification (TS) Action statement, which applies when both containment hydrogen dilution systems are inoperable, and revises the associated TS bases section.
Date of issuance: December 30, 1993
Effective date: December 30, 1993
Amendment No. 183
Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** October 13, 1993 (58 FR 52995) The commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 30, 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.

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: September 10, 1992, as supplemented by letter dated March 17, 1993.
Brief description of amendment: The amendments change the "Z" value for the reactor coolant pump (RCP) undervoltage relay setpoint and "allowable value" for the RCP underfrequency relay setpoint in Technical Specification Table 2.2-1.
Date of issuance: December 23, 1993
Effective date: December 23, 1993, to be implemented within 30 days of issuance.
Amendment Nos.: Unit 1 - Amendment No. 22; Unit 2 - Amendment No. 8
Facility Operating License Nos. NPF-87 and NPF-89: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 14, 1993 (58 FR 19488). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 23, 1993. No significant hazards consideration comments received: No
Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P. O. Box 19497, Arlington, Texas 76019.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: November 3, 1992, as clarified on December 4, 1992
Brief description of amendment: The amendment revises the Technical Specification Table 4.3-1, "Reactor Trip System Instrumentation Surveillance Requirements," Note 5, to reflect that integral bias curves, rather than detector plateau curves, are used to calibrate the source range instrumentation.
Date of issuance: December 28, 1993
Effective date: December 28, 1993
Amendment No.: 87
Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** January 6, 1993 (58 FR 601) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 28, 1993. No significant hazards consideration comments received: No.
Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: February 25, 1992
Brief description of amendment: The amendment revises the Technical Specification Section 6 to change General Manager, Nuclear Operations to Vice President, Nuclear Operations.
Date of issuance: December 28, 1993
Effective date: December 28, 1993
Amendment No.: 88
Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 29, 1992 (57 FR 18179) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 28, 1993. No significant hazards consideration comments received: No.
Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of application for amendments: September 29, 1993
Brief description of amendments: These amendments modify the required inspection frequency of the low pressure turbine blades and make administrative changes to the Technical Specifications.
Date of issuance: January 5, 1994
Effective date: January 5, 1994
Amendment Nos.: 184 and 184
Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** October 27, 1993 (58 FR 57860) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated

January 5, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301 Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks Manitowoc County, Wisconsin

Date of application for amendments: November 24, 1992

Brief description of amendments: The amendments modified Technical Specification (TS) Section 15.3.10 (Control Rod and Power Distribution Limits). These changes removed reference to the hot shutdown condition and made the section only applicable during an approach to criticality. The shutdown requirements are still governed by the existing shutdown margin requirements specified in Section 15.3.10.A.3.

Date of issuance: January 3, 1994

Effective date: January 3, 1994

Amendment Nos.: 144 and 148

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 3, 1993 (58 FR 12270) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 3, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 21, 1993

Brief description of amendment: The amendment revises Technical Specification 6.3.1 related to the qualification requirements for the position of Manager Operations and revises Technical Specification 6.5.1.2 to delete specific title designations from the Plant Safety Review Committee (PSRC) membership. The qualifications for the Manager Operations are revised to require that the individual holds a senior reactor operator license or previously held a senior reactor operator license at a similar unit (pressurized water reactor). The revision to the PSRC membership requirements replaced a list of specific manager titles with a phrase designating managers responsible for certain technical areas.

Date of issuance: January 3, 1994

Effective date: January 3, 1994, to be implemented within 30 days of issuance.

Amendment No.: 70

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 24, 1993, (58 FR 62158) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 3, 1994. No significant hazards consideration comments received: No.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Dated at Rockville, Maryland, this 10th day of January, 1994

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Acting Director, Division of Reactor Projects - III/IV/V, Office of Nuclear Reactor Regulation

[Doc. 94–1100 Filed 1–18–94; 8:45 am]

BILLING CODE 7590–01–F

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 5.67, "Material Control and Accounting for Uranium Enrichment Facilities Authorized To Produce Special Nuclear Material of Low Strategic Significance," provides guidance on a material control and accounting program that is acceptable to the NRC staff for a uranium enrichment facility.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted 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.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402–9328, telephone (202) 512–2249 or (202) 512–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 20th day of December 1993.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 94–1218 Filed 1–18–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Co., Brunswick Steam Electric Plant, Units 1 and 2

Exemption

I

The Carolina Power & Light Company (the licensee) is the holder of Facility Operating License Nos. DPR–71 and DPR–62 which authorize operation of the Brunswick Steam Electric Plant, Units 1 and 2 (BSEP or the facility), respectively, at steady state power levels not in excess of 2436 megawatts thermal. The facility consists of two boiling water reactors located at the licensee's site in Brunswick County, North Carolina. The Facility Operating License provides, among other things, that BSEP is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

II

Section III.A.5.(b)(2) of Appendix J establishes an acceptance criterion for the total measured containment leakage rate, L_{am}, measured at the peak containment internal pressure, P_a, calculated for the design basis accident. Since the periodic Type A tests at BSEP are conducted at P_a, the acceptance criterion for these tests is that L_{am} be less than 75 percent of the maximum allowable leakage rate, L_a, as specified in Technical Specification 4.6.1.2.b; this value is 0.5 percent by weight of the

containment air per 24 hours. Section III.A.6(b) of Appendix J requires that, if two consecutive periodic Type A tests fail to meet the criteria in section III.A.5.(b)(2), notwithstanding the periodic retest schedule of section III.D, a Type A test must be performed at each plant shutdown for refueling, or approximately every 18 months, whichever occurs first, until two consecutive Type A tests meet the criteria in section III.A.5.(b).

The exemption would allow both BSEP units to return to a normal testing frequency so the next Unit 1 Type A test would then be performed during the Reload 9 outage scheduled for March 1995 and the next Unit 2 test during the Reload 12 outage scheduled for March 1997.

In its letter dated October 19, 1993, requesting a one-time exemption from the schedular requirements of Section III.A.6.(b) of Appendix J, the licensee stated that each unit is currently in an accelerated testing condition due to as-found testing failures which, except for the 1987 Unit 1 test, were within L_a leakage limits but exceeded the current 0.75 L_a leakage limit of Section III.A.5.(b)(2) of Appendix J to 10 CFR Part 50. The licensee has based its request on the fact that the as-left limit of 0.75 L_a was specified in Appendix J to provide a margin for possible deterioration of the containment leak-tightness during the interval between Type A tests. The licensee states that this margin for deterioration is no longer needed when the as-found Type A test is performed. The licensee believes that it should be technically acceptable to use L_a as the as-found Type A test acceptance criterion. The license provides further justification in that the Type A test are normally terminated as soon as the acceptance criteria are satisfied for economic reasons. The licensee believes that this process may result in leak rates that may not be indicative of actual primary containment leakage and that, if the test durations were extended, the quantified leakage would be less than that reported to the NRC.

The as-found Type A condition is represented by the leakage rate calculated by adding the differences between the as-found and as-left measured local leakage rates from each Type B and Type C test to the leakage rate measured in the Type A test. These Type B and Type C tests are usually conducted prior to conducting the Type A test. In the event that potentially excessive leakage paths are identified that would interfere with the satisfactory completion of a period Type A test and such paths are isolated during the test, the Type B or Type C as-found leakage rates measured on the isolated penetrations after the completion of the Type A test are added into the Type A as-found leakage rate total. The as-left Type A condition is represented by the periodic Type A leakage rate after any required repairs and/or adjustments are made.

The staff reviewed the history of the Type A tests conducted at BSEP and found that the last two Type A as-found test results have been failures as noted below:

Date of test	As-found leak rate (% wt. per day)	As-left leak rate (% wt. per day)	0.75 L_a limit (% wt. per day)
Unit 1 Type A Test History			
1987	Greater than L_a	.2150	0.375
1991	.4956	.3408	.375
Unit 2 Type A Test History			
1991	.4042	.3552	.375
1991	.4420	.3511	.375

The staff noted that the last two test results for each unit has exceeded the acceptance criterion of 0.75 L_a required by Appendix J. Except for the 1987 test on Unit 1, the test results did not exceed the maximum allowable rate of 1.0 L_a. The licensee indicated the 1987 Unit 1 failure was caused by a containment penetration failure identified during the local leak rate testing. The licensee also stated the primary reason for failing the as-found limits is considered to be the leakage savings additions from Type C testing of valves and the Type B testing of penetrations, where leakage rates of repaired or replaced components are added into the integrated Type A test results.

The licensee stated the major contributors to the 1987 Unit 1 test failure were from (1) penetration X9A, Feedwater Loop A Injection, and (2) penetration X54E, Containment Monitor, CAC–AT–1262, Discharge. The licensee further stated the corrective actions to repair several valves associated with these penetrations were completed, and if the leakage from these penetrations was not considered, the as-found leakage savings would have been 0.049% wt. per day. For the 1991 Unit 1 Type A test, the majors contributors were stated to be (1) penetration X9B, Feedwater Loop B Injection, (2) penetration X14, Reactor Water Cleanup (RWCU) Suction Line, and (3) penetration X10, Reactor Core Isolation Cooling Turbine Steam Supply Line. These penetrations were repaired by the replacement or repair of affected valves.

The licensee stated that the major contributors to the 1991 Unit 2 test failure were from (1) penetration X220, Torus Purge to Standby Gas, and (2) penetration X8, Main Steam Line Drain. The major contributors to the 1992 Unit 2 failure were from (1) penetration X14, RWCU Suction, and (2) penetration X12, Residual Heat Removal Shutdown Cooling Suction. The licensee conducted repairs to several valves to correct the leakage through each of these penetrations.

The NRC staff has reviewed the licensee's request and basis and finds that there is adequate assurance that there will not be any significant undetected degradation in the primary containment leakage during the next Type A test interval in that the primary contributors to potentially excessive leakage paths will be measured during the required Type B and Type C tests. These latter tests will be conducted at least once during each 18-month refueling outage, but in no case at intervals greater than 2 years (Sections III.D.2 and III.D.3 of Appendix J to 10 CFR Part 50).

The staff agrees that the subject exemption request does not pose any undue risk to the public health and safety in that (1) the last as-left Type A test leakage rates were below 0.75 L_a and (2) the licensee will continue to demonstrate that the test results from the Type B and C local leak rate tests will be no greater than their specified values in the Brunswick Technical Specifications prior to restart after a refueling outage. Any potentially excessive leakage paths will continue to be repaired and/or adjusted prior to restart and at intervals of 18 months, thereby continuing to ensure the integrity of the containment. Based on these considerations, the staff concludes that the licensee's request for a one-time exemption to Section III.A.6(b) of Appendix J to 10 CFR part 50 will ensure compliance with the maximum permissible containment leakage rate specified in the Brunswick Technical Specifications and, thus, should be granted.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption;

namely, that the application of this regulation is not necessary to achieve the underlying purpose of the rule. The underlying purpose of the rule is to provide a margin for possible deterioration of the containment leak-tightness during the interval between Type A tests. The Licensee has provided adequate assurance, as set forth above, that the underlying purpose of the rule will be achieved in that the primary contributors to potentially excessive leakage paths will be measured during Type B and C testing. Further, the staff also finds that the protection provided by the licensee against potentially excessive containment leakage will not present an undue risk to the public health and safety. The application of the regulation is not necessary to assure the integrity of the containment in the event of a postulated design basis loss-of-coolant accident.

The Commission hereby grants the one-time exemption with respect to the requirements of 10 CFR part 50, Appendix J, Section III.A.5.(b)(2), to return both BSEP units to a normal Type A test frequency. Should two consecutive periodic Type A tests fail to meet the criteria in section III.A.5.(b)(2) in the future, notwithstanding the periodic retest schedule of section III.D, the licensee will be required to take the appropriate actions as specified in Section III.A.6(b) of Appendix J to 10 CFR 50.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of the subject exemption will not have a significant effect on the quality of the human environment (59 FR 1569).

The Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 11th day of January 1994.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–1219 Filed 1–18–94; 8:45 am]

BILLING CODE 7590–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability, et al.

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the properties known as Forest Lakes Unit 3, located in LaPlata County, Colorado, and the Springfield Property, located in Travis County, Texas, are affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of all or any portion of these properties may be mailed or faxed to the RTC until April 19, 1994.

ADDRESSES: Copies of detailed descriptions of these properties, including maps, can be obtained from or are available for inspection by contacting the following person:

Forest Lakes Unit 3: Mr. Marsha Johnson, Resolution Trust Corporation, c/o AM&G Asset Management, 4041 North Central Avenue, Suite 405, Phoenix, AZ 85012, (602) 285–1262; Fax (602) 285–0335.

Springfield Property: Mr. Steven Reid, Resolution Trust Corporation, Dallas Field Office, 3500 Maple Avenue, Reverchon Plaza, Suite 300, Dallas, TX 75219–3935, (214) 443–4738; Fax (214) 443–6574.

SUPPLEMENTARY INFORMATION: The Forest Lakes Unit 3 property is located on County Road 501 approximately seven (7) miles north of the town of Bayfield, Colorado. The site contains archaeological resources and is adjacent to the San Juan National Forest. The Forest Lakes Unit 3 property consists of approximately 286 acres of undeveloped land and unfinished residential lots. The property has mountainous terrain with vegetation consisting of a mixture of ponderosa pine, spruce, aspen, pinon and juniper as well as native grasses and vegetation.

The Springfield property is located approximately three (3) miles east of Interstate Highway 35 along East William Cannon Boulevard in the southeast sector of Austin, Texas. The southern boundary of the property is Colton-Bluff Springs Road, Salt Springs Drive abuts the property boundary on the west, and Scenic Loop Road is to the east. The Springfield property contains an undeveloped floodplain and abuts McKinney Falls State Park along the property's northern boundary. The property consists of approximately 344 acres of undeveloped land with habitat for several endemic species of wildlife. The properties are covered properties within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of these properties must be received on or before April 19, 1994 by the Resolution Trust Corporation at the appropriate address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form:

Notice of Serious Interest

RE: [insert name of property]

Federal Register Publication Date:

[insert Federal Register publication date]

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the Internal Revenue Service regarding the organization's status under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 170(h)(3)).

3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price and method of financing).

4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.

5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects: Environmental protection.

Dated: January 12, 1994.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 94–1201 Filed 1–18–94; 8:45 am]

BILLING CODE 6714–01–M

Coastal Barrier Improvement Act; Property Availability

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Highland Acres, located in Passaic County, New Jersey is affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of all or any portion of the property may be mailed or faxed to the RTC until April 19, 1994.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person:

Mr. Greg Zahm, Resolution Trust Corporation, Valley Forge Field Office, Post Office Box 1500, Valley Forge, PA 19482–1500, (215) 631–3505; FAX (215) 631–3703.

SUPPLEMENTARY INFORMATION: The Highland Acres property is located at 1735 Union Valley Road, West Milford, New Jersey. The property is undeveloped and consists of approximately 211.2 acres of woodland and farmland. The site is bisected by Union Valley Road. The Highland Acres property is bounded on the southeast by Belcher Creek and the site contains wetlands, undeveloped floodplains, and is located within the boundary of a sole source aquifer. The property adjoins land managed by the City of Newark for watershed conservation purposes and Camp Hope, a Passaic County managed facility on the northeast. The property is covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of the property must be received on or before April 19, 1994 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form:

Notice of Serious Interest

RE: [insert name of property]

Federal Register Publication Date: _____

[insert Federal Register publication date]

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the Internal Revenue Service regarding the organization's status under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 170(h)(3)).
3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price and method of financing).
4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.
5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects: Environmental protection.

Dated: January 12, 1994.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 94–1202 Filed 1–18–94; 8:45 am]

BILLING CODE 6714–01–M

Coastal Barrier Improvement Act; Property Availability

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the properties known as Prairie Oaks Ranch, located in Sacramento County, and Rancho San Diego, located in San Diego County, California, are affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notice of serious interest to purchase or effect other transfer of all or any portion of these properties may be mailed or faxed to the RTC until April 19, 1994.

ADDRESSES: Copies of detailed descriptions of these properties, including maps, can be obtained from or are available for inspection by contacting the following person:

Mr. E. Ted Hine, Resolution Trust Corporation, California Field Office, 4000 MacArthur Boulevard, Third Floor, East Tower, Newport Beach, CA 92660–2516, (714) 263–4648; Fax (714) 852–7770.

SUPPLEMENTARY INFORMATION: The Prairie Oaks Ranch property is located north of U.S. Highway 50 and east of Prairie City Road in the City of Folsom, California. The property is bisected by Blue Ravine Road and Riley Street. The site contains wetlands, an undeveloped floodplain, and is adjacent to Clifford Reservoir and a park managed by the City of Folsom. The Prairie Oaks Ranch property consists of approximately 405 acres of undeveloped land with rolling terrain and numerous groves of oaks. The property contains a portion of Willow Creek which meanders through the site and approximately 31 acres of wetlands.

The Rancho San Diego property is located approximately fifteen (15) miles east of downtown San Diego and generally centered around the intersection of Campo Road (Highway 94) and Jamacha Road. The property is situated in an undeveloped floodplain, contains habitat for the Federally-listed endangered least Bell's vireo and is adjacent to Sweetwater Reservoir and Steel Canyon Park. The Rancho San Diego property consists of approximately 2,129 acres of undeveloped land and the topography is characterized by steep slopes rising from both sides of the Sweetwater River which traverses the property. These properties are covered properties within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of these properties must be received on or before April 19, 1994 by the Resolution Trust Corporation at the appropriate address stated above.

The entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government;
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form:

Notice of Serious Interest

RE: [insert name of property]

Federal Register Publication Date: _____

[insert Federal Register publication date]

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the Internal Revenue Service regarding the organization's status under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 170(h)(3)).
3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price and method of financing).
4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended

conservation use(s) as stated in its notice of serious interest.

5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects: Environmental protection.

Dated: January 12, 1994.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 94–1203 Filed 1–18–94; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33456; File No. SR–Amex–93–44]

January 11, 1994.

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Exchange Fee Increases

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 23, 1993, the American Stock Exchange, Inc. ("Amex" 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 Exchange is increasing its equity regulatory fee and CRD [1] fees, as well as adopting a new options floor brokerage fee.

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 Exchange is increasing several charges imposed on members and member organizations. The equity regulatory fee charged to clearing firms (based on cleared dollar value) is being raised from $.000045 per side to $.000050 per side, an increase of $.000005 per side. The fee charged to member firms for registering sales personnel through the CRD System is being raised $5.00 in each category as listed below. Both the equity regulatory fee and the CRD fees were last increased in 1991.[2]

Category	Current	Proposed
Initial registration	$40	$45
Renewals	20	25
Transfers	25	30
Terminations	15	20

The Exchange is also adopting a new options floor brokerage fee that will be payable by clearing firms of $.015 per contract side for all customer and non-market making member firm principal activity. The Chicago Board Options Exchange and the Philadelphia Stock Exchange both impose similar charges at higher levels.

The Exchange is revising the fees it charges to members and member firms as outlined above in order to remain competitive with other equity and options exchanges offering similar services.

2. Statutory Basis

The Exchange fee revisions are consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(4) in particular in that they are intended to assure the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange fee revisions will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the Exchange fee revisions.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the 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 Amex. All submissions should refer to File No. SR–Amex–93–44 and should be submitted by February 9, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1167 Filed 1–18–94; 8:45 am]

BILLING CODE 8010–01–M

[1] The CRD system is a computer data base that provides current registration information for every registered representative that is associated with a member of the National Association of Securities Dealers, Inc. and/or is licensed in a state that participates in the CRD system.

[2] *See* Securities Exchange Act Release No. 28794 (January 17, 1991). 56 FR 2964 (January 25, 1991).

[Release No. 34–33457; File No. SR–DTC–93–13]

Self-Regulatory Organizations; The Depository Trust Company; Filing of Proposed Rule Change Relating to an Increase in the Fixed Net Debit Cap Employed in The Depository Trust Company's Same-Day Funds Settlement System

January 11, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 1, 1993, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–93–13) as described in Items I, II, and III below, which Items have been prepared primarily by DTC. 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 the Proposed Rule Change

The proposed rule change filed by DTC consists of an increase of $187 million in the fixed net debit cap employed in DTC's Same-Day Funds Settlement ("SDFS") system. Such increase will applicable only to the net debits of SDFS participants that elect to share DTC's costs of increasing its external committed line of credit.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC 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

DTC employs a fixed net debit cap in its SDFS system in order to assure that DTC's liquidity resources are sufficient to complete settlement if due to insolvency or, more likely, a temporary operational problem, an SDFS participant were to fail to settle its net debit obligation.[2] The fixed net debit cap is set at 75% of: (1) the aggregate cash deposits to the SDFS participants fund and (2) DTC's internal and external lines of credit. The cap is currently set at $387 million.

DTC has on deposit approximately 72% of the commercial paper ("CP") outstanding in the U.S. and expects that virtually all CP outstanding in the U.S., except CP that is in direct issuers' proprietary book-entry systems, will be included in DTC's CP program sometime in 1994. DTC plans to add other types of money market instruments ("MMI") to its SDFS system within the next year beginning with a new program for institutional certificates of deposit.[3]

DTC is concerned that with the anticipated increase in volume the fixed net debit cap at its current level could have the undesirable effect of temporarily blocking substantial numbers of book-entry deliveries. In order to ease the flow of transactions through the system, DTC has decided to increase its external committee line of credit by $250 million and thereby raise the fixed net debit cap that will be applied to the net debits of SDFS participants that elect to share DTC's cost of obtaining the increased line of credit. At this time for twenty-two SDFS participants, the fixed net debit cap is the operative cap limiting their net debits.

DTC believes that the securities resources available to it to collateralize any borrowing it should have to make under the increased line of credit are more than adequate.[4]

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition 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

DTC has not solicited or received comments on the proposed rule change. Informally, a number of SDFS participants to which the increased fixed net debit cap will be available have expressed support for the proposal.

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 such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR–DTC–93–13 and should be submitted February 9, 1994.

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[1] 15 U.S.C. 78s(b)(1).

[2] Each Participant's net debit is limited throughout the processing day by a net debit cap that is the lesser of: (1) the adjustable cap, that is a multiple of the participant's deposits to the SDFS participants fund, or (2) the fixed net debit cap.

[3] Securities Exchange Act Release No. 33126 (November 1, 1993) 58 FR 59283 [File No. SR–DTC–93–12] (notice of proposed rule change to implement a MMI program). Under the MMI program, DTC also proposes to make eligible municipal CP and bankers' acceptances.

[4] DTC's line of credit agreement provides that any borrowing may be collaterlized by collateral securities in the account of a failing participant as well as by securities that have been deposited by DTC participants to the SDFS participants fund. On November 15, 1993, deposits to the SDFS participants fund included securities having a market value of approximately $632 million.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1223 Filed 1–18–94; 8:45 am]

BILLING CODE 8010–01–7

[Release No. 34–33446; File No. SR–MBS–92–03]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Granting Approval of Proposed Rule Change Regarding Revised Securities Reports and Revised Letter of Credit Issuer Standards

January 7, 1994.

On July 30, 1992, the MBS Clearing Corporation ("MBS") filed a proposed rule change (File No. SR–MBS–92–03) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on November 27, 1992.[2] No comments were received by the Commission. This order approves the proposal.

I. Description of the Proposal

The proposal amends the MBS *Rules* at Article IV (Participants Fund), Rule 2 (Daily Market Margin Differential Deposits to Participants Fund), Sections 6 (Forms of Deposits) and 7 (Special Provisions Relating to Deposits of Cash). The proposed rule change also clarifies MBS's existing rules regarding acceptable deposits of debt securities and letters of credit to MBS's Participants Fund ("Fund").

1. MBS Rules, Article IV, Rule 2, Section 6

Currently, MBS *Rules*, Article IV, Rule 2, Section 6 require that deposits of debt securities to the Fund be valued at the lesser of their par value or 100% of their current market value. MBS asserts that, in accordance with good financial practices, it should value Treasury securities for purposes of the Fund only on a Current Market Value basis. MBS also states that the proposal will help clarify valuation of securities deposits. Moreover, it is MBS' practice not to accept deposits of Treasury securities that are within six months of their callable period in order to avoid any risk of loss due to a callable bond trading at a premium being called at par.

2. MBS Rules, Article IV, Rule 2, Section 7(b)

Currently, MBS Rules, Article IV, Rule 2, Section 7(b), provided that MBS is not required to accept a letter of credit as a deposit if, as a result of such acceptance, more than 25% of all Market Margin Differential Deposits to the Fund (including deposits other than letters of credit) would consist of letters of credit by one bank or trust company. The intent of this existing rule, and MBS's current policy is: (1) To reject such letters of credit if acceptance would result in more than 25% of all Market Margin Differential Deposits[3] to the Fund (including all types of deposits) being in the form of letters of credit from one bank or trust company, and (2) to minimize the risk of concentration in one bank or trust company of a substantial portion of letters of credit deposited as Market Margin Differential. The proposed rule change clarifies the intent of the existing rule and reflects MBS's current policy.

II. Discussion

The Commission believes that this proposal is consistent with the Act, particularly Section 17A of the Act.[4] Sections 17A(b)(3) (A) and (F) of the Act require that a clearing agency be organized and its rules be designed to promote, among other things, the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds within its custody or control or for which it is responsible.[5]

This proposal permits Treasury securities in MBS' Participants Fund to be carried at 100% of their current market value, in place of the current practice of carrying them at the lesser of their par value or 100% of their current market value. MBS reports that its customers have requested the proposed single price determinant for valuing Treasuries because, from the customers' perspective, it constitutes a more straightforward business practice and is less onerous to apply.

In assessing the merits of this proposed change in the valuation of a major clearing margin asset, the Commission recognizes that allowing MBS to value the Treasury securities at prices above par would add some market and interest rate risk to MBS' valuation formula. But the Commission believes that the risk of this valuation change is manageable and acceptable inasmuch as the Treasury securities in question: (1) will be limited to non-callable Treasuries, meaning there will be no risk that a bond trading at a premium will be called at par; and (2) will be valued and marked-to-the-market by MBS on a daily basis, meaning that the maximum marketplace risk exposure will be a one day price move.

The proposal also includes technical changes to MBS' practices concerning its Participants Fund. Among other things, the proposal clarifies, with no change in meaning, MBS' standards for accepting letters of credit for deposits into its Fund. In particular, the proposal clarifies a previously-approved MBS rule filing stating that no more than 25% of the Participants Fund may consist of letters of credit from any one issuer.[6] The Commission believes, therefore, that this portion of the proposal is not making any significant changes to existing rules. The Commission believes that the 25% limitation is a prudent measure to safeguard against exposure to any one financial institution.

III. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular the requirements of Section 17A of the Act.[7]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the above-mentioned proposed rule change (File No. SR–MBS–92–03) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1168 Filed 1–18–94; 8:45 am]

BILLING CODE 8010–01–M

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[5] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 31419 (November 19, 1992), 57 FR 56396.

[3] The term "Market Margin Differential Deposit" means the amount a Participant is required to deposit to MBS's Participants Fund under Article IV, Rule 2 of MBS's Rules.

[4] 15 U.S.C. 78q–1 (1988).

[5] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[6] Securities Exchange Act Release No. 30278 (January 22, 1992), 57 FR 3660 [File No. SR–MBS–90–08] (order approving proposed rule change).

[7] 15 U.S.C. 78q–1 (1988).

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–33455; File No. SR–NASD–94–1]

Self-Regulatory Organizations; Notice and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to a Waiver of ITS/CAES Service Fees for November and December 1993

January 11, 1994.

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 January 6, 1994, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The purpose of the proposed rule change is to authorize the waiver of member service fees associated with the operation of the NASD's Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES") for November and December 1993. 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 NASD is submitting this rule filing to authorize the waiver of member service fees associated with the operation of the NASD's ITS/CAES for November and December 1993. Specifically, the service fees proposed to be waived are contained in NASD's By-Laws, Schedule D, Part VIII, Section A.4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

This rule change reflects the NASD's determination to temporarily waive the collection of ITS/CAES service fees for November and December 1993.[1] Such action has resulted from the positive financial and operational developments experienced in the equities marketplace generally in 1993, including members' increased usage of ITS/CAES.[2] The waiver of ITS/CAES service fees for November and December of 1993 will maintain total revenue from ITS/CAES at levels believed to be reasonable in relation to recovery of the development and ongoing operational costs associated with the system.

The NASD believes that the proposed rule change is consistent with and in furtherance of section 15A(b)(5) of the Act. Section 15A(b)(5) requires that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the association operates or controls. By waiving ITS/CAES service fees for a limited two-month period, the NASD believes that the total fees assessed for ITS/CAES usage by members will remain at levels sufficient to ensure satisfaction of the statutory mandate that these fees be reasonably and equitably allocated.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder because the proposal establishes or changes a due, fee, or other charge imposed by the NASD. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 9, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1169 Filed 1–18–94; 8:45 am]

BILLING CODE 8010–01–M

[1] The NASD only is proposing to waive the ITS/CAES service fees; the equipment related charges noted in section A.4. are not being waived for November and December 1993.

[2] See also Securities Exchange Act Release No. 33143 (November 3, 1993), 58 FR 59773.

[Investment Company Act Release No. 20012; 811–4747]

SunAmerica Cash Fund; Notice of Application

January 12, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: SunAmerica Cash Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on December 17, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may require a hearing by writing in the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 7, 1994, and

should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 733 Third Avenue, 3rd Floor, New York, New York 10017, Attn: Robert M. Zakem, Senior Vice President and General Counsel.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272–3018, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Prior to December 8, 1993, applicant, formerly Integrated Cash Fund, an open-end management investment company was a Massachusetts business trust. On July 8, 1986, applicant filed a notification of registration under section 8(a) of the Act. On July 9, 1986, applicant filed a registration statement under the Securities Act of 1933 and section 8(b) of the Act to register an indefinite number of shares of beneficial interest, par value $.01 per share. The registration statement became effective on January 6, 1987. Applicant commenced operations and the initial public offering of its shares on September 23, 1987.

2. On March 31, 1993, applicant's Board of Trustees approved an agreement and plan of reorganization (the "Agreement") between applicant and SunAmerica Money Market Funds, Inc. (File No. 811–3807, formerly SunAmerica Money Market Securities, Inc., "SunAmerica"), providing for the transfer of substantially all of applicant's assets and liabilities to SunAmerica Money Market Fund (the "Acquiring Fund"), a separate investment series of SunAmerica, in exchange for shares of the Acquiring Fund.

3. In accordance with rule 17a–8 under the Act, at a joint meeting held on March 31, 1993, the Board of Trustees/Directors of each of applicant and SunAmerica determined that participation in the reorganization was in the best interest of the shareholders and that the interests of the existing shareholders would not be diluted as a result of the reorganization. These findings, and the basis upon which such findings were made, were recorded in the minute books of each investment company.

4. Proxy materials relating to the reorganization were filed with the SEC and distributed to applicant's sharedholders on or about July 29, 1993. On September 23, 1993, a majority of applicant's shareholders approved the reorganization.

5. The reorganization was effected pursuant to the Agreement at a closing held on September 24, 1993. Applicant distributed in complete liquidation, *pro rata* to its shareholders of record as of the closet of business on September 24, 1993, the full and fractional shares acquired in the exchange. The net asset value of Acquiring Fund shares received by applicant's shareholders was equal to the net asset value of applicant's shares held by such shareholders.

6. No brokerage commissions were paid on the transfer of assets from applicant to the Fund. Expenses for effecting the reorganization were borne by applicant and SunAmerica. Such expenses included preparation of proxy materials, printing expenses, and legal and accounting fees.

7. On December 8, 1993, applicant filed a Certificate of Termination of Trust with the Secretary of State of Massachusetts business trust.

8. As of the date of the application, applicant had no assets, liabilities, or shareholders. All liabilities and obligations not discharged by applicant on or before September 24, 1993 were assumed by, and became the obligations of, the Acquiring Fund. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding-up of its affairs.

9. Applicant is not a party to any litigation or administration proceeding.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1170 Filed 1–18–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20015; 812–8698]

TCW Asia Pacific Equity Limited Partnership, et al.

January 12, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: TCW Asia Pacific Equity Limited Partnership, TCW Emerging Markets Limited Partnership, TCW Small Capitalization Growth Stocks Limited Partnership (collectively, the "Partnerships"), TCW Funds, Inc. (the "Company"), TCW Asset Management Company ("TAMCO"), and TCW Funds Management, Inc. (the "Adviser").

RELEVANT ACT SECTIONS: Order requested under section 17(b) of the Act for an exemption from the provisions of section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the Partnerships to transfer substantially all of their assets and liabilities to certain series of the Company in exchange for the series' shares, which then will be distributed to partners of the Partnerships.

FILING DATE: The application was filed on November 26, 1993, and amended on January 6, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 7, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 865 South Figueroa Street, Suite 1800, Los Angeles, California 90017.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Partnerships were organized as California limited partnerships. They

are open-end investment partnerships, allowing investors to purchase and redeem Partnership interests (the "Units") at net asset value on a monthly basis. The Partnerships are not registered under the Act in reliance on section 3(c)(1) of the Act. The offerings of the Units were structured as private placements under section 4(2) of the Securities Act of 1933, and Regulation D promulgated thereunder. Units are sold to institutional investors and high net worth individuals.

2. TAMCO, a registered investment adviser and an indirect wholly-owned subsidiary of The TCW Group, Inc., serves as the sole general partner of each of the Partnerships, and has exclusive responsibility for the overall administration of the Partnerships. TAMCO also has exclusive power and authority to manage and control the investments of each Partnership.

3. The Company, a Maryland corporation, is a registered open-end investment company formed as a series company. Currently, the Company offers six portfolios. The Company proposes to offer three new investment portfolios (the "Funds"), each of which will correspond to a Partnership in terms of investment objectives and policies.

4. The Company has entered into an advisory agreement with the Adviser, a wholly-owned subsidiary of The TCW Group, Inc., pursuant to which the Adviser will render investment management services to the Funds that are substantially the same as the services that TAMCO currently renders to the Partnerships. The officers of TAMCO serving as portfolio managers of the Partnerships also serve as officers of the Adviser and will serve as portfolio managers of the Funds.

5. Applicants propose that, pursuant to an agreement and plan of exchange, each of the Funds acquire substantially all of the assets and assume substantially all of the liabilities of the corresponding Partnership in exchange for Fund shares (the "Exchange"). Fund shares received by the Partnership will have an aggregate net asset value equivalent to the net asset value of the assets transferred by the Partnership (except for the effect of organizational expenses paid by the Fund). Upon consummation of an Exchange, the Partnership will distribute the Fund shares to its partners, with each partner receiving shares having an aggregate net asset value equivalent to the net asset value of the Units held by such partner prior to the Exchange (except for the effect of organizational expenses paid by the Fund). Each Partnership may retain assets needed to pay any accrued expenses. Each Partnership may also retain assets which the applicable Fund is not permitted to purchase, or which would be unsuitable for the Fund. Any assets retained in excess of amounts needed to pay the accrued expenses not transferred to the Fund would be distributed *pro rata* to partners of the Partnership. Each Partnership will be liquidated and dissolved following the distribution.

6. Each Partnership agreement of the Partnerships provides that the Partnership may be converted into a registered investment company if the general partner determines that a conversion is in the best interest of the Partnership. Each agreement expressly provides that no further approval or consent of the limited partners is required for such conversion, so long as at least 60 days' advance written notice is provided to the limited partners. Limited partners who do not wish to participate in the conversion of their Partnership will have adequate opportunity to redeem their Partnership interests before the conversion occurs. As a result, no limited partner will receive shares in exchange for his or her Units unless such limited partner determines to retain his or her investment.

7. Prior to an Exchange, certain limited partners may withdraw from the Partnerships and receive a *pro rata* in-kind distribution for the purpose of investing in new limited partnerships that have similar investment strategies and are expected to have a minimum investment of $1.5 million. Such limited partners include limited partners who have made investments of a magnitude sufficient to qualify for advisory fees lower than those to be charged by the Funds, limited partners with more than $1.5 million invested in any Partnership, and certain limited partners who would encounter regulatory or other difficulties if they invested in a registered investment company. The new limited partnerships will not be registered under the Act in reliance on section 3(c)(1) thereof, and the new partnership interests will not be registered under the Securities Act of 1933 in reliance on section 4(2) thereof.

8. The expenses of each Exchange will be borne by TAMCO. No brokerage commission, fee, or other remuneration will be paid in connection with an Exchange. Fund organizational expenses, up to a maximum of $50,000 per Fund, will be paid by the Funds and amortized over five years. Fund organizational expenses in excess of $50,000 per Fund will be paid by the Adviser. Any unamortized organizational expenses associated with the organization of a Fund at the time the Adviser withdraws its initial investment in the Company will be borne by the Adviser and not the Fund.

9. The management fees for the Funds will not exceed the maximum fees currently paid by the limited partners in each corresponding Partnership. It is expected that other Fund expenses generally will be higher as a percentage of net asset value than the expenses of a corresponding Partnership. This is primarily because of the increased operating costs of a registered investment company and compliance with additional regulatory requirements. Through the end of calendar 1994, however, the Adviser will limit annual Fund expenses with the intention of capping Fund expense ratios at levels which would have been incurred during 1994 by the Partnerships.

10. The Funds' board of directors and TAMCO have considered the desirability of the Exchange from the respective points of view of the Company and the Partnerships. All of the members of the board, including all of the independent directors, and TAMCO have approved the Exchanges and concluded that: (a) The Exchanges are desirable as a business matter from the respective points of view of the Company and the Partnerships; (b) the Exchanges are in the best interests of the Company and the Partnerships; (c) the Exchanges are reasonable and fair, do not involve overreaching, and are consistent with the policies of the Act; (d) the Exchanges are consistent with the policies of the Company and the Partnerships; and (e) the interests of existing shareholders in the Company and existing partners will not be diluted as a result of the Exchanges.

11. The Exchanges will not be effected until each of the following conditions is satisfied: the Company's registration statement has been declared effective; the SEC has issued an order relating to the application; and the Company has received a favorable opinion of counsel with respect to the tax consequences of the Exchanges.

12. The Exchanges will establish the Funds as the successor investment vehicles to the Partnerships. The Exchanges will permit partners to pursue the same investment objectives and policies they were expecting from the Partnerships as shareholders of the Funds without sacrificing the pass-through tax features of the Partnerships. In addition, shareholders of the Funds will be able to purchase and redeem shares on each business day, as opposed to only once per month as in currently provided under the partnership agreements. The Funds expect that operating as registered investment

companies will help encourage net asset growth.

Applicants' Legal Analysis

1. Section 17(a) prohibits affiliated persons of a registered investment company, or affiliated persons of such persons, from selling to or purchasing from such company any security or other property. Each Partnership may be an affiliated person of the Company because TAMCO, the general partner of the Partnerships, and the Adviser, the investment adviser of the Company, are under common control. Thus, the proposed Exchanges may be prohibited by section 17(a) if they are viewed as principal transactions between the Company and the partners of the Partnerships, or between the Company and the Partnerships.

2. Section 17(b) provides for SEC approval of a proposed affiliated transaction that would be otherwise prohibited by section 17(a) if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the transaction is consistent with the policy of each registered investment company concerned, and the transaction is consistent with the general purposes of the Act.

3. Applicants believe that the proposed Exchanges meet the terms of section 17(b). They represent, among other things, that the investment objectives and policies of each Fund are substantially similar to the corresponding Partnerships. In addition, after the Exchanges, limited partners will hold substantially the same assets as Fund shareholders as they previously had held as limited partners. In this sense, the Exchanges can be viewed as a change in the form in which the assets are held, rather than a disposition giving rise to section 17(a) concerns.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1224 Filed 1–18–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1932]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea, Working Group on Bulk Chemicals; Meeting

The Working Group on Bulk Chemicals (BCH) of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 a.m. on February 8, 1994, in room 4436, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. The purpose of the meeting is to review the results of the Twenty-third session of BCH held in September 1993 and to discuss air pollution issues in preparation for the 28 February meeting of the BCH working group on air pollution to be held at IMO Headquarters in London.

Among other things, the items of particular interest are:

a. Amendments and interpretation of the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (BCH Code) and the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code).

b. Amendments and interpretation of the provisions of Annex II of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78).

c. Amendments and interpretation of the provisions of the Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (GC Code) and the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases In Bulk (IGC Code).

d. Guidelines for technical assessment for intervention under the 1973 Intervention Protocol.

e. Role of the human element in maritime casualties.

f. Air pollution from ships.

g. Existing ships' standards.

h. International Convention on Oil Pollution Preparedness, Response and Cooperation.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Commander K. J. Eldridge, U.S. Coast Guard (G–MTH–1), 2100 Second Street SW., Washington, DC 20593–0001 or by calling (202) 267–1217.

Dated: January 7, 1994.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 94–1198 Filed 1–18–94; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Commercial Space Transportation Advisory Committee; Open Meeting

Pursuant to section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. app. 1), notice is hearby given of a special meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will be conducted as a teleconference to take place on Friday, January 21, 1994, beginning at 1:30 p.m. E.S.T., originating in room 2203 (Multi-Media Room) in the Department of Transportation's Headquarters Building, 400 Seventh Street, SW., Washington, DC. The purpose of the meeting is to consider certain information on launch requirements requested by the Secretary to support the Department's participation in the White House Office of Science and Technology Policy (OSTP) Interagency Working Group (IWG) on Space Transportation. Fewer than fifteen (15) days notice of this special meeting is provided in order for the Department to meet the IWG timetable for preparation of a summary report.

This meeting is open to the interested public by speakerphone in room 2203; however, space may be limited. Additional information may be obtained by contacting Ms. Linda H. Strine at (202) 366–2980.

Dated: January 13, 1994.

Frank C. Weaver,

Director, Office of Commercial Space Transportation.

[FR Doc. 94–1377 Filed 1–18–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Proposed Change #2 to FAA P–8110–2, Airship Design Criteria

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of Proposed Change #2 to FAA P–8110–2, Airship Design Criteria (ADC); request for comments.

SUMMARY: This proposed change adds the requirements for fly-by-light control systems. We propose to add two new paragraphs to the ADC that cover concerns related to optical couplings and optical degradation. We do not consider loss of primary flight controls critical to continued safe flight and landing in airships, because they essentially become free balloons if they lose controllability.

DATES: Comments must be received on or before March 21, 1994.

ADDRESSES: Mail or deliver comments on the Proposed Change #2 to FAA P–8110–2, Airship Design Criteria (ADC), to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Standards Office

(ACE–110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: J. Lowell Foster, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE–110), 601 East 12th Street, Kansas City, Missouri 64106.

COMMENTS INVITED: Interested parties are invited to submit such written data, views, or arguments as they may desire. Commenters must identify the report number (FAA–P–8110–2), and submit comments to the address specified above. We will consider all written comments received on or before the closing data for comments before we revise the ADC. The proposed changes to the ADC and comments received may be inspected at the Standards Office (ACE–110), 1201 E. Walnut, Suite 900, Kansas City, Missouri, between the hours of 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

BACKGROUND: The requirements for a control system not directly (mechanically) connected to the control surface are applicable to both fly-by-wire and fly-by-light. The fiber optics used in fly-by-light systems, though immune to some of the problems associated with fly-by-wire systems, has its own set of problems. Those problems are addressed in this change.

Issued in Kansas City, Missouri, January 4, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–1207 Filed 1–18–94; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–94–2]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. 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 on or before February 8, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition 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 Avenue, 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 (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on January 6, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Disposition of Petitions

Docket No.: 26183
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR 121, appendix H
Description of Relief Sought/ Disposition: To extend Exemption No. 5400 to continue to permit member airlines and other qualifying part 121 operators, under certain conditions and limitations, the use of Level C (Phase II) simulator for PIC training and checking

Grant, December 28, 1993, Exemption No. 5400A.

Docket No.: 26303.
Petitioner: Florida Aircraft Leasing Corporation.
Sections of the FAR Affected: 14 CFR 91.9(a)
Description of Relief Sought/ Disposition: To permit Florida Aircraft Leasing Corporation to continue to operate its McDonnell Douglas DC–6A and DC–6B aircraft at five percent increased zero fuel and landing weight for the purpose of operating all-cargo aircraft under the terms of part 125 of the FAR

Grant, December 30, 1993, Exemption No. 5388A.

Docket No.: 26748
Petitioner: Atlantic Aviation
Sections of the FAR Affected: 14 CFR 135.165(b) (5), (6) and (7)
Description of Relief Sought: To extend Exemption No. 5443 to continue to permit Atlantic Aviation to operate its turbojet airplanes equipped with one long-range navigation system (LRNS) and one high-frequency (HF) communications system in extended overwater operations

Grant, December 30, 1993, Exemption No. 5443A.

Docket No.: 26898
Petitioner: Air Transport International, Inc.
Sections of the FAR Affected: 14 CFR 121.343(c)
Description of Relief Sought: To amend Exemption No. 5593 to allow the petitioner to operate, after May 16, 1994, under an FAA-approved Airplane Retirement Schedule until December 31, 1998, certain airplanes that do not have one or more of the digital data flight recorders

Grant, January 3, 1994, Exemption No. 5593F.

Docket No.: 26921
Petitioner: Coastal Helicopters Incorporated
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit the petitioner to install a Mode C, rather than a Mode S, transponder in its Bell 47G helicopter

Grant, December 29, 1993, Exemption No. 5817.

Docket No.: 27222
Petitioner: Executive Flightways, Inc.
Sections of the FAR Affected: 14 CFR 135.165(b) (6) and (7)
Description of Relief Sought: To amend Exemption No. 5675 to allow the petitioner to operate certain airplanes equipped with one long-range navigation system (LRNS) and one high-frequency (HF) communication system in extended overwater poperations and exceed the 30-minute communications gap required in Condition No. 4 of the exemption

Grant, December 30, 1993, Exemption No. 5675A.

Docket No.: 27246
Petitioner: Lufthansa German Airlines
Sections of the FAR Affected: 14 CFR 129.18
Description of Relief Sought: To amend Exemption No. 5728 to allow the

petitioner to operate an additional DC–10 aircraft, which lacks TCAS II, beyond those listed in the existing exemption

Denial, December 30, 1993, Exemption No. 5728A.

Docket No.: 27365
Petitioner: Midwest Express Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.358
Description of Relief Sought/ Disposition: To extend the compliance date requiring installation of airborne windshear detection systems in several McDonnell Douglas DC–9 series 10 aircraft until January 31, 1994

Denial, December 7, 1993, Exemption No. 5806.

Docket No.: 27431
Petitioner: Mr. R.V. Anderson
Sections of the FAR Affected: 14 CFR 103
Description of Relief Sought/ Disposition: To permit the petitioner to utilize a two-place ultralight for single occupant purposes

Withdrawn, December 23, 1993.

Docket No.: 27442
Petitioner: Air Columbus
Sections of the FAR Affected: 14 CFR 129.18
Description of Relief Sought: To allow the petitioner to operate in United States airspace from December 31, 1993 to March 4, 1994, without required TCAS II equipment installed in its aircraft

Denial, December 30, 1993, Exemption No. 5819.

Docket No.: 27472
Petitioner: Asiana Airlines
Sections of the FAR Affected: 14 CFR 129.18
Description of Relief Sought: To allow the petitioner to operate two Boeing 737–400 (B–737) aircraft to Saipan, between 31, 1993 and June 30, 1995, that are not equipped with an approved traffic alert and collision avoidance system (TCAS)

Partial Grant, December 30, 1993, Exemption No. 5827.

Docket No.: 27475
Petitioner: Transportes Aeromar, S.A. de C. V. (Aeromar)
Sections of the FAR Affected: 14 CFR 129.18
Description of Relief Sought/ Disposition: To permit the petitioner to operate in U.S. airspace, from December 30, 1993 until February 9, 1995, without the required TCAS II equipment installed in its aircraft

Denial, December 30, 1993, Exemption No. 5820.

Docket No.: 27520
Petitioner: Guyana Airways Corporation
Sections of the FAR Affected: 14 CFR 129.18
Description of Relief Sought: To allow the petitioner to operate in U.S. airspace, from December 31, 1993 to January 31, 1994, without the required TCAS II equipment installed in its B–707 aircraft

Denial, December 30, 1993, Exemption No. 5821.

Docket No.: 27533
Petitioner: Lineas Aereaas Costariquenses, S.S. (LACSA)
Sections of the FAR Affected: 14 CFR 129.18
Description of Relief Sought: To allow the petitioner to operate one Airbus A320, N–486GX, for seven flights per week to Miami International Airport, or in the alternative to fly four flights per week to San Juan, Puerto Rico, and three flights per week to New Orleans, Louisiana, without the required TCAS equipment installed after the December 30, 1993 deadline until January 23, 1994

Denial, December 30, 1993, Exemption No. 5822.

Docket No.: 27535
Petitioner: Aeroflot Russian International Airlines
Sections of the FAR Affected: 14 CFR 129.18
Description of Relief Sought: To allow the petitioner to operate 21 IL–62M, 15 IL–86, 4 IL–96–300 and 4 TU–154 aircraft that are not equipped with an approved TCAS II traffic collision avoidance system after December 30, 1993

Partial Grant, December 30, 1993, Exemption No. 5823.

Docket No.: 27536
Petitioner: Western Flyers Air Service
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit the petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135

Grant, December 29, 1993, Exemption No. 5828.

Docket No.: 27550
Petitioner: Aeronias Venezolanas S.A. (Avensa)
Sections of the FAR Affected: 14 CFR 129.18
Description of Relief Sought: To allow the petitioner to operate in U.S. airspace, from December 31, 1993 until April 30, 1994, without the required TCAS II equipment installed in its aircraft

Denial, December 30, 1993, Exemption No. 5825.

Docket No.: 27551
Petitioner: Lineas Aereas Allegro S.A. de C.V. (Allegro)
Sections of the FAR Affected: 14 CFR 129.18
Description of Relief Sought: To allow the petitioner to operate in U.S. airspace, from December 31, 1993 to January 3, 1994, without required TCAS II equipment installed in its aircraft

Denial, December 30, 1993, Exemption No. 5818.

Docket No.: 27556
Petitioner: United Parcel Service Company (UPS)
Sections of the FAR Affected: 14 CFR 121.343(c)
Description of Relief Sought: To allow the petitioner to continue operating until December 1, 1995, aircraft that are not fitted by May 26, 1994, with a digital flight data recorder (DRDR) capable of simultaneously recording at least 11 flight parameters

Denial, December 29, 1993, Exemption No. 5816.

Docket No.: 27563
Petitioner: Air Ukraine Airline
Sections of the FAR Affected: 14 CFR 129.18
Description of Relief Sought/ Disposition: To permit the petitioner to operate four IL–62 aircraft that are not equipped with an approved traffic alert and collision avoidance system (TCAS II) in the U.S. after December 30, 1993

Partial Grant, December 30, 1993, Exemption No. 5824.

[FR Doc. 94–1173 Filed 1–18–94; 8:45 am]
BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Rotorcraft Issues

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee on rotorcraft issues to discuss current rulemaking actions and future activities and plans.

DATES: The meeting will be held on February 4, 1994, at 9 a.m. PST. Arrange for oral presentations by January 21, 1994.

ADDRESSES: The meeting will be held at the Hilton Hotel, Mezzanine, at 777 Convention Way, Anaheim, California 92802, telephone (714) 750–4321.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Herber, Office of Rulemaking, Aircraft & Airport Rules Division, ARM–200, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3498.

SUPPLEMENTARY INFORMATION: This public meeting is announced pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II). The agenda will include:

- Review of the JAR/FAR 27 and 29 Harmonization rulemaking package.
- Report on the status of the Occupant Restraint rulemaking package.
- Review the status of the External Loads rulemaking package.
- Discussion of future activities and plans.

Attendance is open to the public but will be limited to the space available. The public must make arrangements by January 21, 1994, to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 16 copies to the Assistant Executive Director or by providing the copies to him at the meeting. In addition, sign and oral interpretation, as well as a listening device, can be made available at the meeting if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Fort Worth, Texas, on January 6, 1994.

Mike Mathias,

Acting Assistant Executive Director for Rotorcraft Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–1174 Filed 1–18–94; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Marquette County Airport, Marquette, MI

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 use the revenue from a PFC at Marquette County 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) part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 18, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Harold R. Pawley, Airport Manager, of the County of Marquette, Michigan at the following address: Marquette County Airport, 198–B Airport Road, Negaunee, Michigan 49866.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Marquette under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Dean C. Nitz, Manager, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (313) 487–7300. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Marquette County Airport under the provisions of the Aviation Safety 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 21, 1993, the FAA determined that the application to use the revenue from a PFC submitted by the County of Marquette, Michigan 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 April 9, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Actual charge effective date: December 1, 1992
Estimated charge expiration date: April 1, 1996
Total approved net PFC revenue: $459,700
Brief description of proposed projects: Perimeter Deer Fencing and Terminal Security:
Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxis and charters.

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 County of Marquette, Michigan.

Issued in Des Plaines, Illinois, on January 7, 1994.

Larry H. Ladendorf,

Acting Manager, Airports Division, Great Lakes Region.

[FR Doc. 94–1209 Filed 1–18–94; 8:45 am]

BILLING CODE 4910–13–M

Intent to Rule on Application to Use the Revenue From a Passenger Facility Charge (PFC) at Midland International Airport, Midland, TX

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 use the revenue from a PFC at Midland International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IV 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 18, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, ASW–610D, Planning and Programming Branch, Airports Division, Southwest Region, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ken A. Day, Director of Airports, Midland International Airport at the following address: Mr. Ken A. Day, Director of Airports, Midland International Airport, 9506 LaForce Boulevard, Midland, Texas 79711–0305.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, ASW–610D, Federal Aviation Administration, Planning and Programming Branch, Airports Division, Southwest Region, Fort Worth, Texas 76193–0610, (817) 624–5979.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Midland International Airport under the provisions of the Aviation Safety and

Capacity Expansion Act of 1990 (title IV 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 17, 1993, the FAA determined that the application to use the revenue from a PFC submitted by Midland 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 April 15, 1994.

The following is a brief overview of the application.

Level of the PFC: $3.00
Charge effective date: January 1, 1993
Proposed charge expiration date: January 1, 2013
Total estimated PFC revenue: $35,529,521.00
Brief description of proposed project(s).
Projects to use PFC's
Rehabilitate Airfield Taxiways
Reconstruct Runway 4/22
Rehabilitate Runway 16L/34R
Construct New Terminal Complex
Proposed class or classes of air carriers to be exempted from collecting PFC's.
FAR Part 135 air charter operators who operate aircraft with a seating capacity of less than 10 passengers

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT" and at the FAA regional Airports office located at: Federal Aviation Administration, Airports Division, Planning and Programming Branch, ASW–610D, 2601 Meacham Boulevard, Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Midland International Airport.

Issued in Fort Worth, Texas on December 17, 1993.

John M. Dempsey,

Manager, Airports Division.

[FR Doc. 94–1175 Filed 1–18–94; 8:45 am]

BILLING CODE 4910–13–M

Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In December 1993, there were 10 applications approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IV of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Panama City-Bay County Airport and Industrial District, Panama City, Florida.

Application Number: 93–01–I–00–PFN.

Application Type: Impose PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $7,422,988.

Earliest Permissible Charge Effective Date: February 1, 1994.

Estimated Charge Expiration Date: October 1, 2007.

Class of Air Carriers Not Required To Collect PFC's: Nonscheduled operations by air taxi/commercial operators.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at Panama City-Bay County International Airport.

Brief Description of Project Approved for Collection Only: New terminal, parking and access system, and related facilities.

Decision Date: December 1, 1993.

FOR FURTHER INFORMATION CONTACT: Carlos E. Maeda, Orlando Airports District Office, (407) 648–6583.

Public Agency: Paducah Airport Corporation, Paducah, Kentucky.

Application Number: 93–01–C–00–PAH.

Applciation Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $386,550.

Earliest Permissible Charge Effective Date: March 1, 1994.

Estimated Charge Expiration Date: December 1, 1998.

Class of Air Carriers Not Required To Collect PFC's: On-demand air taxi/commercial operators (Part 135 Operators) enplaning less than 50 passengers annually and on-demand supplemental air carriers (Part 121 Operators) enplaning less than 50 passengers annually.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that each proposed class accounts for less than 1 percent of the total enplanements at Barkley Regional Airport.

Brief Description of Projects Approved for Collection and Use:
Acquire property underlying runway 22 approach path,
Passenger terminal improvements,
Acquire handicapped passenger lift,
Airfield signage,
Runway 14/32 parallel taxiway and ramp extension project,
Acquire property for eventual airport expansion,
Emergency/stand-by electrical generator,
Perimeter service road.

Decision Date: December 2, 1993.

FOR FURTHER INFORMATION CONTACT: Cynthia K. Wills, Memphis Airports District Office, (901) 544–3495.

Public Agency: County of Albany, New York.

Appliction Number: 93–01–I–00–ALB.

Application Type: Impose PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $40,726,364.

Earliest Permissible Charge Effective Date: March 1, 1994.

Estimated Charge Expiration Date: April 1, 2005.

Class of Air Carriers Not Required To Collect PFC's: Air taxi and charter carriers filing FAA Form 1800–31.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at Albany County Airport.

Brief Description of Projects Approved for Collection Only:
Terminal building renovation and expansion,
Runway and taxiway improvements,
Flood management improvements,
Air traffic control tower,
Environmental remediation,
New interior roadways,
Airport studies,
Airport equipment,
New storage building.

Decision Date: December 3, 1993.

FOR FURTHER INFORMATION CONTACT: Philip Brito, New York Airports District Office, (718) 553–1882.

Public Agency: Puerto Rico Ports Authority, San Juan, Puerto Rico.

Application Number: 93–02–U–00–SJU.

Application Type: Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $20,790.061.

Earliest Estimated Charge Effective Date: March 1, 1993.

Estimated Charge Expiration Date: February 1, 1997.

Class of Air Carriers Not Required To Collect PFC's: No change.

Brief Description of Project Approved for Use: Construct single crossfield taxiway.

Decision Date: December 14, 1993.

FOR FURTHER INFORMATION CONTACT: Ilia A. Quinones, Orlando Airports District Office, (407) 648–6583.

Public Agency: City of Minot, North Dakota.

Application Number: 93–01–C–00–MOT.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $1,569,483.

Earliest Permissible Charge Effective Date: March 1, 1994.

Estimated Charge Expiration Date: March 1, 1999.

Class of Air Carriers Not Required To Collect PFC's: Unscheduled passenger/charter services operating aircraft with a passenger capacity of 30 seats or less.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at Minot International Airport.

Brief Description of Projects Approved for Collection and Use:

Construct vault and standby power generator,
Passenger facility charge application costs,
Reconstruct west terminal apron area, phase I,
Reconstruct west terminal apron area, phase II,
Access roads to west terminal area,
Purchase rotary side delivery broom,
Reconstruct west terminal building,

Brief Description of Projects Approved for Collection Only:

Reconstruct and expand the air cargo ramp,
Acquire land on the east end of [runway] 8–26 and adjacent to runway 13–31,
Purchase high speed snow plow,
Construct parallel taxiway to [runway] 8–26,
Extend and strengthen runway 8–26,
Perimeter security fencing east and south side,
Construct taxilanes,
Internal access (service) road to north areas,
Construct compass rose,
Construct service road to air carrier ramp and freight ramp,
Airport master plan,
Heavy duty sand truck,
Reconstruct runway 13–31 and install porous friction course,
Runway surface ice detectors,
Automated weather (observation) system.

Decision Date: December 15, 1993.

FOR FURTHER INFORMATION CONTACT: Irene Porter, Bismarck Airports District Office, (701) 250–4385.

Public Agency: City of Tyler, Texas.

Application Number: 93–01–C–00–TYR.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $819,733.

Earliest Permissible Charge Effective Date: March 1, 1994.

Estimated Charge Expiration Date: July 1, 1998.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Airport planning studies,
Access road improvements,
Airport safety equipment,
Security fencing improvements,
Runway safety project.

Decision Date: December 20, 1993.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Airports Division, (817) 222–5614.

Public Agency: Benedum Airport Authority, Clarksburg, West Virginia.

Application Number: 9301–C–00–CKB.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $105,256.

Earliest Permissible Charge Effective Date: April 1, 1994.

Estimated Charge Expiration Date: April 1, 1996.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Airport runway signage,
Security room, terminal building,
Snow blower,
Replace electrical cables,
Replace aircraft rescue and firefighting vehicle (ARFF),
Two snow removal vehicles, sand spreader, snow plows,
Replace heating and air conditioning terminal building.

Decision Date: December 29, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph H. Scheff, Beckley Airports Field Office, (304) 252–6216.

Public Agency: City of Corpus Christi (City), Corpus Christi, Texas.

Application Number: 93–01–C–00–CRP.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $5,540,745.

Estimated Charge Effective Date: March 1, 1994.

Estimated Charge Expiration Date: January 1, 1998.

Class of Air Carriers Not Required To Collect PFC's: Part 158 air charter operators who operate aircraft with a seating capacity of less than 10 passengers.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at Corpus Christi International Airport.

Brief Description of Projects Approved for Collection and Use:

Guidance signs and markings,
Automatic switchgear and primary service upgrade,
High intensity runway lighting (HIRL) on runway 17–35,
Commercial apron lighting,
Commercial apron rigid pavement reconstruction,
Runway 13–31 pavement reconstruction.

Brief Description of Projects Approved-in-Part for Collection and Use:

Aircraft rescue and firefighting (ARFF) facility, communications, training center, and burn pit relocation.

Determination: Approved in part. The FAA has determined that the burn pit relocation/ARFF training facility portion of the project does not enhance safety, security, or capacity; mitigate noise impacts, or furnish opportunities for enhanced competition between or among carriers. The FAA is currently implementing a policy of funding only regional ARFF training facilities. Corpus Christi International Airport (CRP) has not been designated as a regional ARFF training site by the FAA's Southwest Region Airports Division.

Terminal reconstruction.

Determination: Approved in part. The project elements to convert the public lobby to a USO/Chapel, construct new taxi shelters, expand parking areas, and relocate sister city garden are not AIP eligible, nor do they meet PFC-specific eligibility for gates and related areas.

Brief Description of Projects Disapproved:

West apron cargo improvements.

Determination: Disapproved. The City states in the application that it is planning to finance this cargo building

with local funds but provides no further information, such as a construction schedule. Given that the justification for this project is dependent on the cargo building, the FAA does not have sufficient information to approve the apron at this time.

Equipment storage facility and storage yard.

Determination: Disapproved. This project involves storage of maintenance equipment, areas for trade shops, and a central supply yard for airfield and building maintenance use. This facility does not meet the requirements of section 158.15(b)(1) and, therefore, this project is not PFC eligible.

Loop road relocation.

Determination. Disapproved. The financial plan for this project proposes using AIP discretionary funding for a majority of the project costs. The FAA cannot commit to this level of discretionary funding at this time. The alternate funding plan was determined not to be a viable plan. In addition, because the City was not required and did not provide a listing of alternative projects to ensure that the PFC revenue is used on approved projects. Therefore, the FAA has no assurance that PFC revenue collected for use on the subject project could be used on approved projects, in the event AIP discretionary funding were not provided.

Landside roadway reconstruction.

Determination: Disapproved. Section 158.33(a)(1) requires the public agency to begin implementation of a project no later than two years after receiving approval to use PFC revenue on that project. Therefore, all projects approved in this application must begin implementation no later than November 1995. The schedule submitted with the application shows an implementation date of June 1996 for this project.

Brief Description of Projects Withdrawn:

Vacuum sweeper,
Handicap lift,
Taxiways L and M lighting and widening,
Purchase aircraft rescue and firefighting vehicle,
Update master plan.

Determination: The City withdrew these projects by telephone on November 15, 1993.

Cargo building.

Determination: The City withdrew this project due to airline objections.

Determination Date: December 29, 1993.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: City of Tallahassee (City), Florida.

Application Type: 93–02–U–OO–TLH.

Application Type: Use PFC Revenue.

PFC Level: $3.00

Total Approved Net PFC Revenue: $6,715,081.

Earliest Permissible Charge Effective Date: February 1, 1993.

Estimated Charge Expiration Date: June 1, 1998.

Class of Air Carriers Not Required To Collect PFC's: No change.

Brief Description of Projects Approved for Use:

Overlay runway 9/27 and taxiway,
Upgrade taxiway lighting,
Construct perimeter security fence, security access system,
Update airport master plan and noise study,
Overlay general aviation apron—existing ramp (south apron),
Overlay runway 18/36 and taxiways, associated projects,
Construct 10,000 square foot aircraft rescue and firefighting vehicle (ARFF) building (three bay),
Construct service road west of runway 9/27 and construct perimeter road east and south of runway 9/27,
Purchase quick response ARFF vehicle,
Purchase 3,000 gallon ARFF vehicle.

Brief Description of Project Approved-in-Part To Use PFC Revenue:

Construct covered walkway and handicap ramp, other terminal improvements for American with Disabilities Act (ADA) compliance.

Determination: Approved in part. Based on the description of the project in this application, the FAA has determined that the terminal public area ADA projects are not PFC eligible in accordance with Program Guidance Letter 93–3.5.

PFC project formulation costs, PFC administrative costs, interest expenses, miscellaneous expenses.

Determination: Approved in part. The miscellaneous expenses were not specifically identified in the City's application and therefore, are not PFC eligible.

Decision Date: December 30, 1993.

FOR FURTHER INFORMATION CONTACT: Carlos E. Maeda, Orlando Airports District Office, (407) 648–6583.

Public Agency: City of Long Beach, Long Beach, California.

Application Number: 93–01–C–00–LGB.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00

Total Approved PFC Revenue: $3,533,766.

Estimated Charge Effective Date: March 1, 1994.

Estimated Charge Expiration Date: March 1, 1998.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators and on-demand charter operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at Long Beach Municipal Airport.

Brief Description of Projects Approved for Collection and Use:

Airfield lighting improvements,
Airfield perimeter service road,
Airport pavement management system,
Taxiway F reconstruction,
Runway 7R/25L rehabilitation,
runway 7L/25R rehabilitation,
Airfield lighting and signage improvements,
Airfield sign system/pavement markings modifications,
Taxiways J1, J2, and L5 rehabilitation,
Airfield safety area improvements,
Earth berm erosion control,
North/south taxiway A pavement reconstruction,
Airfield taxiway shoulder construction, taxiways D and K,
Airfield lighting backup generator,
Construction of tiedown facility on parcel O,
Airfield perimeter service road,
Midfield aircraft engine run-up pads,
Aircraft rescue and firefighting vehicle (ARFF),
Airport security fences and gate improvements,
Security access control program,
Terminal building rehabilitation,
Terminal/airfield access improvements,
Airport noise monitoring system.

Brief Description of Projects Approved to Collect Only:

Airfield pavement rehabilitation/reconstruction,
Handicapped facilities.

Brief Description of Projects Approved-in-Part for Collection and Use:

Airfield pavement slurry seal.

Determination: Approved in part. This project is eligible under Airport Improvement Program (AIP) criteria. Sources of financing for a portion of this project include an existing AIP grant. However, the remainder of the project also requires AIP funding, which the FAA is unable to commit to at this time. Also, that portion of the project which is not included in the existing AIP grant was not included in the description of the project provided to the air carriers during airline consultation. The city of Long Beach has not provided evidence

to demonstrate that the carriers have had the opportunity to comment on that portion of the project not currently under grant. Therefore, the approved amount corresponds to that portion of the project already under AIP grant.

Airfield pavement rehabilitation/reconstruction.

Determination: Approved in part. A portion of the project, the reconstruction of taxiway K and service road B, was not included in the description of the project provided to the air carriers during airline consultation nor was it included in the description provided in the FAA's **Federal Register** notice on this application. The city of Long Beach has not provided evidence to demonstrate that the carriers have had the opportunity to comment on the rehabilitation of taxiway K and service road B. Therefore, those elements of the project have not been approved.

Brief Description of Project Disapproved: ARFF training facility.

Determination: Disapproved. The FAA has determined that this project does not enhance safety, security, or capacity, mitigate noise impacts, or furnish opportunities for enhanced competition between or among carriers. Therefore, this project is not PFC eligible. The ARFF training facility has been reviewed under AIP criteria (paragraphs 301b and 500 of FAA Order 5100.38A), which permits projects to be reviewed on a case-by-case basis. The FAA is currently implementing a policy of funding only regional ARFF training facilities. Long Beach Municipal Airport has not been designated as a regional ARFF training site by the FAA's Western-Pacific Region Airports Division.

Decision Date: December 30, 1993.

FOR FURTHER INFORMATION CONTACT: John P. Milligan, Western Pacific Airports Division, (301) 297–1029.

Issued in Washington, DC on January 12, 1994.

Donna Taylor,

Acting Manager, Airports Financial Assistance Division.

Cumulative List of PFC Applications Approved in the Preceding Quarter

State/application No. 1 airport/city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
Arizona: 93–01–C–00–YUM, Yuma MCAS/Yuma International, Yuma	9/9/1993	$3	$1,678,064	12/1/1993	6/1/2003
California:.					
93–01–C–00–CIC, Chico Municipal, Chico	9/29/1993	3	137,043	1/1/1994	6/1/1997
93–01–C–00–MRY, Monterey Peninsula, Monterey	10/8/1993	3	3,960,855	1/1/1994	6/1/2000
Connecticut: 93–01–C–00–HVN, Tweed-New Haven, New Haven	9/10/1993	3	2,490,450	12/1/1993	6/1/1999
Florida: 93–02–C–00–MCO, Orlando International, Orlando	9/24/1993	3	12,957,000	12/1/1993	2/1/1998
Georgia: 93–01–C–00–CSG, Columbus Metropolitan, Columbus	10/1/1993	3	534,633	1/1/1994	6/1/1995
Illinois:					
93–02–U–00–RFD, Greater Rockford, Rockford	9/2/1993	3	1,168,937	12/1/1993	10/1/1996
93–03–I–00–SPI, Capital, Springfield	11/24/1993	0	0	2/1/1994	2/1/2006
Iowa: 93–01–C–00–DSM, Des Moines Municipal, Des Moines	11/29/1993	3	6,446,507	2/1/1994	4/1/1997
Louisiana:					
93–02–U–00–MSY, New Orleans International/Moisant Field, New Orleans	11/16/1993	0	0	6/1/1993	4/1/2000
93–01–I–00–SHV, Shreveport Regional, Shreveport	11/19/1993	3	33,050,278	2/1/1994	2/1/2019
Maine: 93–01–C–00–PWM, Portland International Jetport, Portland	10/29/1993	3	12,233,751	2/1/1994	5/1/2001
Mississippi:					
93–02–C–00–GPT, Gulfport-Biloxi Regional, Gulfport-Biloxi	11/2/1993	3	607,817	2/1/1994	12/1/1995
93–02–C–00–MEI, Key Field, Meridian	10/19/1993	3	155,223	1/1/1994	8/1/1996
Montana: 93–01–C–00–FCA, Glacier Park International, Kalispell	9/29/1993	3	1,211,000	12/1/1993	11/1/1999
Nevada: 93–01–C–00–RNO, Reno Cannon International, Reno	10/29/1993	3	34,263,607	1/1/1994	5/1/1999
North Carolina: 93–01–C–00–ILM, New Hanover International, Wilmington	11/2/1993	3	1,505,000	2/1/1994	8/1/1997
Ohio: 93–03–U–00–CMH, Port Columbus International, Columbus	10/27/1993	3	16,270,256	1/1/1994	9/1/1996
Oklahoma: 93–02–U–00–TUL, Tulsa International, Tulsa	10/18/1993	3	9,717,000	2/1/1994	8/1/1995
Oregon: 93–01–C–00–OTH, North Bend Municipal, North Bend	11/27/1993	3	182,044	2/1/1994	1/1/1998
Pennsylvania: 93–01–C–00–AVP, Wilkes-Barre, Scranton International, Wilkes-Barre/Scranton	9/24/1993	3	2,369,566	12/1/1993	6/1/1997
Rhode Island: 93–01–C–00–PVD, Theodore F. Green State, Providence	11/30/1993	3	103,885,286	2/1/1994	8/1/2013
South Carolina: 93–01–C–00–49J, Hilton Head, Hilton Head Island	11/19/1993	3	1,542,300	2/1/1994	3/1/1999
Tennessee: 93–01–C–00–TYS, McGhee Tyson, Knoxville	10/6/1993	3	5,681,615	1/1/1994	1/1/1997

CUMULATIVE LIST OF PFC APPLICATIONS APPROVED IN THE PRECEDING QUARTER—Continued

State/application No. 1 airport/city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
Virginia:					
93-01-C-00-CHO, Charlottesville-Albemarle, Charlottesville	10/20/1993	0	0	9/1/1992	10/1/93
93-01-C-00-IAD, Washington Dulles International, Washington, DC	10/18/1993	3	199,752,390	1/1/1994	11/1/2003
Washington: 93-02-C-00-SEA, Seattle-Tacoma International, Seattle	10/25/1993	3	47,500,500	1/1/1994	1/1/1996

[1] The estimated charge expiration date is subject to change due to the rate of collection and actual allowable project costs.

[FR Doc. 94-1210 Filed 1-18-94; 8:45 am]
BILLING CODE 4910-13-M

[Summary Notice No. PE-94-1]

Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. 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 on or before February 8, 1994.

ADDRESSES: Send comments on any petition in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition 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 Avenue 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 (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on January 6, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 10633.
Petitioner: Federal Aviation Administration Technical Center.
Sections of the FAR Affected: 14 CFR 91.117(a), 91.303(e), 91.119(c) and 91.159(a).
Description of Relief Sought/ Disposition: To continue to permit the petitioner to conduct flight operations in support of research and development projects, subject to certain conditions and limitations. *Grant, December 15, 1993, Exemption No. 1200A*

Docket No.: 20853.
Petitioner: United Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.99 and 121.351.
Description of Relief Sought: To extend Exemption No. 3122 to allow the petitioner to continue to operate its turbojet airplanes in extended overwater operations with one high-frequency (HF) communications radio system and one long-range navigation system (LNRS). *Grant, December 22, 1993, Exemption No. 3122G*

Docket No.: 22441.
Petitioner: United Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.440(a).
Description of Relief Sought/ Disposition: To amend Exemption No. 3451 to allow the petitioner to utilize an alternate line check program permit in consort with its single visit training program (SVTP) for flight crew members. *Grant, December 23, 1993, Exemption No. 3451I*

Docket No.: 25559.
Petitioner: Aerospace Industries Association of America, Inc.
Sections of the FAR Affected: 14 CFR 21.182(a) and 45.119(a).
Description of Relief Sought: To extend Exemption No. 4913 to continue to allow relief from the requirement to install the identification plate specified in the rule during the production phase on the exterior of the aircraft. *Grant, December 22, 1993, Exemption No. 4913C*

Docket No.: 26584.
Petitioner: PHH Corporation.
Sections of the FAR Affected: 14 CFR 135.165(b)(5), (6) and (7).
Description of Relief Sought: To extend Exemption No. 5439 to allow PHH corporation to continue to operate certain airplanes equipped with one long-range navigation system (LRNS) and one high-frequency (HF) communication system in extended overwater operations. *Grant, December 29, 1993, Exemption No. 5439A*

Docket No.: 27335.
Petitioner: Aloha Skydivers Club.
Section of the FAR Affected: 14 CFR 105.43(a) and (d).
Description of Relief Sought: To allow foreign parachutists relief from the parachute equipment and packing requirements. *Partial Grant, December 23, 1993, Exemption No. 5814*

Docket No.: 27396.
Petitioner: Northwest Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.427(d)(1), 121.433(a), (c)(1)(i) and (iii), 121.440(a), 121.441(a)(1) and (b)(1) and appendix F of part 121.
Description of Relief Sought: To allow the petitioner to establish an annual single-visit training program (SVTP) where Northwest Airlines, Inc. (NWA) would conduct a four-day, crew oriented, annual training and evaluation program for all pilots and to administer PIC line checks six months following the implementation of its SVTP for one complete cycle, thereafter on a random basis to 50 percent of its PIC's and all flight crew

members. *Partial Grant, December 28, 1993, Exemption No. 5815*

Docket No.: 27422.

Petitioner: Millon Air, Inc.

Sections of the FAR Affected: 14 CFR 121.358.

Description of Relief Sought/ Disposition: To extend the compliance date for installation of airborne windshear detection systems beyond December 30, 1993. *Denial, December 22, 1993, Exemption No. 5813*

Docket No.: 27552.

Petitioner: Express One International.

Sections of the FAR Affected: 14 CFR 121.358.

Description of Relief Sought: To extend the compliance date for installation of airborne windshear detection systems beyond December 30, 1993, until January 2, 1994, for one DC–10 aircraft. *Denial, December 20, 1993, Exemption No. 5811*

[FR Doc. 94–1172 Filed 1–18–94; 8:45 am]

BILLING CODE 4910–13–M

Proposal for a New Special Purpose Operation in the Restricted Category Under FAR 21.25(b)(7)—Space Vehicle Launching

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice proposes to specify a new restricted category special purpose operation under FAR 21.25(b)(7), "Any other operation specified by the Administrator." The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities.

DATES: Comments on this notice must be received on or before February 18, 1994.

ADDRESSES: Send comments on this notice in triplicate to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Attn.: Victor Powell, Aerospace Engineering Specialist, AIR–110, 800 Independence Avenue SW., room 804, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: This proposal to specify a new special purpose restricted category operation, any comments received, and a copy of any final disposition will be filed in room 804, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591. Telephone (202) 267–9588.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit such written data, views, or arguments as they may desire. The FAA will consider any communication received on or before the closing date for comments from the public regarding this proposal to specify a new special purpose operation before approving the new special purpose or any related operation.

Background

Regulations Affected: FAR § 21.25(b)(7)

Discussion of Proposed New Special Purpose Operation

Federal Aviation Regulations (FAR) part 21, § 21.25 provides for issuance of type certificates approving specific special purpose operations for aircraft in the restricted category. Examples of special purpose operations for which restricted category type and airworthiness certificates may be issued are listed in FAR §§ 21.25(b)(1) Through (b)(6). Authority to specify any other special purpose operation is reserved by the FAA Administrator in FAR § 21.25(b)(7). Advisory Circular (AC) 21–17 states that the only operations falling within the restricted special purpose category are those items specifically listed in FAR § 21.25(b) (1) through (6), "plus further categories established under (b)(7) after public notice and comment procedures." The FAA defines restricted category Operations in FAR § 21.25(b) as agricultural (spraying, dusting, seeding, and livestock and predatory animal control); forest and wildlife conservation; aerial surveying (photography, mapping, and oil and mineral exploration); patrolling (pipelines, power lines, and canals); weather control (cloud seeding); aerial advertising (skywriting, banner towing, airborne signs and public address systems); and any other operation specified by the Administrator.

The FAA has approximately 50 years of experience in approving restricted category type certificates and flight operations for aircraft and uses that are in the public interest, but that cannot be accomplished in standard category aircraft (normal, utility, acrobatic, commuter, or transport). Restricted category certificates are issued when an aircraft is not eligible for standard category certification as configured for a particular special purpose operation. Historically special purpose operations conducted with restricted category aircraft have provided an acceptable overall level of safety because the FAA requires restricted category aircraft to meet all the airworthiness requirements of the appropriate standard category except for those requirements that are not pertinent to the special purpose operation. In addition, to compensate for the airworthiness requirements that cannot be met by the aircraft configuration, the FAA places performance or flight limitations upon the aircraft's restricted category operation (for example, requiring operators to avoid populated areas and to carry only essential personnel) to compensate for airworthiness standards that cannot be met.

Newport Aeronautical Development Corporation (NADC), seeks to establish a new special purpose operation called "space vehicle launching" under the restricted category provisions of § 21.25(b)(7), "Any other operation specified by the Administrator." The special purpose will allow restricted category aircraft to transport and release air-launched vehicles (ALV) designed to launch payloads (e.g., satellites or other research packages) into either earth orbit or sub-orbital trajectories.

This notice describes one method of using the proposed special purpose operation. However, if the FAA establishes this proposed special purpose operation, other individuals and companies may use other methods for operating aircraft for "space vehicle launching" as a special purpose operation in restricted category.

An ALV/aircraft combination represents a blend of two technologies—aviation and space. Civil aircraft established their record of safety and reliability during a long history of thorough and careful Federal oversight. The U.S. public bases its confidence in civil aviation on the knowledge that the FAA will not compromise its safety standards. The FAA is responsible for the certification of the aircraft, and its operation, to protect the aircraft, the crew, and the public and property on the ground.

In a typical projected use of this category, an operator, such as Orbital Sciences Corporation (OSC), may use one of several ALV models that are within the weight carrying capacity of the restricted category aircraft used in this special purpose operation. Orbital Sciences Corporation's current ALV models range up to 85,000 pounds in weight, contain several solid or liquid propellant rocket motors, and are designed to launch a payload into outer space. In this example, an L–1011 aircraft (or "carrier aircraft") may be modified to carry any of the operator's ALV models aloft. In addition, when not using the carrier aircraft for ALV launch

operations, the operator will use the carrier aircraft for other purposes and will be able to convert the aircraft back to a passenger and/or cargo carrying configuration after extensive modifications.

Launches will either be licensed by DOT's Office of Commercial Space Transportation (OCST) or carried out by the U.S. Government on its own behalf. OCST licenses commercial space launches in accordance with the Commercial Space Launch Act of 1984, as amended (49 U.S.C. App. 2601 *et seq.*) (the Act). OCST exercises regulatory authority over launches of launch vehicles to ensure the protection of public health and safety, the safety of property, and the national security and foreign policy interests of the United States. To obtain a license from OCST, an applicant, such as OSC, must demonstrate that it is capable of conducting launch related operations safely and responsibly.

Launches carried out by the U.S. Government on its own behalf are not subject to the Act and, accordingly, are not licensed by OCST. In those instances, the FAA would continue to exercise regulatory authority over the civil aircraft and the U.S. Government would be responsible for launch operations.

While the carrier aircraft/ALV combination will be capable of operating out of many locations worldwide and then launching an ALV, the takeoff and landing operations may be limited to certain military, government, or selected civil airports. FAR 91.313(e) places the following constraints upon operation of restricted category aircraft: "Except when operating in accordance with the terms and conditions of a certificate of waiver or special operating limitations issued by the Administrator, no person may operate a restricted category civil aircraft within the U.S.—(1) Over a densely populated area; (2) In a congested airway; or (3) Near a busy airport where passenger transport operations are conducted."

Orbital Sciences Corporation's current proposal is to release the ALV over the ocean but, in some circumstances, OSC may apply to release the ALV over land. During a typical operation, the pilot would release the ALV after the carrier aircraft climbs past 38,000 feet above sea level. After falling away from the carrier aircraft, the ALV rocket motor would ignite and carry the payload into the desired orbital or sub-orbital trajectory. After each rocket stage exhausts its fuel, the spent stage drops from the ALV. Depending on the ALV's altitude, the spent rocket stage would either drop back to the earth's surface, burn up in atmospheric reentry, or enter orbit.

During ferry flights and launch operations, OSC proposes to use safety inhibits to keep the ALV in a safe condition and protect the carrier aircraft and persons or property on the ground from inadvertent rocket ignition or other hazardous events. In addition, OSC proposes to use mechanical safety inhibits to inhibit inadvertent rocket ignition while the ALV remains attached to the carrier aircraft. OCS will protect the ALV release mechanism on the carrier aircraft to ensure that the pilot cannot inadvertently release the ALV. OSC has proposed placing a launch control operator on the carrier aircraft to continuously monitor the ALV's status and to ensure that the safety inhibits remain in place using carrier aircraft and ALV instrumentation. Safety inhibits are not removed from the motor and other critical circuits until after the pilot releases the ALV and it has dropped clear of the aircraft. OSC must plan the carrier aircraft flight routes for both ferry and launch operations to minimize the risk to public safety and the flight routes must be approved by the FAA.

Orbital Science Corporation also proposes to incorporate an onboard command destruct system on the ALV to allow ground launch range safety personnel to terminate the ALV's flight if, after release, the ALV threatens public safety. The command destruct system will be inoperative while the ALV remains attached to the carrier aircraft. Should ground personnel activate the command destruct system after the pilot releases the ALV, the system will disable the rocket motors and the ALV will fall towards the earth, where they could decide to initiate command destruct action.

Depending on whether the launch is government or commercial, either USAF/NASA/FAA or OCST/FAA, respectively, evaluate potential risks posed to public safety by possible use of the command destruct system. Either the carrier aircraft's or the ALV's flight path may be restricted if necessary to protect public safety.

In an emergency, the carrier aircraft pilot could jettison the ALV from the aircraft. If the pilot jettisons the ALV during ferry flight operations or before release during launch operations, the ALV will fall, intact, to the earth's surface. However, if the pilot jettisons the ALV only a few moments prior to a normal launch, it is possible that the ground launch range's safety personnel may be able to activate the command destruct system. In that case, the safety personnel will either allow the ALV to fall to the earth's surface or initiate the command destruct action, whichever best protects the public safety.

Orbital Science Corporation has conducted four ALV launches from a NASA-owned model NB–52 at both the Western and Eastern Ranges. NASA and DOD conducted extensive safety and design reviews for the ALV launches from the NB–52. OSC expects that launch operations using the carrier aircraft will be similar to those conducted using NASA's NB–52.

In issuing restricted category certificates, the FAA is required to prescribe appropriate conditions and limitations upon the aircraft type design and the operations of those aircraft to ensure the safety of persons and property in the air and on the ground. The FAA specifically solicits comments on whether the proposed special purpose operation, "space vehicle launching," would be in the public interest. The requester states that this special purpose would allow an operator to put payloads in orbit for approximately half the cost of using either conventional rockets or the space shuttle. Supplying this "space vehicle launching" service would provide jobs for both the operator and companies developing and building the payloads (satellites or research packages). Companies (and individuals) could use the payloads for business and research activities: Improving communication systems, researching atmospheric phenomena, improving navigation systems, developing new manufacturing techniques, and more. The FAA also solicits comment on operational restrictions the public believes are appropriate for these carrier aircraft while transporting ALV's, and the reasons for those restrictions. Comments should cover both launch and ferry flights.

Issued in Washington, DC, on January 11, 1994.

David W. Ostrowski,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 94–1208 Filed 1–18–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Guidelines for Implementation of the Applied Research and Technology Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for applications.

SUMMARY: The FHWA announces guidelines to carry out the Applied Research and Technology (ART) Program as required in section 6005(a) of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Richard A. McComb, Office of Technology Applications (HTA–2), (202) 366–2792; or Ms. Vivian Philbin, Office of the Chief Counsel, (202) 366–0780, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: The Applied Research and Technology Program, authorized under section 6005(a) of the ISTEA, Pub. L. 102–240, 105 Stat. 1914, 2170, was established for the purpose of accelerating testing, evaluation, and implementation of technologies which are designed to improve the durability, efficiency, environmental impact, productivity, and safety of highway, transit, and intermodal transportation systems.

The attached guidelines were developed for the selection and funding of field Test and Evaluation (T&E) projects under the ART Program which utilize the Highway Innovative Technology Evaluation Center (HITEC) for the development of evaluation plans. HITEC, an independent non-profit organization, was created by the American Society of Civil Engineer's (ASCE) Civil Engineering Research Foundation (CERF), in conjunction with the American Association of State Highway and Transportation Officials (AASHTO) and the FHWA. HITEC provides a process for the impartial evaluation of new products, materials, equipment, and services for which industry standards do not exist. Selection of T&E projects for ART Program funding will be made by the FHWA on the basis of evaluation plans developed by HITEC.

Authority Sec. 6005(a), Pub. L. 102–240, 105 Stat. 1914, 2170; 23 U.S.C. 307(e) and 315; 49 CFR 1.48.

Issued on January 10, 1994.

Rodney E. Slater,

Federal Highway Administrator.

Purpose and Scope

The Applied Research and Technology (ART) Program, authorized under section 6005 of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, Pub. L. 102–240, 105 Stat. 1914, 2170, was established to accelerate the testing and evaluation of technologies, both domestic and foreign, which are designed to improve the physical and/or operating characteristics of highways and transit and intermodal systems. These guidelines have been developed in direct response to section 6005(a) of the ISTEA (codified at 23 U.S.C. 307(e)(2)) and apply to the field Test and Evaluation (T&E) projects. The purpose of these guidelines is to set forth the FHWA's selection criteria of field T&E projects for State highway agency construction projects.

The field T&E projects are but one element of the FHWA's Applied Research and Technology Program. The other elements include (1) the Applied Research Element, and (2) the Priority Technologies Element. The former includes support for the development of research and development (R&D) products, the implementation of new technologies, international activities, and the funding of the operation of HITEC. The latter includes the testing and evaluation of the designated technologies that are specified in section 6005(e) (4)–(8) of ISTEA, and the other new and innovative technologies identified by the FHWA and proposed for partnerships.

Proposals for field T&E projects for ART Program funding are invited from State highway agencies, private entities, individuals, and other organizations. All proposals will be routed through the Highway Innovative Technology Evaluation Center (HITEC). HITEC, an independent non-profit organization, was created by the American Society of Civil Engineers' (ASCE) Civil Engineering Research Foundation (CERF), in conjunction with the American Association of State Highway and Transportation Officials (AASHTO), and the Federal Highway Administration (FHWA). HITEC provides a process for the impartial evaluation of new products, materials, equipment, and services for which industry standards do not exist. Proposals for funding R&D and other activities not associated with the testing and evaluation of new technologies will not be evaluated by HITEC.

Applications will be processed by HITEC under its standard procedures for assessment, planning, evaluation, and reporting on products, materials, equipment, services, and other technologies. HITEC will act as the central point of screening of new technologies by the public and private sectors. Highway agencies are encouraged to have private individuals submit their ideas and proprietary products directly to HITEC for screening and possible evaluation. If the technology requires a full scale field T&E project, HITEC, by working with the States, will assist applicants in developing and submitting evaluation plans for T&E projects to the FHWA for possible funding under the ART Program. State highway agencies may also submit applications to HITEC for non-commercial technologies. The FHWA will determine the acceptability of the project for funding.

For those technologies that result in State highway agency construction projects approved by the FHWA, the program provides for ART funding of up to 80 percent to State highway agencies for the cost of installing (constructing) the new technologies as part of a T&E project. In addition, the costs for testing, data collection, evaluation, and report preparation associated with the T&E construction project are eligible for 100 percent ART funds. State highway agencies conducting T&E projects are required to submit annual interim reports and a final report to document the project, the data collected, and the testing and evaluation results. If the technology fails on an operating highway, a pro rata share of the repair and/or replacement costs to restore the highway to useable condition may be financed with Federal-aid funds for that system of highways.

Applications

Applications for technology testing and evaluation and possible ART T&E funding shall be submitted directly to HITEC. Application requirements are intended to be simple, brief, and straightforward to encourage participation by private innovators and others who are unfamiliar with the highway market.

HITEC has developed an Information and Application Booklet that has been designed to be a comprehensive, self-explanatory document. It includes an Application Form as well as a description of the technical protocols and HITEC operating policies. Written inquiries and applications should be addressed to: HITEC, 1015 15th Street, NW., Washington, DC 20005. The phone number is (202) 842–0555.

Technologies

The definition of new technologies for testing and evaluation includes those that represent significant changes in the performance or other relevant characteristics of an existing product, but not the minor upgrading of a product or the use of the evaluation process to promote new interest in an existing product. Technologies should be sufficiently developed to provide a specific product, system, or process (at least in a prototype stage) for evaluation

without further development. In addition, technologies should employ new materials, designs, manufactured products, construction procedures, functional components, or other features that may provide improved service and/or operating or physical characteristics in the highway or transit system.

Both domestic and foreign technologies are eligible for testing and evaluation in the program. Note that Intelligent Vehicle Highway Systems (IVHS) technologies are not eligible for this program. IVHS technologies are specifically covered under IVHS programs administered by the Department of Transportation and other agencies; IVHS technologies will be referred to those programs. T&E projects eligible for consideration in the program will include (but will not be limited to) the following categories of technology:

1. Accelerated Construction Materials and Procedures. Projects under this category will test and evaluate innovative uses and modifications of concrete, steel, plastics, composites, and other materials, and innovative procedures for accelerating construction, including specifications and equipment for pavements, structures, geotechnical works, and drainage facilities. Rapid-curing materials, prefabricated components, plug-in replacement modules, automated construction equipment, robots, and sensors are examples of technologies that will be considered in this category.

2. Environmentally Beneficial Materials and Procedures. Projects under this category will test and evaluate the environmental benefits of alternative materials and procedures used in the planning, design, construction, rehabilitation, operation, and maintenance of highways. Air quality improvements and noise abatement systems for construction, maintenance, and operations; environmentally benign materials for vegetation control and snow and ice removal; and environmentally safe paint removal, cleaning, and application are among the hazard-free or beneficial environmental technologies covered in this category.

3. Materials and Techniques That Enhance Serviceability and Longevity Under Adverse Climatic, Environmental, and Load Effects. This category of projects will include projects using materials and techniques, including design and construction, seeking to enhance the serviceability and durability of pavements, structures, and appurtenances under adverse environmental conditions and severe loadings. Strength enhancing additives or reinforcements, coatings, sealers, composite designs, in situ supplements, and alternative design or construction technologies are examples of candidates to be included in this category.

4. Technologies That Increase Efficiency and Productivity of Vehicular Travel. This category will include projects, both in the vehicle and on the roadway, such as traffic control devices and systems; traffic management systems, strategies, and communications; information systems; computer-based tools that permit analysis of area-wide surface transportation needs and operational plans; and other technologies and procedures that increase the efficiency and productivity of vehicular travel. Technologies to be explored may include innovative sensing and information transfer technologies, operational systems, software, and other technologies affecting vehicular travel and demand management.

5. Technologies That Enhance Safety and Accessibility of Vehicular Transportation Systems. Projects under this category will test and evaluate hardware, software, materials, equipment, and systems that address improved safety and accessibility of vehicular transportation systems. Also included will be design, construction, and operational concepts for improved safety or accessibility of vehicular transportation systems, such as guidance and control systems, visibility and traction improvements, and network operations monitoring and control systems.

Field Locations

T&E projects under the ART Program are required to be incorporated in projects constructed on highways eligible for Federal-aid. Project sites for the testing and evaluation of new technologies will be chosen to insure that an appropriate range of traffic and operations, cultural, geographic, topographic, climatic, and other necessary site characteristics are included in the program.

Cost-Sharing

The Federal share of funding for acquiring, installing, or constructing an approved T&E project will not exceed 80 percent of the costs of the technology incorporated into the project. Non-Federal funds for the matching portion of the technologies incorporated into the project may be provided by cash payments or an equivalent value in the form of construction services, equipment, materials, or other services or tangible goods required and used directly for purchasing, constructing, installing, or otherwise obtaining the approved technology. In addition, the costs for testing, data collection, evaluation, and report preparation associated with the T&E construction project are eligible for 100 percent ART funds.

Cost-sharing using ART funds is not available to assist small business entrepreneurs, private sector businesses, individuals, and other private organizations in offsetting standard HITEC fees for processing and evaluation plan development. The processing fee and evaluation plan development fees for applications submitted to HITEC by State highway agencies are eligible for 100 percent ART funding. Funds are not available under these guidelines for general R&D or for any technology development costs.

Eligible Construction Costs

Construction features and costs of T&E projects eligible for Federal cost-sharing are those found to be additional to or different from the features and costs associated exclusively with conventional projects or technologies. The additional costs, hereafter referred to as Delta Costs, are eligible for up to 80 percent Federal funds. Examples of three basic categories of features which may generate Delta Costs are as follows:

1. A replacement or substitute for a conventional technology. The Delta Costs would be the costs for the replacement or substitute, minus the cost of the conventional technology. An example would be a new binder used as a substitute for asphalt or portland cement.

2. A new addition to or modification of an existing technology. In this case the Delta Costs would be the costs of the additional technology and its incorporation in the project. An example would be the use of an asphalt modifier for which the material cost of the modifier and the labor or equipment cost incurred in adding the modifier would constitute the Delta Costs. If the modification of the existing technology also required an increase in the preparation, handling, or placement costs over conventional costs, those increased costs also would be a part of the Delta Costs.

3. An entirely new technology added to a project. The Delta Costs in this category would be all of the costs for the new technology to be incorporated into the project. Examples would be the installation of a system for heating a bridge deck or the installation of a cathodic protection system for a bridge structure. In general, Delta Costs will not include those costs associated with

the normal construction of the project that are not a direct part of the new technology. Examples of features that normally would not be included in Delta Costs include: restriping surfaces after overlays, redecking in conjunction with the installation of a bridge deck heating system, improvement of subsurface and/or roadside drainage systems in conjunction with a pavement overlay project, and traffic control during construction (unless it is unique to the installation or changed in character and cost by the installation, in which cases the increased costs specifically attributable to the portions of the project would be included in the Delta Costs).

Costs for data collection, data analysis, and information dissemination are eligible for 100 percent ART funding on approved T&E projects.

In those instances where the technology used on an approved T&E project fails and the State is required to repair the roadway to restore it to full standards, a pro rata share of the repair or replacement costs can be eligible for Federal-aid funds for that system where the installation took place. Such repair of the roadway will not be considered maintenance.

Technical Assistance

State highway agencies with approved T&E projects shall be provided with technical assistance to carry out projects.

Evaluation Plans

When an evaluation plan that includes the construction of a full scale field T&E project has been developed by HITEC, it will be submitted to the FHWA for review and proposed ART Program funding. The following sections shall be included in the evaluation plan for the proposed T&E project. This information does not have to be submitted with the application to HITEC, but will be developed as a part of the HITEC evaluation process.

Project Plan

The specific purpose and objectives of the T&E project must be delineated, followed by a description of:

1. The components of the technology to be evaluated,
2. The proposed installations, and
3. Planned observations, including qualitative and quantitative requirements for the term of the project.

A time/phase chart or time line for the complete project must be included. If the T&E project is to be a part of a larger construction project, the entire construction project must be described in general detail, and the new technology described in specific detail within the project.

Data Collection

The design of each data collection element must be based on the principles of scientific inquiry and structured so that both the internal and external validity of the data are fully addressed and the results can be applied to other situations. A detailed plan for the collection of data must accompany the proposal for the project. The plan must, as a minimum, include:

1. The type of data to be collected and the reasons for collecting it,
2. Criteria and procedures for locating and placing the new technology and for selecting data collection locations,
3. Instrumentation to be used for each set of data to be obtained,
4. Timing of the data collection (e.g., calendar time, clock time, environmental conditions if limiting, and the interval between readings),
5. Procedures for collecting the data, and
6. Frequency and quantity of data to be obtained during the testing period.

Data collection will be directed toward the determination of functional performance and life cycle costs and, where applicable, will include:

1. Design, construction, maintenance, and operations criteria and cost data,
2. Relevant environmental and operational characteristics and data at the test site,
3. Interim maintenance and repair history,
4. Assessment of safety in both construction or installation and in operations,
5. Measures of the impact on traffic operations,
6. Measures of the impact on contiguous property and occupants,
7. Performance data (e.g., visibility, reflectivity, riding quality, deflection, skid resistance, traffic capacity, and flow characteristics), and
8. Other data as needed to fully meet the project objectives.

Cost and Budget

Detailed information on the estimated total costs and annual costs of the proposed project must be presented, with a breakdown of capital costs for equipment, instruments, and special materials; payroll costs for labor for installation and operation of the new technology; payroll costs, travel, and other expenses for observations, data collection, and analysis; costs for information storage and data retrieval; and costs for publication and distribution of reports and other proposed technology transfer activities. The proposed source, amount, and allocation of funds for the non-Federal portion of the costs must be described in the cost and budget data section of the proposal. Up to 80 percent of the costs of construction for the T&E project may be provided by Federal funds; however, the level of cost-sharing offered by the proposing agency will be a factor considered in the selection of the projects to be funded under the ART Program.

Reporting Requirements

An annual progress report will be required of each public agency for each T&E project for which the testing, data collection, and evaluation is underway. In order to meet Congressional deadlines, the report must be received by the FHWA no later than September 30 each year. The report should include:

1. A brief description of the plan for the T&E project, including a description of the technology being evaluated, the scope and objectives of the project, the evaluation procedures being used, and the time period and location(s) for the full program;
2. A detailed description of the activities conducted during the report period, including the tests performed, the equipment being used, all test location characteristics, and a compilation of the data collected to date;
3. A detailed description of any changes or modifications in the plan that were made or proposed to be made in the project during the report period, the warrants for the changes, and the expected results of the changes;
4. If an interim report, a summary of the trends, both short term and long term, and results to date of the testing and evaluation program; and
5. If a final report, a detailed summary of the results of the tests and evaluations and the conclusions drawn from the project, including the long term prospects of the technology, the intended use of the results, and the technology transfer plans to be implemented by the agency conducting the project and those recommended for execution by the FHWA and others.

Technology Transfer

A discussion of the plans for use of the information derived from the project must be included in the proposal. Plans for the implementation of new technologies resulting from the experiment must include a discussion of the intended development of specifications, reports, technical papers, training courses, conferences, demonstrations, or other means of disseminating the useful results

throughout the transportation community.

Selection Criteria

Evaluation plans for the proposed T&E projects prepared by HITEC and submitted to the FHWA for funding under the ART Program will be reviewed annually on a fiscal year basis. Selection will be based on specific characteristics of the projects as presented in the proposals. The selection criteria to be used by the FHWA in evaluating and rating proposals are listed below in descending order of priority:

1. Applicability of the proposed project to the categories of general technologies. Does the project specifically address one or more of the general categories of technologies covered in the legislation and discussed above in these guidelines?

2. Timeliness of the proposed project as a part of an approved and funded construction project of new construction, rehabilitation, upgrading, or replacement. Does the proposed project fit into an activity that has been approved and funded for early construction and that will likely proceed with or without the new technology component? Is the opportunity for the technology limited to the proposed project or are there frequent opportunities to fit the technology into similar projects? Are there unique characteristics of the project (such as location) that make it especially appropriate for testing and evaluating the proposed technology?

3. Clarity of focus and applicability of the new technology being evaluated to areas of need in the national transportation program. Does the proposed project clearly address a technology of recognized importance in the national transportation program? Does the proposed technology offer the potential for solving a major problem in current highway programs or systems (such as bridge deck deterioration, pavement failures, snow and ice control, or urban network capacity and safety)?

4. Level of funding to be provided by the applicant for the T&E project. While ART funds are available for up to 80 percent of the cost of construction of the T&E project and up to 100 percent of the testing, data collection, and reporting, extra consideration will be given to projects with higher-than-minimum levels of participation by the applicant agencies. Non-Federal funding may include, in addition to a monetary match, the furnishing of materials and/or equipment, specially trained workers used in installing or performing the new technology, and other tangible contributions of goods or labor specifically related to the project.

5. Appropriateness of the costs and budget for the project to the potential return on investment in terms of future increases in safety, serviceability, productivity, durability, economy, environmental quality, and other benefits to the national transportation systems. What is the anticipated cost-benefit ratio for the proposed project? What are the potential benefits to the nation's transportation system of the new technology, if successful, in terms of direct cost savings in construction and/or operations or indirect savings through improved safety, efficiency, capacity, or other relevant characteristics?

6. Completeness and technical quality of the project plan and design. The caliber of the plan as a well-designed project will be assessed. Are the objectives of the project well defined? Are they specific, realistic, and achievable? Do the steps in the plan focus on those objectives? Are the installation and evaluation procedures, including instrumentation and data collection, carefully planned and described? Is the proposed plan statistically sound? Have the relevant variables been accommodated in the plan?

7. Suitability of the proposed project location(s) for providing the needed environmental and operational conditions for the evaluation of the technology being studied, the required geographic diversity of locations, and the convenience and accessibility of the proposed site(s). Is the proposed site for the project suitable to the needs of the technology and practical for performance of the observations and data collection?

8. Quality, clarity, comprehensiveness, and applicability of the proposed technology transfer program. The plan for the use of the results must be included in the evaluation of the proposal. That plan must address the following issues: How are the results of the technology to be used at the completion of the project, if successful? If unsuccessful? What technology transfer procedures will be followed for implementation of the new technology in the applicant's agency and nationally?

Post Selection

On a fiscal year basis, the FHWA will announce the selection of approved T&E projects for funding under the ART Program from the candidates submitted by HITEC. This will take place early in the first quarter of each fiscal year. The FHWA will notify the States of the approved project(s) and the funding amount(s). The States will be requested to develop Plans, Specifications, and Estimates (PS&E) for the construction of the projects. Allocation of Federal funds for construction will be based on the approved PS&E. Funding of the approved projects will be through the normal Federal-aid procedures with the selected States and funding will be processed through the FHWA field offices.

[FR Doc. 94–1212 Filed 1–18–94; 8:45 am]
BILLING CODE 4910–22–P

Research and Special Programs Administration

Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before February 18, 1994.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application	Applicant	Regulation(s) affected	Nature of exemption thereof
11190–N	Olin Corporation, Winchester Division, East Alton, IL.	49 CFR 173.62(c)	To authorize the transportation of 1G fiber drums as outer packaging for use in transporting various classes of explosives. (Modes 1, 3, and 4.)
11191–N	Alaska Helicopters, Inc., Anchorage, AK.	49 CFR 172.101, 173.241, 173.242, 173.243.	To authorize the bulk transportation of class 3 hazardous materials in quantities greater than those presently authorized by cargo air. (Mode 4.)
11192–N	Bulk Sak, Inc., Malvern, AR	49 CFR 172.101, 172.331, 173.124, 173.152, 173.154, 173.164, 173.204, 173.213, 173.217, 173.227, 173.240, 173.241, 173.242, 173.244.	To authorize the manufacture, mark and sell of non-DOT specification collapsable, nonreusable, flexible bulk bags for use in transporting various classes of solid hazardous material. (Modes 1, 2, and 3.)
11193–N	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.28	To exempt reused, reconditioned and remanufactured metal packaging from the minimum thickness requirements for transporting Class 1 explosives. (Modes 1, 2, 3, and 4.)
11194–N	Pressure Technology, Inc., Hanover, MD.	49 CFR 173.304(a), 175.3, 49 CFR 173.302(a).	To authorize the manufacture, mark and sell of non-DOT specification fiber reinforced plastic full composite cylinder for shipment of certain Division 2.1 and 2.2 gases. (Modes 1, 2, 3, 4, and 5.)
11195–N	Defense Technology Corporation of America, Casper, WY.	49 CFR 172.101	To exempt from labelling requirements small packages of various hazardous material (i.e. tear gas type products) now required to bear a poison label. (Mode 1.)
11196–N	DHE (Fabrication and Machining) Vereeniging, Republic of So. Africa.	49 CFR 178.245–1(b)	To authorize the transportation of various classes of hazardous material in non-DOT specification steel portable tanks similar to Specification 51 equipped with fittings at the end or on top in one location. (Modes 1, 2, and 3.)
11197–N	Hach Company, Ames, IA	49 CFR 172, 173, Parts 107	To exempt from shipping papers, marking and labeling requirements limited quantities of various hazardous materials known as test kits in specially designed packaging. (Mode 1.)
11198–N	Macsotech, Inc., Los Angeles, CA.	49 CFR 178.42	To manufacture, mark and sell a non-DOT specification seamless aluminum cylinder comparable to a DOT Specification 3E for shipment of those hazardous materials authorized for shipment in a DOT Specification 3AL cylinder (Modes 1, 2, 3, and 4.)
11199–N	Dexsil Corporation, Hamden, CT.	49 CFR 173.4	To authorize small, quantities (0.10 grams) of alkali dispersions, Division 4.3 material to be shipped under the exceptions for small quantity requirements of the regulations. (Modes 1, 2, 3, 4, and 5.)

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on January 12, 1994.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 94–1266 Filed 1–18–94; 8:45 am]

BILLING CODE 4910–60–M

Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before February 3, 1994.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Modification of exemption
7887–X	North Coast Rocketry, Inc., Salt Lake City, UT (see footnote 1)	7887
9157–X	Matheson Gas Products, Secaucus, NJ (see footnote 2)	9157
10340–X	Schutz Werk GmbH & Co., Selters, West Germany (see footnote 3)	10340
11072–X	U.S. Department of Defense, Falls Church, VA (see footnote 4)	11072
11147–X	The Boeing Company, Seattle, WA (see footnote 5)	11147
11168–X	Aldrich Chemical Company, Inc., Milwaukee, WI (see footnote 6)	11168

(1) To modify exemption to provide for potassium perchlorate, Division 5.1 as an additional commodity.
(2) To modify exemption to provide for cargo vessel as an additional mode of transportation.
(3) To exempt IBCs containing residue of various classes of hazardous materials from the shipping paper requirements and provide for one-inch markings.
(4) To modify exemption to provide for on-deck stowage of shipborne steel barges containing Class 1 material.
(5) To reissue exemption originally issued on an emergency basis to authorize the shipment of aircraft safety equipment which utilize non-DOT specification cylinders containing a Division 2.2 material.
(6) To modify exemption to include cargo vessel as an additional mode of transportation.

Application No.	Applicant	Parties to exemption
6614–P	Inter Valley Pool Supply, Azusa, CA	6614
7991–P	Washington Central Railroad Company, Yakima, WA	7991
8362–P	Department of the Navy, Silver Spring, MD	8362
9275–P	J. Manheimer, Inc., Long Island City, NY	9275
9723–P	Environmental Services of America, Inc., Ellington, CT	9723
9723–P	Environmental Response, Inc., Hendersonville, TN	9723
9769–P	Franklin Environmental Services, Inc., Wrentham, MA	9769
9969–P	Kin-Tek Laboratories, Inc., LaMarque, TX	9969
10001–P	Airgas, Inc., Mobile, AL	10001
10001–P	Linweld, Lincoln, NE	10001
10114–P	Northwest Airlines, Inc., St. Paul, NM	10114
10175–P	Letica Corporation, Rochester, MI	10175
10307–P	Rhone-Poulenc Basic Chemicals Co., Shelton, CT	10307
10933–P	Advanced Environmental Technology Corporation, Flanders, NJ	10933
11119–P	Oatey Co., Cleveland, OH	11119
11119–P	Akzo Coatings, Inc., Norcross, GA	11119
11189–P	Ford Motor Company, Dearborn, MI	11189

This notice of receipt of applications for modification of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on January 12, 1994.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 94–1267 Filed 1–18–94; 8:45 am]

BILLING CODE 4910–60–M

Pipeline Safety Advisory Bulletin ADB–94–01; Supplemental Incident/Accident Reports

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Advisory to owners and operators of natural and other gas pipeline facilities and hazardous liquids pipeline facilities concerning certain requirements applying to (1) supplemental incident and accident reports and (2) estimated property damage totals.

SUMMARY: This advisory (1) reminds pipeline facility owners and operators to submit supplements to gas pipeline incident and hazardous liquid pipeline accident reports as required by the regulations, (2) clarifies what should be included in estimated property damage totals on incident/accident reports, and (3) cancels a previous interpretation on costs to be included in these estimated property damage totals.

Advisory

Written incident reports are required under 49 CFR 191.9 for gas distribution systems and 49 CFR 191.15 for gas transmission and gathering systems and accident reports are required under 49 CFR 195.54 for hazardous liquid pipeline systems. After the initial report has been submitted, the operator is required to submit a supplemental written report whenever additional relevant information is obtained concerning the particular incident or accident. The form to be used for supplemental reports is the same as for the initial report, and submittal must be no later than 30 days after acquiring the additional information.

All relevant costs must be included in the estimated property damage total on the initial written incident or accident report as well as supplemental reports. This includes (but is not limited to) costs due to property damage to the operator's facilities and to property of others, commodity/product not recovered, facility repair and replacement, gas distribution service restoration and relighting, leak locating, right-of-way clean up and environmental clean up and damage. Facility repair, replacement or change that is not related to the incident but is done by the operator as a matter of convenience (for example, to take advantage of access to facilities unearthed because of the incident) should not be included.

An April 2, 1974, letter from the Office of Pipeline Safety (OPS) to Lakehead Pipeline Company included an interpretation that "* * * the value of any commodity lost or fittings used during repair which become permanently attached to the system * * *" is not to be included in the estimate of total property damage. This interpretation is no longer applicable.

Background

A review of a sampling of incident and accident reports has revealed two problems with the reports:

(1) Supplemental reports were seldom submitted, and (2) many estimates of property damage totals were low and appeared to be incomplete, particularly in regard to environmental damage including costs associated with cleanup.

With regard to item (1), this advisory is a reminder to operators that supplemental reports updating data in the report are required to be submitted to OPS. Concerning item (2), there has been some misunderstanding on what costs to include in estimating property damage totals, perhaps because of the April 2, 1974, OPS letter to Lakehead Pipe Line Company. OPS wants all property damage costs associated with the failures reported on the report forms, particularly the costs of environmental damage and cleanup costs. Property damage costs that are determined after the initial submittal of the report forms should be submitted in additional supplemental report forms.

Issued in Washington, DC, on January 13, 1994.

Richard L. Beam,

Associate Administrator for Pipeline Safety.

[FR Doc. 94–1255 Filed 1–18–94; 8:45 am]

BILLING CODE 4910–60–P

Pipeline Safety Advisory Bulletin ADB–94–02 Valve Location and Spacing

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

ACTION: Advisory to owners and operators of gas distribution facilities.

SUMMARY: The purpose of this advisory bulletin is to provide guidance to operators regarding the valve location and spacing requirements of 49 CFR 192.181(a).

Advisory

In the event of an incident or other emergency, the number and location of gas distribution system valves are critical in achieving the effective shut down and isolation of any section of main in a gas distribution system. The RSPA is providing guidance in this Advisory Bulletin to owners and operators to assure that valving on high pressure distribution systems complies with the requirements of § 192.181(a).

The "Guide for Gas Transmission and Distribution Piping Systems" (Guide) can be referred to for help in establishing locations for emergency valves. Developed by the Gas Piping Technology Committee, it is now referenced as American National Standards Institute ANSI/GPTC Z 380. Copies are available through the American Gas Association; 1515 Wilson Blvd.; Arlington, VA 22209.

The guide lists the following as criteria to be considered when establishing valve locations in high pressure distribution systems:

• Physical Characteristics:

—Size of area to be isolated.

—Topographic features (such as rivers, major highways and railroads).

—Number of valves necessary to isolate the area.

• Operating Characteristics:

—Number of customers and type of customers such as hospitals, schools and commercial and industrial users that would be affected.

—Time required for available personnel to carry out isolation procedures.

—Time required for controlling the pressure in the isolated area by means of venting, transferring gas to adjacent systems, etc.

—Time required for available personnel to restore service to customers.

Background

A high pressure gas main in Atlanta, Georgia was ruptured by a construction contractor on December 1, 1977. The National Transportation Safety Board (NTSB) investigated the incident and found the probable cause was the failure of the contractor to use information available to him on his blueprint which resulted in the rupture of the gas main. The incident occurred at 1:00 p.m. and, because of a poor selection of the location and the number of emergency valves, it took until 2:45 p.m. to shut off the flow of gas to the ruptured main.

In its accident report on the rupture, NTSB recommended (Safety Recommendation P–78–24) that RSPA amend 192.181(a) to specifically define the requirement for location and number of emergency valves. This is not feasible because the location and number of emergency valves is dependent on local conditions, and because local conditions vary greatly from operator to operator and city to city. Therefore, by means of this Advisory Bulletin, the attention of operators is being redirected to the requirements of § 192.181(a), and to the Guide for any help it can be toward meeting the requirements of § 192.181(a). Although § 192.181 is a design regulation on gas distribution systems readied for service after March 1971, on systems installed before (as well as after) that date the Guide material can be used, as noted previously, as a help in determining emergency valve locations.

Issued in Washington, DC, January 13, 1994.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 94–1256 Filed 1–18–94; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

January 12, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

SPECIAL REQUEST: This form was developed as a direct result of the enactment of the "Brady Handgun Violence Prevention Act," Title I of Public Law 103–159, which provides, in part, for a national waiting period of 5 days before a licensed importer, manufacturer, or dealer may lawfully transfer a handgun to a nonlicensed individual. The Act provides that the waiting period provisions of the law become effective 90 days after the date of enactment, i.e., February 28, 1994; therefore, the Department of the Treasury, on behalf of the Bureau of Alcohol, Tobacco and Firearms, is requesting Office of Management and Budget (OMB) review and approval by January 14, 1994. We are submitting this form for public comment by close of business February 1, 1994. Although this will not allow time for comment on this draft of the form, your comments are welcome and should be submitted for consideration for possible future revisions of the form.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: New.

Form Number: ATF F 5300.35.

Type of Review: New Collection.

Title: Statement of Intent to Obtain a Handgun(s).

Description: This form is used to establish the eligibility of the buyer and to determine if a handgun sale is legal, prior to actual delivery of the handgun.

It becomes part of the dealer's records and is used by Law Enforcement in investigations/inspections to trace firearms or to confirm criminal activity of persons who have violated the Gun Control Act.

Respondents: Individuals or households, Businesses or other for-profit, Federal agencies or employees.

Estimated Number of Respondents/Recordkeepers: 8,000,000.

Estimated Burden Hours Per Respondent/Recordkeeping: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 1,316,750 hours.

Clearance Officer: Robert N. Hogarth, (202) 927–8930 , Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

BILLING CODE: 4810–31–P

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
STATEMENT OF INTENT TO OBTAIN A HANDGUN(S)

Prepare in duplicate. All entries must be in ink. Before completing, please see notices and instructions on the back of this form.

SECTION A: TO BE COMPLETED PERSONALLY BY THE TRANSFEREE (BUYER). THE BUYER MUST PRINT 1,2,3, 4 AND 5 OF THIS SECTION.

1. TRANSFEREE'S (BUYER'S) NAME (Last, first, middle)

2. DATE OF BIRTH (Month, day, year)

3. RESIDENCE ADDRESS (No., street, city, state and ZIP code)

4. THE INFORMATION REQUESTED IS THIS ITEM (4) IS OPTIONAL, BUT WILL HELP AVOID THE POSSIBILITY OF BEING MISIDENTIFIED AS A FELON OR OTHER PROHIBITED PERSON.

☐ AMERICAN INDIAN OR ALASKAN NATIVE ☐ ASIAN OR PACIFIC ISLANDER ☐ BLACK, NOT OF HISPANIC ORIGIN ☐ HISPANIC ☐ WHITE, NOT OF HISPANIC ORIGIN	SOCIAL SECURITY NUMBER	HEIGHT	WEIGHT	SEX
	PLACE OF BIRTH			

5. STATEMENT OF TRANSFEREE (BUYER), EACH QUESTION MUST BE ANSWERED WITH "YES" OR "NO" CHECK IN THE APPROPRIATE BOX FOR EACH QUESTION.

	YES	NO		YES	NO
a. Are you under indictment or information* in any court for a crime punishable by imprisonment for a term exceeding one year? *A formal accusation of a crime made by a prosecuting attorney, as distinguished from an indictment presented by a grand jury.			c. Are you a fugitive from justice?		
			d. Are you an unlawful user of, or addicted to, marijuan, or any depressant, stimulant or narcotic drug, or any other controlled substance?		
b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (Note: A "YES" answer is necessary if the judge could have given a sentence of more than one year. A "YES" answer is not required if you have been pardoned for the crime or the conviction has been expunged or set aside, or you have had your civil right restored and, under the law where the conviction occured, you are not prohibited from receiving or possessing any firearm.			e. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?		
			f. Have you been discharged from the Armed Forces under dishonorable conditions?		
			g. Are you an alien illegally in the United States?		
			h. Are you a person who, having been a citizen of the United States, has renounced your citizenship?		

I hereby certify that the answers to the above are true and correct. I understand that a person answers "Yes" to any of the above questions is prohibited from purchasing and/or possessing a firearm, except as otherwise provided by Federal Law. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony.

TRANSFEREE'S (BUYER'S) SIGNATURE | DATE

SECTION B - TO BE COMPLETED BY THE TRANSFEROR (SELLER)

6. TRADE/CORPORATE NAME, ADDRESS, AND TELEPHONE NUMBER OF TRANSFEROR (SELLER) | FEDERAL FIREARMS LICENSE NUMBER

7. THE TRANSFEREE (BUYER) HAS IDENTIFIED HIMSELF/HERSELF TO ME BY USING A DRIVER'S LICENSE OR OTHER IDENTIFICATION THAT CONTAIN A PHOTOGRAPH AND SHOWS THE TRANSFEREE'S (BUYER'S) NAME, DATE OF BIRTH AND RESIDENCE ADDRESS.

TYPE OF IDENTIFICATION | NUMBER OF IDENTIFICATION

☐ DRIVER'S LICENSE ☐ OTHER (Specify) _____

8. NOTICE OF THE STATEMENT IN SECTION A OF THIS FORM WAS PROVIDED TO _____ (Chief Law Enforcement Officer) OF _____ (Law Enforcement Agency) ON _____ (Date) BY

(Check the appropriate answer(s).)

☐ TELEPHONE ☐ TELEFAX ☐ IN PERSON ☐ OTHER (Specify) _____

9. A COPY OF THE STATEMENT IN SECTION A OF THIS FORM WAS TRANSMITTED TO THE CHIEF LAW ENFORCEMENT OFFICER ON _____ (Date) BY

(Check the appropriate answer(s).)

☐ MAIL ☐ TELEFAX ☐ IN PERSON ☐ OTHER (Specify) _____

10. ON _____ (Date), THE CHIEF LAW ENFORCEMENT OFFICER PROVIDED NOTICE THAT THIS TRANSFER

☐ WOULD ☐ WOULD NOT VIOLATE FEDERAL, STATE OR LOCAL LAWS.

11. TRANSFEROR'S (SELLER'S) SIGNATURE | TRANSFEROR'S TITLE | DATE

ATF F 5300.35 ( )

BILLING CODE 4810-31-C

Instructions for ATF F 5300.35

Notice

The Brady handgun Violence Prevention Act is effective on February 28, 1994 and imposes a 5-day waiting period on the transfer of a handgun(s).

Warning

Any seller who knowingly transfers a handgun(s) to any person prohibited from receiving or possessing any firearm violates the law even though the seller has met the waiting period requirements.

Instructions to Tranferee(Buyer)

1. The buyer must personally complete Section A of the form and certify (sign) that the answers are true and correct.

If the buyer is unable to read and/or write, the answers may be written by other persons, excluding the licensee. Two persons(other than the dealer) will then sign as witnesses to the buyer's answers and signature.

2. The buyer shall print the responses to Section A, Items 1,2,3,4, and 5.

3. The buyer must provide a valid government issued photo identification to the seller that contains the buyer's name, date of birth, and residence address.

Instructions to Transferor(Seller)

Note: This form need not be completed if the proposed transfer of a handgun(s) is subject to any of the exceptions contained in 27 CFR 178.

1. You may use Forms 5300.35 supplied by ATF or use photocopies of such forms. If photocopies are used, the photocopies must include the instructions.

2. If the transfer is subject to any of the exceptions in 26 CFR 178.____ the dealer must obtain the documentation required by 27 CFR 178.____ to support the exception(s). A handgun(s) will not be transferred to any buyer who fails to provide such documentation.

3. If the proposed transfer of a handgun(s) is subject to the 5-day waiting period, the buyer must complete Section A and the seller must complete Section B.

4. The seller must:

(a) ensure that the buyer complete Section A and signs the statement;

(b) if the buyer's name is illegible, print the buyer's name above the name of the buyer; and

(c) establish the identify of the buyer by requiring the buyer to provide a valid government issued photo identification bearing the buyer's name, date of birth, and residence address.

5. Within 1 day after the buyer furnishes the statement, the seller shall provide notice of the contents of this statement to the Chief Law Enforcement Officer of the place of residence of the buyer. (See Item 8 on the form.)

6. Within 1 day after the buyer furnishes the statement, the seller shall sign and date the form in Item 10 and transmit a copy of this form, including its instructions to the Chief Law Enforcement Officer of the place of residence of the buyer. (See Item 9 on the form.)

7. The seller shall delay delivery of the handgun(s) until 5 business days (meaning days on which State Offices are open) have elapsed from the date the seller has furnished notice of the contents of the statement to the Chief Law Enforcement Officer. (Unless within the 5-day period the seller has received notice from the Chief Law Enforcement Officer of the place of residence of the buyer that the buyer's receipt or possession of the handgun(s) would not violate the law.)

8. After the seller has provided notice of the contents of the buyer's intent to obtain a handgun(s) to the Chief Law Enforcement Officer, this form must be maintained as part of the seller's permanent records, regardless of whether the transfer occurs.

9. If prior to the expiration of the 5-day waiting period or prior to actual delivery of the handgun(s) to the buyer, the seller receives notification from the Chief Law Enforcement Officer that the officer has information that the possession or receipt of a handgun by the buyer would violate the law, the seller is prohibited from transferring the handgun(s) to the buyer.

10. Any seller, who after the transfer of an handgun(s) receives a report from a Chief Law Enforcement Officer containing information that the receipt or possession of the handgun(s) by the buyer would violate the law, shall within 1 business day communicate all information that the seller has about the transfer and the buyer to a) the Chief Law Enforcement Officer of the place of business of the Seller and b) the Chief Law Enforcement Officer of the place of residence of the buyer. The seller may also provide this information to the local ATF office.

11. After the seller has provided a copy of this form to the Chief Law Enforcement Officer, any subsequent proposal(s) made by the same buyer to obtain a handgun(s) requires the execution of a new ATF Form 5300.35.

12. After the seller has completed the handgun(s) transaction, the original ATF Form 5300.35 becomes part of the seller's permanent records. ATF Form 5300.35 must be attached to the ATF Form 4473 that reflects the handgun transfer.

Instructions to Chief Law Enforcement Officials

1. This form contains the statement of intent to obtain a handgun(s) by the person identified in Section A. The seller may not lawfully deliver the handgun(s) to the buyer until 5 business days have elapsed from the date the seller furnished notice of the contents of this statement to you, or you have notified the seller within the 5-day period that you have no information that the buyer's receipt or possession of the handgun(s) would violate Federal, State, or local law.

2. You are required to make a reasonable effort to ascertain within the 5-day period whether the buyer's receipt or possession of a handgun(s) would violate the law, including research in whatever State and local recordkeeping systems are available to you, and in any national system designated by the Attorney General. For your information, the receipt or possession of a handgun by a person who falls within any category of persons listed in Section A, Item 5, would violate Federal law.

3. At the earliest possible time, you should advise the seller if the buyer's receipt or possession of the handgun(s) would violate the law. Unless you notify the seller that the buyer's receipt or possession of a handgun(s) would violate the law, the seller may deliver the handgun(s) to the buyer. Notification either during or after the 5-day waiting period may prevent the unlawful receipt of a handgun(s).

4. Unless you determine that the buyer's receipt or possession of the handgun(s) would violate the law, you shall, within 20 business days from the date of the buyer's statement, destroy this form, any record containing information derived from this form, and any record created as a result of the notice of the contents of this form.

5. If you determine that the buyer is ineligible to receive or possess a handgun(s), you should maintain this form. The buyer may request that you provide the reason(s) for such determination and you must provide such reason(s) to the buyer within 20 business days after the receipt of the request. Your retention of this form may assist you in responding to such inquiries.

Definitions

1. The term "Chief Law Enforcement Officer" means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

2. The term "handgun" means (a) a firearms which has a short stock and is designed to be held and fired by the use of a single hand; and (b) any combination of parts from which a firearm described by (a) can be assembled.

Paperwork Reduction Act Notice

The information required on this form is in accordance with the Reduction Act of 1980. The purpose of the information is to determine the eligibility of the buyer (transferee to receive firearms under Federal Law). The information is subject to inspection by ATF officers. The information on this form is required by 18 U.S.C. 922 and 923.

The estimated average burden associate with this collection is 6 minutes per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Reports Management Officer, Information Programs Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, and the Office of Management and Budget, Paperwork Reduction Project (1512–), Washington, DC 20503.

[FR Doc. 94–1260 Filed 1–18–94; 8:45 am]

BILLING CODE 4810–31–P

Sunshine Act Meetings

Federal Register
Vol. 59, No. 12
Wednesday, January 19, 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).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Monday, January 24, 1994, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussing agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Final amendments to Part 303 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices Required to be Filed by Statute or Regulation," to conform to the definition and treatment of branch relocations in the final interagency policy statement on branch closings.

Memorandum and resolution re: Request for comment on a proposed statement of policy setting forth guidance with respect to the conversation from mutual to stock ownership of State chartered savings banks and the Corporation's supervisory concerns on the matter.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3132 (Voice); (202) 942–3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Acting Executive Secretary of the Corporation, at (202) 898–6757.

Dated: January 14, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–1407 Filed 1–14–94; 2:55 pm]

BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, January 24, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 14, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–1398 Filed 1–14–94; 2:54 pm]

BILLING CODE 6210–01–P

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., January 25, 1994.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 31012, *Cheney Railroad Company, Inc.—Feeder Line Acquisition—CSX Transportation, Inc., Line Between Greens and Ivalee, AL* and Finance Docket No. 31012 (Sub-No. 1), *Tyson Foods, Inc.—Feeder Line Application—CSX Transportation, Inc., Line at Ivalee, AL.*

Finance Docket No. 32352, *Chevron U.S.A., Inc.—Lease and Operation Exemption—Richmond Belt Railway.*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of External Affairs, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–1409 Filed 1–14–94; 2:57 pm]

BILLING CODE 7035–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 17, 24, 31, and February 7, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 17

Wednesday, January 19

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Final Amendments to 10 CFR Part 55 on Renewal of Licenses and Requalification Requirements for Licensed Operators (Contact: Anthony DiPalo, 301–492–3784 or Frank Collins, 301–504–3173)

b. Proposed Export of Fort St. Vrain Unirradiated HEU Fuel Assemblies to France for Recovery and Down-Blending to LEU (XSNMO2748) (Tentative) (Contact: Betty Wright, 301–504–2342)

Week of January 24—Tentative

Monday, January 24

9:30 a.m.

Briefing on Final Report of Regulatory Review Task Force (Public Meeting) (Contact: Frank Gillespie, 301–504–1274)

2:00 p.m.

Briefing on Options for Agreement States Compatibility Policy (Public Meeting) (Contact: Cardelia Maupin, 301–504–2312)

Tuesday, January 25

10:00 a.m.

Briefing on Status of TVA Nuclear Programs (Public Meeting)

1:30 p.m.

Briefing on Activities of the Center for Nuclear Waste Regulatory Analyses (CNWRA) (Public Meeting) (Contact: Malcolm Knapp, 301–504–3324)

Wednesday, January 26

9:00 a.m.

Discussion of Management Issues (Closed—Ex. 2 & 6)

10:00 a.m.

Briefing by GE on Status of ABWR Application for Design Certification (Public Meeting)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.

Briefing by NARUC Nuclear Waste Program Office (Public Meeting)

(Contact: Olga Kruger, 301–347–4314)

Thursday, January 27

1:30 p.m.

Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)

(Contact: Bill Bateman, 301–504–1711)

Friday, January 28

10:00 a.m.

Briefing on Progress of Design Certification Review and Implementation (Public Meeting)

(Contact: Dennis Crutchfield, 301–504–1199 or Richard Borchardt, 301–504–1118)

Week of January 31—Tentative

Monday, January 31

10:00 a.m.

Briefing on Plan for Implementation of PRA Working Group Report (Public Meeting)

(Contact: Joe Murphy, 301–492–3980)

1:30 p.m.

Briefing on NRC Actions Vis-a-Vis Allegers (Public Meeting)

(Contact: James Lieberman, 301–504–2741)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 7—Tentative

Tuesday, February 8

2:00 p.m.

Briefing by Agreement States on Their Activities (Public Meeting)

(Contact: Richard Bangart, 301–504–3340)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Thursday, February 10

10:00 a.m.

Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

(Contact: John Larkins, 301–492–4516)

ADDITIONAL INFORMATION: By a vote of 4–0 on January 10, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Management Issues" (CLOSED—Ex. 2 and 9B) be held on January 10, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: January 14, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–1408 Filed 1–14–94; 2:56 pm]

BILLING CODE 7590–01–M

federal register

Wednesday
January 19, 1994

Part II

Department of Defense

Army Corps of Engineers

33 CFR Part 334

Restricted Areas and Danger Zone, Cooper River and Tributaries, Charleston, SC; Rule

DEPARTMENT OF DEFENSE

Army Corps of Engineers

33 CFR Part 334

Restricted Areas and Danger Zone, Cooper River and Tributaries, Charleston, SC

AGENCY: Army Corps of Engineers, DoD.
ACTION: Final rule.

SUMMARY: The Army Corps of Engineers is establishing a danger zone in the waters of an unnamed tributary of Foster Creek, a tributary of the Cooper River. The danger zone generally borders the Charleston Naval Base and the Naval Weapons Station, Charleston and Berkeley Counties, South Carolina. The danger zone is needed to protect the public from the dangers associated with the possibility of an errant round from an existing pistol range impacting in the unnamed creek. In addition to these regulations, the Navy has received authorization from the Charleston District Engineer to erect a fence and a gate across the creek to control passage into the area. Although the area is not closed to the public on a full time basis, the Commanding Officer, Naval Weapons Station, may close the area at any time and reopen the area when he/she determines that such restrictions may be terminated.

EFFECTIVE DATE: February 18, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Tina Hadden at (803) 727–4330 or Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: The Commanding Officer, Naval Weapons Station, Charleston, South Carolina, has requested that the Corps expand the existing restricted areas by establishing a danger zone in the waters of the Cooper River and its tributaries pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (33 U.S.C. 1) and section XIX of the Army Appropriations Act of 1919 (33 U.S.C. 3). The danger zone will generally border the Charleston Naval Base and Naval Weapons Station. The danger zone is needed to provide a margin of safety for vessels operating in the unnamed creek which is a tributary to Foster Creek by prohibiting their entry into the area when determined appropriate by the Commanding Officer of the Naval Weapons Station. A firing range for pistol training exists on an upland area close to the waterway. Although the weapons are not directed or intentionally fired into the waterway, an errant round from the pistol range could impact into the water. Vessels shall also be prevented from entering the area by a fence and gate across the waterway. Closure of the gate and prohibited entry by these regulations shall be as required by the Commanding Officer of the Naval Weapons Station.

We published these rules in the Notice of Proposed Rulemaking Section of the **Federal Register** on September 10, 1993, (58 FR 47786) with the comment period expiring on October 12, 1993. We received no comments and accordingly, we are publishing these regulations as final without change.

Economic Assessment and Certification

This rule is issued with respect to a military function of the Defense Department and accordingly, the provisions of Executive Order 12866 do not apply. These rules have been reviewed under the Regulatory Flexibility Act (Public Law 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small businesses (i.e., small businesses and small governmental jurisdictions). These regulations may have a minimal impact on individuals fishing in the area. However, these regulations will not prohibit their entry into the area except on an intermittent basis as required for the Governments' operations. The area is not known to support a commercial fishery and will not affect the food fishing industry. In addition, there will be no fees or charges imposed by the base commander for registration or entry into the area. This will not result in any increase in costs to those fishermen. Accordingly, the preparation of a regulatory flexibility analysis is not warranted.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

In consideration of the above, the Corps is amending part 334 of title 33 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.460 is amended by adding paragraphs (a)(12) and (b)(11) to read as follows:

§ 334.460 Cooper River and tributaries at Charleston, SC.

(a) The areas. * * *

(12) Danger zone. That portion of Foster Creek beginning at the point of the southern shoreline of an unnamed tributary of Foster Creek at its intersection with Foster Creek at latitude 31°59′16″ N, longitude 79°57′23″; thence back proceeding along the eastern shoreline to the terminus of the tributary at latitude 32°59′49″, longitude 79°57′29″; thence back down the western shoreline of the unnamed tributary to latitude 32°59′15″, longitude 79°57′26″.

(b) The regulations. * * *

(11) The Commanding Officer of the U.S. Naval Weapons Station, Charleston, South Carolina, may at his/her discretion, close passage to all watercraft and vessels in the danger zone described in paragraph (a)(12) until such time as he/she determines such restrictions should be terminated.

Dated: December 29, 1993.

Jimmy F. Bates,

Deputy Director of Civil Works.

[FR Doc. 94–1194 Filed 1–18–94; 8:45 am]

BILLING CODE 3710–92–M

federal register

Wednesday
January 19, 1994

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Special Visual Flight Rules; Denver, CO; Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 27583; Amendment No. 91–236]

Special Visual Flight Rules (SVFR); Denver, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action amends appendix D, part 91, of the Federal Aviation Regulations to accurately reflect the name of the new Denver, Colorado, airport. The new Denver International Airport, scheduled to open in March 1994, will replace the Denver Stapleton Airport. Appendix D, part 91, lists locations, including Denver, Colorado, where special operating restrictions apply. This action will not affect any procedures or practices currently in place, but it is necessary to correctly state the name of the new Denver airport.

EFFECTIVE DATE: March 9, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Crum, Air Traffic Rules Branch (ATP–230), Airspace-Rules and Aeronautical Information Division, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

Appendix D, part 91, lists airports/locations where special operating restrictions apply. Section 1 lists the locations at which the requirements of § 91.215(b)(2) apply. (Aircraft operating within 30 nautical miles of an airport, listed in Section 1, from the surface upward to 10,000 feet mean sea level must be equipped with a Mode C transponder.) Section 3 lists the locations where fixed-wing special visual flight rule (SVFR) operations are prohibited. Both sections list the name of the Denver, Colorado, airport as "Denver Stapleton Airport."

On March 9, 1994, the new Denver International Airport will open, replacing the Denver Stapleton Airport. This amendment replaces the word "Stapleton" with the word "International" in sections 1 and 3 of appendix D, part 91.

List of Subjects in 14 CFR Part 91

Aircraft, Airmen, Airports, Air traffic control, Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 91 of the Federal Aviation Regulations (FAR) (14 CFR part 91) as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

Appendix D to Part 91 [Amended]

2. Sections 1 and 3 of appendix D are amended at the "Denver, CO" entry by replacing the word "Stapleton" with the word "International."

Issued in Washington, DC, on January 12, 1994.

Willis C. Nelson,

Assistant Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–1205 Filed 1–18–94; 8:45 am]

BILLING CODE 4910–13–M

federal register

Wednesday
January 19, 1994

Part IV

Environmental Protection Agency

Department of Agriculture

Soil Conservation Service

Department of Defense

Corps of Engineers, Department of the Army

Department of the Interior

Fish and Wildlife Service

Memorandum of Agreement Concerning Wetlands Determinations on Agricultural Lands; Notice

ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Interagency Memorandum of Agreement Concerning Wetlands Determinations for Purposes of Section 404 of the Clean Water Act and Subtitle B of the Food Security Act

AGENCIES: Environmental Protection Agency; Soil Conservation Service, USDA; Army Corps of Engineers, DoD; Fish and Wildlife Service, DoI.

ACTION: Notice.

SUMMARY: On January 6, 1994, the Departments of the Army, Agriculture, the Interior, and the Environmental Protection Agency signed a Memorandum of Agreement (MOA) that recognizes the Soil Conservation Service (SCS) as the lead Federal agency for wetlands delineations on agricultural lands. Specifically, the MOA articulates the policy and procedures to be used in the determination of wetlands jurisdiction for purposes of both Section 404 of the Clean Water Act and Subtitle B of the Food Security Act (also known as the Swampbuster program). The MOA, which establishes minimum training requirements and requires the use of standard interagency approved methods, will improve the quality and consistency of wetlands determinations on agricultural lands. The actual text of the MOA is published as part of this notice.

DATES: The effective date of this MOA is January 6, 1994.

ADDRESSES: Copies of this MOA are available from:

EPA Wetlands Hotline, (800) 832–7828.

U.S. Soil Conservation Service Conservation Planning Division, Washington, DC 20013.

U.S. Army Corps of Engineers CECW–OR, 20 Massachusetts Ave., NW, Washington, DC 20314–1000.

U.S. Fish and Wildlife Service Division of Habitat Conservation (400ARLSQ), 1849 C. St., NW, Washington, DC 20240

FOR FURTHER INFORMATION CONTACT: The EPA Wetlands Hotline, (800) 832–7828; Gregory Peck of the Environmental Protection Agency, 202/260–8794; Michael Davis of the Office of the Assistant Secretary of the Army (Civil Works), 703/695–1376; Warren Lee of the Soil Conservation Service, 202/720–1845; or Stephen Forsythe of the Fish and Wildlife Service, (703) 358–2161.

SUPPLEMENTARY INFORMATION: On August 24, 1993, the Clinton Administration announced a comprehensive package of wetlands policy reforms that will improve the protection of wetlands and make wetlands programs more fair and flexible for landowners. The MOA signed on January 6, 1994, implements one of the more than 40 initiatives in the Administrations's Wetlands Plan. The MOA signatory agencies recognize the important contribution of agricultural producers to society, our economy, and our environment. The agencies are committed to ensuring that Federal wetlands programs are administered in a manner that minimizes the impacts on affected landowners to the extent possible consistent with the important goal of protecting wetlands. The MOA was developed in response to concerns that previous practices may have led to confusion and inconsistent application of Federal wetlands programs and policies on agricultural lands.

The MOA will minimize duplication and inconsistencies between Swampbuster and the Clean Water Act wetlands programs and articulate clearly the procedures by which the Nation's farmers can rely on SCS wetlands jurisdictional determinations on agricultural land for purposes of both the Clean Water Act and Swampbuster programs. The MOA includes provisions to ensure that agency personnel are properly trained, that standard agreed-upon methods are utilized in making wetlands determinations, and that appropriate monitoring and oversight is undertaken. The MOA also places emphasis on local cooperation between the signatory agencies and the improvement of analytical methods for making wetland determinations.

While the MOA became effective on January 6, 1994, full implementation will vary from state to state depending on the level of training required and the development of state wetlands mapping conventions. The signatory agencies will take appropriate action to expedite implementation of the MOA consistent with such prerequisites.

The full text of the MOA follows.

Dated: January 7, 1994.

Approved:

James R. Lyons,

Assistant Secretary for Natural Resources and Environment, Department of Agriculture.

Dated: January 12, 1994.

Approved:

Robert Perciasepe,

Assistant Administrator for Water Environmental Protection Agency.

Dated: January 7, 1994.

Approved:

G. Edward Dickey,

Acting Assistant Secretary of the Army for Civil Works, Department of the Army.

Dated: January 7, 1994.

Approved:

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

Memorandum of Agreement Among the Department of Agriculture, the Environmental Protection Agency, the Department of the Interior, and the Department of the Army Concerning the Delineation of Wetlands for Purposes of Section 404 of the Clean Water Act and Subtitle B of the Food Security Act.

I. Background

The Departments of the Army, Agriculture, and the Interior, and the Environmental Protection Agency (EPA) recognize fully that the protection of the Nation's remaining wetlands is an important objective that will be supported through the implementation of the Wetland Conservation (Swampbuster) provision of the Food Security Act (FSA) and Section 404 of the Clean Water Act (CWA). The agencies further recognize and value the important contribution of agricultural producers to our society, our economy, and our environment. We are committed to ensuring that Federal wetlands programs are administered in a manner that minimizes the impacts on affected landowners to the fullest possible extent consistent with the important goal of protecting wetlands. We are also committed to minimizing duplication and inconsistencies between Swampbuster and the CWA Section 404 program. On August 24, 1993, the Administration announced a comprehensive package of reforms that will improve both the protection of wetlands and make wetlands programs more fair and flexible for landowners, including the Nations's agriculture producers. This Memorandum of Agreement (MOA) implements one of over 40 components of the Administration's Wetland Plan.

II. Purpose and Applicability

A. Purpose

The purpose of this MOA is to specify the manner in which wetland delineations and certain other determinations of waters of the United States made by the U.S. Department of Agriculture (USDA) under the FSA will be relied upon for purposes of CWA Section 404. While this MOA will promote consistency between CWA and FSA wetlands programs, it is not intended in any way to diminish the protection of these important aquatic resources. In this regard, all signatory agencies to this MOA will ensure that wetlands programs are administered in a manner consistent with the objectives and requirements of applicable laws, implementing regulations, and guidance.

B. Applicability

1. The Administrator of EPA has the ultimate authority to determine the geographic scope of waters of the United States subject to jurisdiction under the CWA, including the Section 404 regulatory program. Consistent with a current MOA between EPA and the Department of the Army, the Army Corps of Engineers (Corps) conducts jurisdictional delineations associated with the day-to-day administration of the Section 404 program.

2. The Secretary of the USDA, acting through the Chief of the Soil Conservation Service (SCS), has the ultimate authority to determine the geographic scope of wetlands for FSA purposes and to make delineations relative to the FSA, in consultation with the Department of the Interior, Fish and Wildlife Service (FWS).

III. Definition of Agricultural Lands

For the purposes of this MOA, the term "agricultural lands" means those lands intensively used and managed for the production of food or fiber to the extent that the natural vegetation has been removed and cannot be used to determine whether the area meets applicable hydrophytic vegetation criteria in making a wetland delineation.

A. Areas that meet the above definition may include intensively used and managed cropland, hayland, pasture land, orchards, vineyards, and areas which support wetland crops (e.g., cranberries, taro, watercress, rice). For example, lands intensively used and managed for pasture or hayland where the natural vegetation has been removed and replaced with planted grasses or legumes such as ryegrass, bluegrass, or alfalfa, are considered agricultural lands for the purposes of this MOA.

B. "Agricultural lands" do not include range lands, forest lands, wood lots, or tree farms. Further, lands where the natural vegetation has not been removed, even though that vegetation may be regularly grazed or mowed and collected as forage or fodder (e.g., uncultivated meadows and prairies, salt hay), are not considered agricultural lands for the purposes of this MOA.

Other definitions for the purposes of this MOA are listed below in section VI.

IV. Allocation of Responsibility

A. In accordance with the terms and procedures of this MOA, wetland delineations made by SCS on agricultural lands, in consultation with FWS, will be accepted by EPA and the Corps for the purposes of determining Section 404 wetland jurisdiction. In addition, EPA and the Corps will accept SCS wetland delineations on non-agricultural lands that are either narrow bands immediately adjacent to, or small pockets interspersed among, agricultural lands. SCS is responsible for making wetland delineations for agricultural lands whether or not the person who owns, manages, or operates the land is a participant in USDA programs.

B. Lands owned or operated by a USDA program participant that are not agricultural lands and for which a USDA program participant requests a wetland delineation, will be delineated by SCS in coordination with the Corps, or EPA as appropriate, and in consultation with FWS. Final wetland delineations conducted by SCS pursuant to the requirements of this paragraph shall not be revised by SCS except where an opportunity for coordination and consultation is provided to the other signatory agencies.

C. SCS may conduct delineations of other waters for the purposes of Section 404 of the CWA, such as lakes, ponds, and streams, in coordination with the Corps, or EPA as appropriate, on lands on which SCS is otherwise engaged in wetland delineations pursuant to paragraphs IV.A or IV.B of this MOA. Delineations of "other waters" will not be made until the interagency oversight team convened pursuant to Section V.B.2 has agreed on appropriate local procedures and guidance for making such delineations.

D. For agricultural lands, the signatory agencies will use the procedures for delineating wetlands as described in the National Food Security Act Manual, Third Edition (NFSAM). For areas that are not agricultural lands, SCS will use the 1987 Corps Wetland Delineation Manual, with current national Corps guidance, to make wetland delineations applicable to Section 404.

E. Delineations on "agricultural lands" must be performed by personnel who are trained in the use of the NFSAM. Delineations on other lands and waters must be performed by personnel who are trained in the use of the 1987 Corps Wetland Delineation Manual. This MOA includes provisions for the appropriate interagency delineation training below in Section V.E.

F. In the spirit of the agencies' commitment to develop agreed upon methods for use in making wetland delineations, subsequent revisions or amendments to the Corps 1987 manual or portions of the NFSAM affecting the wetland delineation procedures upon which this agreement is based will require the concurrence of the four signatory agencies.

G. A final written wetland delineation made by SCS pursuant to the terms of this MOA will be adhered to by all the signatory agencies and will be effective for a period of five years from the date the delineation is made final, unless new information warrants revision of the delineation before the expiration date. Such new information may include, for example, data on landscape changes caused by a major flood, or a landowner's notification of intent to abandon agricultural use and the return of wetland conditions on a prior converted cropland. In accordance with Section 1222 of the FSA, SCS will update wetland delineations on this five-year cycle. Circumstances under which SCS wetland delineations made prior to the effective date of this agreement will be considered as final for Section 404 purposes are addressed in Paragraph V.C.

H. Within the course of administering their Swampbuster responsibilities, SCS and FWS will provide landowners/operators general written information (i.e., EPA/Corps fact sheets) regarding the CWA Section 404 program permit requirements, general permits, and exemptions. The SCS and FWS will not, however, provide opinions regarding the applicability of CWA Section 404 permit requirements or exemptions.

I. USDA will maintain documentation of all final written SCS wetland delineations and record the appropriate label and boundary information on an official wetland delineation map. USDA will make this information available to the signatory agencies upon request.

J. In pursuing enforcement activities, the signatory agencies will rely upon delineations made by the lead agency, as clarified below, providing a single

Federal delineation for potential violations of Section 404 or Swampbuster. Nothing in this MOA will diminish, modify, or otherwise affect existing EPA and Corps enforcement authorities under the CWA and clarified in the 1989 "EPA/Army MOA Concerning Federal Enforcement for the Section 404 Program of the Clean Water Act." EPA, the Corps, and SCS may gather information based on site visits or other means to provide additional evidentiary support for a wetland delineation which is the subject of a potential or ongoing CWA Section 404 or Swampbuster enforcement action.

K. For those lands where SCS has not made a final written wetland delineation, and where the Corps or EPA is pursuing, a potential CWA violation, the lead agency for the CWA enforcement action will conduct a jurisdictional delineation for the purposes of Section 404 and such delineations will be used by SCS for determining Swampbuster jurisdiction and potential Swampbuster violations. For those lands where the Corps has not made a final written wetland delineation, and where SCS is pursuing a potential Swampbuster violation, SCS will make a final written wetland delineation consistent with Sections IV.A, IV.B, and IV.C of this MOA and provide copies to the Corps and EPA. Such delineations will be used by the Corps and EPA for the purpose of determining potential violations of the CWA. In circumstances in which either the Corps or EPA is pursuing a potential CWA violation on land that is subject to an ongoing SCS appeal, a wetland delineation will be conducted by the Corps or EPA in consultation with SCS and FWS.

L. In making wetland delineations, the agencies recognize that discharges of dredged or fill material that are not authorized under Section 404 cannot eliminate Section 404 jurisdiction, and that wetlands that were converted as a result of unauthorized discharges remain subject to Section 404 regulation.

V. Procedures

Accurate and consistent wetland delineations are critical to the success of this MOA. For this reason, the signatory agencies will work cooperatively at the field level to:

(1) Achieve interagency concurrence on mapping conventions used by SCS for wetland delineations on agricultural lands, (2) provide EPA and Corps programmatic review of SCS delineations, and (3) certify wetland delineations in accordance with Section 1222(a)(2) of the FSA, as amended. The following sections describe the procedures that will be followed to accomplish these objectives.

A. Mapping Conventions

1. Each SCS State Conservationist will take the lead in convening representatives of the Corps, EPA, FWS, and SCS to obtain the written concurrence of each of the signatory agencies, within 120 calendar days of the effective date of this MOA, on a set of mapping conventions for use in making wetland delineations. Only mapping conventions concurred upon by all signatory agencies will be used by SCS for wetland delineations.

2. If interagency consensus on mapping conventions is not reached within 120 days of the date of this MOA, the State Conservationist will refer documentation of the unresolved issues to the Chief of SCS. The Chief of SCS will immediately forward copies of the State Conservationist's documentation of unresolved issues to the Corps Director of Civil Works; the EPA Director of the Office of Wetlands, Oceans, and Watersheds; and the FWS Director. Immediately thereafter, the Chief of SCS or an appropriate designee will lead necessary discussions to achieve interagency concurrence on resolution of outstanding issues, and will forward documentation of the resolution to the State Conservationist and the appropriate Headquarters offices of the signatory agencies.

3. Once interagency concurrence on mapping conventions is obtained, such mapping conventions will be used immediately in place of the earlier mapping conventions.

4. Agreed-upon mapping conventions developed at the state level will be documented and submitted, for each state, through the Chief of SCS to the Headquarters of each of the signatory agencies. State-level agreements will be reviewed by the Headquarters of the signatory agencies for the purpose of ensuring national consistency.

B. Delineation Process Review and Oversight

1. This MOA emphasizes the need to ensure consistency in the manner in which wetlands are identified for CWA and FSA purposes, and provides a number of mechanisms to increase meaningful interagency coordination and consultation in order for the agencies to work toward meeting this goal. In this regard, the agencies believe it is critical that efforts for achieving consistency be carefully monitored and evaluated. Consequently, this MOA establishes a monitoring and review process that will be used to provide for continuous improvement in the wetland delineation process specified in this MOA.

2. EPA will lead the signatory agencies in establishing interagency oversight teams at the state level to conduct periodic review of wetland delineations conducted under the provisions of this MOA. These reviews will include delineations done by SCS pursuant to Sections IV.A, IV.B, and IV.C of this MOA and delineations done by EPA or the Corps pursuant to Section IV.K. of this MOA. These reviews also will include changes to wetland delineations resulting from the SCS appeals process, as well as disagreements regarding allocation of responsibility. These reviews will occur, at a minimum, on a quarterly basis for the first year, on a semi-annual basis for the second year, and annually thereafter. In addition, a review will be initiated whenever one or more of the signatory agencies believes a significant issue needs to be addressed. The purpose of each review will be to evaluate the accuracy of an appropriate sample of wetland delineations. When feasible, this will include actual field verifications of wetland delineations. Should the interagency oversight team identify issues regarding implementation of this MOA or wetland delineations conducted under the provisions of this MOA, the team will work to resolve those issues and reach agreement on any necessary corrective actions. Each review, and any necessary corrective action, will be documented in a report to be distributed to the signatory agencies' appropriate field and Headquarters offices.

3. In situations in which the interagency oversight team identifies and reports unresolved issues concerning wetland delineations conducted under the provisions of this MOA, including changes to wetland delineations resulting from the SCS appeals process, the Headquarters offices of the signatory agencies will informally review the issue and work to reach agreement on any necessary corrective actions. This informal process notwithstanding, the EPA Regional Administrator or the Corps District Engineer may, at any time, propose to designate a geographic area as a "special case".

4. Similar to the terms of the current Memorandum of Agreement between the Department of the Army and the EPA Concerning the Determination of the Geographic Jurisdiction of the Section 404 Program and the Application of the Exemptions under Section 404(f) of the CWA, the EPA Regional Administrator or the Corps

District Engineer may propose to designate a geographic area, or a particular wetland type within a designated geographic area, as a special case. A special case may be designated only after the interagency oversight team (EPA, Corps, SCS, and FWS) has reviewed the relevant issues and been unable to reach a consensus on an appropriate resolution. Special cases will be designated by an easily identifiable political or geographic subdivision, such as a township, county, parish, state, EPA Region, or Corps division or district, and will be marked on maps or using some other clear format and provided to the appropriate EPA, Corps, FWS, and SCS field offices. Proposed designations of special cases will not be effective until approved by EPA or Corps Headquarters, as appropriate.

5. Upon proposing a special case, the EPA Regional Administrator or Corps District Engineer, as appropriate, will notify the appropriate SCS State Conservationist in writing. Following notification of the proposed designation, SCS will not make wetland delineations for the purposes of CWA jurisdiction within the proposed special case for a period of 20 working days from the date of the notification. SCS may proceed to make wetland delineations for CWA purposes in the proposed special case after the 20-day period if the SCS State Conservationist has not been notified by the EPA Regional Administrator or Corps District Engineer of approval of the proposed special case designation by EPA Headquarters or the Corps Director of Civil Works, as appropriate.

6. Following approval of the proposed special case, the Corps, or EPA as appropriate, will make final CWA wetland delineations in the special case area, rather than SCS. In addition, the referring field office (i.e., either the EPA Regional Administrator or Corps District Engineer) will develop draft guidance relevant to the specific issues raised by the special case and forward the draft guidance to its Headquarters office. The Headquarters office of the agency which designated the special case will develop final guidance after consulting with the signatory agencies' Headquarters offices. EPA concurrence will be required for final guidance for any special case designated by the Corps. Special cases remain in effect until final guidance is issued by the Headquarters office of the agency which designated the special case or the designation is withdrawn by the EPA Regional Administrator or Corps District Engineer, as appropriate.

C. Reliance on Previous SCS Wetland Delineations for CWA Purposes

1. Section 1222 of the FSA, as amended by the Food Agriculture Conservation and Trade Act, provides that SCS will certify SCS wetland delineations made prior to November 28, 1990. The intent of this process is to ensure the accuracy of wetland delineations conducted prior to November 28, 1990, for the purposes of the FSA. This certification process also will provide a useful basis for establishing reliance on wetland delineations for CWA purposes. All certifications done after the effective date of this MOA that are done using mapping conventions will use the agreed-upon mapping conventions pursuant to Section V.A of this MOA.

2. Written SCS wetland delineations for lands identified in section IV.A of his MOA conducted prior to the effective date of this MOA will be used for purposes of establishing CWA jurisdiction, subject to the provisions of section V.C.3 below. If such SCS wetland delineations are subsequently modified or revised through updated certification, these modifications or revisions will supersede the previous delineations for purposes of establishing CWA jurisdiction. Written SCS wetland delineations for lands identified in sections IV.B and IV.C of this MOA conducted prior to the effective date of this MOA will require coordination with the Corps, or EPA as appropriate, before being used for purposes of determining CWA jurisdiction.

3. As part of the certification effort, SCS will establish priorities to certify SCS wetland delineations. In addition to responding to requests from individual landowners who feel their original wetland determinations were made in error, SCS will give priority to certifying those wetland delineations where at least two of the four signatory agencies represented on the interagency oversight team convened pursuant to section V.B.2 of this MOA agree that SCS wetland delineations in a particular area, or a generic class of SCS wetland delineations in a particular area, raise issues regarding their accuracy based on current guidance. These priority areas will be identified only after mapping conventions are agreed upon pursuant to section V.A of this MOA. Identification of these high priority certification needs shall be made at the level of the SCS State Conservationist, FWS Regional Director, EPA Regional Administrator, and the Corps District Engineer. Following identification of these high priority certification needs, the SCS State Conservationist will immediately notify the affected landowner(s), by letter, that the relevant SCS wetland delineations have been identified as a high priority for being certified under Section 1222 of the FSA. In addition, the notification will inform the landowner that while previous wetland delineations remain valid for purposes of the FSA until certification or certification update is completed, the landowner will need to contact the Corps before proceeding with discharges of dredged or fill material. This communication by the landowner will enable the Corps to review the wetland delineation to establish whether it can be used for purposes of CWA jurisdiction. The SCS State Conservationist will initiate, within 30 calendar days of landowner notification, corrective measures to resolve the wetland delineation accuracy problem.

D. Appeals

Landowners for whom SCS makes wetland delineations for either Swampbuster or Section 404 will be afforded the opportunity to appeal such wetland delineations through the SCS appeals process. In circumstances where an appeal is made and the State Conservationist is considering a change in the original delineation, the State Conservationist will notify the Corps District Engineer and the EPA Regional Administrator to provide the opportunity for their participation and input on the appeal. FWS also will be consulted consistent with the requirements of current regulations. The Corps and EPA reserve the right, on a case-by-case basis, to determine that a revised delineation resulting from an appeal is not valid for purposes of Section 404 jurisdiction.

E. Training

1. SCS, in addition to FWS and EPA, will continue to participate in the interagency wetland delineation training sponsored by the Corps, which is based on the most current manual used to delineate wetlands for purposes of Section 404. Completion of this training will be a prerequisite for field staff of all signatory agencies who delineate wetlands on non-agricultural lands using the 1987 Corps Wetland Delineation Manual.

2. The interagency wetland delineation training will address agency wetland delineation responsibilities as defined by this MOA, including SCS NFSAM wetland delineation procedures.

3. Field offices of the signatory agencies are encouraged to provide supplemental interagency wetland delineation training (i.e., in addition to

that required in paragraph IV.E), as necessary, to prepare SCS field staff for making Section 404 wetland delineations. For training on the use of the 1987 Corps Wetland Delineation Manual, such supplemental training will rely on the training materials used for the Corps delineation training program and will provide an equivalent level of instruction.

VI. Definitions

A. *Coordination* means that SCS will contact the Corps, or EPA as appropriate, and provide an opportunity for review, comment, and approval of the findings of SCS prior to making a final delineation. The Corps, or EPA as appropriate, will review the proposed delineation and respond to SCS regarding its acceptability for CWA Section 404 purposes within 45 days of receipt of all necessary information. SCS will not issue a final delineation until agreement is reached between SCS and the Corps or EPA, as appropriate.

B. *Consultation* means that SCS, consistent with current provisions of the FSA, will provide FWS opportunity for full participation in the action being taken and for timely review and comment on the findings of SCS prior to a final wetland delineation pursuant to the requirements of the FSA.

C. A *wetland delineation* is any determination of the presence of wetlands and their boundaries.

D. A *special case* for the purposes of this MOA refers to those geographic areas or wetland types where the Corps or EPA will make final CWA wetland delineations.

E. *Signatory agencies* means the EPA and the Departments of Army (acting through the Corps), Agriculture (acting through SCS), and Interior (acting through FWS).

F. *USDA program participant* means individual landowners/operators eligible to receive USDA program benefits covered under Title XII of the Food Security Act of 1985, as amended by the Food, Agriculture, Conservation and Trade Act of 1990.

VII. General

A. The policy and procedures contained within this MOA do not create any rights, either substantive or procedural, enforceable by any party regarding an enforcement action brought by the United States. Deviation or variance from the administrative procedures included in this MOA will not constitute a defense for violators or others concerned with any Section 404 enforcement action.

B. Nothing in this MOA is intended to diminish, modify, or otherwise affect statutory or regulatory authorities of any of the signatory agencies. All formal guidance interpreting this MOA and background materials upon which this MOA is based will be issued jointly by the agencies.

C. Nothing in this MOA will be construed as indicating a financial commitment by SCS, the Corps, EPA, or FWS for the expenditure of funds except as authorized in specific appropriations.

D. This MOA will take effect on the date of the last signature below and will continue in effect until modified or revoked by agreement of all signatory agencies, or revoked by any of the signatory agencies alone upon 90 days written notice. Modifications to this MOA may be made by mutual agreement and Headquarters level approval by all the signatory agencies. Such modifications will take effect upon signature of the modified document by all the signatory agencies.

E. The signatory agencies will refer delineation requests to the appropriate agency pursuant to this MOA.

Dated: January 6, 1994.

James R. Lyons,

Assistant Secretary for Natural Resources and Environment, Department of Agriculture.

Robert Perciasepe,

Assistant Administrator for Water, Environmental Protection Agency.

G. Edward Dickey,

Acting Assistant Secretary of the Army for Civil Works, Department of the Army.

George T. Frampton, Jr.,

Assistant Secretary for Fish, Wildlife and Parks, Department of the Interior.

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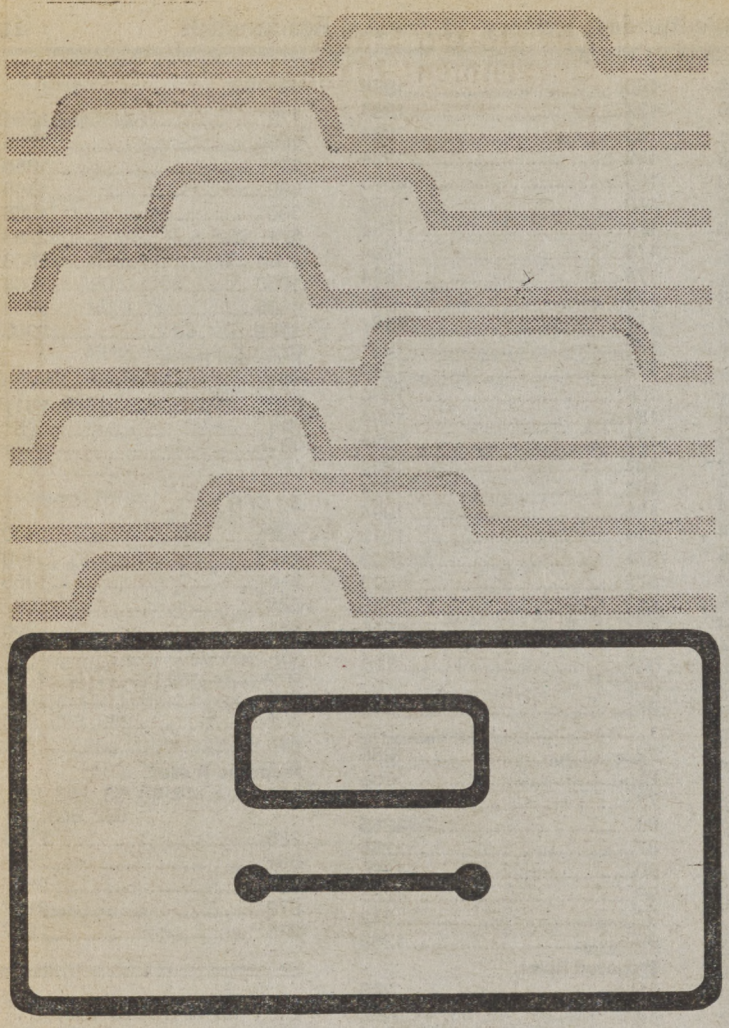
LIST OF PUBLIC LAWS

Note: The list of Public Laws for the first session of the 103d Congress has been completed and will resume when bills are enacted into law during the second session of the 103d Congress, which convenes on January 25, 1994.

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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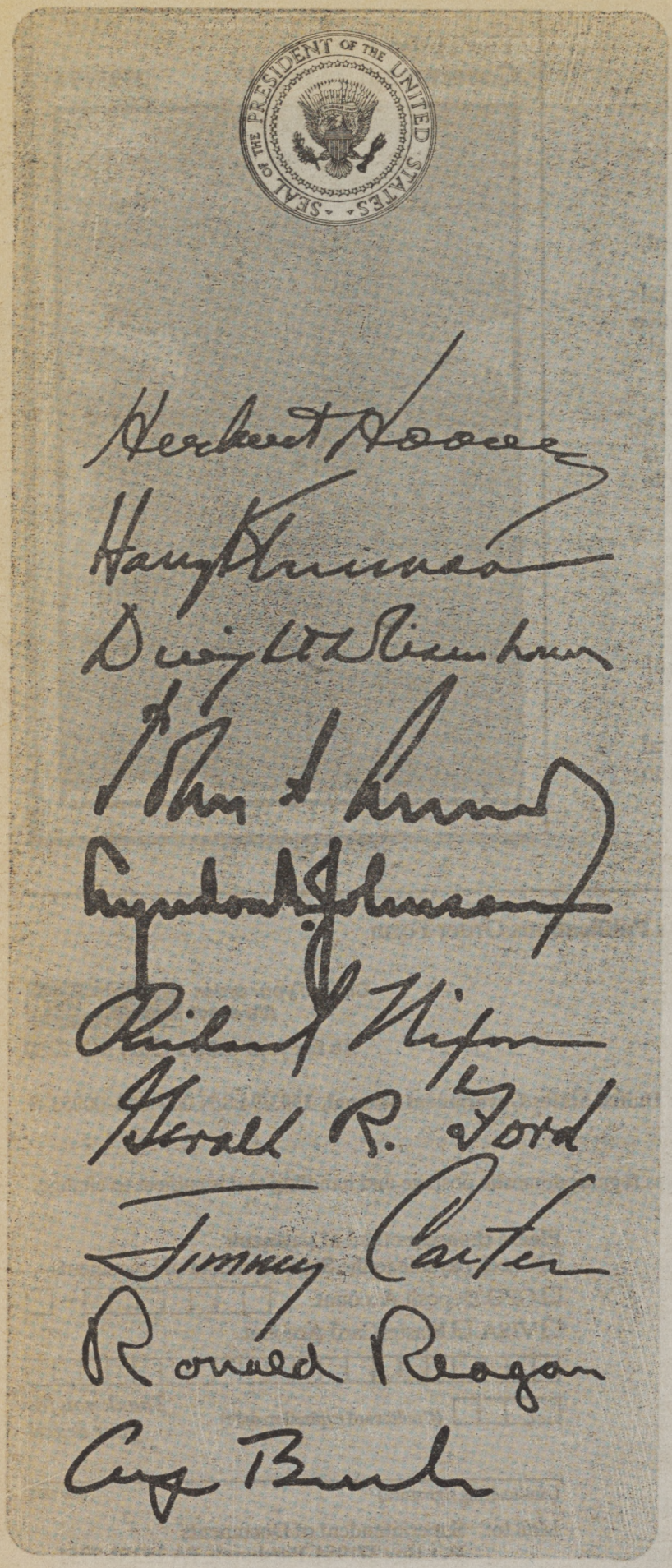

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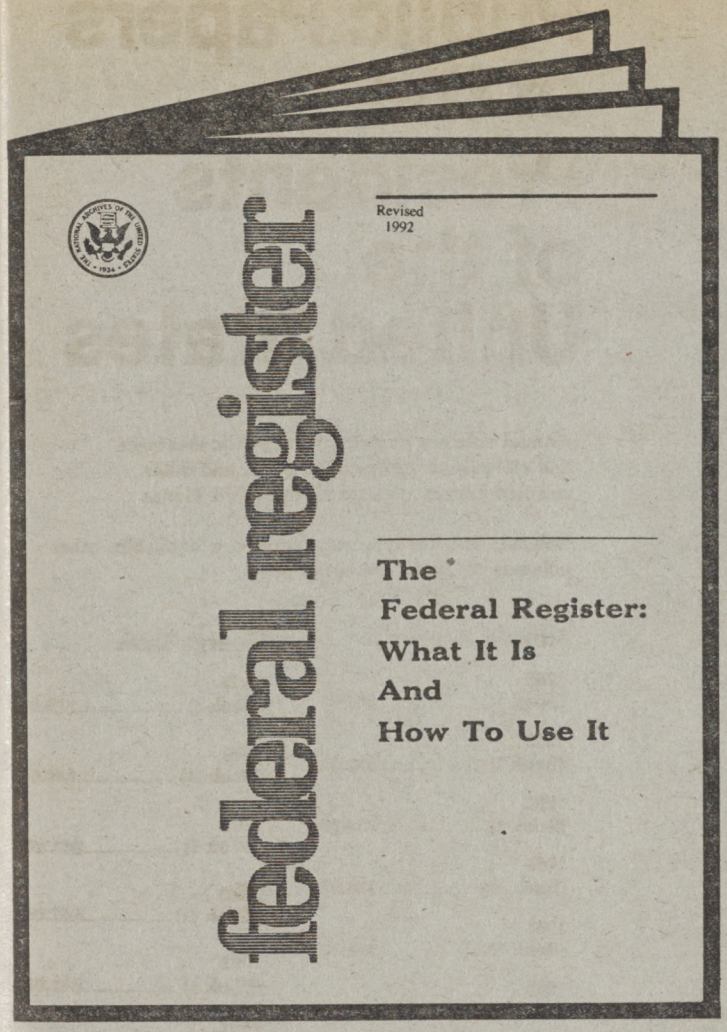

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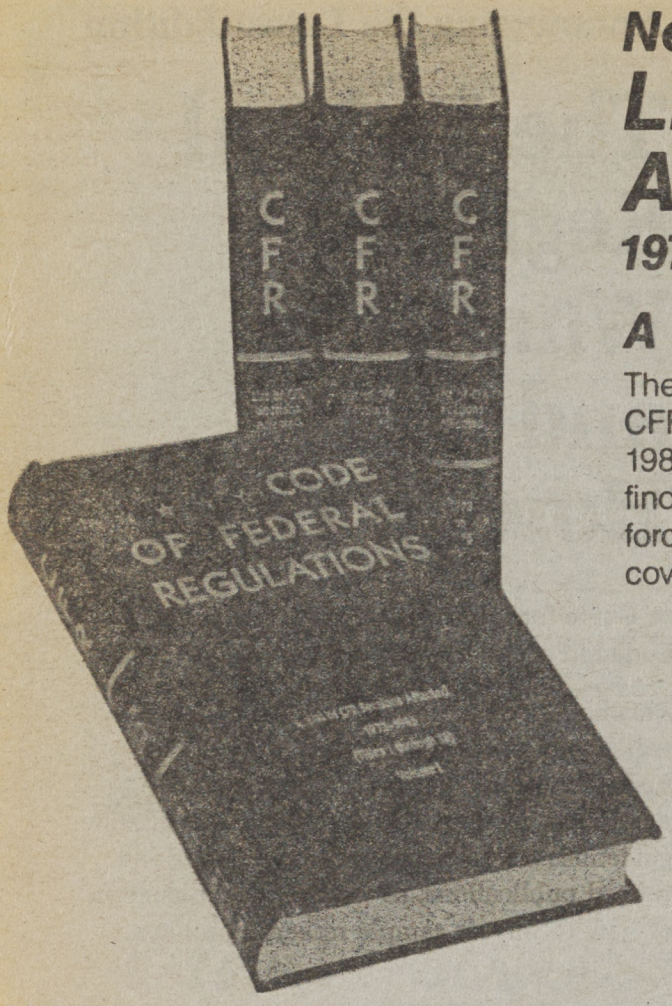

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