AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

4–28–94
Vol. 59 No. 81

federal register

Thursday
April 28, 1994

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

4–28–94
Vol. 59 No. 81

Thursday
April 28, 1994

federal register

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

WASHINGTON, DC
(two briefings)

WHEN: May 15 at 9:00 am and 1:30 pm

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

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and the General Officers to delegate to the Assistant Secretary for Administration authority to approve coverage of individual law enforcement and firefighter positions under the special retirement provisions of the Civil Service Retirement System (CSRS).

EFFECTIVE DATE: April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Curt Dahlke, Compensation Division, Office of Personnel, United States Department of Agriculture, Washington, DC 20250, (202) 720–6104.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) issued interim regulations on December 7, 1993, which allow a Cabinet Secretary to redelegate his or her authority to approve coverage of individual law enforcement, and firefighter positions under the special retirement provisions of CSRS. The Secretary of Agriculture is delegating authority to make special retirement coverage determinations on CSRS positions to the Assistant Secretary for Administration. 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 may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12778 and 12866. Finally, this action is not a rule as defined by Pub. L. No. 96–354, the Regulatory Flexibility Act, and, thus, is exempt from the provisions of that Act.

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 reads 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 2.25 is amended by adding a new paragraph (e)(17) as follows:

§ 2.25 Delegations of authority to the Assistant Secretary for Administration.

* * * * *

(e) * * *

(17) Approve coverage of individual law enforcement and firefighter positions under the special retirement provisions of the CSRS.

* * * * *

For Subpart C:

Dated: April 21, 1994.

Mike Espy,

Secretary of Agriculture.

[FR Doc. 94–10134 Filed 4–26–94; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Marketing Service

7 CFR Part 985

[FV94–985–2IFR]

Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for "Class 3" Native Spearmint Oil for the 1993–94 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule increases the quantity of Class 3 (Native) spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 1993–94 marketing year. This rule was recommended by the Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West. This rule was recommended in order to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the spearmint oil market.

DATES: Effective on April 28, 1994; comments received by May 31, 1994, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456, Fax: (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW. Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724; or Christian D. Nissen, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 [7 CFR part 985], regulating the handling of spearmint oil produced in the Far West [Washington, Idaho, Oregon, and designated parts of California, Nevada, Montana, and Utah], hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C 601–674], hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule increases the quantity of Class 3 spearmint oil produced in the Far West that may be purchased from or handled for producers by handlers during the 1993–94 marketing year, which ends on May 31, 1994. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

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

There are eight spearmint oil handlers subject to regulation under the order and approximately 260 producers of spearmint oil in the regulated production area. Of the 260 producers, approximately 160 producers hold "Class 1" (Scotch) oil allotment base, and 145 producers hold "Class 3" (Native) oil allotment base. Small agricultural service firms have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $3,500,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A minority of handlers and producers of Far West spearmint oil may be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the order). Spearmint oil is also produced in the Midwest. The production area covered by the order normally accounts for 75 percent of the annual U.S. production of spearmint oil.

This rule increases the salable quantity and allotment percentage of Native spearmint oil that handlers may purchase from, or handle for, producers during the 1993–94 marketing year, which ends on May 31, 1994. This rule increases the salable quantity from 714,665 pounds to 772,611 pounds and the allotment percentage from 37 percent to 40 percent for Native spearmint oil.

The salable quantity is the total quantity of each class of oil which handlers may purchase from, or handle on behalf of, producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The initial salable quantities and allotment percentages for both Native and Scotch spearmint oils for the 1993–94 marketing year were recommended by the Committee at its October 15, 1992, meeting. The Committee recommended salable quantities of 714,665 pounds and 716,164 pounds for Native and Scotch oils, respectively, and allotment percentages of 37 percent and 41 percent for Native and Scotch oils, respectively.

A proposed rule incorporating the Committee's October 15, 1992, recommendation was published in the December 7, 1992, issue of the **Federal Register** [57 FR 57695]. Comments on the proposed rule were solicited from interested persons until January 6, 1993. No comments were received. Accordingly, based upon analysis of available information, a final rule establishing the Committee's recommendation as the salable quantities and allotment percentages for the 1993–94 marketing year was published in the May 13, 1993, issue of the **Federal Register** [58 FR 28340].

Pursuant to authority contained in sections 985.50, 985.51, and 985.52 of the order, at its February 23, 1994, meeting in Pasco, Washington, the Committee recommended that the salable quantity and allotment percentage for Native spearmint oil for the 1993–94 marketing year be increased. The Committee vote resulted in seven members in favor and one member opposed to the recommendation. The member voting in opposition believes current demand for Native spearmint oil is not adequate enough to warrant an increase in the salable quantity and allotment percentage.

The Committee's recommendation to increase the allotment percentage for Native spearmint oil by three percent results in a 57,946 pound increase in the salable quantity, from 714,665 to 772,611 pounds. Growers currently hold in reserve 1,436,020 pounds of Native oil and 948,063 pounds of Scotch oil. However, the Committee states that not all producers have reserve oil available to fill their increase in the salable quantity. In those cases, no additional oil is made available to the market. Therefore, this rule provides an actual increase of 55,553 pounds of additional base rather than the calculated amount. This small difference between the calculated and actual amounts of released oil will not have a significant impact on the availability of marketable oil.

The Committee, in reaching its decision to recommend an increase in the 1993–94 salable quantity and allotment percentage for Native spearmint oil, took into consideration the current supply and anticipated demand for both Native and Scotch spearmint oils. The available supply of Native and Scotch spearmint oil as of February 23, 1994, is 59,599 pounds and 175,000 pounds, respectively. When considering its initial recommendation for the 1993–94 season, the Committee estimated that the recommended salable quantity and allotment percentage would result in an approximate carryover of 90,000 pounds of Native oil. This places the current available supply of Native oil below the expected carryover.

Over the past five years, the average utilization of Native oil between March 1 and May 31 is 91,375 pounds. This figure is considerably more than the

existing available supply. In addition, a majority of spearmint oil buyers indicated they will be in a position to buy additional Native spearmint oil if it is made available. By increasing the Native spearmint oil allotment percentage by three percent, the available supply (as of February 23, 1994), will increase by 55,553 pounds, from 59,599 pounds to 115,152 pounds.

In its deliberations on how best to meet the anticipated demand, Committee members and other industry participants indicated that the available Native spearmint oil supply should be increased by three to seven percent. The majority of the individuals recommending some level of increase favored three percent, indicating a higher level may push Native oil supply into a surplus situation before the end of the marketing year. The Committee did not recommend an increase in the supply of Scotch spearmint oil since it is anticipated that there will be a surplus supply of this type of oil by the end of the marketing year.

The Department, based on its analysis of available information, has determined that an allotment percentage of 40 percent should be established for Native spearmint oil for the 1993–94 marketing year. This percentage will provide an increase in the salable quantity of Native spearmint oil from 714,665 pounds to 772,611 pounds.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including that contained in the prior proposed and final rules in connection with the establishment of the salable quantities and allotment percentages for Native and Scotch spearmint oils for the 1993–94 marketing year, the Committee's recommendation and other available information, it is found that to revise § 985.212 [58 FR 28340] to change the salable quantity and allotment percentage for Native spearmint oil, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This final action increases the quantity of Native spearmint oil that may be marketed immediately; (2) The Committee recommended this rule at a public meeting and all interested persons had an opportunity to provide input; (3) Handlers and producers should be apprised as soon as possible of the salable quantity and allotment percentage of Native oil contained in this interim final rule; and (4) This rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 985

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

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

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

Authority: 7 U.S.C. 601–674.

2. Section 985.212 is amended by revising the introductory text and paragraph (b) to read as follows:

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

§ 985.212 Salable quantities and allotment percentages—1993–94 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 1993, shall be as follows:

* * * * *

(b) "Class 3" (Native) oil—a salable quantity of 772,611 pounds and an allotment percentage of 40 percent.

Dated: April 20, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–10224 Filed 4–26–94; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Parts 54 and 79

[Docket No. 93–050–2]

Scrapie: Sheep and Goats Less Than 1 Year of Age Moved to Slaughter

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the scrapie regulations to allow sheep and goats less than 1 year of age from scrapie-infected or source flocks to move interstate to slaughter, without being permanently identified with an indelible "S" mark, if they are accompanied by a permit and moved in a sealed means of conveyance. We are also providing that the diagnosis of scrapie necessary to categorize a flock as an infected flock, source flock, or trace flock must have been made after March 31, 1989, and are providing that flank tattoos and ear tattoos are acceptable forms of identification for certain sheep and goats moved interstate. These changes will provide safeguards necessary to guard against the interstate spread of scrapie, while eliminating unnecessarily restrictive marking and identification requirements.

EFFECTIVE DATE: May 31, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Dan Harpster, Senior Staff Veterinarian, Miscellaneous Diseases Staff, Veterinary Services, APHIS, USDA, room 701, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20872, (301) 436–6954.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 79 (referred to below as the regulations) contain provisions restricting the interstate movement of sheep and goats because of scrapie. Scrapie is a progressive degenerative disease of the central nervous system of sheep and goats. The disease develops slowly, with an incubation period lasting from months to years. The regulations are designed to prevent the interstate transmission of scrapie.

On November 12, 1993, we published in the **Federal Register** (58 FR 59955–59959, Docket No. 93–050–1) a proposal to amend the regulations to allow sheep and goats less than 1 year of age from scrapie-infected or source flocks to move interstate to slaughter, without being permanently identified with an indelible "S" mark, if they are accompanied by a permit and are moved in sealed means of conveyance. We also proposed to provide that the diagnosis of scrapie necessary to categorize a flock as an infected flock, source flock, or trace flock must have been made after March 31, 1989, and proposed to make flank tattoos and ear tattoos acceptable forms of identification for certain sheep and goats moved interstate.

We solicited comments concerning our proposal for a 60-day comment period ending January 11, 1994. We received four comments by that date, from a member of the lamb industry, a veterinary medical association, and two sheep industry associations. One commenter supported the entire proposal. One commenter raised issues beyond the scope of the proposal.

The other two commenters supported the proposal with one qualification. Both indicated that our proposal stated that flank tattoos and ear tattoos should be considered acceptable forms of identification because electronic implant devices are "unavailable." The commenters stated that, rather than being unavailable, electronic implant devices enjoy widespread acceptance and usage. Both commenters stated that such devices offer more consistency and are more likely to be permanent than other forms of identification. One of the commenters recommended that the Animal and Plant Health Inspection Service (APHIS) coordinate the distribution and application of electronic implants for the voluntary scrapie flock certification program.

We are making no changes based on these comments. We agree with the commenters that electronic implant devices are in many ways superior to either flank tattoos or ear tattoos. However, at present, electronic implant devices are cost-prohibitive for many owners.

In addition to this problem, there does not yet exist an internationally recognized set of standards for electronic implant devices. Therefore, a reader capable of reading one type of electronic implant device might not be able to read another. Although APHIS is committed to purchasing electronic implant readers as part of the voluntary scrapie flock certification program, we do not consider such purchases advisable until one reader can be used on several different companies' implants. For these reasons, we consider it appropriate at this time to allow forms of identification other than electronic implant devices.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as the final rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

The changes we are making include allowing the interstate movement to slaughter of sheep and goats less than 1 year of age from scrapie-infected flocks or source flocks that do not meet the requirements of § 79.2 (a)(1) through (a)(7) of the regulations, if the animals are moved in a sealed means of conveyance and accompanied by a permit. This approach will be less restrictive and more efficient than allowing these animals to be moved interstate only if the animals have been identified with an "S" mark to the left jaw.

Although the change applies to both sheep and goats, at present no goats are being moved interstate with an "S" mark.

There are approximately 92,500 sheep farms in the United States, with approximately 11 million sheep. The large majority of these are small entities. Ninety-nine percent of the sheep farms in this country each have annual sales totalling less than $500,000, and approximately 77,000 have fewer than 100 sheep.

The number of farms and animals that will be affected by this change is relatively small. There are approximately 81 infected or source flocks in this country, with only about 4,050 animals. All of these flocks are on what are considered small farms. The total number of farms affected will be less than .1 percent of the total number of sheep farms in the United States.

It costs approximately $0.50 to brand a lamb. This amount will be saved by those farms that choose to ship animals according to the regulations. This compares to the average market value for a finished market lamb of $65.

We are also providing that the diagnosis of scrapie necessary to categorize a flock as an infected flock, source flock, or trace flock must have been made after March 31, 1989. This change excludes from such categorizations flocks that completed a 42-month surveillance period prior to October 1, 1992, and in which scrapie has not been diagnosed since. This change clarifies our intent as to the definitions in question and will have no economic effect.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been submitted for approval to the Office of Management and Budget.

List of Subjects

9 CFR Part 54

Animal diseases, Goats, Indemnity payments, Sheep.

9 CFR Part 79

Animal diseases, Quarantine, Sheep, Transportation.

Accordingly, 9 CFR parts 54 and 79 are amended as follows:

PART 54—CONTROL OF SCRAPIE

1. The authority citation for part 54 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 134a–134h; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 54.1 is amended as follows:

a. The definitions of *infected flock, source flock,* and *trace flock* are revised to read as set forth below.

b. The definitions of *Veterinary Services* and *Veterinary Services representative* are removed.

c. The words "a Veterinary Services" are removed and "an APHIS" are added in their place in the following places:

i. The definition of *affected animal;*

ii. The definition of *flock plan,* first sentence; and

iii. The definition of *scrapie-exposed animals.*

d. The definition of *Area Veterinarian in Charge* is amended by removing the words "Veterinary Services" and "the Animal and Plant Health Inspection Service" and adding "APHIS" in their place.

e. In the definition of *flock plan,* the second sentence is amended by removing the words "Veterinary Services" and adding "APHIS" in their place.

§ 54.1 Definitions.

* * * * *

Infected flock. Any flock in which an APHIS representative or a State representative has determined an animal to be a scrapie-positive animal after March 31, 1989. A flock will no longer be an infected flock after it has completed the requirements of a flock plan.

* * * * *

Source flock. A flock in which an APHIS representative or a State representative has determined that at least two animals were born that were diagnosed as scrapie-positive animals at an age of 54 months or less. In order for the flock to be a source flock, the second scrapie-positive diagnosis must have been made within 60 months of the first

scrapie-positive diagnosis and after March 31, 1989. A flock will no longer be a source flock after it has completed the requirements of a flock plan.

* * * * *

Trace flock. A flock in which an APHIS representative or a State representative has determined that one animal was born that was diagnosed as a scrapie-positive animal at an age of 54 months or less. In order for the flock to be a trace flock, the scrapie-positive diagnosis must have been made after March 31, 1989. A flock will no longer be a trace flock after it has completed the requirements of a flock plan.

* * * * *

PART 79—SCRAPIE IN SHEEP AND GOATS

3. The authority citation for part 79 is revised to read as follows:

Authority: 21 U.S.C. 111–114a, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§79.1 [Amended]

4. In § 79.1, definition of *flock plan*, the second sentence is amended by removing the words "Veterinary Services" and adding "APHIS" in their place.

5. Section 79.1 is amended by removing the definition of *Veterinary Services representative;* by revising the definitions of *infected flock, source flock,* and *trace flock;* and by adding *Animal and Plant Health Inspection Service, APHIS representative,* and *permit* in alphabetical order to read as follows:

§79.1 Definitions.

* * * * *

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

APHIS representative. An individual employed by APHIS who is authorized to perform the function involved.

* * * * *

Infected flock. Any flock in which an APHIS representative or a State representative has determined an animal to be a scrapie-positive animal after March 31, 1989. A flock will no longer be an infected flock after it has completed the requirements of a flock plan.

Permit. An official document (VS Form 1–27) issued by an APHIS representative that indicates the following: the shipper's or consignor's name and address; the consignee's name and address; the State where the permit was issued; points of origin and destination of the animals being moved interstate; purpose of the movement; number and species of animals covered by the permit; whether the animals are from an infected flock or a source flock; transportation vehicle license number or other identification number; and seal number.

* * * * *

Source flock. A flock in which an APHIS representative or a State representative has determined that at least two animals were born that were diagnosed as scrapie-positive animals at an age of 54 months or less. In order for the flock to be a source flock, the second scrapie-positive diagnosis must have been made within 60 months of the first scrapie-positive diagnosis and after March 31, 1989. A flock will no longer be a source flock after it has completed the requirements of a flock plan.

* * * * *

Trace flock. A flock in which an APHIS representative or a State representative has determined that one animal was born that was diagnosed as a scrapie-positive animal at an age of 54 months or less. In order for the flock to be a trace flock, the scrapie-positive diagnosis must have been made after March 31, 1989. A flock will no longer be a trace flock after it has completed the requirements of a flock plan.

* * * * *

6. Section 79.2 is amended as follows:

a. Paragraphs (a)(1) through (a)(7) are redesignated as paragraphs (a)(2)(i) through (a)(2)(vii), respectively.

b. Paragraph (a) introductory text is revised and paragraphs (a)(1) and (a)(2) introductory text are added to read as set forth below.

c. In newly redesignated paragraph (a)(2)(ii), the first sentence is amended by removing the words "Veterinary Services" and adding "APHIS" in their place.

d. In newly redesignated paragraph (a)(2)(iii), the third sentence is revised to read as set forth below.

e. Newly redesignated paragraph (a)(2)(iv) is revised to read as set forth below.

f. Newly redesignated paragraph (a)(2)(v) is amended by removing the words "Veterinary Services" and adding "APHIS" in their place.

g. Newly redesignated paragraph (a)(2)(vi) is amended by removing the reference to "paragraph (a)(4)" and adding "paragraph (a)(2)(iv)" in its place; and by removing the words "Veterinary Services" and adding "APHIS" in their place.

h. Newly redesignated paragraph (a)(2)(vii) is amended by removing the reference to "paragraph (a)(2)" and adding "paragraph (a)(2)(ii)" in its place.

§79.2 General restrictions.

(a) Except as provided in paragraphs (a)(1) and (a)(2) of this section, no scrapie-positive animal, animal from an infected flock, or animal from a source flock may be moved interstate, unless the animal has been permanently identified with an indelible mark in the form of the letter "S," at least 1" by 1", applied on the left jaw.

(1) Animals less than 1 year of age may be moved interstate to slaughter from an infected flock or a source flock if the animals are moved in a means of conveyance sealed by an APHIS representative and are accompanied by a permit.

(2) High-risk animals less than 1 year of age moving in slaughter channels and animals other than high-risk animals may be moved interstate if the animals are from infected flocks or source flocks meeting the following conditions: [1]

* * * * *

(iii) * * * The form of identification shall be an electronic implant, flank tattoo, or ear tattoo, providing a unique identification number that may be applied by the owner of the flock or his or her agent in accordance with instructions by an APHIS representative, State representative, or an accredited veterinarian.

(iv) The owner of the flock or his or her agent shall maintain, and keep for a minimum of 5 years after an animal dies or is otherwise removed from a flock, the following records for each animal in the flock: The animal's individual identification number from its electronic implant, flank tattoo, or ear tattoo, and any secondary form of identification the owner of the flock may choose to maintain; sex; breed; date of acquisition and source (previous flock), if the animal was not born in the flock; and disposition, including the date and cause of death, if known, or date of removal from the flock.

* * * * *

§§ 79.2 and 79.3 [Amended]

7. In addition to the amendments set forth above, 9 CFR part 79 is amended by removing the words "a Veterinary

[1] Owners of flocks participating in the Voluntary Scrapie Flock Certification Program described in 9 CFR part 54 agree to follow the "Uniform Methods and Rules—Voluntary Scrapie Flock Certification" (the UM&R), which include, among other requirements, the conditions in this section. Individual copies of the UM&R may be obtained from the Administrator, c/o Sheep, Goat, Equine, and Poultry Diseases Staff, Animal and Plant Health Inspection Service, United States Department of Agriculture, 6505 Belcrest Road, Hyattsville, MD 20782; or from the American Sheep Industry Association, Producer Services, 6911 S. Yosemite Street, Englewood, CO 80112–1414, telephone (303) 771–3500.

Services" and adding, in their place, the words "an APHIS" in the following places:

a. Section 79.2, newly redesignated § 79.2(a)(2)(ii), last sentence; and newly designated (a)(2)(vii), both places they appear; and

b. Section 79.3(b).

§ 79.3 [Amended]

8. In § 79.3, paragraph (a) is amended by removing the words "A Veterinary Services" and replacing them with the words "An APHIS" each time they appear.

Done in Washington, DC, this 20th day of April 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–10030 Filed 4–26–94; 8:45am]

BILLING CODE 3410–34–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 250 and 259

[Release No. 35–26031; File No. S7–35–92]

RIN 3235–AF68

Public Utility Holding Company Act Rules

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Final rules.

SUMMARY: The Commission today is adopting amendments to rules and forms under the Public Utility Holding Company Act of 1935 ("Act"). The amendments will expand certain exemptions, and generally update and clarify the requirements of the rules. The Commission is rescinding rule 50, which required competitive bidding in connection with the purchase or underwriting of securities of companies in a registered system. The rulemaking is intended to reduce regulatory burdens under the Act.

EFFECTIVE DATE: May 31, 1994.

FOR FURTHER INFORMATION CONTACT: Joanne C. Rutkowski, Assistant Director, (202) 942–0545, or Brian P. Spires, Attorney, (202) 942–0557, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549.

SUPPLEMENTARY INFORMATION: On November 4, 1992, the Commission proposed for comment a rulemaking intended to modernize and streamline regulation under the Act.[1] The Commission is adopting the proposed amendments to rules 7 (17 CFR 250.7), 26 (17 CFR 250.26), 27 (17 CFR 250.27), 29 (17 CFR 250.29), 40(a)(5) (17 CFR 250.40(a)(5)), 41(c) (17 CFR 250.41(c)), 42(b) (17 CFR 250.42(b)), 43(b) (17 CFR 250.43(b)), 44(b) (17 CFR 250.44(b)), 49 (17 CFR 250.49), 52 (17 CFR 250.52), 62 (17 CFR 250.62), 63 (17 CFR 250.63), 65(b)(2) (17 CFR 250.65(b)(2)), and 71(b) (17 CFR 250.71(b)) under the Act [15 U.S.C. 79 *et seq.*] and forms U5S, U–12(I)–A and U–12(I)–B, and rescinding rule 50 (17 CFR 250.50). The Commission is deferring action on the proposed amendments to rule 83(d) (17 CFR 250.83(d)) and to the annual report on Form U–13–60 for service company subsidiaries of registered holding companies (17 CFR 259.313), pending further consideration.

Comments were received from eight registered holding companies,[2] two service company subsidiaries of registered holding companies,[3] and two other parties.[4] The Commission has carefully considered these comments, and is incorporating a number of the suggestions in the rule and form amendments that it is adopting today.

I. Introduction

The Commission is adopting various measures intended generally to modernize the rules under the Act and, in particular, to reduce undue regulatory burdens on companies in a registered holding company system. These measures grew out of the Commission's continuing assessment of the appropriateness of existing regulatory requirements.

A. Rule 7(a): Companies Deemed Not To Be Electric or Gas Utility Companies

Under rule 7(a), a company is deemed not to be an electric utility company or a gas utility company, within the meaning of sections 2(a)(3) and 2(a)(4) of the Act, respectively, if the company is primarily engaged in one or more nonutility businesses, and the company's gross sales of electricity, or of natural or manufactured gas distributed at retail, do not exceed a specified amount.[5] At present, the rule permits such companies to make annual utility sales of up to $100,000. The proposed amendment would allow average annual sales of up to $5 million.[6]

Columbia, CNG and Heritage support adoption of the amendment. Northeast suggests that the amendment, as it relates to sales of electricity, is unnecessary in view of the broad exemptions already provided under the Public Utility Regulatory Policies Act of 1978 ("PURPA") [16 U.S.C. § 824a-3(e)],[7] and the Energy Policy Act of 1992.[8] The exemption under rule 7(a), however, is not related to the exemptions under PURPA and the Energy Policy Act. The rule is intended to accommodate a small amount of energy sales by a company that is otherwise engaged in a nonutility business. In comparison, the exemptions under PURPA and the Energy Policy Act are intended to encourage the growth of a competitive energy market. The proposed amendment does not conflict with these statutes or the legislative policies that underlie them.

Columbia and Heritage ask the Commission to adopt a different test of revenues. Columbia suggests that the exemption should apply to a company with gas utility revenues no greater than 5% of its nonutility revenues.[9] Under the Heritage proposal, a company that is not a state-regulated utility could

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[1] See Holding Co. Act Release No. 25668, 57 FR 54025 (Nov. 16, 1992).

[2] The Southern Company ("Southern"), American Electric Power Company ("AEP"), Central and South West Corporation ("CSW"), The Columbia Gas System, Inc. ("Columbia"), Consolidated Natural Gas Company ("CNG"), Northeast Utilities ("Northeast"), General Public Utilities Corporation ("GPU") and New England Electric System ("NEES") filed comments.

[3] EUA Service Corporation and GPU Service Corporation, service company subsidiaries of Eastern Utilities Associates, a registered holding company, and GPU, respectively, filed comments.

[4] Comments were filed by the Investment Company Institute ("ICI"), a national association of investment companies, and by Heritage Propane Corporation ("Heritage"), a Delaware corporation engaged, through subsidiaries, in the sale of propane in enclosed portable containers and through metered systems.

[5] 17 CFR 250.7(a).

[6] The rule employs a three-year test period. Use of a three-year average should eliminate the need for an application when sales in a given year unexpectedly exceed the dollar limitation.

[7] Pursuant to section 210 of PURPA, the Federal Energy Regulatory Commission has adopted rules generally exempting cogeneration facilities and small power production facilities from treatment as public-utility companies for purposes of the Act. See 18 CFR 292.602(b).

[8] Pub. L. No. 102–486, 106 Stat. 2776. The Energy Policy Act amended the Act to create two new classes of exempt entities, exempt wholesale generators and foreign utility companies. *See* sections 32 and 33 of the Act, as amended.

[9] Columbia cites the example of a company that is primarily engaged in the business of distribution of natural or manufactured gas in enclosed portable containers, but derives revenues of more than $5 million from the distribution of natural gas to a central storage tank and through underground pipeline systems. Such an arrangement may be found in real estate developments and small towns.

Section 2(c) exempts municipalities from the scope of the Act. In addition, a company such as that described by Columbia can apply for an order declaring it not to be a public-utility company for purposes of the Act. *See, e.g., AmeriGas Propane,* Holding Co. Act Release No. 25434, 50 SEC Docket 918 (Dec. 20, 1991) (propane company declared not to be a public-utility company where underground pipeline sales were less than 5% of total revenues).

receive up to 20% of its gross revenues from the sale of manufactured gas at retail. The Commission is concerned that these approaches could vitiate the rationale for the exemption, which is the small absolute size of the utility operations, not the relative size of utility and nonutility operations, and so declines to adopt them.

The Commission believes that the increase in the dollar limit to $5 million is appropriate in view of the changes in the industry since rule 7(a) was adopted in 1941.[10] A company with annual utility revenues that exceed $5 million may request an order, upon application, declaring it not to be a utility company for purposes of the Act.[11]

Accordingly, the Commission is adopting the amendment substantially as proposed.[12]

B. Rule 29: Filing of Reports to State Commissions

Rule 29(a), adopted under sections 14 and 15 of the Act, requires a company in a registered holding company system to file with the Commission two copies of each report submitted to stockholders.[13] The Commission believes that the reporting requirement under the rule is no longer necessary. The Commission receives copies of system companies' annual reports to shareholders as exhibits to the Form U5S filed by the parent company.[14] System companies are also subject to extensive disclosure requirements under the other federal securities laws. Among other things, the companies file with the Commission periodic reports on Forms 10–K and 10–Q and current reports on Form 8–K, in addition to the special reports that may be required under circumstances such as a proxy solicitation or tender offer.

The commenters uniformly favor amendment of rule 29 to delete the reporting requirement as it applies to shareholder reports. Accordingly, the rule is so amended.

C. Rule 40(a)(5): Exemption of Acquisitions From Nonaffiliates

Companies in a registered system generally require prior Commission approval, under the standards of section 10, for the acquisition of any security.[15] Rule 40(a)(5) provides a limited exemption to this requirement for the acquisition of securities of local industrial or other nonutility enterprises.[16] Under the rule, the acquisition cannot result in an affiliation between the system company and the local enterprise. Further, the rule limits to $50,000 the aggregate amount that a system company can invest each year "for the purpose of, and in accordance with a State law specifically relating to, promoting the development of business and industry in such territory," and to $10,000 the aggregate annual amount that a system company can invest in other local nonutility enterprises.

These dollar amounts have not been increased since the rule was adopted more than 50 years ago. The Commission, however, has authorized by order a number of "good citizen" investments in larger amounts.[17] In light of these orders, and to increase the usefulness of the rule, the Commission proposed to remove the dollar limit on investments pursuant to state business development laws, and to increase to $1 million the annual limit on investments in other local enterprises. The amended rule would exempt investments in nonutility enterprises located in the service territory of the acquiring public-utility company or, if the acquiring company were not a public-utility company, in the service territory of the registered system.

Upon further consideration, the Commission believes that the proposed amendment may be overbroad as it relates to investments pursuant to state business development laws. It does not appear necessary at this time to provide an unlimited exception for such investments. The rule provides a narrow exception to the requirements of section 9(a)(1) for investments in industrial development and similar entities. The Commission is concerned that an unbounded rule could encourage investments unrelated to the purpose of the rule. Accordingly, the Commission is not removing the dollar limitation but, instead, is increasing it from $50,000 to $5 million per year for investments pursuant to state business development laws. In addition, the Commission is adopting the proposal to increase to $1 million annually the limit on investments in other local enterprises.

The commenters have suggested several modifications to the proposed amendment. Northeast asks the Commission to expand the geographic scope to include the entire area served by the entity in which an investment is to be made or in which the activities of the entity have an economic impact, and to the entire state or states in which the system companies operate. Such an expansion could encourage investments that have little or no relationship to the system's service territory, and thus undercut the rationale for the exemption.[18] Accordingly, the Commission declines to grant this request.

CSW urges the Commission to increase to $5 million annually the permissible aggregate investment in local enterprises that are not organized pursuant to state business development laws. The comment suggests that this dollar amount is necessary to provide a meaningful stimulus in a given region. The Commission declines to adopt this suggestion. The $1 million limit is intended to facilitate certain limited "good citizen" investments. The nominal dollar amount provides a safeguard against potential abuses. A company seeking to engage in a transaction that is not within the terms of the rule may, of course, seek

[10] Holding Co. Act Release No. 2694 (Apr. 17, 1941) (adopting release).

[11] *See* sections 2(a)(3) and 2(a)(4) of the Act. *See, e.g., Petrolane Gas Service Limited Partnership*, Holding Co. Act Release No. 25846, 54 SEC Docket 1389 (July 7, 1993) (distributor of propane in enclosed portable containers with distribution sales of approximately $16 million); *AmeriGas Propane*, Holding Co. Act Release No. 25434, 50 SEC Docket 918 (Dec. 20, 1991) (distributor of propane in enclosed portable containers with distribution sales of approximately $16 million); *Cal Gas Corp.*, Holding Co. Act Release No. 24407, 38 SEC Docket 999 (June 10, 1987) (liquefied petroleum gas marketing company with distribution sales of approximately $11 million); *Enron Corp.*, Holding Co. Act Release No. 24428, 38 SEC Docket 1535 (July 23, 1987) (gas transportation company with distribution sales of approximately $5 million); *LTV Steel Mining Co.*, Holding Co. Act Release No. 25360, 49 SEC Docket 936 (Aug. 12, 1991) (iron ore mining company with electricity sales of approximately $2.2 million).

[12] The rule, as amended, deletes an outdated reference to sales of electricity at wholesale "during the existence of the national emergency."

[13] 17 CFR 250.29(a).

[14] *See* Holding Co. Act Release No. 23214, 49 FR 4717 (Feb. 8, 1984).

[15] *See* section 9(a) of the Act.

[16] 17 CFR 250.40(a)(5). The rule was adopted under section 9(c)(3) which provides that:

[Section 9(a)] shall not apply to the acquisition by a registered holding company, or a subsidiary thereof, of . . . such commercial paper and other securities, within such limitations, as the Commission may by rules and regulations or order prescribe as appropriate in the ordinary course of business of a registered holding company or subsidiary company thereof and as not detrimental to the public interest or the interest of investors or consumers.

[17] *See, e.g., Hope Gas, Inc.*, Holding Co. Act Release No. 25407, 50 SEC Docket 344 (Nov. 8, 1991) (authorizing investment of $2 million for venture capital investments pursuant to state law).

[18] Without the strict geographic restriction, the rule could be used for purposes of diversification. As noted above, a registered holding company generally requires prior Commission approval, by order upon application, to acquire any interest in any other business. Among other things, such nonutility acquisitions must be functionally related to the operations of the system's integrated public-utility system. It is well settled that section 9(c)(3) cannot be used to circumvent this requirement. *See Michigan Consol. Gas Co.*, 44 S.E.C. 361, 366 (1973), *aff'd*, 444 F.2d 913 (D.C. Cir. 1971) (providing that section 9(c)(3) cannot be employed to evade the proscriptions of section 11(b)(1)).

Commission approval by order upon application.

Northeast also recommends that the Commission amend the rule to permit an acquisition of up to 10% of the voting securities of a local enterprise.[19] Under Northeast's proposal, a regulated company could become an affiliate or a holding company of a local business, without the need to apply for or receive Commission approval. The Commission declines to follow this recommendation. Rule 40(a)(5) requires that an acquisition not result in an affiliation with the issuer. This requirement is intended to ensure that the rule is not used to circumvent the requirements of sections 9, 10 and 11, consistent with the limited scope of section 9(c)(3).[20] The Commission declines to expand the scope of the rule, as requested by Northeast.[21]

The Commission is also amending Form U5S to require disclosure of the aggregate amount of investments in entities operating in the service territory of the registered holding company.

D. Rule 41(c): Exemption of Public-Utility Subsidiaries With Respect to Limited Acquisition of Utility Assets

Under section 9(a)(1) of the Act, companies in a registered system generally require Commission approval, by order upon application, before acquiring utility assets. Rule 41(c) provides a limited exception to this requirement for the acquisition by a system public-utility company of electric utility assets that are, or immediately following the transaction will be, connected with electric utility assets that the acquiring company already owns and operates, or gas utility assets that are located in, or adjacent to, the service area in which the acquiring company already owns and operates gas utility assets.[22] The existing rule limits the amount of such acquisitions to the lesser of $100,000 or 5% of the acquirer's gross utility revenues in a given calendar year.

The proposed amendment would increase the annual limit to the lesser of $5 million or 5% of the gross annual revenues that the acquiring company derived from its operations as a public-utility company during the preceding calendar year. The commenters uniformly supported this amendment. The Commission is adopting the rule as proposed.[23]

E. Rule 42(b): Acquisition, Retirement and Redemption of Securities by the Issuer Thereof

Transactions by which a company in a registered system acquires, retires or redeems a security of which it is the issuer (or which it has assumed or guaranteed) generally require Commission approval by order upon application under sections 9(a), 10 and 12(c), and rules thereunder. At present, rule 42(b) provides a limited exemption to this requirement.[24] The proposed amendment would expand the rule to exempt all transactions in which a system company acquires, retires or redeems a security of which it is the issuer (or which it has assumed or guaranteed).

Under the amendment, system companies could more easily adjust their capital ratios in response to changing economic conditions. Commenters, citing the important role of the capital markets in regulating the capital structures of publicly-held corporations, uniformly support expansion of the exemption. The Commission recognizes that rating agencies, financial institutions and state regulators play important roles in ensuring appropriate capital ratios for public-utility companies.[25]

To forestall potential abuse, the exemption remains unavailable for affiliate transactions.[26] CNG asks the Commission to modify this exclusion to exempt the acquisition of shares of common stock pursuant to the exchange and tax withholding provisions of an employee benefit plan. The commenter states that the modification is necessary because the rule, at present, does not exempt transactions with the officers and directors of system companies, who are affiliates of such companies within the meaning of the Act.[27] The Commission declines to adopt this recommendation. A party may continue to seek Commission approval, by order upon application, for these types of transactions.

The acquisition by a registered holding company of its own securities as part of a "going-private" transaction is exempt from the requirements otherwise applicable to such transactions under the Securities Exchange Act of 1934.[28] To ensure that these transactions do not escape review, the amended rule will not exempt transactions within the meaning of rule 13e–3(a)(3) under the Securities Exchange Act.[29]

Accordingly, the Commission adopts the amendment substantially as proposed.

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[19] Rule 40(a)(5) provides in pertinent part that the exemption will not apply where "by reason of such acquisition, [the local enterprise] will become an affiliate of the company acquiring the securities." The Act defines an affiliate to include any company of which 5% or more of the outstanding voting securities are owned by a specified company.

[20] *Michigan Consol. Gas Co.*, 44 S.E.C. at 367 (acquisitions under section 9(c)(3) have involved only "investments in, and have not involved ownership and control of, another business").

[21] The Commission's precedent under section 9(c)(3) is uniform in this regard. *See, e.g., Hope Gas, Inc.*, Holding Co. Act Release No. 25407, 50 SEC Docket 344 (Nov. 8, 1991); *East Ohio Gas Co.*, Holding Co. Act Release No. 25046, 45 SEC Docket 1225 (Feb. 27, 1990) (applicants represented that the registered company would not acquire more than 5% of the securities of the subject industrial development company).

[22] 17 CFR 250.41(c). Compare section 9(b)(1) (a system company can acquire an unlimited amount of utility assets if the acquisitions have been expressly authorized by a state commission). Rule 41(c) was adopted under section 3(d), which authorizes the Commission to make rules exempting companies from the obligations, duties, or liabilities imposed on them as "subsidiary companies" or "affiliates," as defined by the Act.

[23] Item 2 of Form U5S generally requires a registered holding company to disclose any acquisitions of "utility plant in service or under construction of any electric utility company or retail gas utility company for the production, transmission or distribution of electric energy or distribution of natural or manufactured gas."

[24] Paragraph (b) of the present rule exempts: (1) the retirement of treasury securities; (2) the acquisition, retirement or redemption of any evidence of indebtedness, at maturity or otherwise, for the consideration specifically designated therein; (3) the acquisition, retirement or redemption of any security pursuant to a conversion privilege; (4) the acquisition, retirement or redemption of any evidence of indebtedness in accordance with any indenture requirement then applicable, or in an aggregate amount estimated not to exceed the amount of any sinking fund or other periodic requirement for the following twelve months; (5) the acquisition, retirement or redemption in any calendar year of not more than two percent of the amount of a given class of securities; and (6) the acquisition, retirement or redemption of any securities, other than common stock, at a cost not exceeding $50,000 in any calendar year. 17 CFR 250.42(b).

[25] In other matters, the Commission has recognized the role of rating agencies in analyzing structured financings. *See* Exclusion from the Definition of Investment Company for Structured Financings, Investment Company Act Release No. 19105, 57 FR 56248 (Nov. 27, 1992).

[26] The legislative history indicates that the regulation of intercompany transactions under section 12 was intended "to prevent the milking of operating companies for undue advantage to the controlling holding company groups." H.R. Rep. No. 1318, 74th Cong., 1st Sess. 17 (1935). The Senate report stated, in regard to section 12: "Unless appropriate discretion is given to the Commission, new devices will spring up and may result in nullifying the provisions of [the Act]." S. Rep. No. 621, 74th Cong., 1st Sess. 34 (1935).

[27] Section 2(a)(11)(C) of the Act defines "affiliate" to include officers and directors of system companies.

[28] *See* 17 CFR 240.13e–3(g)(3) (the rules that govern going-private transactions do not apply to transactions by a registered holding company in compliance with the requirements of the Act).

[29] *See, e.g.*, 17 CFR 240.13e–3(a)(3). As here relevant, rules adopted pursuant to section 13(e)(1) of the Securities Exchange Act impose reporting requirements on an issuer's acquisition of its own common stock, whether in response to a tender offer [rule 13e–1], as part of a going-private transaction [rule 13e–3], or as a self-tender offer [rule 13e–4]. *See* 17 CFR 240.13e–1, 240.13e–3, 240.13e–4.

F. Rule 43(b): Sales to Affiliates

Rule 43, adopted under sections 12(d) and 12(g) of the Act, generally requires prior Commission approval for sales to an affiliate of securities, utility assets, or any other interest in any business.[30] Under the present rule, a sale of securities is excepted from this requirement if the acquisition is within the terms of section 9(b)(2),[31] the consideration is less than $100,000 and the acquisition does not require Commission approval,[32] or the transaction involves the sale of securities of a subsidiary service company.[33] The proposed amendment would create a single class of exemptions for sales to affiliates of securities, utility assets, or any other interests in any business up to a total annual aggregate consideration of $5 million when the acquisition does not require Commission approval.[34]

The Commission believes that existing reporting requirements under the Act should guard against potential abuses.[35] The commenters generally favor the proposed amendment.[36] CNG asks whether the dollar limitation applies to each transaction or the annual aggregate amount of such transactions. The $5 million limit is intended as an annual aggregate maximum amount for all transactions under the rule. CNG also seeks an additional exemption for intrasystem transactions when the acquisition is otherwise subject to approval of the Commission. The Commission does not perceive the need for such an exemption. The rule, therefore, is adopted substantially as proposed.

G. Rule 44(b): Sales of Securities and Assets

Rule 44, adopted under section 12(d) of the Act, governs sales of utility securities or utility assets by a registered holding company to any person.[37] The rule, at present, exempts four classes of such sales from the general requirement of Commission approval by order upon application. The proposed amendment would replace the existing exemptions with a single one that would exempt all sales up to an annual aggregate amount of $5 million where the acquisition of the securities or assets does not require Commission approval. The Commission believes that existing reporting requirements under the Act offer a safeguard against potential abuses. The commenters generally support this amendment. Accordingly, the rule is amended.

H. Rule 50: Requirement of Public Invitation of Proposals for the Purchase or Underwriting of Securities

The Commission is rescinding rule 50.[38] The rule, which established a requirement of competitive bidding with respect to the issuance or sale of securities by a registered holding company or its subsidiary, was intended to prevent abuses in the issue and sale of securities. In practice, many system companies relied upon various exceptions to this requirement. The Commission believes that the rule is no longer necessary in view of the extensive reporting requirements imposed by the Act and the other federal securities laws. In addition, unless otherwise exempted, the underlying financing will remain subject to Commission review.[39] Rescission of the rule will permit companies in a registered holding company system to choose the marketing method that offers the most advantageous terms. The commenters strongly support this proposal.[40] The rule is hereby rescinded.

I. Rule 65: Expenditures in Connection With Solicitation of Proxies

Rule 65, adopted under section 12(i) of the Act, generally requires prior Commission approval for certain expenditures in connection with the solicitation of proxies by a company in a registered system.[41] The rule currently provides an exemption for annual aggregate expenditures of $1,000. The proposed amendment would increase the annual exemption to $100,000.

The commenters generally support this proposal. Columbia, however, asks the Commission to rescind the rule. The commenter notes that regulated companies are already subject to the proxy solicitation rules under the Securities Exchange Act of 1934,[42] and contends that there are no current abuses that justify the additional restrictions under the Act.[43] Northeast asks the Commission to amend the rule to require only that proxy solicitations be conducted in conformity with the Commission's proxy rules.

Both the proxy rules and rule 65 require the disclosure of the identity of paid solicitors and the cost of the

[30] 17 CFR 250.43.

[31] Section 9(b)(2) provides an exemption from section 9(a) for the acquisition by a public-utility company of the securities of its subsidiary public-utility company in a wholly intrastate holding company system.

[32] Rule 41(c) provides an exemption for limited acquisitions of utility assets. Any sales corresponding to these exempt acquisitions would also be exempt under rule 43(b), as amended. Further, rules 40 and 42 provide exemptions for limited acquisitions of nonutility interests and for an issuer's acquisition of its own securities, respectively, while rule 52 exempts certain security issuances and acquisitions.

[33] A service company is a subsidiary company of a registered holding company that performs services or construction for, or sells goods to, an associate company.

[34] Acquisitions not subject to Commission approval would include, for example, an acquisition of utility assets within the exemption provided by section 9(b) or 9(c), or rule 41.

[35] Form U5S requires annual reporting of sales in excess of $1 million of "utility plant in service or under construction of any electric utility company or retail gas utility company for the production, transmission or distribution of electric energy or distribution of natural or manufactured gas."

A registered holding company also must report "issuances, sales or pledges of securities of system companies or guaranty or assumption by system companies of securities of other persons, including system companies or exempted subsidiaries, stating the name of the issuer, the name of the system company if different, describing the securities, the date and form of the transaction, the consideration and the exemption claimed." *Id.*

[36] The commenters cited the protections afforded by existing state and federal law, together with the reporting requirement of Form U5S under the Act, as safeguards for the interests of investors and consumers.

A registered holding company also must report "issuances, sales or pledges of securities of system companies or guaranty or assumption by system companies of securities of other persons, including system companies or exempted subsidiaries, stating the name of the issuer, the name of the system company if different, describing the securities, the date and form of the transaction, the consideration and the exemption claimed." Id.

[37] 17 CFR 250.44.

[38] 17 CFR 250.50.

[39] In particular, the Commission must consider, under section 7(d)(4) of the Act, whether the fees or other remuneration paid in connection with the issue, sale or distribution of a security are reasonable. Rule 52 (17 CFR 250.52) provides a limited exemption for the issuance and sale of certain securities by public-utility companies in a registered system. A company seeking to rely upon rule 52 must report, on Form U–6B–2, the terms and conditions of such transaction.

[40] CNG expressed concern that rescission of the rule would eliminate the option to bid securities competitively and thus endanger a company's ability to rely upon rule 415 under the Securities Act of 1933, the "shelf-registration" rule. The elimination of the requirement of competitive bidding does not affect a registered holding company's ability to offer securities subject to a competitive process. In addition, the Commission notes that the availability of rule 415 under the Securities Act depends on the type of securities that are to be offered, not the competitive bidding requirements of rule 50. Indeed, rule 50 had been amended to allow for shelf registration by registered holding companies. See Holding Co. Act Release No. 22623, 47 FR 39810 (Sept. 2, 1982).

[41] 17 CFR 250.65.

[42] Proxy solicitations and related expenses are subject to Commission review under the Securities Exchange Act of 1934 [15 U.S.C. §§ 78a–78*ll*] and rules thereunder [17 CFR 240.14a–1–240.14f–1].

[43] Columbia at 4–5. The commenter also asserted that the requirements of rule 65 are inconsistent with recent amendments to the Commission's proxy rules that decrease regulation of communications among shareholders. *See* Securities Exchange Act Release No. 34–31326, 57 FR 48276 (Oct. 22, 1992) (adopting amendments to the proxy rules).

solicitations.[44] A proposal to rescind rule 65 may be an appropriate subject for a future rulemaking. In the meantime, however, the rule is amended as proposed.

J. Rule 71: Statements To Be Filed Pursuant to Section 12(i) of the Act

Under section 12(i) of the Act, persons employed or retained by any registered holding company or its subsidiary, who engage in activities before Congress, the Federal Energy Regulatory Commission ("FERC") or the Commission, must disclose the nature and character of their employment and related compensation. Rule 71(a) currently requires a report on Form U–12(I)–A within 10 days of the date of such activities.[45] Rule 71(b) permits the filing of an advance statement on Form U–12(I)–B covering anticipated activities for the remainder of the calendar year. The proposed amendment would lengthen the advance statement period to three years.

The commenters generally support the amendment. CNG asks the Commission to clarify the types of persons that are required to file under the rule. In general, support staff, such as secretarial staff, are not subject to the filing requirement, in contrast to officers and attorneys who represent the companies.[46]

Columbia suggests that the Commission exempt from filing all regular employees in the holding company whose expenses do not exceed $30,000 per year. By its terms, however, section 12(i) does not appear to permit a *de minimis* exemption.[47] The Commission therefore declines to adopt this suggestion. Accordingly, the rule is adopted as proposed.

K. Rule 83: Exemption in the Case of Transactions With Foreign Associates

Section 13 of the Act requires that service, sales and construction contracts be performed economically and efficiently for the benefit of associate companies at cost, fairly and equitably allocated among the companies.

Under rule 83(d), any subsidiary company can perform service, sales and construction contracts for a foreign associate company without complying with the standards of section 13(b), and without the need to apply for, and receive, prior Commission approval, so long as the aggregate cost of such contracts does not exceed $10,000 annually.[48] The Commission proposed to amend the rule to extend the exemption to all transactions, at not less than cost, with foreign associate companies.

The Commission had believed that the pricing requirement under the proposed amended rule would provide an adequate safeguard against abuse. A question has arisen, however, whether the rule would protect against a diversion of management and other expertise away from the needs of the system's core utility operations. The Commission will consider these issues in a companion rulemaking involving a proposed amendment to rule 87.[49] Accordingly, the Commission is deferring action for further consideration of the proposed amendment to rule 83.

L. Uniform System of Accounts and Form U–13–60: Annual Report for Mutual and Subsidiary Service Companies

The Commission is deferring action on a proposed amendment to the annual report form for mutual and subsidiary service companies, Form U–13–60.[50] The proposed amendment was intended to harmonize the Commission's Uniform System of Accounts for Mutual and Subsidiary Service Companies and the FERC's standard accounts for utility companies.

Most commenters expressed confusion as to the proposed changes and the degree of flexibility they would afford. These commenters asked the Commission to clarify its proposal. In light of these comments, the Commission has decided to defer action to enable it to consider the matter more closely.

M. Other Matters

Finally, the Commission is amending or deleting obsolete language in certain rules, including references to the Federal Power Commission, the Atomic Energy Commission and the Bankruptcy Act.[51]

II. Summary of the Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, regarding the amendment to rule 7. The Analysis explains that the amendment is intended to expand the exemption from regulation for companies that are primarily engaged in nonutility businesses. The Analysis describes the present regulatory framework under which a company operating public-utility facilities must obtain a Commission order declaring it not to be an electric or gas utility company, unless the gross sales of electric energy, or of natural or manufactured gas distributed at retail by means of the facilities owned or operated by such company, did not exceed $100,000 during the previous calendar year. The exemption by order is not available for companies that own but do not operate such facilities. The amendment would increase the dollar sales allowable

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[44] *See* 17 CFR 240.14a–101, item 4. For solicitations not subject to election contests, item 4(a) provides, in pertinent part,

(2) If the solicitation is made otherwise than by the registrant, so state and give the names of the participants in the solicitation * * *.

(3) * * * If the solicitation is to be made by specially engaged employees or paid solicitors, state (i) the material features of any contract or arrangement for such solicitation and identify the parties, and (ii) the cost or anticipated cost thereof.

(4) State the names of the persons by whom the cost of the solicitation has been or will be borne, directly or indirectly.

For solicitations subject to election contests, item 4(b) provides, in pertinent part,

(1) State by whom the solicitation is made and describe the methods employed and to be employed to solicit security holders.

(2) If regular employees of the registrant or any other participant in a solicitation have been or are to be employed to solicit security holders, describe the class or classes of employees to be so employed, and the manner and nature of their employment for such purpose.

(3) If specially engaged employees, representatives or other persons have been or are to be employed to solicit security holders, state (i) the material features of any contract or arrangement for such solicitation and the identity of the parties, (ii) the cost or anticipated cost thereof, and (iii) the approximate number of such employees or employees of any other person (naming such other person) who will solicit security holders.

(4) State the total amount estimated to be spent and the total expenditures to date for, in furtherance of, or in connection with the solicitation of security holders.

(5) State by whom the cost of the solicitation will be borne. * * *

Compare Holding Co. Act Release No. 2681 (Apr. 9, 1941) (rule 65 was intended to "prevent substantial expenditures of corporate funds by the management of a registered holding company to employ solicitors to aid them in obtaining proxies in a contested election").

[45] 17 CFR 250.71(a)

[46] *See, e.g., SEC* v. *Morgan, Lewis & Bockius*, 209 F.2d 44 (9th Cir. 1953) (attorneys representing holding companies before the Commission in a matter affecting a registered holding company are required to file under rule 71).

[47] Section 12(i) requires the filing of forms with the Commission with respect to individuals who "present, advocate, or oppose any matter."

[48] 17 CFR 250.83(d).

[49] The Commission proposed to amend rule 87 to clarify the requirement of prior approval, by order upon application, for service, sales or construction contracts involving an exempt wholesale generator or foreign utility company and an associate company. *See* Holding Company Act Release No. 25887, International Series Release No. 584 (Sept. 23, 1993), 58 FR 51508 (Oct. 1, 1993).

[50] *See* Holding Co. Act Release No. 1858 (Dec. 29, 1939) (adopting Form U–13–60); Holding Co. Act Release No. 21447 (Feb. 22, 1980) (amendment). The Uniform System of Accounts are found in 17 CFR 256.

[51] *See, e.g.*, 17 CFR 250.7, 250.26, 250.27, 250.49, 250.52, 250.62, 250.63.

under the exemption to $5 million. The Analysis states that several significant alternatives to the amendment were considered, including continuing to grant exemptions by order on a case-by-case basis, but concludes that the amendment provides the least impact on, or cost to, small businesses. A copy of the Final Regulatory Flexibility Analysis may be obtained from Brian P. Spires, at Mail Stop 10–6, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549.

The other rule and form amendments will not affect any small entities as defined in rule 110. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amended rules would not have a significant economic impact on a substantial number of small entities. The Commission did not receive any comments with respect to the Chairman's certification.

III. Cost/Benefit of Proposed Actions

The amendments will decrease regulatory compliance costs for companies in a registered holding company system. In fiscal year 1993, for example, the amendments would have eliminated the need for 22 applications and approximately 545 forms, and would have reduced the regulatory burden associated with an additional 86 applications, for an estimated savings of more than 4,114 hours per year. Moreover, the amendments would have reduced by approximately 1,576 hours the staff time associated with reviewing and analyzing these applications. The only cost to the companies complying with the amended rules will be the cost of reporting on Form U5S the information required by rule 40(a)(5). It is estimated that no more than one-half hour will be required to complete the additional information required by the change to Form U5S.

IV. Paperwork Reduction Act

The Office of Management and Budget has approved the amended rules and forms for continued use through December 31, 1995 and February 28, 1996 (Control No. 3235–AF68).

V. Statutory Authority

Commission is amending rule 7 pursuant to sections 2(a)(3), 2(a)(4) and 20(a) [15 U.S.C. §§ 79b(a)(4), 79b(a)(4), 79t(a)] of the Act; amending rule 26 pursuant to section 20(a) [15 U.S.C. § 79t(a)] of the Act; amending rule 27 pursuant to section 20(a) [15 U.S.C. § 79t(a)] of the Act; amending rule 29 pursuant to sections 14, 15 and 20(a) [15 U.S.C. §§ 79n, 79o, 79t(a)] of the Act; amending rule 40(a)(5) and Form U5S pursuant to sections 3(d), 5(c), 9(c)(3), 14 and 20(a) [15 U.S.C. §§ 79c(d), 79e(c), 79i(c)(3), 79n, 79t(a)] of the Act; amending rule 41(c) pursuant to section 3(d) [15 U.S.C. § 79c(d)] of the Act; amending rule 42 pursuant to section 9(c)(3), 12(c) and 20(a) [15 U.S.C. §§ 79i(c)(3), 79l(c), 79t(a)] of the Act; amending rule 43(b) pursuant to sections 6(b), 12(d), 12(f) and 27(a) [15 U.S.C. §§ 79f(b), 79*l*(d), 79*l*(f), 79aa(a)] of the Act; amending rule 44(b) pursuant to section 12(d) [15 U.S.C. § 79*l*(d)] of the Act; amending rule 49 pursuant to section 20(a) [15 U.S.C. § 79t(a)] of the Act; rescinding rule 50 pursuant to section 20(a) [15 U.S.C. § 79t(a)] of the Act; amending rule 52 pursuant to section 20(a) [15 U.S.C. § 79t(a)] of the Act; amending rule 62 pursuant to section 20(a) [15 U.S.C. § 79t(a)] of the Act; amending rule 63 pursuant to section 20(a) [15 U.S.C. § 79t(a)] of the Act; amending rule 65 pursuant to sections 12(e) and 20(a) [15 U.S.C. §§ 79*l*(e), 79t(a)] of the Act; and amending rule 71(b) and Forms U–12(I)–A and U–12(I)–B pursuant to section 12(i) and 20(a) [15 U.S.C. §§ 79*l*(i), 79t(a)] of the Act. The authority citations for these actions precede the text of the actions.

VI. Text of Rule and Form Amendments

List of Subjects in 17 CFR Parts 250 and 259

Utilities.

For the reasons set out in the preamble, the Commission is amending Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The authority citation for Part 250 continues to read as follows:

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t, unless otherwise noted.

2. The authority citations at the end of the following sections are removed: 250.7, 250.26, and 250.29.

3. Section 250.7 is amended by removing "Atomic Energy Commission" in paragraphs (b)(2)(i) and (b)(3)(i) and adding in its place "Nuclear Regulatory Commission" and by revising paragraph (a) to read as follows:

§ 250.7 Companies deemed not to be electric or gas utility companies.

(a) Any company which is primarily engaged in one or more businesses other than the business of an electric or gas utility company, shall not be deemed an electric or gas utility company within the meaning of section 2(a)(3) or section 2(a)(4) of the Act if the gross sales of electric energy, or of natural or manufactured gas distributed at retail by means of the facilities owned or operated by such company, did not exceed an average annual amount of $5,000,000 over the preceding three calendar years. There may be excluded from the gross sales specified:

(1) Sales of electric energy or natural or manufactured gas to tenants or employees of the operating company for their own use and not for resale; and

(2) Sales of gas to industrial consumers or in enclosed portable containers.

* * * * *

§ 250.26 [Amended]

4. Section 250.26 is amended by removing "Federal Power Commission" each time it appears in paragraph (b)(2), and adding in its place "Federal Energy Regulatory Commission".

§ 250.27 [Amended]

5. Section 250.27 is amended by removing "Federal Power Commission" each time it appears in paragraph (a), and adding in its place "Federal Energy Regulatory Commission".

6. Section 250.29 is revised to read as follows:

§ 250.29 Filing of Reports to State Commissions.

Preliminary Note: Reports to State Commissions shall be submitted to the Commission in paper only, whether or not the filer is otherwise required to file in electronic format.

A copy of each annual report submitted by any registered holding company or any subsidiary thereof to a State Commission covering operations not reported to the Federal Energy Regulatory Commission shall be filed with the Securities and Exchange Commission no later than ten days after such submission.

7. Section 250.40 is amended by revising paragraph (a)(5) to read as follows:

§ 250.40 Exemption of certain acquisitions from nonaffiliates.

(a) * * *

(5) *Securities of local enterprises.* Any security issued by an industrial or other nonutility enterprise located in the service territory of the acquiring public-utility company or, if the acquiring company is not a public-utility company, in the service territory of the registered holding-company system: *Provided,*

(i) The total cost of acquisitions by the acquiring company of securities of

industrial development companies organized for the purpose of, and in accordance with a State law that specifically relates to, promoting the development of business and industry in such state does not exceed an annual aggregate amount of $5 million, and

(ii) The total cost of acquisitions of securities of other local industrial or nonutility enterprises does not exceed an annual aggregate amount of $1 million. In no event, however, will the above exemption apply where, by reason of such acquisition, the acquiring company would become an affiliate of the issuer.

* * * * *

8. Section 250.41 is amended by revising paragraph (c) to read as follows:

§ 250.41 Exemption of public utility subsidiaries with respect to limited acquisition of utility assets.

* * * * *

(c) *Limit in Amount.* The total consideration paid for utility assets acquired pursuant to the exemption granted by this section does not exceed in any calendar year the lesser of $5 million or five percent of the gross annual revenues of the acquiring company derived from its operations as a public-utility company during the preceding calendar year.

* * * * *

9. Section 250.42 is revised to read as follows:

§ 250.42 Acquisition, retirement and redemption of securities by the issuer thereof.

A registered holding company or its subsidiary company may acquire, retire or redeem any security of which it is the issuer (or which it has assumed or guaranteed) without the need for prior Commission approval under sections 9(a), 10 and 12(c) of the Act: *Provided,* This section shall not apply to a transaction by a registered holding company or its subsidiary company with an associate company, an affiliate, or an affiliate of an associate company, or to a transaction by a registered holding company, as defined in § 240.13e-3(a)(3) of this chapter.

10. Section 250.43 is amended by revising paragraph (b) to read as follows:

§ 250.43 Sales to affiliates.

* * * * *

(b) *Exception.* The foregoing requirement in paragraph (a) shall not apply to any sale of securities or utility assets or any other interest in any business in an aggregate amount of up to $5,000,000 during any calendar year if the acquisition of such securities, assets or other interest does not require prior Commission approval.

11. Section 250.44 is amended by revising paragraph (b) to read as follows:

§ 250.44 Sales of securities and assets.

* * * * *

(b) *Exception.* The foregoing requirement in paragraph (a) shall not apply to any sale of securities or of utility assets in an aggregate amount of up to $5,000,000 during any calendar year if the acquisition of such securities or assets does not require prior Commission approval.

* * * * *

§ 250.49 [Amended]

12. Section 250.49 is amended by revising the phrase "section 208 of Chapter X of the Bankruptcy Act, as amended (52 Stat. 894; 11 U.S.C. 608)" in paragraph (c) to read "section 1109(a) of Chapter 11 of the Bankruptcy Code (11 U.S.C. 1109(a))" and by removing the clauses "section 106(13) of said Chapter X (52 Stat. 883; 11 U.S.C. 506), or of" and "section 106.(13) of said Chapter X or of" where they appear in paragraph (c).

§ 250.50 [Removed and Reserved]

13. Section 250.50 is removed and reserved.

§ 250.52 [Amended]

14. Section 250.52 is amended by removing the phrase "paragraph (d)" in paragraph (c) and replacing it with "paragraph (c)."

§ 250.62 [Amended]

15. Section 250.62 is amended by removing the phrase "or by a confirmed telegram" in paragraph (d)(2), and removing the phrase "or telegraphic" in paragraph (d)(3).

§ 250.63 [Amended]

16. Section 250.63 is amended by revising the phrase "section 208 of Chapter X of the Bankruptcy Act as amended (52 Stat. 894; 11 U.S.C. 608)" to read "section 1109(a) of Chapter 11 of the Bankruptcy Code (11 U.S.C. 1109(a))".

17. Section 250.65 is amended by revising paragraph (b)(2) to read as follows:

§ 250.65 Expenditures in connection with solicitation of proxies.

* * * * *

(b) *Exceptions.* * * *

(2) Other expenditures not in excess of $100,000 during any one calendar year.

* * * * *

18. Section 250.71 is amended by revising the section heading and paragraph (b) to read as follows:

§ 250.71 Statements to be filed pursuant to section 12(i).

* * * * *

(b) *Advance statement.* An advance statement, covering anticipated activity for the remainder of the present calendar year, and the next two calendar years, may be filed on Form U–12(I)–B by any person (whether or not the compensation of such person has been fixed in advance) who is a salaried officer or employee or an attorney, accountant or other expert regularly retained by any company or by companies in the same holding-company system, or any person specially retained in connection with a particular proceeding or enterprise which is expected to involve a series of appearances or activities, if such employment or retainer does not contemplate any expenses other than ordinary personal, traveling or sustenance expenses, stationery, postage, telephone, telecopier and telegraphic service, stenographic and clerical assistance, expenditures for the printing of briefs or other documents to be submitted to any agencies specified in section 12(i) of the Act, and similar items.

* * * * *

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

19. The authority citation for Part 259 continues to read as follows:

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t.

Subpart A—Forms for Registration and Annual Supplements

20. Form U5S (referenced in § 259.5s) is amended by revising paragraph 1 of Item 5 to read as follows:

Note: These amendments and the forms do not appear in the Code of Federal Regulations.

Form U5S

* * * * *

Item 5. Investments in Securities of Nonsystem Companies

* * * * *

1. Aggregate amount of investments in persons operating in the retail service area of the owner, or of its subsidiaries. State the number of persons included and describe generally the kind of persons included. If investments were made pursuant to State law, cite the State law under which they were made.

* * * * *

Subpart C—Forms for Statements and Reports

21. Form U–12(I)–A (referenced in § 259.212a) is amended by revising paragraph (b) of rule U–71 to read as follows:

Form U–12(I)–A

* * * * *

Statements to Be Filed Pursuant to Section 12(i)

* * * * *

(b) *Advance Statement.* An advance statement, covering anticipated activity for the remainder of the present calendar year and the next two calendar years, may be filed on Form U–12(I)–B by any person (whether or not the compensation of such person has been fixed in advance) who is a salaried officer or employee or an attorney, accountant or other expert regularly retained by any company or by companies in the same holding-company system, or any person specially retained in connection with a particular proceeding or enterprise which is expected to involve a series of appearances or activities, if such employment or retainer does not contemplate any expenses other than ordinary personal, traveling or sustenance expenses, stationery, postage, telephone, telecopier and telegraphic service, stenographic and clerical assistance, expenditures for the printing of briefs or other documents to be submitted to any agencies specified in section 12(i) of the Act, and similar items.

* * * * *

22. Form U–12(I)–B (referenced in § 259.212b) is amended by revising the heading, revising the phrase "during the prior year and to be received during the calendar year" to read "during the current year and estimated to be received over the next two calendar years" in paragraph 5(a) and removing the phrase "during prior year" in column (a) of the table in paragraph 5(a), revising paragraph (b) of rule U–71, revising the General Instruction to Form U–12(I)–B, removing the phrase "at end of year" in Item 5(a) of the General Instruction, and removing the phrase "at end of year" in Item 6 of the General Instruction, to read as follows:

Form U–12(I)–B (Three-Year Statement)

Securities and Exchange Commission,
Washington, D.C. Three year period ending 19 ____.

Form U–12(I)–B (Three-Year Statement)

* * * * *

Statements to Be Filed Pursuant to Section 12(i).

* * * * *

(b) *Advance Statement.* An advance statement, covering anticipated activity for the remainder of the present calendar year and the next two calendar years, may be filed on Form U–12(I)–B by any person (whether or not the compensation of such person has been fixed in advance) who is a salaried officer or employee or an attorney, accountant or other expert regularly retained by any company or by companies in the same holding-company system, or any person specially retained in connection with a particular proceeding or enterprise which is expected to involve a series of appearances or activities, if such employment or retainer does not contemplate any expenses other than ordinary personal, traveling or sustenance expenses, stationery, postage, telephone, telecopier and telegraphic service, stenographic and clerical assistance, expenditures for the printing of briefs or other documents to be submitted to any agencies specified in section 12(i) of the Act, and similar items.

* * * * *

Instructions

General Instruction.—Advance Statement on this form shall continue in effect until January 30 of the year following the end of the three-year period covered by the advance statement, unless and except as previously supplemented or renewed. Supplementary statements during the three-year period may be filed in the event of material changes such as in information called for by items 1 through 6. Changes of rank or salary within the organization would not ordinarily be deemed material.

* * * * *

Dated: April 20, 1994.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–10090 Filed 4–26–94; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Salinomycin, Roxarsone, and Bacitracin Zinc

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Hoechst-Roussel Agri-Vet Co. The ANADA provides for using approved single ingredient Type A medicated articles to make Type C medicated broiler feeds containing salinomycin with roxarsone and bacitracin zinc.

EFFECTIVE DATE: April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1602.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., P.O. Box 2500, Somerville, NJ 08876–1258, filed ANADA 200–086 for the use of salinomycin with roxarsone and bacitracin zinc. The ANADA provides for using approved single ingredient Type A medicated articles to make Type C medicated broiler feeds containing 40 to 60 grams per ton (g/t) of salinomycin sodium activity, 45.4 g/t of roxarsone, and 4 to 50 g/t of bacitracin zinc, for the prevention of coccidiosis in broiler chickens caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, including some field strains of *E. tenella* that are more susceptible to roxarsone combined with salinomycin than to salinomycin alone, and for increased rate of weight gain and improved feed efficiency.

ANADA 200–086 is as a generic copy of Agri-Bio's NADA 137–536 and is approved as of April 27, 1994. The regulations are amended in § 558.550 *Salinomycin* (21 CFR 558.550) to reflect the approval.

This approval is for use of single ingredient Type A medicated articles to make Type C medicated feeds. Roxarsone is a Category II drug which, as provided in § 558.4, requires an approved Form FDA 1900 for making a Type C feed. Therefore, the use of salinomycin, roxarsone, and bacitracin zinc Type A medicated articles to make Type C medicated feeds as provided in

ANADA 200–086 requires an approved Form FDA 1900.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.550 [Amended]

2. Section 558.550 *Salinomycin* is amended in paragraph (a)(2) by adding "(b)(1)(viii)," after "(b)(1)(vi)".

Dated: April 18,1994.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 94–10019 Filed 4–26–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–94–049]

RIN 2115–AE46

Special Local Regulations: Lake Worth, ICW, Mile 1022

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Lake Worth Sunfest '94. This event will be held on April 27 through May 1, 1994; from 6 p.m. to 10 p.m. EDT (Eastern Daylight Time) on April 27 and 28; from 11 a.m. to 10 p.m. EDT on April 29; and, from 9 a.m. to 10 p.m. EDT on April 30 and May 1. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on April 27 through May 1, 1994; from 6 p.m. to 10 p.m. EDT (Eastern Daylight Time) on April 27 and 28; from 11 a.m. to 10 p.m. EDT on April 29; and, from 9 a.m. to 10 p.m. EDT on April 30 and May 1.

FOR FURTHER INFORMATION CONTACT: ENS B. DAILEY, Coast Guard Group Miami, (305) 535–4492.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The updated information to hold the event was not received until April 1994, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are ENS B. DAILEY, Project Officer, Coast Guard Group Miami, and LT J. LOSEGO, Project Attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulations

There will be approximately 45 racers in race boats, ski boats, jet skis, and canoes, ranging in size from 12 to 17 feet, participating in the Palm Beach County Sunfest '94. High speed race boats traveling up to 120 m.p.h., and canoes, jet skis, and water skiers, require calm waters to perform and create an extra or unusual hazard in the navigable waters. As a result, there will be a no wake zone in the Lake Worth Intracoastal Waterway between the Royal Palm Bridge and the Flagler Memorial Bridge where the event will take place.

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.08 of Commandant Instruction M16475.1B, and this proposal has been determined to be categorically excluded. Specifically, the Coast Guard has consulted with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service regarding the environmental impact of this event, and it was determined that the event does not jeopardize the continued existence of protected species. As a condition to the permit, the applicant is required to educate the operators of spectator craft and parade participants regarding the possible presence of manatees and the appropriate precautions to take if the animals are sighted.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

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

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35T07–049 is added to read as follows:

§ 100.35T07–049 Palm Beach Sunfest '94.

(a) *Regulated Area:* A regulated area is established in the Lake Worth Intracoastal Waterway (ICW), between the Flagler Memorial Bridge and the Royal Palm Bridge, with the northern boundary formed by latitude 26°–42′–48″, and the southern boundary formed by latitude 26°–42′–19″. The eastern and western boundaries of the regulated area are formed by the shoreline of the ICW.

(b) *Special Local Regulations:* (1) The regulated area is a no wake zone. All transiting vessels shall operate at a speed so as to not cause a wake or at five (5) knots, whichever is slower.

(2) All vessels shall immediately follow any specific instructions given by event patrol craft and exercise extreme caution while operating in or near the regulated area. A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any nonparticipating vessel to take immediate action to avoid collision and avoid interference with event participants. The display of an orange distress smoke signal from a patrol

vessel will be the signal for any and all vessels to stop immediately.

(3) After the termination of the Sunfest '94 event on each respective day, all vessels may resume normal operations.

(c) Effective dates: This section becomes effective on April 27 through May 1, 1994; from 6 p.m. to 10 p.m. EDT (Eastern Daylight Time) on April 27 and 28; from 11 a.m. to 10 p.m. EDT on April 29; and, from 9 a.m. to 10 p.m. EDT on April 30 and May 1. These times are effective, unless the regulated area is sooner terminated by the Patrol Commander.

Dated: April 13, 1994.

P.J. Cardaci,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 94–10172 Filed 4–26–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD01–94–011]

New Jersey Offshore Powerboat Race, Manasquan, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice puts into effect the permanent regulations, 33 CFR 100.505, for the New Jersey Offshore Powerboat Race. The regulation will be effective from Saturday, July 16, 1994 at 9 a.m. until 6 p.m. This regulation is necessary to control vessel traffic due to the confined nature of the waterway and anticipated congestion at the time of the event. The purpose of this regulation is to provide for the safety of life and property during the event.

EFFECTIVE DATE: The regulations in 33 CFR 100.505 are effective from 9 a.m. to 6 p.m. on Saturday, July 16, 1994.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Benjamin M. Algeo, Chief, Boating Safety Affairs Branch, First Coast Guard District, (617) 223–8311.

Drafting Information: The principal persons involved in drafting this document are LTJG B. M. Algeo, Project Manager, First Coast Guard District Boating Safety Division, and LCDR. J. D. Stieb, Project Attorney, First Coast Guard District Legal Division.

SUPPLEMENTARY INFORMATION: This notice provides the effective period for the permanent regulation governing the 1994 running of the New Jersey Offshore Powerboat Race, New Jersey. A portion of the Manasquan River will be closed during the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. The regulated area is that area between Manasquan Inlet together with all of the navigable waters of the United States from Asbury Park, New Jersey, southward to Seaside Park, New Jersey, north from the New Jersey Shoreline seaward to the limits of the Territorial Sea; The Manasquan River: From the New Jersey Transit Railroad Bridge to the mouth of the Manasquan Inlet. Additional public notification will be made via the First Coast Guard District Local Notice to Mariners and marine safety broadcasts. The full text of this regulation is found in 33 CFR 100.505.

Dated: February 22, 1994.

Kent H. Williams,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 94–10174 Filed 4–26–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD07–93–091]

Drawbridge Operation Regulations; Kissimmee River, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing regulations governing the operation of the CSX Railroad bridge, at mile 37.0, near Fort Basinger, Florida, by requiring 96 hour advance notification for an opening of the draw. This proposal is being made to be consistent with three other bridges on the waterway. This action will relieve the bridgeowner of the burden of having a person available within 72 hours to open the draw, which has not opened during the past twenty years, while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: May 31, 1994.

FOR FURTHER INFORMATION CONTACT: Walter Paskowsky, Project Manager, Bridge Section at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Walter Paskowsky, Project Manager, and LT J. M. Losego, Project Counsel.

Regulatory History

On November 9, 1993 the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations in the **Federal Register** (57 FR 59426). The Coast Guard received no comments on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

This swingbridge presently opens with 72 hours advance notice for the passage of floating equipment employed for flood control work under the jurisdiction of the South Florida Water Management District or the U.S. Army Corps of Engineers. This regulation was established in 1964 by the U.S. Army Corps of Engineers with the Kissimmee River Flood Control Project was under construction. The State Road 70, 78 and 98 highway bridges which cross the same waterway have been authorized to open with 96 hours advance notice. This change will allow the CSX Railroad bridge at mile 37.0, which must be opened by hand, to open with a similar 96 hour advance notice.

The limitation on the type of vessel navigation which would be allowed an opening will be removed; however, there is not expected to be an increase in the number of openings since the level of navigation on the waterway is limited to small recreational vessels. The rule will also reflect the bridge owner's name change from Seaboard System to CSX Railroad.

Discussion of Comments

No comments were received. The owner of the bridge CSX Transportation, concurred with the proposed change prior to the publication of the notice of proposed rulemaking.

Regulatory Evaluation

This rule is not a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because the drawbridge has not been opened during the past twenty years.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since the drawbridge has not opened since 1970, the increase in advance notification requirements will not affect commercial navigation. Because it expects the impact of the proposal to be so minimal, the Coast

Guard certifies under Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusive Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

§ 117.295 Kissimmee River

The draw of the DSX Railroad bridge, mile 37.0, near Fort Basinger, shall open if at least 96 hours notice is given.

Dated: April 4, 1994.

W.P. Leahy,

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

[FR Doc. 94–10171 Filed 4–26–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Louisville 94–006]

RIN 2115–AA97

Safety Zone; Ohio River Mile 468.5 to 473.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Ohio River. The regulation is needed to control vessel traffic in the regulated area while transiting downbound at night during high water conditions. The regulation will restrict commercial navigation in the regulated area for the safety of vessel traffic and the protection of life and property along the river.

EFFECTIVE DATES: This regulation is effective on April 15, 1994, at 7 p.m. EDST. It will terminate at 6 p.m. EDST on May 15, 1994, unless sooner terminated by the Captain of the Port, Louisville, Kentucky.

FOR FURTHER INFORMATION CONTACT: LT Phillip Ison, Operations Officer, Captain of the Port, Louisville, Kentucky at (502) 582–5194.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafter of this regulation is LT Phillip Ison, Project Officer, Marine Safety Office, Louisville, Kentucky.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. In effect, this regulation extends an existing safety zone which will terminate at 7 p.m. EDST on April 15, 1994. Although this regulation continues restrictions which have been in place for fifteen days, following normal rulemaking procedures would have been impracticable. Specifically, the high water periods in the Cincinnati, Ohio area are natural events which cannot be predicted with any reasonable accuracy. The need to extend the restrictions, and how long they should be kept in place, could not have been predicted until recently, making it more practical to issue a new regulation instead of extending the current one. As the river conditions present an immediate hazard to navigation, life, and property, the Coast Guard deems it to be in the public's best interest to issue a regulation now.

Background and Purpose

The situation requiring this regulation is high water in the Ohio River in the vicinity of Cincinnati, Ohio. The Ohio River in the Cincinnati area is hazardous to transit under the best of conditions. To transit the area, mariners must navigate through several sweeping turns and seven bridges. When the water level in the Ohio River reaches 45 feet, on the Cincinnati gage, river currents increase and become very unpredictable, making it difficult for downbound vessels to maintain steerageway. During hours of darkness the background lights of the city of Cincinnati hamper mariners' ability to maintain sight of the front of their tow. The regulation is intended to protect the public and the environment, at night during periods of high water, from a potential hazard of large downbound tows carrying hazardous material through the regulated area.

Regulatory Evaluation

This rule is not a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979); it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements.

The Coast Guard expects the impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation as an action required to protect the public and the environment.

List of Subjects in 33 CFR Part 165

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

Temporary Regulation

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

PART 165—[AMENDED]

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

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

2. A temporary § 165.T02–022 is added, to read as follows:

§ 165.T02–022 Safety Zone: Ohio River.

(a) *Location.* The Ohio River between mile 468.5 and mile 473.0 is established as a safety zone.

(b) *Effective Dates.* This section becomes effective on April 15, 1994, at 7 p.m. EDST. It will terminate at 6 p.m. EDST on May 15, 1994, unless sooner terminated by the Captain of the Port Louisville, Kentucky.

(c) *Regulations.* In accordance with the general regulations under § 165.23 of this part, entry into the described zone by all downbound vessels towing cargoes regulated by title 46 Code of Federal Regulations Subchapters D and O with a tow length exceeding 600 feet excluding the tow boat is prohibited from one-half hour before sunset to one-half hour after sunrise.

Dated: April 12, 1994.

W.J. Morani, Jr.,

Commander, U.S. Coast Guard, Captain of the Port, Louisville, Kentucky.

[FR Doc. 94–10175 Filed 4–26–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD08–94–006]
RIN 2115–AE81

Regulated Navigation Area; Mississippi River, Miles 88 to 240 Above Head of Passes

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is extending the upper limits of the Mississippi River regulated navigation area, which presently exists between miles 88 and 127, Mississippi River, above Head of Passes, Louisiana, to cover the area between river miles 88 and 240, above Head of Passes, up to the Port of Baton Rouge. This regulation is necessary to improve the safety of barge fleeting areas that exist on the Mississippi River between New Orleans and Baton Rouge, Louisiana, an extremely confined navigation area with a high volume of marine traffic. The extension of this regulated navigation area will result in safer, standardized methods of mooring barges at and around barge fleeting facilities along the lower Mississippi River between New Orleans and Baton Rouge, Louisiana.

DATES: This regulation becomes effective on April 28, 1994. Comments on this regulation must be received on or before June 27, 1994.

ADDRESSES: Comments should be mailed to Commander (mps), Eighth Coast Guard District, Hale Boggs Federal Bldg., 501 Magazine St., New Orleans, LA 70130–3396. Comments may also be hand delivered to this address. The comments and other materials related to this regulation will be available for inspection and copying in room 1341 at the above address. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments on collection-of-information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: Lieutenant Verne Gifford, Marine Safety Division, Eight Coast Guard District, room 1341, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396. Phone number: (504) 589–6172.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD8–94–006) and the specific section of this rule to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8.5 by 11 inches, suitable for copying. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander (mps), Eighth Coast Guard District, at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentation will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The drafters of this regulation are LTJG Stephanie Spunt, project officer for the Captain of the Port, New Orleans, Louisiana, LT Verne Gifford, project officer, Eighth Coast Guard District Marine Safety Division, and CDR D. G. Dickman, project attorney, Eighth Coast Guard District Legal Office.

Regulatory Information

This rule is being published as an interim rule and is being made effective on the date of publication. Many barge fleet breakaways have occurred outside the currently regulated area that are a direct result of inadequate mooring practices that are addressed by this regulation. Current high water conditions in the amended regulated area have exacerbated the problem. Continued high water conditions are expected in the regulated area throughout the spring and summer months. Immediate action is needed to limit the number and effect of barge breakaways and to protect the environment, especially during high water conditions. For these reasons, the Coast Guard for good cause finds, under 5 U.S.C. 553(b)(B) and (d)(3), that notice, and public procedure on the notice, before the effective date of this rule are contrary to the public interest and that this rule should be made effective in less than 30 days after publication.

Background and Purpose

Recent barge fleet breakaways on the Mississippi River within the Captain of the Port New Orleans zone show that there are a statistically significant higher incidence of barge fleet breakaways between miles 127 and 240 above Head of Passes, which is outside of the current regulated navigation area. Coast Guard fleet inspectors have found that many fleeting operations located between miles 127 and 240 do not currently conform with the mooring regulations that apply to fleets operating within the current regulated navigation area.

Casualty investigations have indicated that a majority of the breakaways occur as the result of a passing tow or deep draft vessel striking the fleet. Additionally, barge fleet breakaways are also caused by large wakes from passing deep draft vessels. Both of these causal factors increase during high water conditions as faster currents and increased debris result from the high water conditions. This contributes to more collisions and to more incidents from large vessel wakes. Most often, in these cases, barge moorings outside the current regulated area have been determined to have been weak or inadequate to withstand these foreseeable increased forces. High water conditions currently exist and it is expected that higher than normal river stages will continue to exist during the spring and summer of 1994.

Discussion of Rules

The existing regulations establish general procedural and equipment requirements for mooring of barge fleets on the Mississippi River between miles

88 and 127 above Head of Passes. These regulations further outlined additional specific fleeting requirements during periods of high water. High water is specified in the regulations as existing when the Carrollton Gauge stands at 12 feet, or when the Carrollton Gauge stands at 10 feet, the U.S. Army Corps of Engineers forecasts the Mississippi River will rise to 12 feet and the District Commander determines the conditions to be hazardous.

The Coast Guard has determined that extending the regulated navigation area to include the area of the Mississippi River between mile 88 and mile 240 above Head of Passes will improve the management and mooring procedures for the bare fleets in this area and will reduce the number of breakaways as well as create a safer environment for the entire maritime community in the Captain of the Port New Orleans zone.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11034); February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. section 601 et seq.), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include: (1) Small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Act. Although this rule is exempt, the Coast Guard has reviewed it for potential impact on small entities.

There are approximately 33 barge fleeting operations outside of the current regulated area that will be required to comply with the increased mooring and supervision requirement as a result of the expansion of the regulated area. Operators of barge fleets often share locations and some operators have multiple locations both within and without the current regulated area, meaning that the businesses affected will be less than the number of fleets.

Therefore, the Coast Guard's position is that this rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. section 3501 et seq.), the Office of Management and Budget (OMB) reviews each rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include recordkeeping, notification, and other, similar requirements.

This rule contains collection of information requirements in the following section: Section 165.803(i). The following particulars apply:

DOT No.: 2115.

OMB Control No.: 2115–0092.

Administration: U.S. Coast Guard.

Title: Regulated Navigation Area; Mississippi River, Miles 88 to 240 Above Head of Passes.

Need for Information: To ensure that the operators of barge fleeting facilities follow the proper mooring and inspection procedures, in order to prevent barges from breaking away from a fleeting facility and creating a hazard in a very congested area of the Mississippi River.

Proposed Use of Information: To provide documentary evidence that inspections are being made and to aid in the investigation of any occurrences of barge fleet breakaways.

Frequency of Response: Barge fleeting facilities must record: the time of commencement and termination of each inspection of barge moorings and the name of each person who does the inspection (twice daily); the date and time of each barge entering or leaving the facility; and the hazardous cargoes in them.

Burden Estimate: Estimated burden is as follows:

	Currently approved	Requested
Number of recordings per day.	9.3	9.3
Estimated time per recording.	5 minutes	5 minutes
Number of days per year.	365 days	365 days
Average wage of inspectors.	$8 per hour	$8 per hour
Number of fleeting facilities.	39	70

9.3 recordings per day×365 days×70 fleets×5 minutes per recording divided by 60 (minutes per hour) = 19801 hours. Annual total cost is $158,408. (Current approved burden is 11032 hours and annual total cost of $88,256.)

Respondents: 70 barge fleeting operators in the regulated area.

Form(s): None specified.

Average Burden Hours per Respondent: 283 hours per respondent per year.

This rule represents an increase of 8769 total hours in recordkeeping requirements.

The Coast Guard is submitting the increased requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The section number is § 165.803(i) and the current OMB control number is OMB Control Number 2115–0092. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES**.

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 proposed rule does not raise sufficient federalism concerns to warrant the preparation of a Federalism Assessment.

Environmental Consideration

This rule has been thoroughly reviewed by the Coast Guard, the lead Federal agency for purposes of the National Environmental Policy Act (NEPA). It has been determined not to have a significant effect on the human environment or environmental conditions and to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c. of Commandant Instruction M16475.1B.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

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

PART 165—[REVISED]

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

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

2. In section 165.803, the introductory text and paragraph (m)(1) introductory text are revised to read as follows:

§ 165.803 Mississippi River—regulated navigation area.

The following is a regulated navigation area—The waters of the Mississippi River between miles 88 and 240 above Head of Passes.

* * * * *

(m) High water.

(1) This subsection applies to barges on the Mississippi River between miles 88 and 240 above Head of Passes when:

* * * * *

Dated: April 20, 1994.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 94–10170 Filed 4–26–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 167

[CGD 90–039]

RIN 2115–AD43

Traffic Separation Scheme; In The Approaches to Chesapeake Bay

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard amends the traffic separation scheme (TSS) in the Approaches to Chesapeake Bay by realigning and reconfiguring the Southern Approach to incorporate a deep-water (DW) route. The Coast Guard suspended the Southern approach lanes on October 15, 1988, because the water depth was too shallow to accommodate the deeper draft vessels which were able to call on the port after completion of a U.S. Army Corps of Engineers (COE) channel deepening project in Hampton Roads. The realigned and reconfigured Southern Approach utilizes naturally occurring deeper water and incorporates the proposed Atlantic Ocean Channel, a U.S. Army Corps of Engineers navigation improvement project.

EFFECTIVE DATES: May 31, 1994.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Project Manager, Short Range Aids to Navigation Division, Office of Navigation Safety and Waterway Services at (202) 267–0415.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Margie G. Hegy, Project Manager, John R. Walters, Project Officer, Fifth Coast Guard District Portsmouth, VA, and Helen G. Boutrous, Project Counsel, Office of Chief Counsel.

Regulatory History

On September 6, 1990, the Coast Guard published a notice of proposed rulemaking entitled "Traffic Separation Scheme; In the Approaches to Chesapeake Bay" in the **Federal Register** (55 FR 36666). The Coast Guard received six letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

The Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1223 authorizes the Secretary of the Department in which the Coast Guard is operating to establish TSSs and shipping safety fairways, where necessary, to provide safe access routes for vessels proceeding to or from United States ports.

A TSS is an internationally recognized routing measure that minimizes the risk of collision by separating vessels into opposing streams of traffic through the establishment of traffic lanes. To be internationally recognized, a TSS must be approved by the International Maritime Organization (IMO). IMO approves a TSS only if the proposed routing system complies with IMO principles and guidelines on ships' routing. Vessel use of a TSS is voluntary; however, vessels operating in or near an IMO approved TSS are subject to Rule 10 of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), 33 U.S.C. foll. 1602.

The TSS in the Approaches to Chesapeake Bay was established on December 1, 1969, and was adopted by IMO on October 12, 1971. In consists of three parts: Part I, Precautionary Area; Part II, Eastern Approach; and Part III, Southern Approach.

Regulatory Background

The 1978 amendments to the PWSA required the Coast Guard to undertake a port access route study to determine the need for TSSs or shipping safety fairways to increase vessel traffic safety in offshore areas subject to the jurisdiction of the United States. The Coast Guard initiated this study by publishing a notice of study on April 16, 1979 (44 FR 22543). The final notice of study results for the TSS in the Approaches to Chesapeake Bay was published on July 22, 1982 (47 FR 31766). The study concluded that the existing TSS was adequate for the foreseeable future.

The Water Resources Development Act of 1986, Public Law 99–662, (33 U.S.C. 2201 *et seq.*) authorized the deepening of the Thimble Shoals, Newport News, Craney Island Reach, Norfolk Harbor Reach, and the Entrance Reach Channels in the port of Hampton Roads to a depth of 55′ below mean low water (MLW) and construction of a new channel, to be known as the Atlantic Ocean Channel. The Atlantic Ocean Channel will connect deep water at the entrance to Chesapeake Bay with deep water in the Atlantic Ocean.

Completion of the dredging of all channels except the Atlantic Ocean Channel to 50′ (MLW) allows vessels with drafts exceeding the water depths in the existing Southern Approach lanes to call on the ports of Hampton Roads. The COE conducted hydrographic surveys in 1985 and 1986 and found that the water depth in the Southern Approach lanes was only 48′ (MLW); however, water depths of 50′ were found in the immediate vicinity. To ensure safe navigation for vessels with drafts exceeding the water depth in the Southern Approach lanes, the Coast Guard suspended the Southern Approach lanes (Notice to Mariners No. 31, July 30, 1988). A system of safewater buoys was established, as an interim measure, to direct vessels to naturally occurring deeper waters in the immediate vicinity.

The Coast Guard opened a Port Access Route Study on July 12, 1988 (53 FR 26282). The study, conducted by the Fifth Coast Guard District in Portsmouth, VA, evaluated the need for vessel routing measures in the

approaches to Chesapeake Bay. The study area encompassed the approaches to Chesapeake Bay, including the TSS.

The study results were published on July 13, 1989, at 54 FR 29627. The study, concluding that there is a continuing need for the TSS, recommended that the Southern Approach be realigned and reconfigured to incorporate a deep-water route with specific rules for vessels operating therein.

A deep-water route is an internationally recognized routing measure primarily intended for use by ships, which because of their draft in relation to the available depth of water in the area concerned, require the use of such a route. In the Southern Approach, water depths outside of the planned deep water route are insufficient for use by vessels drawing more than 45′ of water. It is also a general requirement of IMO that traffic which does not require the use of the deep-water route should avoid using the route.

The Coast Guard submitted the amended TSS, as proposed in the NPRM, to IMO's Subcommittee on Safety of Navigation (NAV) for consideration and approval at its September 1990 meeting. The Subcommittee approved the establishment of a deep-water route between the traffic lanes of the southern approach of the TSS as proposed by the U.S., but "could not agree with the proposal to recommend the use of the deep-water route by certain ships with a draft of less than 45′ (13.5 meters) which need not use the deep-water route." The Subcommittee amended the U.S. proposal accordingly and forwarded it to IMO's Maritime Safety Committee for consideration and adoption. The Committee adopted the revised proposal at its May 1991 meeting for implementation at 0000 hours UTC, 0500 Eastern Time Zone, on 16 November 1991.

The Coast Guard is reconfiguring the Southern Approach, which is crucial to continued navigation safety and protection of the marine environment, and publishing the Precautionary Area and Eastern Approach parts of the existing TSS.

The Southern Approach consists of inbound and outbound lanes for vessels drawing 45′ of water or less, separated by a 1300′ wide deep-water route for inbound and outbound vessels drawing over 45′ of water and for naval aircraft carriers.

Both the inbound and outbound lanes for vessels drawing 45′ feet of water or less measure 0.75 nautical miles (1500 yards) in width as determined by multiplying the published standard error of LORAN–C (0.25 NM) by three. Because of the low-lying coast of the Commonwealth of Virginia and the lack of prominent landmarks, LORAN–C remains an acceptable aid to navigation for use in these inbound and outbound lanes.

The deep water route, for vessels drawing over 45′ of water, measures 1300′ in width and has a charted natural depth of 50′ or greater. As currently planned, the COE will construct the Atlantic Ocean Channel in this location when funds become available in both the Federal and Commonwealth of Virginia budgets. Due to uncertain economic conditions, a dredging completion date is unknown.

Discussion of Comments and Changes

Six written comments were received in response to the notice of proposed rulemaking. Five comments fully support establishment of the traffic separation scheme and the sixth comment offered editorial suggestions. Specific comments pertaining to other aspects of the proposal are discussed below.

The U.S. Army Corps of Engineers (COE) advised that due to budgetary consideration in the Commonwealth of Virginia, dredging of the Atlantic Ocean Channel would be rescheduled to an indefinite time in the future. The COE also pointed out an error in one of the geographical positions for the inbound traffic lane. This information has been corrected in the final rule.

One comment, which is not adopted in this final rule, suggested that the draft limitation for use of the deep-water route be changed to "vessels drawing 45 feet or more" while four comments agreed with the proposal to provide vessels drawing greater than 45 feet exclusive use of the deep-water route.

Five comments strongly objected to the proposal to recommend that all vessels carrying dangerous cargo and petroleum distillates as cargo use the deep-water route. IMO's Subcommittee on Safety of Navigation also objected to this provision and amended the U.S. proposal to exclude it from consideration and adoption by the Maritime Safety Committee. Based on the comments and IMO's action, this proposed recommendation is deleted from this final rule.

Three comments objected to naval aircraft carriers using the deep-water route. In response to the notice of study, the U.S. Navy requested that it be allowed to use the deep-water route to ensure the continued safe, uneventful transit of aircraft carriers to and from sea. The Coast Guard and IMO agree that aircraft carrier usage of the deep-water route will enhance navigation safety and therefore will be permitted.

One comment suggested placement of a buoy near latitude 36°54.43′ longitude 75°53.2′W to mark lesser water depths adjacent to the inbound traffic lane. The 1500-yard inbound lane, with the use of LORAN–C or radar, is sufficient to allow safe passage through the area without the placement of a buoy. Therefore, this comment is not adopted.

Three comments disagreed with the proposed recommendation that vessels announce their intentions to use the deep-water route. One comment objected to Channel 16 VHF–FM usage because of frequency congestion by other users. Two comments recommended that vessels call at least one hour prior to entering the deep-water route instead of at the time the vessel approaches Chesapeake Bay Southern Approach Lighted Whistle Buoy CB on the south end, or Chesapeake Bay Junction Lighted Buoy CBJ on the north end of the route, as proposed in the NPRM. The Coast Guard realizes that Channel 16 is crowded, however it is recognized as the distress, safety, and calling frequency in the United States and internationally as evidenced by IMO's adoption of this recommended practice. If the exchange of additional information is required, shifting to another VHF–FM channel would be appropriate.

Other minor editorial and administrative changes have been made to improve the clarity of this part.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and non-significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). Vessels have been complying with the requirements of this rule since IMO implementation on November 16, 1991. No additional costs are associated with this final rule. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

There are no additional costs associated with this final rule as vessels have been using the newly configured southern approach lanes since it was implemented by IMO on November 16, 1991. Therefore, the Coast Guard certifies under Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have

a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The authority to establish TSSs and shipping safety fairways, where necessary, to provide safe across routes for vessels proceeding to or from U.S. ports is committed to the Coast Guard by Federal Statute. Therefore, the Coast Guard does not expect this rule to raise any preemption issues with respect to state actions on the same subject matter.

Environmental Impact

The Coast Guard has determined that this action will not have a significant impact on the environment and that an environmental impact statement is not necessary. A Finding of No Significant Impact (FONSI) is on file in the docket for inspection or copying where indicated under **ADDRESSES**. Comments received as a result of the NPRM did not address any environmental concerns.

List of Subjects in 33 CFR Part 167

Harbors, Marine safety, Navigation (water), Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 167 as follows:

PART 167—OFFSHORE TRAFFIC SEPARATION SCHEMES

1. The authority citation for part 167 continues to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46.

2. Section 167.3 is revised to read as follows:

§ 167.3 Geographic coordinates.

Geographic coordinates are defined using North American 1927 Datum (NAD 27) unless indicated otherwise.

3. In § 167.5, paragraph (e) is added to read as follows:

§ 167.5 Definitions.

* * * * *

(e) *Deep-water route* means an internationally recognized routing measure primarily intended for use by ships that, because of their draft in relation to the available depth of water in the area concerned, require the use of such a route.

4. The heading for Subpart B is amended to read as follows:

Subpart B—Description of Traffic Separation Schemes and Precautionary Areas

5. Sections 167.200 through 167.203 are added to read as follows:

§ 167.200 Chesapeake Bay approach traffic separation scheme.

(a) The traffic separation scheme in the approaches to Chesapeake Bay consists of three parts: a Precautionary Area, an Eastern Approach, and a Southern Approach. The Southern Approach consists of inbound and outbound lanes for vessels drawing 13.5 meters (45 feet) of fresh water or less, separated by a deep-water (DW) route for inbound and outbound vessels with drafts exceeding 13.5 meters (45 feet) in fresh water and for naval aircraft carriers. Each part is defined geographically, using North American Datum 1983 (NAD 83), in §§ 167.201, 167.202, 167.203.

(b) All vessels approaching the Traffic Separation Scheme in the Approaches to Chesapeake Bay should use the appropriate inbound or outbound traffic lane.

§ 167.201 Precautionary area.

A precautionary area is established bounded by a circle with a two-mile radius, centered on the following geographic position:

Latitude	*Longitude*
36°56.14′ N	75°57.43′ W

§ 167.202 Eastern approach.

(a) A separation line is established connecting the following geographic positions:

Latitude	*Longitude*
36°58.66′ N	75°48.63′ W
36°56.79′ N	75°55.08′ W

(b) An inbound traffic lane is established between the separation line and a line connecting the following geographical positions:

Latitude	*Longitude*
36°59.14′ N	75°48.88′ W
36°57.24′ N	75°55.34′ W

(c) An outbound traffic lane is established between the separation line and a line connecting the following geographical positions:

Latitude	*Longitude*
36°56.29′ N	75°54.93′ W
36°58.18′ N	75°48.48′ W

§ 167.203 Southern approach.

(a) An inbound traffic lane is established between separation lines running through the following geographical positions:

Latitude	*Longitude*
36°50.33′ N	75°46.29′ W
36°52.90′ N	75°51.52′ W
36°55.96′ N	75°54.97′ W
36°55.11′ N	75°55.23′ W
36°52.35′ N	75°52.12′ W
36°49.70′ N	75°46.80′ W

(b) An outbound traffic lane is established between separation lines running through the following geographical positions:

Latitude	*Longitude*
36°49.52′ N	75°46.94′ W
36°52.18′ N	75°52.29′ W
36°54.97′ N	75°55.43′ W
36°54.44′ N	75°56.09′ W
36°51.59′ N	75°52.92′ W
36°48.87′ N	75°47.42′ W

(c) A deep-water route is established between lines running through the following geographical positions:

Latitude	*Longitude*
34°55.11′ N	75°55.23′ W
36°52.35′ N	75°52.12′ W
36°49.70′ N	75°46.80′ W
36°49.52′ N	75°46.94′ W
36°52.18′ N	75°52.29′ W
36°54.97′ N	75°55.43′ W

(d) The following vessels should use the deep-water route established in paragraph (c) of this section when bound for Chesapeake Bay from sea or to sea from Chesapeake Bay:

(1) Deep draft vessels (drafts greater than 13.5 meters/45 feet in fresh water).

(2) Naval aircraft carriers.

(e) It is recommended that a vessel using the deep-water route established in paragraph (c) of this section—

(1) Announce its intention on VHF–FM Channel 16 as it approaches Chesapeake Bay Southern Approach Lighted Whistle Buoy CB on the south end, or Chesapeake Bay Junction Lighted Buoy CBJ on the north end of the route;

(2) Avoid, as far as practicable, overtaking other vessels operating in the deep-water route; and

(3) Keep as near to the outer limit of the route which lies on the vessel's starboard side as is safe and practicable.

(f) Vessels other than those listed in paragraph (d) of this section should not use the deep-water route.

Dated: April 15, 1994.

W.J. Ecker,

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

[FR Doc. 94–10176 Filed 4–26–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AG54

Veterans Education; Flight Training

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: These amended regulations permit pilot flight training pursuant to 14 CFR, Part 61, conducted in flight simulators to be approved for purposes of VA (Department of Veterans Affairs) administered education benefits when such training is authorized by the FAA (Federal Aviation Administration). These regulations also provide for approval of solo flight training for such education benefits purposes, as authorized by the Veterans Benefits Act of 1992.

EFFECTIVE DATES: The amendments to §§ 21.4263(g)(1), 21.4263(g)(4), 21.4263(g)(4)(ii) and the new paragraph 21.4263(h)(1)(iii) are effective September 30, 1990. All other amendments to the regulations included here are effective October 1, 1992.

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

SUPPLEMENTARY INFORMATION: On pages 49196 through 49199 of the **Federal Register** of September 22, 1993, there were published interim final regulations with a request for public comment. These regulations amended 38 CFR part 21 in order to implement provisions of the Veterans Benefits Act of 1992 which affect flight training and to provide for approval of flight training in flight simulators for VA educational benefit purposes. Interested people were given 30 days to submit comments, suggestions or objections. VA received no comments, suggestions or objections. Accordingly, these regulations are now final.

To ensure that flight training would achieve the end of qualifying the individual for employment in the aviation industry, VA regulation § 21.4263 has long restricted approvable training in two ways: (1) The entity providing the training must have a pilot school or provisional pilot school certificate issued by the FAA under part 141, 14 CFR (§ 21.4263(g)); and (2) the training being offered must meet the FAA requirements of either Part 141, in the case of pilots, or part 63, in the case of flight crew members other than pilots (§ 21.4263(g)(3)(ii)). Thus, the individual is assured of the quality of the training and its ability to enable him or her to meet FAA standards for an appropriate certificate or rating in areas relevant to commercial aviation.

For the reasons stated in the **Federal Register** on September 22, 1993, these amended regulations now also permit pilot flight training pursuant to 14 CFR part 61, conducted in flight simulators to be approved for purposes of VA (Department of Veterans Affairs) administered education benefits when such training is authorized by the FAA (Federal Aviation Administration).

The Veterans Benefits Act of 1992, Public Law 102–568, contains a provision which now allows eligible veterans and servicemembers to receive educational assistance allowance for pursuing solo flight training. Therefore, these amendments contain provisions governing such flight training.

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

This certification can be made because those provisions governing solo flight training affect only individuals. While the amended regulations governing flight training in a flight simulator will directly affect some small entities, VA does not believe that they will affect a substantial number of them. Most of the schools or entities which now will be able to seek approval are under the control of the major airlines. These airlines would not qualify as small entities. Furthermore, the economic impact on the few small entities that would qualify to seek approval for additional training would be positive since there may be additional veterans who would pursue the courses offered by those small entities. VA does not think that this would be a significant economic impact since the number of veterans enrolling in any course would probably be small.

VA finds that the Administrative Procedures Act allows a retroactive effective date for these amended regulations. The amended regulations governing flight training in flight simulators contain only liberalizing provisions which relieve a restriction imposed on the approval of flight courses.

Furthermore, the department is aware that although the regulations did not permit approval of courses offered pursuant to part 61, 14 CFR, some courses have been approved due to a misunderstanding as to the nature of some of these courses and some veterans have received educational assistance for pursuing them. Since, in these cases, FAA-approved training of the kind covered by these regulations was provided based on administrative approval of the courses, VA believes it appropriate that this promulgation of regulations also ratify such course approvals. Accordingly, VA is making the amendments to §§ 21.4263(g)(1), 21.4263(g)(4), 21.4263(g)(4)(i) and the new paragraph 21.4263(h)(1)(iii) effective September 30, 1990, which is the same as the effective date for the earliest of these approvals.

The Department of Veterans Affairs finds that good cause exists for making the amendments to remaining regulations, like the provisions of law they implement, retroactively effective on October 1, 1992.

It is necessary to implement these provisions of law as soon as possible. These provisions are intended to achieve a benefit for the individual. The maximum benefits intended in the legislation will be achieved through prompt implementation. Hence, a delayed effective date would be contrary to statutory design, would complicate administration of these provisions of law; and might result in the denial of a benefit to someone who is entitled to it.

These regulations have been reviewed by OMB (the Office of Management and Budget) under Executive Order 12866.

The Catalog of Federal Domestic Assistance numbers for the programs affected by these amended regulations are 64.120, 64.124 and 12.609.

List of Subjects in 38 CFR Part 21

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

Approved: March 15, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21, subpart D is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35, and 36

1. The authority citation for part 21, subpart D continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. In § 21.4263 paragraphs (g)(3), (g)(2), (g)(1) and the introductory text of paragraph (g) are redesignated paragraphs (g)(4), (g)(3), (g)(2) and (g)(1) respectively; newly redesignated paragraphs (g)(1), (g)(4) introductory

text and (g)(4)(ii) are revised; paragraph (h)(1) is revised; paragraphs (h)(3)(i) and (h)(3)(ii) are revised; paragraph (h)(4)(i) introductory text is revised and paragraph (h)(4)(iii) and its authority citation are added; and the introductory text of paragraph (i) is revised to read as follows:

§ 21.4263 Flight training—38 U.S.C. chapter 30 and 10 U.S.C. chapter 106.

* * * * *

(g) *Requirements for approval.* (1) For the purposes of this part, a flight course may be approved only if it is offered by a flight school. A flight school is a school or entity which meets one of the following sets of requirements.

(i) The FAA has issued the school or entity either a pilot school certificate or a provisional pilot school certificate specifying each course the school is approved to offer under 14 CFR part 141. Thus, a military aero club, air carrier or institution of higher learning with the proper certificate is a flight school.

(ii) The entity is either a Flight Training Center or an Air Carrier which does not have a pilot school or provisional pilot school certificate issued by the FAA under 14 CFR part 141, but pursuant to a Grant of Exemption letter issued by the FAA, is permitted to offer pilot training by a flight simulator instead of by use of actual aircraft.

* * * * *

(4) Except as provided in paragraph (g)(3) of this section, no private pilot, student pilot, recreational pilot or test course may be approved by the appropriate State approving agency. Other flight courses of a flight school may be approved if the school has submitted a written application and the State approving agency determines that all of the following requirements are met:

* * * * *

(ii) The course meets the requirements of 14 CFR parts 63 or 141, and is offered by a flight school described in paragraph (g)(1)(i) of this section; or meets the requirements of 14 CFR part 61 and is offered in whole or in part by a flight simulator pursuant to a grant of exemption letter issued by the FAA to the flight school offering the course.

* * * * *

(h) *Hourly limitations.* * * *

(1) *Flight or flight simulator instruction.* Except as provided in paragraph (h)(4) of this section, the maximum number of hours of flight instruction or flight simulator instruction which may be approved for a flight course shall not exceed the number determined by this paragraph.

(i) The maximum number of hours of solo flight instruction shall not exceed the minimum number of hours required for the course provided by FAA regulations.

(ii) The maximum number of hours of dual flight instruction shall not exceed the lesser of—

(A) The number of hours of dual flight instruction in the course outline approved by the FAA, or

(B) 120% of the minimum number of hours of dual flight instruction required for the course by FAA regulations.

(iii) The maximum number of approvable hours for a course offered in whole or in part by flight simulator may not exceed the number of hours in the FAA-approved outline.

(Authority: 38 U.S.C. 3032(f), 3231(f), 10 U.S.C. 2131(g))

* * * * *

(3) *Preflight briefings and postflight critiques.* * * *

(i) If these hours are on the FAA-approved outline, the maximum number of hours of preflight briefings and postflight critiques shall not exceed the number of hours on the outline exclusive of the preflight briefings and post-flight critiques which are attributable to solo flying hours that exceed the minimum number of solo flying hours for the course in 14 CFR part 141.

(ii) If these hours are not on the FAA-approved outline, they may not be approved unless the State approving agency finds that the briefings and critiques are an integral part of the course and do not precede or follow solo flying hours which exceed the minimum number of solo flying hours for the course in 14 CFR part 141. The maximum number of hours of preflight briefings and postflight critiques which may be approved for these courses may not, when added together, exceed 25 percent of the approved hours of flight instruction.

(Authority: 38 U.S.C. 3002, 3452(b), 10 U.S.C. 2131)

(4) *Waiver of limitation in approvable course hours.* (i) Flight schools that wish to have a greater number of hours of dual flight instruction approved than are permitted by paragraph (h)(1)(ii) of this section, may seek an administrative review of their approval by the Director, Education Service. Requests for such a review should be made in writing to the Director of the VA facility having jurisdiction over the flight school. The request should—

* * * * *

(iii) The limit on the number of hours of solo flight instruction found in paragraph (h)(1)(i) of this section may not be waived.

(Authority: 38 U.S.C. 3032(f), 3231(f), 10 U.S.C. 2131(g))

(i) *Charges.* The appropriate State approving agency shall approve charges for tuition and fees for each flight course exclusive of charges for tuition and fees for solo flying hours which exceed the maximum permitted under paragraph (h)(1)(i) of this section and for preflight briefings and postflight critiques which precede or follow the excess solo hours.

* * * * *

[FR Doc. 94–10018 Filed 4–26–94; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN13–2–6359; FRL–4863–8]

Approval And Promulgation of Implementation Plans; Minnesota

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving a revision to the Minnesota State Implementation Plan (SIP) for new source review in nonattainment areas, as proposed on February 23, 1994. This revision was submitted to meet longstanding requirements as well as new requirements imposed by the Clean Air Act Amendments of 1990. This revision consists of the State Rules 7005.3010 through 7005.3060, which incorporate by reference the new source review requirements specified in appendix S to 40 CFR part 51, "Emission Offset Interpretive Ruling," except for the deletion of unacceptable exemptions included in appendix S. This approval lifts the prior ban on permitting major sources and major modifications in Minnesota nonattainment areas.

EFFECTIVE DATE: This final rule is effective May 31, 1994.

ADDRESSES: A copy of this revision to the Minnesota SIP and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone John Summerhays at (312) 886–6067 before visiting the Region 5 Office.)

United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AE–17J), Chicago, Illinois 60604.

A copy of this revision to the Minnesota SIP is available for inspection at the following address:

Office of Air and Radiation (OAR), Docket and Information Center, (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6067.

SUPPLEMENTARY INFORMATION:

I. Notice of Proposed Rulemaking

On February 23, 1994, at 59 FR 8578, USEPA proposed to approve Minnesota new source review regulations submitted on August 5, 1992, and August 26, 1993. These submittals were intended to satisfy both the requirements predating the Clean Air Act Amendments of 1990 and the new requirements those amendments impose. The discussion that follows summarizes the notice of proposed rulemaking. Since no comments were received on this proposal, USEPA is today making final its approval of these new source review submittals and removing the ban on construction of major new sources and major modifications in Minnesota nonattainment areas.

The statutory requirements that apply to State regulations for new source review in nonattainment areas are set forth at part D of title I of the Clean Air Act, particularly in sections 172(c)(5) and 173. Federal regulations developed prior to enactment of the Clean Air Act Amendments of 1990 for nonattainment area new source review programs are set forth at title 40 Code of Federal Regulations, part 51 (40 CFR part 51), particularly 40 CFR 51.165. The Clean Air Act Amendments of 1990 also establish assorted new requirements, for which preliminary guidance was published April 16, 1992 (57 FR 13498), and April 28, 1992 (57 FR 18070). For example, section 189(a)(1)(A) requires that permit programs satisfying sections 172(c)(5) and 173 be submitted for fine particulate matter nonattainment areas.

The notice of proposed rulemaking provided a summarized history of Minnesota new source review submittals. None of these submittals satisfied the specific requirements for permitting new and modified major sources in nonattainment areas, and so Minnesota became subject to a prohibition against permitting major new sources and major modifications in the State's nonattainment areas, as promulgated by USEPA on July 2, 1979 (44 FR 38583).

Section 173 of the Act identifies four essential requirements that State new source permit regulations must impose in nonattainment areas:

(1) New source emissions must be offset by equivalent or greater emission reductions in the area;

(2) The new source must have the lowest achievable emission rate (LAER);

(3) Other sources in the same State owned by the owner or operator of the new source must be in compliance or on a schedule to achieve compliance with applicable regulations; and

(4) The area must not be subject to a finding of failure to implement the SIP.

The submittals being addressed in this rulemaking include State Rules 7005.3010 through 7005.3060 ("Offset Rule"). These rules incorporate appendix S to 40 CFR part 51 into these State rules, modified in response to recommendations by USEPA. In general, adoption of appendix S of 40 CFR part 51 into the State's regulations serves to impose the requirements identified in section 173. Part IV. A. of appendix S provides multiple conditions for granting a permit, including a requirement for lowest achievable emission rates (requirement 2 above), a requirement for compliance of commonly owned sources (requirement 3 above), and a requirement for offsets (requirement 1 above). Although appendix S contains no provision prohibiting permits in "failure to implement" areas, USEPA has adequate authority under section 113(a)(5) to take any necessary action to address permits that violate this prohibition.

The adoption of appendix S by reference as a State rule fails to satisfy some permitting requirements under subpart I of 40 CFR part 51. In particular, appendix S exempts certain source types and is insufficiently clear on some issues. In accordance with a letter from USEPA dated May 17, 1991, Minnesota made various recommended rule revisions which provide that the relevant appendix S exemptions do not apply in Minnesota. USEPA today finds this modified program to satisfy the requirements of 40 CFR part 51.

As discussed in the notice of proposed rulemaking, USEPA has also reviewed whether the requirements enacted as part of the Clean Air Act Amendments of 1990 have been satisfied. As proposed, USEPA is today concluding that the Offset Rule, in conjunction with previously approved permitting rules, satisfies these new requirements.

Minnesota also adopted significant revisions to its regulations on permit processing on August 24, 1993, which it submitted for SIP rulemaking on November 23, 1993. The primary purposes of these regulations were to satisfy requirements in title V of the Clean Air Act for a State operating permit program and to amend the new source permitting regulations to provide an integrated set of permitting regulations. In developing these regulations, the State incorporated language intended to address various issues USEPA had identified with respect to the prior permitting rules. These issues are discussed in more detail in the notice of proposed rulemaking, and include concerns about permit expiration, variances, and outdated references in the Memorandum of Understanding on public comment procedures.[1] USEPA is not taking rulemaking action today on the submittal of November 23, 1993. Nevertheless, USEPA finds that the issues discussed in the notice of proposed rulemaking are no longer of concern, in general because the revised State rules prevent the relevant problems from arising.

As noted in the proposed rulemaking, USEPA is currently developing a rule to implement the changes under the Clean Air Act Amendments of 1990 in the new source review provisions in parts C and D of title I of the Act. The Agency anticipates that the final rule will be promulgated sometime during 1995. Upon promulgation of this final rule, USEPA will review new source review SIPs to determine whether additional SIP revisions are necessary to satisfy the requirements of the rule.

On February 15, 1994, at 59 FR 7218, USEPA concluded that particulate matter precursors do not contribute significantly to violations of the particulate matter standard in Minnesota. Therefore, under section 189(e), new source review for particulate matter precursors is not required in Minnesota's particulate matter nonattainment areas.

II. This Action

USEPA received no comments on its proposal to approve Minnesota's nonattainment area permitting regulations. Consequently, USEPA continues to believe that the regulations

[1] Upon further review, USEPA finds that a concern as to satisfaction of 40 CFR 51.160(a) was misfounded. This provision, which requires assurance that new sources will not interfere with attainment or maintenance of the air quality standards, was found to be satisfied in 1988 rulemaking on Statewide permitting regulations. (See 53 FR 17033.)

submitted by Minnesota on August 5, 1992, and August 26, 1993, satisfy the requirements under part D for a new source permitting program in nonattainment areas, and is approving this SIP revision.

Under the approved rules, permits for nonattainment area sources that satisfy the substantive requirements of the Offset Rule (Rules 7005.3010 through 7005.3060) would be processed in accordance with permit processing provisions in the Consolidated Permit Rules (Rules 7001.0010 through 7001.0210 and Rules 7001.1200 through 7001.1220). On May 13, 1988 (53 FR 17033), USEPA approved the Consolidated Permit Rule as satisfying attainment area permitting requirements but noted that nonattainment area permitting requirements were not met. Today's action finds the nonattainment area permitting requirements met, removes the ban on construction of major new sources and major modifications in Minnesota nonattainment areas, and imposes Minnesota's Consolidated Permit Rule and Offset Rule as federally enforceable requirements for such new sources and modifications. Subsequent rulemaking will address the approvability of the State permitting regulations submitted November 23, 1993.

The rules submitted by Minnesota were intended to address nonattainment area new source review requirements and did not address visibility-related permitting requirements specified in 40 CFR 51.307. Therefore, USEPA is retaining the provisions of 40 CFR 52.1236, which note the absence of approvable State regulations for visibility protection and impose the federally promulgated regulations of 40 CFR 52.26 and 52.28.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA 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, USEPA 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 government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act 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 Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

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 shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action makes final the action proposed at 59 FR 8578. As noted elsewhere in this document, USEPA received no adverse public comment on the proposed action. As a result, the Regional Administrator has classified this action as a Table Three action under the processing procedures established at 54 FR 2214, January 19, 1989, based on revised SIP processing review tables approved by the Acting Assistant Administrator for Air and Radiation on October 4, 1993 (Michael Shapiro's memorandum to Regional Administrators). On January 6, 1989, the Office of Management and Budget (OMB) waived Table Two and Three SIP revisions (54 FR 2222) from the requirements of section 6 of Executive Order 12866 for a period of 2 years. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request. This request continued in effect under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

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 June 27, 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).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

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

Dated: April 5, 1994.

Valdas V. Adamkus,

Regional Administrator.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401–7671q.

Subpart Y—[Amended]

2. Section 52.1220 is amended by adding paragraph (c)(33) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(33) On August 5, 1992, and August 26, 1993, the State of Minnesota submitted its "Offset Rules" as revisions to its State Implementation Plan (SIP) for new source review in nonattainment areas.

(i) Incorporation by reference.

(A) Rules 7005.3020, 7005.3030, and 7005.3040, and 7005.3050, with amendments effective August 24, 1992.

(B) Amendments to Rule 7005.3040, effective June 28, 1993.

(ii) Additional materials.

(A) A letter from Charles Williams to Valdas Adamkus dated August 5, 1992, with attachments.

(B) A letter from Charles Williams to Valdas Adamkus dated August 26, 1993, with attachments.

3. Section 52.1225 is amended by adding paragraph (a) to read as follows.

§ 52.1225 Review of new sources and modifications.

(a) Part D—Approval. The State of Minnesota has satisfied the requirements of sections 173 and 189(a)(1)(A) for permitting of major new sources and modifications in nonattainment areas.

* * * * *

[FR Doc. 94–10110 Filed 4–26–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[IN29–1–5822; FRL 4875–5]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is taking action to approve a requested revision to the Indiana State Implementation Plan (SIP) for ozone. USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of the Clean Air Act (Act), which requires certain ozone nonattainment areas to require specified gasoline dispensing facilities to install and operate Stage II vapor recovery equipment. The subject areas established in the SIP revision are the Indiana portion of the Chicago ozone nonattainment area (Lake and Porter Counties) and the Indiana portion of the Louisville, Kentucky ozone nonattainment area (Clark and Floyd Counties). USEPA's action is being taken without prior proposal.

DATES: This final rule will be effective June 27, 1994, unless notice is received by May 31, 1994, that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the requested SIP revision, technical support documents and public comments received are available at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

This SIP revision is also available for inspection at the Office of Air and Radiation (OAR) Docket and Administration Center (Air Docket 6102), room M1500, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–7548.

Comments on this rulemaking should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (5AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Environmental Engineer, Regulation Development Section, Regulation Development Branch (5AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6061. Anyone wishing to come to Region 5 offices should contact Francisco J. Acevedo first and reference file IN29–1–5822.

SUPPLEMENTARY INFORMATION:

I. Background/Summary of State Submittal

On February 25, 1994, the Indiana Department of Environmental Management (IDEM) submitted to USEPA Stage II Vapor Recovery Rules: Amendments to 326 IAC 8–1–0.5 and 326 IAC 8–4–6 as requested revisions to the Indiana SIP. The rules were adopted by the Indiana Air Pollution Control Board (IAPCB) on July 21, 1993, and were published in the Indiana Register on December 1, 1993. The State submitted these rules to satisfy the Stage II vapor recovery requirements of section 182(b)(3) of the Act. The SIP revision submitted by the State of Indiana sets out procedures for the establishment of a Stage II Vapor Recovery Program in the ozone nonattainment counties of Lake, Porter, Clark, and Floyd. The information presented below summaries the requested SIP revision and USEPA's action on it. A more detailed analysis of the State's submittal is contained in USEPA's technical support documents dated March 23, 1993, and March 31, 1994, which are available from the Region 5 office listed above.

Indiana's regulations specify that Stage II vapor recovery systems are required at gasoline dispensing facilities that dispense more than 10,000 gallons per month, and independent small business marketers of gasoline (ISBMG) that dispense an average monthly volume of more than 50,000 gallons per month. Private fueling facilities such as government and company fleet fueling facilities, as well as retailers, are subject to the Stage II requirements. The regulations specify the use of California Air Resource Board (CARB) certified Stage II systems, which have been demonstrated to achieve at least 95 percent control of Volatile Organic Compound (VOC) emissions during the refueling of motor vehicles. The rules also mandate that the proper installation and operation of such systems be achieved by requiring the installed systems to be tested for proper installation and requiring the State to perform all necessary enforcement of the rules.

The rules mandate the Stage II vapor recovery systems for nonexempt facilities be implemented pursuant to the following phase-in schedule: (1) Facilities that commenced construction after November 15, 1990, must comply six months after promulgation of the rules by the State; (2) facilities that commenced construction before November 15, 1990, and dispense an average monthly volume of more than 100,000 gallons of motor fuel per month, must comply by one year after promulgation of the rules by the State; and (3) all other facilities must comply two years after promulgation of the rules by the State.

II. Review Criteria

The USEPA reviewed the submittal against the requirements of section 182(b)(3) of the Act, as interpreted in the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498, 13513 (April 16, 1992)), and two USEPA documents entitled Technical Guidance-Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities (Technical Guidance) and the Enforcement Guidance for Stage II Vehicle Refueling Control Programs (Enforcement Guidance). Specifically, the following seven general criteria need to be met for a Stage II vapor recovery regulation to be approvable by USEPA:

(1) Installation of Stage II Controls and Determination of Regulated Facilities

Facilities that dispense more than 10,000 gallons per month must install and operate Stage II controls. For gasoline dispensing facilities that are owned and operated by an ISBMG, the State may establish a cut-point as high as 50,000 gallons per month. Section 324(c) of the Act establishes a definition of a ISBMG as a person engaged in the marketing of gasoline who would be required to pay for the installation and operation of Stage II equipment. There are four exemptions to this definition (i.e., four groups that will not be considered ISBMGs): (1) A refiner; (2) a person who controls, is controlled by or is under common control with a refiner; (3) a person who otherwise is directly or indirectly affiliated with a refiner or a person who controls, is controlled by or is under common control with a refiner (unless the sole affiliation is by means of a supply contract or an agreement or contract to use trademark, trade name, service mark, or other identifying symbol or name owned by such refiner or any such person); or (4) a person who receives less than 50 percent of this annual income from refining or marketing of gasoline. In the General Preamble, USEPA indicated that the suggested method for calculating the gallons per month dispensed by affected

facilities is determined by calculating the average volume of product dispensed per month for the 2-year period prior to the adoption of the rule by the State. (See General Preamble, 57 FR at 13514.) The Enforcement Guidance suggests that if sufficient data is not available for a full 2-year period, then the period should be extended to include a total of 24 months of activity, or the actual months of operation during that 2-year period should be used to calculate the facility's average gallons per month. (See Enforcement Guidance, Sec. 3.2.)

(2) Establishment of a Time Schedule for Installation of Stage II Control Equipment

Section 182(b)(3)(B) of the Act establishes three standard deadlines for the installation and application of Stage II controls, after adoption by the State of the Stage II requirements. The phase-in schedule given in the Act is the following: (a) 6 months after adoption for all facilities commencing construction after November 15, 1990; (b) 1 year after adoption for all facilities which dispense 100,000 gallons or more of gasoline per month; and (c) 2 years after adoption for all other facilities required to be regulated. For ISBMGs, section 324(a) of the Act provides that the phase in periods may be: (a) 33 percent of the facilities owned by an ISBMG by the end of the first year after the regulations take effect; (b) 66 percent of such facilities by the end of the second year; and (c) 100 percent of such facilities after the third year.

(3) System Certification

An approved system should be tested and certified so as to meet a minimum requirement of 95 percent emission reduction efficiency. The USEPA believes that this efficiency rate has been demonstrated to be feasible. As stated in the General Preamble, the States may achieve this by utilizing one of the following three alternatives: (a) A method tested and approved by CARB past, current or future recognized testing methods, or (b) an equivalent testing program adopted by the State, conducted by the Program Oversight Agency (POA) or by a third party recognized by the POA, and submitted and approved by USEPA for incorporation in the SIP, or (c) a system approved by CARB. (See Enforcement Guidance, Sec. 4.2.)

(4) Facility Verification of the Proper Installation and Function of Stage II Vapor Control Systems

The General Preamble indicates in order for the State Stage II requirements to be enforceable, the State must require the regulated facility to verify proper installation and function of the Stage II equipment. The Enforcement Guidance specifies performing a Liquid Blockage Test which determines if there is an unacceptable low point in the piping, and a Leak Test which measures the vapor tightness of the Stage II system. The Enforcement Guidance also states that a facility should recertify the functions of the Stage II equipment as least every 5 years, or upon major system replacement or facility modification (75 percent or more of the facility's Stage II equipment), whichever occurs first. (See April 16, 1992 (57 FR 13514) General Preamble, and; Enforcement Guidance, Sec. 8.2.)

(5) Recordkeeping and Reporting

In the Enforcement Guidance, USEPA identifies various records that the State should require facilities to keep and to make available upon request. The USEPA believes that these documents must be available in order to make the Stage II requirement enforceable. These documents include: (a) A license/permit to install and operate the Stage II system; (b) verification of passing functional tests after installation of equipment, this includes the Liquid Blockage Test, Leak Test, and all shutoff/flow prohibiting devise testing; (c) a general station file containing initial station information such as motor vehicle fuel throughput information; (d) an equipment maintenance and compliance file log containing verification that proper maintenance has been conducted in accordance with manufacturer's specifications and requirements; and (e) training certification files. (See Enforcement Guidance, Sec. 8.0.)

(6) Periodic Inspection of Regulated Facility

The State POA should conduct a minimum of 1 compliance inspection per facility per year with mandatory follow-up at stations with violations. USEPA believes such inspections are necessary to ensure that facilities are complying with the Stage II requirements. This is necessary not only for enforcement action but to notify sources that are violating the Stage II requirements so they can make the necessary adjustments to come into compliance. The compliance inspection should consist of a visual inspection of the required paperwork and Stage I and II equipment. In addition to the visual inspection, a functional inspection to determine if the facility's Stage II equipment is functioning properly must also be performed. (See Enforcement Guidance, Sec. 5.2(d).)

(7) Regulated Facility Compliance

The State is required to ensure regulated facility compliance with program requirements through enforcement mechanisms, and a penalty schedule that establishes appropriate penalties for facilities violating the Stage II requirements. (See Enforcement Guidance, Sec. 5.2(e).)

III. Results of USEPA Review

The USEPA reviewed the Indiana submittal to determine if criteria for approval have been met. The results of USEPA's review are as follows:

(1) Installation of Stage II Controls and Determination of Regulated Facilities

Indiana's submittal mandates the requirement of Stage II vapor recovery systems on any gasoline dispensing facility that dispenses a monthly average volume of 10,000 gallons or more, and on ISBMGs who dispense more than 50,000 gallons. The submittal also includes a requirement that affected facilities be identified by calculating the average volume of product dispensed per month for the 2-year period prior to adoption of the rule by the State. Monthly averages are to include only those months when the facility was operating. The USEPA finds this acceptable because if fully addresses the Federal requirement.

(2) Establishment of a Time Schedule for Installation of Stage II Control Equipment

The Act specifies that the time period for installation and operation of the Stage II equipment shall run from the State adoption date of the Stage II rule. The Act defines adoption to mean the date the State adopts the requirements for installation and operation of the Stage II equipment. For all facilities, these compliance dates, calculated from the time of State adoption of the regulation, are: (1) 6 months for facilities for which construction began after November 15, 1990; (2) 1 year for facilities that dispense greater than 100,000 gallons of gasoline per month; and (3) 2 years for all other facilities. The Indiana Stage II rule time schedule sets compliance dates of June 1, 1994, December 1, 1994, and December 1, 1995, respectively for the above three deadlines based on the December 1, 1993, publication date of the rule in the Indiana Register. The State has adopted this schedule for all affected facilities, including those owned or operated by ISBMGs. Although Indiana adopted its regulations on July 21, 1993, USEPA

believes it is appropriate to interpret the adoption date to be December 1, 1993, under the limited circumstances presented in this submittal.

The USEPA is approving the submitted time table for the following reasons. First, the Act states that the adoption date must be used to calculate the compliance schedule for Stage II implementation at facilities. In this case, USEPA defines the adoption date to be the date after which a rule becomes effective in a State. Based on this definition of adoption date USEPA accepts the December 1, 1993, rule publication date as the adoption date from which the compliance schedule is calculated. Second, the compliance deadlines triggered by this date begin within the time schedule specified by the Act. Third, remedying this deficiency by amending the compliance schedule would cause further delay in the implementation of Stage II in Indiana. Finally, the Indiana rule otherwise fulfills the Stage II requirements and USEPA believes it will provide substantial air quality benefits to the regulated areas. Therefore, USEPA believes it is in the public interest to approve and make enforceable this requirement at the earliest time feasible. In the limited circumstances above, USEPA believes that it is not inconsistent to interpret the adoption date to the December 1, 1993.

(3) System Certification

The adopted rule mandate that all Stage II vapor control systems used be certified by CARB to meet 95 percent emission reduction efficiency. Use of CARB-certified systems is acceptable to USEPA. The USEPA has specified in its guidance documents that it believes that CARB-approved Stage II systems meet the requirement of the Act with no additional efficiency testing required. Therefore, USEPA finds the specified system certification in the Indiana submittal acceptable.

(4) Installation of Stage II Vapor Control Systems

The Indiana rule mandates that proper tests be performed to verify proper installation and function of the Stage II systems, and requires systems to be retested every five years, or upon major system replacement or modification. The USEPA believes the testing procedures specified help make the rule enforceable and, therefore, are consistent with the requirements of the Act.

(5) Recordkeeping and Reporting

The Indiana rule requires that the affected facilities submit a registration form of their Stage II equipment to IDEM within forty-five days after the installation of the Stage II equipment. In addition, the rule requires that registration material be kept onsite. It also requires that, at a minimum, the registration information includes: the facility name and address, signature of owner or operator, the CARB Executive Order Number for the Stage II system used, number of nozzles used, the monthly average volume of gasoline dispensed, and the location (including contact person's name, address, and telephone number) of other records and reports required by the rule. Other records and reports required by the rule to be kept on file by the owner or operator and which need to be made available to the POA upon request include: proof that a certified Stage II system has been installed and tested to verify its performance according to its specifications; records that show that proper maintenance has been conducted according to manufacturer specifications; records that show time periods and duration of all malfunctions of the Stage II system; motor vehicle fuel throughput information for each calendar month of the previous year; and proof of employee training certification. The USEPA finds Indiana's recordkeeping and reporting requirements acceptable.

(6) Periodic Inspection Requirements

The IDEM has committed to adhere to the Enforcement Guidance that specifies annual inspections for the facilities with mandatory follow-up at stations with violations or the development of an inspection schedule approved by USEPA through IDEM's inspection program plan.

(7) Regulated Facility Compliance With Program Requirements

The Indian Code (IC 13–7–13–1, states that any person who violates any provision of this article, IC 13–1–1, IC 13–1–3, or IC 13–1–11, or any regulation or standard adopted by one (1) of the boards (i.e., Indiana Air Pollution Control Board), or who violates any determination, permit, or order made or issued by the Commissioner (of IDEM) pursuant to this article, IC 13–1–1, or IC 13–1–3, is liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) per day of any violation. In that this submittal is a regulation adopted by the IAPCB, a violation of which subjects the violator to penalties under IC 13–7–13–1, the submittal is consistent with the policy established by USEPA in its Enforcement Guidance. In addition, IDEM has submitted a civil penalty policy document which accounts for various factors in the assessment of an appropriate civil penalty for noncompliance with IAPCB rules. Some factors accounted for include: severity of the violation, intent, frequency of violations, and other factors.

IV. Rulemaking Action

The USEPA approves 326 IAC 8–1–0.5 and 8–4–6 as revisions to the Indiana ozone SIP because the submittal meets all the criteria required for approvability, as cited above. The Stage II vapor recovery SIP revision for the Lake, Porter, Clark, and Floyd Counties ozone nonattainment areas will be complete following this action.

The USEPA is approving this action without prior proposal because the USEPA views this as a noncontroversial revision and anticipate no adverse comments. This action will be effective on June 27, 1994 unless, May 31, 1994 someone wishes to submit adverse comments. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent documents. One document 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 on June 27, 1994.

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). A revision to the SIP processing review tables was approved by the Acting Assistant Administrator for Office of Air and Radiation on October 4, 1993 (Michael Shapiro's memorandum to Regional Administrators). A future document will inform the general public of these tables. Under the revised tables this action remains classified as a Table 2. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA 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 USEPA's request. This request continued 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 shall be

considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq*, USEPA 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, USEPA 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 government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act 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 Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids USEPA 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).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 27, 1994. Filling 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 not 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 requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and record keeping requirements, Volatile organic compounds.

Dated: April 8, 1994.

Michelle D. Jordan,

Acting Regional Administrator.

For the reasons set out in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations 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 P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(93) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(93) On February 25, 1994 the Indiana Department of Environmental Management requested a revision to the Indiana State Implementation Plan in the form of Stage II Vapor Recovery Rules as amendments to Title 326 of the Indiana Administrative Code (326 IAC) 8–1–0.5 and 8–4–6.

(i) *Incorporation by reference.* (A) 326 IAC 8–1–0.5 Definitions and 8–4–6 Gasoline dispensing facilities. Filed with the Secretary of State October 28, 1993, effective November 29, 1993. Published at Indiana Register, Volume 17, Number 3, December 1, 1993.

[FR Doc. 94–10111 Filed 4–26–94; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–6

[FPMR Amendment A–51]

Miscellaneous Regulations; Display of Code of Ethics for Government Service

AGENCY: Public Buildings Service, General Services Administration.

ACTION: Final rule.

SUMMARY: Public Law 96–303, 94 Stat. 855 (July 3, 1980), requires the Administrator of General Services to provide for the publication of copies of the Code of Ethics for Government Service (Code) and for their distribution to agencies for use. It also prescribes that the Administrator shall promulgate regulations by which the Code shall be displayed in appropriate areas of buildings in which at least 20 individuals are regularly employed by executive agencies, the U.S. Postal Service or the Postal Rate Commission as civilian employees. This Final Rule reinserts regulatory provisions which were inadvertently omitted from the Federal Property Management Regulations beginning with the July 1, 1987, issue of the Code of Federal Regulations.

EFFECTIVE DATE: April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Allie Latimer, Special Counsel for Ethics and Civil Rights, General Services Administration, Office of Ethics and Civil Rights, Washington, DC 20405 (202) 501–0765.

SUPPLEMENTARY INFORMATION:

Executive Order 12866—Regulatory Planning and Review

The General Services Administration (GSA) has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866.

Regulatory Flexibility Act

The General Services Administrative 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.)

List of Subjects in 41 CFR Part 101–6

Government property management, Intergovernmental relations.

For the reasons set out in the preamble, 41 CFR Part 101–6 is amended as follows:

PART 101–6—MISCELLANEOUS REGULATIONS

1. The authority citation for part 101–6 continues to read as follows:

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

2. Subpart 101–6.5 is added to read as follows:

Subpart 101–6.5—Code of Ethics for Government Service

§ 101–6.500 Scope of subpart.

(a) In accordance with Public Law 96–303, the requirements of this section shall apply to all executive agencies (as defined by section 105 of Title 5, United States Code), the United States Postal Service, and the Postal Rate Commission. The heads of these agencies shall be responsible for ensuring that the requirements of this section are observed and complied with within their respective agencies.

(b) Each agency, as defined in "(a)" above, shall display in appropriate areas of buildings in which at least 20 individuals are regularly employed by an agency as civilian employees, copies of the Code of Ethics for Government Service (Code).

(c) For Government-owned or wholly leased buildings subject to the requirements of this section, at least one

copy of the Code shall be conspicuously displayed, normally in the lobby of the main entrance to the building. For other buildings subject to the requirements of this section which are owned, leased, or otherwise provided to the Federal Government for the purpose of performing official business, at least one copy of the Code shall be conspicuously displayed within the space occupied by the Government. In all cases, additional copies of the Code may be displayed in other appropriate building locations, such as auditoriums, bulletin boards, cafeterias, locker rooms, reception areas, and other high-traffic areas.

(d) Agencies of the Federal Government shall not pay any costs for the printing, framing, or other preparation of the Code. Agencies may properly pay incidental expenses, such as the cost of hardware, other materials, and labor incurred to display the Code. Display shall be consistent with the decor and architecture of the building space. Installation shall cause no permanent damage to stonework or other surfaces which are difficult to maintain or repair.

(e) Agencies may obtain copies of the Code by submitting a requisition for National Stock Number (NSN) 7690–01–099–8167 in Fedstrip format to the GSA regional office responsible for providing support to the requisitioning agency. Agencies will be charged a nominal fee to cover shipping and handling.

Dated: April 12, 1994.

Julia M. Stasch,

Acting Administrator of General Services.

[FR Doc. 94–10181 Filed 4–26–94; 8:45 am]

BILLING CODE 6820–23–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[DA 94–310]

General Information

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission is modifying a section of the Commission's Rules that implements the Freedom of Information Act (FOIA) fee schedule. This modification pertains to the charge for recovery of the full, allowable direct costs of searching for and reviewing records requested under the FOIA and the Commission's rules, unless such fees are restricted or waived in accordance with the Commission's rules. The fees are being revised to correspond to modifications in the rate of pay approved by Congress.

EFFECTIVE DATE: May 31, 1994.

FOR FURTHER INFORMATION CONTACT: William Cline, Freedom of Information Act Officer, Records Management Division, room 234, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554, (202) 632–7513.

SUPPLEMENTARY INFORMATION: The FCC is modifying 47 CFR 0.467(a) of the Commission's Rules. This rule pertains to the charges for searching and reviewing records requested under the Freedom of Information (FOIA). The FOIA requires federal agencies to establish a schedule of fees for the processing of requests for agency records in accordance with fee guidance issued by the Office of Management and Budget (OMB). In 1987, OMB issued its Uniform Freedom of Information Act Fee Schedule and Guidelines. However, because the FOIA requires that each agency's fees be based upon its direct costs of providing FOIA services, OMB did not provide a unitary, government-wide schedule of fees. The Commission based its FOIA fee schedule on the grade level of the employee who processes the request. Thus, the fee schedule was computed at a Step 5 of each grade level based on the General Schedule effected January 1994. The instant revisions correspond to modifications in the rate of pay recently approved by Congress.

Regulatory Procedures

This rule has been reviewed under Executive Order 12866 and has been determined not to be a "significant rule" since it will not have an annual effect on the economy of $100 million or more.

In addition, it has been determined that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 47 CFR Part 0

Freedom of information.

Federal Communications Commission.

Andrew S. Fishel,

Managing Director.

Amendatory Text

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

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

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.467(a) is amended by revising the section heading and the table in paragraph (a), by designating the text of paragraph (a) preceding the table as paragraph (a)(1), and by designating the undesignated paragraph following the table in paragraph (a)(1) as paragraph (a)(2) and revising it to read as follows:

§ 0.467 Search and review fees.

(a)(1) * * *

Grade	Hourly fee
GS–2	$8.72
GS–3	9.84
GS–4	11.04
GS–5	12.35
GS–6	13.77
GS–7	15.30
GS–8	16.95
GS–9	18.72
GS–10	20.61
GS–11	22.65
GS–12	27.14
GS–13	32.27
GS–14	38.14
GS–15	44.86

NOTE: These fees will be modified periodically to correspond with modifications in the rate of pay approved by Congress.

(2) The fees in paragraph (a)(1) of this section were computed at Step 5 of each grade level based on the General Schedule effective January 1994 and include 19 percent for personnel benefits.

* * * * *

[FR Doc. 94–9607 Filed 4–26–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 931199–4042; I.D. 042194D]

Groundfish of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the second seasonal bycatch allowance of Pacific halibut apportioned to the

deep-water species fishery in the GOA has been caught.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), April 22, 1994, until 12 noon, A.l.t., June 30, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Senior Inseason Manager, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

An emergency interim rule (59 FR 6222, February 10, 1994) apportioned the Pacific halibut prohibited species catch (PSC) limit for trawl gear into bycatch allowances and seasonal apportionments thereof among fishery categories. In accordance with § 672.20(f)(3)(iii), the deep-water species fishery, which is defined at § 672.20(f)(3)(ii)(B), was apportioned 300 mt of Pacific halibut PSC for the second season, the period March 31, 1994, through June 30, 1994.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.20(f)(3)(iv), that vessels participating in the trawl deep-water species fishery in the GOA have caught the second seasonal bycatch allowance of Pacific halibut apportioned to that fishery. Therefore, NMFS is prohibiting directed fishing for each species and species group that comprise the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are: All rockfish of the genera *Sebastes* and *Sebastolobus*, Greenland turbot, Dover sole, Rex sole, arrowtooth flounder, and sablefish. This closure is effective from 12 noon, A.l.t., April 22, 1994, until 12 noon, A.l.t., June 30, 1994.

Classification

This action is taken under 50 CFR 672.20.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: April 22, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–10161 Filed 4–22–94; 2:59 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 81
Thursday, April 28, 1994

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 306, 318, and 381

[Docket No. 92-022R]

RIN 9583-AB62

Procedures for Appealing Product Retentions

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On February 14, 1994, the Food Safety and Inspection Service (FSIS) published a proposed rule to amend the Federal meat and poultry products inspection regulations to require appeals above the circuit supervisor level that are related to disposition of retained meat and poultry product to be made in writing; provide that an establishment has 20 calendar days to appeal a retention, recondition or rework product, or properly dispose of the product; and establish procedures to ensure appropriate disposition of product immediately after a decision has been reached on an appeal. The proposal also would allow establishments to accumulate retained product for the purpose of reexamination with specialized detecting equipment provided written procedures for such activity are approved by the Regional Director.

The comment period closed on March 16, 1994. FSIS has received requests to reopen the comment period so that additional information may be provided to FSIS. FSIS is granting these requests and reopening the comment period for an additional 30 days.

DATES: Comments must be received on or before: May 31, 1994.

ADDRESSES: Written comments to Policy Office, ATTN: Diane Moore, FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comment as provided under the Poultry Products Inspection Act to Robert D. Murphy, (202) 720-3491.

FOR FURTHER INFORMATION CONTACT: Robert D. Murphy, Director, Processing Operations Staff, Inspection Management Program, Inspection Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720-3491.

SUPPLEMENTARY INFORMATION: On February 14, 1994, FSIS published a proposed rule (59 FR 6929) to amend the Federal meat and poultry products inspection regulations to:

(1) Require establishments to submit written appeals above the circuit supervisor's level when the appeal relates to disposition of retained meat or poultry product,

(2) Provide that an establishment has 20 calendar days to:

(a) Appeal a retention,

(b) Recondition or rework product, or

(c) Properly dispose of the product, and

(3) Establish procedures to ensure appropriate disposition of product immediately after a decision has been reached on an appeal.

FSIS has received requests to reopen the comment period so that additional information can be gathered and submitted to FSIS. FSIS is interested in receiving additional information and is, therefore, reopening the comment period for an additional 30 days.

Done at Washington, DC, on: April 20, 1994.

Terry L. Medley,

Acting Administrator.

[FR Doc. 94-10083 Filed 4-26-94; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 42

[Public Notice 1995]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act, as Amended

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Amended notice of proposed rule.

SUMMARY: This document withdraws the proposed rule published on April 15, 1994 (59 FR 18010) on the subject of the place of application for an immigrant visa and replaces it with a new proposed rule. This proposed rule would amend immigrant visa regulations to make clear that the Department has the authority to determine where an alien's immigrant visa application shall be processed and to revise the text thereof for clarity and consistency of usage.

DATES: Written comments must be received on or before May 31, 1994.

ADDRESSES: Interested persons are invited to submit comments in duplicate to: Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Office, Department of State, Washington, DC, 20522-0113.

FOR FURTHER INFORMATION CONTACT: Cornelius D. Scully, III, Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Office, (202) 663-1184.

SUPPLEMENTARY INFORMATION: On April 15, 1994, the Department published a notice of proposed rule (59 FR 18010). Due to problems which occurred in converting the draft document from one computer system to another, certain revisions to the document were not incorporated into the version which was sent for publication. The Department is, therefore, withdrawing the the April 15, 1994 proposed rulemaking which revised 22 CFR 42.61(a) and is hereby publishing the revised proposed rule.

22 CFR 42.61 is that portion of the Department's immigrant visa regulations which establishes rules for determining at which consular office an alien shall make his or her immigrant visa application. Currently, the first sentence of subsection (a) of § 42.61 specifies that "in ordinary circumstances" an alien's application shall be processed and adjudicated by the consular office having jurisdiction over the alien's place of residence. The second sentence allows for an exception to this general rule in the case of an alien physically present in an area but not having a residence therein, if the alien can establish that he or she will remain in the area long enough to permit the application to be processed to a conclusion. The remainder of 22 CFR 42.61(a) allows for acceptance of immigrant visa applications by other consular offices, either as a matter of discretion or at the direction of the Department.

It is the Department's view that the existing regulatory text affords the Department the authority to make exceptions to the general rules concerning where an application for an immigrant visa shall be made for policy or operational reasons, including reasons of foreign policy, as may be necessary. Recently, however, questions have been raised whether such authority can properly be so imputed, given the phrasing of the text. Since these questions have been raised, the Department believes it to be appropriate to amend the text to make this authority explicit. In addition, the Department is taking the occasion to revise the text editorially for purposes of clarity and consistency of usage.

The Department notes that this regulatory change is both interpretive and concerned with management and matters of foreign policy. The Department has nevertheless decided to provide for a thirty-day comment period.

This rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this rule would not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980. This rule has been reviewed as required under Executive Order 12778 and certified to be in compliance therewith. This rule is exempt from review under Executive Order 12866, but has been reviewed internally by the Department to ensure consistency with the objectives thereof.

List of Subjects in 22 CFR Part 42

Aliens, Application, Immigrants, Visas.

Accordingly, it is proposed to amend 22 CFR Part 42 as follows:

PART 42—[AMENDED]

1. The authority citation for Part 42 would be revised to read as follows:

Authority: 8 U.S.C. 1104.

2. Section 42.61 is amended by revising paragraph (a) to read as follows:

§ 42.61 Place of application.

(a) *Alien to apply in consular district of residence.* Unless otherwise directed by the Department, an alien applying for an immigrant visa shall make application at the consular office having jurisdiction over the alien's place of residence. Also, unless otherwise provided by the Department, an alien physically present in an area but having no residence therein may make application at the consular office having jurisdiction over that area if the alien can establish that he or she will be able to remain in the area for the period required to process the application. Finally, a consular office may, as a matter of discretion, or shall, at the direction of the Department, accept an immigrant visa application from an alien who is neither a resident of, nor physically present in, the area designated for that office for such purpose. For the purposes of this section, an alien physically present in the United States shall be considered to be a resident of the area of his or her last residence prior to entry into the United States.

* * * * *

Dated: April 21, 1994.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 94–10121 Filed 4–26–94; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 220

[RIN 0790–AF63]

Collection From Third Party Payers of Reasonable Costs of Healthcare Services

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would replace the current method of per diem billings based on diagnostic related groups and expand the single outpatient billing category to as many as forty to fifty, and expand the billing for outpatient services to include land ambulance service, air ambulance service and hyperbaric services. This proposed rule improves billing methods for both inpatient and outpatient care. This creates a greater level of specificity which more accurately reflects the cost of the care provided. In addition, the proposed rule will identify additional outpatient services for which recovery of costs will be sought.

DATES: Comments must be received by June 27, 1994.

ADDRESSES: Comments should be sent to: Office of the Deputy Assistant Secretary of Defense (Health Services Operations), Attn: Operations and Management Support, room 3E343, The Pentagon, Washington, DC 20301–1200.

FOR FURTHER INFORMATION CONTACT: CMSgt Kathleen I. Reents at (703) 756–8910.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted 10 U.S.C. 1095 as part of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, § 2001(a)(1), to permit the Department of Defense to collect from third party payers reasonable inpatient hospital care costs incurred on behalf of most DoD health care beneficiaries. To implement this statute, the Department of Defense issued a proposed rule October 8, 1986, and a final rule September 25, 1987. The final rule has been amended several times since 1987, most recently on September 9, 1992 (57 FR 41096). That rule changed the unified per diem rate for inpatient care to a set of 12 clinical group per diem rates. It also implemented authority to bill for outpatient services by establishing a single per visit rate for most outpatient services.

II. Provisions of the Proposed Rule

A. Inpatient Services

In October 1992, the Department of Defense began a transition from the traditional single rate for reimbursement for various health care services to multiple rates reflective of the clinical care provided. The multiple rates result in charges that more closely approximate the actual costs of delivering specific categories of medical services, such as surgical care, obstetrical care, pediatric care, etc. The rates are based on the actual costs of rendering healthcare services as reflected in the Medical Expense and Performance Reporting System (MEPRS).

We propose a change to paragraph 220.8(c) to replace the current twelve billing categories with a billing method based on diagnostic related groups (DRGs), as specifically authorized by 10 U.S.C. 1095(f)(3). We believe the DRG-based method for determining reasonable costs of inpatient care will produce more accurate and equitable billings.

Billings will more accurately reflect the costs associated with the actual services provided. Our proposal is to model our DRG-based cost methodology on the DRG-based payment system for hospital care under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). However, in some respects, we propose simplification of CHAMPUS methods, with authority to introduce the additional refinements at a later date.

For example, we propose initially to use a single national standardized amount, rather than the three

standardized amounts (large urban, other urban, and rural) used by CHAMPUS. The three amounts do not differ significantly and are probably not as relevant in connection with a unified federal hospital system, such as DoD's. However, the proposed rule would allow us to adapt the multiple standardized amounts at a later date.

The standardized amount will be the result of dividing total system-wide costs of inpatient care by the total number of discharges system-wide. With respect to DRG relative weights, we propose to use the same weights as are used for the CHAMPUS DRG-based payment method. The CHAMPUS weights were calculated from a data base of actual CHAMPUS claims filed by civilian hospitals. Because the patient population under military treatment facilities and CHAMPUS are quite similar, we believe it appropriate to use the same weights.

The CHAMPUS DRG-based payment method uses a number of adjustments to the product of standardized amount multiplied by the relative weight of the DRG involved. The adjustments relate to outlier cases, area wage differences and indirect medical education. We propose initially not to use these adjustments, but to allow all related costs to be reflected in the standardized amount. This approach has the advantage of simplicity and predictability for payers. However, the proposed rule would allow these adjustments to be introduced at a later date.

In accordance with current practice, the standard DRG-based rate shall be subdivided into three categories: Hospital charges, Professional charges, and Ancillary charges.

The intended effective date for implementation of a multiple rate schedule shall be October 1, 1994, the effective date of this rule, barring unforeseen difficulties in automation support. The specific rates will be published in the **Federal Register**.

B. Outpatient Services

As with the inpatient rates, the outpatient rates will be based on the actual costs of rendering healthcare services as reflected in the Medical Expense and Performance Reporting System (MEPRS). MEPRS is the standard expense reporting system for all fixed medical treatment facilities (MTFs) within the Department of Defense (DoD) and is the accepted source of healthcare information for Congress and offices and agencies of the Executive Branch. The reimbursement categories will be selected based on board certified specialties/subspecialties widely accepted by graduate medical accrediting organizations such as the Accreditation Council for Graduate Medical Education (ACGME) or the American Board of Medical Specialties (ABMS).

Rates may be established but need not be limited to each of the following clinical reimbursement categories: Internal Medicine, Allergy, Cardiology, Diabetic, Endocrinology, Gastroenterology, Hematology, Hypertension, Nephrology, Neurology, Nutrition, Oncology, Pulmonary Disease, Rheumatology, Dermatology, Infectious Disease, Physical Medicine, General Surgery, Cardiovascular and Thoracic Surgery, Neurosurgery, Ophthalmology, Organ Transplant, Otolaryngology, Plastic Surgery, Procotology, Urology, Pediatric Surgery, Family Planning, Obstetrics, Gynecology, Pediatrics, Adolocent Pediatrics, Well Baby, Orthopaedics, Cast, Orthotic Laboratory, Hand Surgery, Podiatry, Psychiatry, Psychology, Child Guidance, Mental Health, Social Work, Substance Abuse Rehabilitation, Family Practice, and Occupational and Physical Therapy. We will not necessarily establish a separate rate for each of these clinical reimbursement categories. Similar categories may be combined for purposes of billing.

Another proposed revision to section 220.8 involves the expansion of a single outpatient rate to multiple reimbursement category rates similar to that for inpatient care. The Department of Defense proposes to adopt a methodology for computing rates for outpatient care similar to that used for computing multiple rates for inpatient care. Thus, collections for most outpatient services will be based on a standard per visit fee to a specialty/subspecialty which is representative of the average cost in facilities of the Uniformed Services of an outpatient visit to that specialty clinic. Multiple outpatient visits on the same day to different clinics will result in one charge for each clinic visit. Multiple visits on the same day to the same clinic will only have one charge. As a general rule, each standard per visit amount to the specialty/subspecialty clinic will be all-inclusive. No additional charge will be made for routine laboratory, radiology, pharmacy or other ancillary or overhead services provided in conjunction with an outpatient visit.

Although most outpatient services will be billed based on the standard per visit fee for a specialty/subspecialty, there are several special rules for particular types of care. One special rule is that a separate charge for the same day/ambulatory surgery will be published annually.

The proposed effective date of the proposed expanded number of billing categories is targeted for October 1, 1994. The specific rates will be published in the **Federal Register**.

C. Miscellaneous Healthcare Services

Initial implementation of the Third Party Collection Program was somewhat limited in scope and concentrated on inpatient and ambulatory care areas. We propose to expand the program to include outpatient services which may not traditionally be provided in hospitals or which are not traditional clinical specialties or subspecialties. This includes, but is not limited to, ambulance service, hyperbaric treatments, dental care services and immunizations. We propose to recover the cost of these services to the extent they are generally applicable coverage provisions of a third party payer.

We propose to recover the cost of ambulance service which includes the cost of providing emergency aid and then transportation of beneficiaries to a medical treatment facility. It would also include the transport of patients to other medical facilities or the specialized clinics for diagnostic or therapeutic services which also is frequently necessary. We propose to recover costs on the basis of the length of time the ambulance is in service with one hour to be the minimum amount billed. Our reimbursement rates for ambulance care will only cover the costs of operating the vehicle, including labor costs (driver and attendant), supplies, fuel, and overhead.

We also propose to recover the cost of hyperbaric treatments provided to beneficiaries as part of a course of treatment. For example, high pressure oxygenation treatments, burn treatments and decompression treatments in response to diving incidents are frequently provided. We only intend to recover the cost of providing these treatments which includes the operating cost of the chamber, e.g., labor costs, (operators and attending medical personnel), supplies, and overhead. We do not intend to include amortization of either the actual or replacement cost of the hyperbaric chamber or the building.

Dental services are provided to beneficiaries on a space available basis and in remote locations. Dental services may include oral diagnosis and prevention, periodontics, prosthodontics (fixed and removable), implantology, oral surgery, orthodontics, pediatric dentistry and endodontics.

We also provide a wide range of immunizations to Military Health Service beneficiaries, including immunizations against common childhood diseases such as measles, smallpox and diphtheria and regional endemic diseases such as yellow fever, plague and cholera. We also administer a variety of medications and test beneficiaries for allergic conditions. Immunizations costs are not included as part of the reimbursement rates for either inpatient or ambulatory care. We intend to seek reimbursement for immunizations against childhood diseases and diseases characteristic of the United States and its Territories. We will also seek reimbursement for the administration of all medications or allergy extracts, when the medication or extract is purchased by the medical treatment facility, and for the testing for allergic conditions. We do not intend to seek recovery for immunizations administered incident to overseas travel or transfer or for those medications purchased by the beneficiary and simply administered at the medical treatment facility. Our reimbursement rate shall be based on the average fully burdened cost of an immunization and we shall apply a separate charge for each immunization which is administered.

D. Other Revisions

Finally, the proposed rule would eliminate the special provision regarding PRIMUS and NAVCARE clincis, which are DOD's contractor owned and operated freestanding clinics. Under special demonstration program authority, these clinics have functioned under rules applicable to military medical treatment facilities. The proposed change would conform with other proposed regulatory action of DOD, which would make the PRIMUS/NAVCARE clinic program permanent under the auspices of the CHAMPUS program. With this action, CHAMPUS coordination of benefits procedures, rather than Third Party Collection Program procedures, will become applicable.

III. Regulatory Procedures

This proposed rule is not a significant regulatory action under Executive Order 12866. It would not have an impact of $100 million or other significant economic impacts. Similarly, the rule does not significantly affect a substantial number of small entities within the meaning of the Regulatory Flexibility Act. As stated above, for the most part, this proposed rule would simply incorporate into the third party collection program regulation more precise cost calculation methods. In addition, this rule does not impose new information collection requirements for purposes of the Paperwork Reduction Act.

This is a proposed rule. We invite public comments on all matters covered by this proposal.

For the reasons stated in the preamble, 32 CFR Part 220 is proposed to be amended as follows:

PART 220—COLLECTION FROM THIRD PARTY PAYERS OF REASONABLE COSTS OF HEALTHCARE SERVICES

1. The authority citation for part 220 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 1095.

2. Section 220.8 is proposed to be amended by revising paragraph (a), the heading and first sentence of paragraph (c), introductory text, and by paragraphs (e), (g), (h), (i), and (1) to read as follows:

§ 220.8 Reasonable costs.

* * * * *

(a) *Diagnosis related group (DRG)-based method for calculating reasonable costs for inpatient services.*

(1) *In general.* As authorized by 10 U.S.C. 1095(f)(3), the calculation of reasonable costs for purposes of collections for inpatient hospital care under 10 U.S.C. 1095 and this part shall be based on diagnosis related groups (DRGs). Costs shall be based on the inpatient full reimbursement rate per hospital discharge, weighted to reflect the intensity of the principal diagnosis involved. The average cost per case shall be published annually as an inpatient standardized amount. A relative weight for each DRG shall be the same as the DRG weights published annually for hospital reimbursement rates under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) pursuant to 32 CFR 199.14(a)(1).

(2) *Standardized amount.* The Standardized amount shall be determined by dividing the total costs of all inpatient care in all military medical treatment facilities by the total number of discharges. This will produce a single national standardized amount. The Department of Defense is authorized, but not required by this part to calculate three standardized amounts, one each for large urban areas, other urban areas, and rural areas, utilizing the same distinctions in identifying those areas as is used for CHAMPUS under 32 CFR part 199, paragraph 199.14(a)(1).

(3) *DRG relative weights.* Costs for each DRG will be determined by multiplying the standardized amount per discharge by the DRG relative weight. For this purpose, the DRG relative weights used for CHAMPUS pursuant to 32 CFR part 199, paragraph 199.14(a)(1) shall be used.

(4) *Adjustments for outliers, area wages, and indirect medical education.* The Department of Defense may, but is not required by this part, to adjust cost determinations in particular cases for length-of-stay outliers (long stay and short stay), cost outliers, area wage rates, and indirect medical education. If any such adjustments are used, the method shall be comparable to that used for CHAMPUS hospital reimbursements pursuant to 32 CFR part 199, paragraph 199.14(a)(1)(iii)(E), and the calculation of the standardized amount under paragraph (a)(2) of this section will reflect that such adjustments will be used.

(5) *Identification of professional and hospital costs.* For purposes of billing third party payers other than automobile liability and no-fault insurance carriers, billings will be subdivided into three categories:

(i) Hospital charges (which refers to routine services charges associated with the hospital stay).

(ii) Professional charges (which refers to professional services provided by physicians and certain other providers).

(c) *Clinical groups per diem rates for care provided on or after October 1, 1992, and prior to October 1, 1994.* For inpatient hospital care provided on or after October 1, 1992, and prior to October 1, 1994, the computation of reasonable costs shall be based on the per diem full reimbursement rate applicable to the clinical category of services involved.* * *

(d) *Special rule for partnership program providers.* In cases in which the professional provider services are provided under the Partnership Program (or similar program operated under the authority of 10 U.S.C. 1096), the professional charges component of the total standard rate will be deleted, as applicable, from the claim from the facility of the Uniformed Services. The third party payer will receive a claim for professional services directly from the individual healthcare provider, who is not an employee or agent of the Department of Defense. Such claims are not covered by 10 U.S.C. 1095 or this part, but are governed by statutory and regulatory requirements of the CHAMPUS program (see 32 CFR part 199). The same is true for professional services provided on an outpatient basis under the Partnership Program.

(e) *Per visit rates.*

(1) As authorized by 10 U.S.C. 1095(f)(2), the computation of

reasonable costs for purposes of collections for most outpatient services shall be based on a per visit rate for a clinical specialty or subspecialty. The per visit charge shall be equal to the outpatient full reimbursement rate for that clinical specialty or subspecialty and includes all routine ancillary services. A separate charge will be calculated for cases that are considered same day/ambulatory surgeries. These rates shall be updated and published annually. As with inpatient billing categories, clinical groups representing selected board certified specialties/subspecialties widely accepted by graduate medical accrediting organizations such as the Accreditation Council for Graduate Medical Education (ACGME) or the American Board of Medical Specialties will be used for ambulatory billing categories. Related clinical groups may be combined for purposes of billing categories.

(2) The following clinical reimbursement categories are representative, but not all-inclusive of the billing category clinical groups referred to in paragraph (E)(1) of this section: Internal Medicine, Allergy, Cardiology, Diabetic, Endocrinology, Gastroenterology, Hematology, Hypertension, Nephrology, Neurology, Nutrition, Oncology, Pulmonary Disease, Rheumatology, Dermatology, Infectious Disease, Physical Medicine, General Surgery, Cardiovascular and Thoracic Surgery, Neurosurgery, Ophthalmology, Organ Transplant, Otolaryngology, Plastic Surgery, Protology, Urology, Pediatric Surgery, Family Planning, Obstetrics, Gynecology, Pediatrics, Adolescent Pediatrics, Well Baby, Orthopaedics, Cast, Orthotic Laboratory, Hand Surgery, Podiatry, Psychiatry, Psychology, Child Guidance, Mental Health, Social Work, Substance Abuse Rehabilitation, Family Practice, and Occupational and Physical Therapy.

* * * * *

(g) *Special rule for services ordered and paid for by a facility of the Uniformed Services but provided by another provider.* In cases where a facility of the Uniformed Services purchases ancillary services or procedures, from a source other than a Uniformed Services facility, the cost of the purchased services will be added to the standard rate. Examples of ancillary services and other procedures covered by this special rule include (but are not limited to): laboratory, radiology, pharmacy, pulmonary function, cardiac catheterization, hemodialysis, hyperbaric medicine, electrocardiography, electroencephalography, electroneuromyography, pulmonary function, inhalation and respiratory therapy and physical therapy services.

(h) *Special rule for certain ancillary services ordered by outside providers and provided by a facility of the Uniformed Services.* If a Uniformed Services facility provides certain ancillary services, prescription drugs or other procedures based on a request from a source other than a Uniformed Services facility and are not incident to any outpatient visit or inpatient services, the reasonable cost will not be based on the usual per diem or per visit rate. Rather, a separate standard rate shall be established based on the cost of the particular high-cost service, drug or procedure provided. This special rule applies only to services, drugs or procedures having a cost of at least $60. The reasonable cost for the services, drugs or procedures to which this special rule applies shall be calculated and published annually.

(i) *Miscellaneous health care services.* Some outpatient services are provided which may not traditionally be provided in hospitals or which are not traditional clinical specialties or subspecialties. This includes, but is not limited to, land ambulance service, air ambulance service, hyperbaric treatments, dental care services and immunications.

(1) The charge for ambulance services shall be based on the full costs of operating the ambulance service.

(2) For hyperbaric treatments (such as high pressure oxygenation treatments, burn treatments and decompression treatments in response to diving incidents), charges will be based on the full operating costs of the hyperbaric treatment services.

(3) Charges for dental services (including oral diagnosis and prevention, periodontics, prosthodontics (fixed and removable), implantology, oral surgery, orthodontics, pediatric dentistry and endodontics) will be based on a full cost of the dental services.

(4) The charge for immunications, allergin extracts, allergic condition tests, and the administration of certain medications when these services are provided in a separate immunizations or shot clinic, will be based on the average full cost of these services, exclusive of any costs considered for purposes of any outpatient visit. A separate charge shall be made for each immunization, injection or medication administered.

* * * * *

(l) *Alternative determination of reasonable costs.* Any third party payer that can satisfactorily demonstrate a prevailing rate of payment in the same geographic area for the same or similar aggregate groups of services that is less than the standard rate (or other amount as determined under paragraphs (f) through (k) of this section) of the facility of the Uniformed Services may, with the agreement of the facility of the Uniformed Services (or other authorized representatives of the United States), limit payments under 10 U.S.C. 1095 to that prevailing rate for that aggregate category of services. The determination of the third party payer's prevailing rate shall be based on a review of valid contractual arrangements with other facilities or providers constituting a majority of the services for which payment is made under the third party payer's plan. This paragraph does not apply to cases covered by § 220.11.

* * * * *

3. Section 220.10 is proposed to be amended by revising paragraph (c)(1)(ii), as follows:

§ 220.10 Special rules for Medicare supplemental plans.

* * * * *

(c) *Charges for health care services other than the inpatient hospital deductible amount.*

(1) * * *

(ii) Include adjustments, as appropriate, to identify major components of the all inclusive per diem or per visit rates for which Medicare has special rules.

* * * * *

Dated: April 22, 1994.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–10126 Filed 4–26–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGDO1–94–021]

RIN 2115–AA97

Safety Zone: Empire State Regatta Fireworks, Hudson River, New York

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone in the Hudson River at Albany, New York, for the Empire State Regatta Fireworks program. This event, sponsored by Empire State Regatta Inc., will take place on Saturday, June 11, 1994, from

9 p.m. until 10:15 p.m. This safety zone, located in the Hudson River at Albany, New York, is needed to protect the boating public from the hazards associated with fireworks exploding in the area.

DATES: Comments must be received on or before May 31, 1994.

ADDRESSES: Comments should be mailed to Captain of the Port, New York, bldg. 108, Governors Island, New York 10004–5096, or may be delivered to the Waterways Management Branch, Bldg. 108, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Any person wishing to visit the office must contact the Waterways Management Branch at (212) 668–7933 to obtain advance clearance due to the fact that Governors Island is a military installation with limited access.

FOR FURTHER INFORMATION CONTACT: LT. R. Trabocchi, Project Manager, Captain of the Port, New York, (212) 668–7933.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGDO1–94–021) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing, however, a public hearing may be requested by writing to the Project Manager at the address under **ADDRESSES**. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are LT R. Trabocchi, Project Manager, Captain of the Port, New York, and CDR J. Astley, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

On March 1, 1994, Empire State Regatta, Inc. submitted a request to hold a fireworks program in the Hudson River at Albany, New York, in conjunction with the annual Empire State Regatta. This proposed safety zone is being established to protect boaters from the hazards associated with fireworks exploding in the area. No vessel would be permitted to enter or move within this area unless authorized to do so by the Coast Guard Captain of the Port, New York.

Discussion of Proposed Amendments

The Coast Guard proposes to establish a temporary safety zone that will include all waters of the Hudson River within a 300 yard radius of a point located in land approximately 500 yards south of the New York Central Railroad Bridge on the eastern side of the Hudson River. This proposed safety zone will leave the western half of the Hudson River, including eighty percent of the federal channel open to vessel traffic for the duration of this event. If adopted this safety zone will be in effect from 9 p.m. until 10:15 p.m. on June 11, 1994. This proposed safety zone is needed to protect the boating public from the hazards associated with fireworks exploding in the area. No vessel would permitted to enter or move within this area unless authorized by the Coast Guard Captain of the Port, New York.

Regulatory Evaluation

This rule is a significant regulatory action 12866 and is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). Although this event will close a portion of the Hudson River, the effect of this partial closure will not be significant for several reasons. Due to the limited duration of the event, the late hour of the event, the extensive advisories that will be made to the affected maritime community, and that all traffic can safely transit to the west of this safety zone, the Coast Guard expects the economic impact of this proposed regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons given in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to promote maritime safety and protect the environment, and thus is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be included in the Docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

Part 165—[AMENDED]

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

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

2. A temporary section, 165.T01–021 will be added to read as follows:

§ 165.T01–021 Empire State Regatta Fireworks, Hudson River, New York.

(a) *Location* This temporary safety zone includes all waters of the Hudson River at Albany, New York, within a 300 yard radius of a point located on land approximately 500 yards south of the New York Central Railroad Bridge of the eastern side of the Hudson River at or near 43° 38′ 58″N latitude and 73° 44′ 35″W longitude.

(b) *Effective period* This section is effective from 9 p.m. until 10:15 p.m. on June 11, 1994.

(c) *Regulatons.* (1) The general regulations contained in 33 CFR 165.23 apply to this safety zone.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. Coast Guard Auxiliary members may be present to inform vessel operators of this regulation and other applicable laws.

Dated: April 15, 1994.

T.H. Gilmour,

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

[FR Doc. 94–10173 Filed 4–26–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

48 CFR Parts 5419 and 5452

DLA Acquisition Regulation; Small Business and Small Disadvantaged Business Concerns

AGENCY: Defense Logistics Agency, DOD.

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Logistics Agency (DLA) proposes to establish a new 48 CFR Chapter 54 to contain Defense Logistics Agency acquisition regulations. New parts 5419 and 5452 provide regulatory coverage which incorporates two nonstandard clauses in domestic bulk petroleum solicitations and contracts concerning small business set asides and evaluation preference for Small Disadvantaged Business Concerns into DLAR on a permanent basis. Comments are hereby requested on the proposed coverage which supplements the contract quality requirements of the Defense Federal Acquisition Regulation Supplement (DFARS) by adding prescriptive language and contract clauses to satisfy the specific needs of DLA. The proposed coverage is being published in the **Federal Register** because it is expected to have an effect beyond the internal operating procedures of DLA and, in some cases, a significant cost or administrative impact on contractors, when required.

DATES: Comments on the proposed DLAR rules must be submitted in writing to the address shown below on or before June 27, 1994, to be considered in the formulation of the final rules.

ADDRESSES: Interested parties should submit written comments to Defense Logistics Agency, Directorate of Procurement, Contract Policy Team (AQPLL), Ms. Melody Reardon, Cameron Station, Alexandria, Virginia 22306–6100 FAX: (703) 274–0310.

FOR FURTHER INFORMATION CONTACT: Ms. Melody Reardon, Defense Logistics Agency, AQPLL (703) 274–6431.

SUPPLEMENTARY INFORMATION:

A. Background

Section 1207 of Public Law 99–661, as amended, sets a goal for the Department of Defense to award five percent of contract and performance dollars to small disadvantaged business (SDB) concerns, historically black colleges and universities, and minority institutions. Defense Fuel Supply Center has historically utilized deviations to DFARS 252.219–7001 and 252.219–7006 which are reviewed and approved on an annual basis by the Director of Defense Procurement. Defense Fuel Supply Center proposes incorporating two nonstandard clauses in DLAR in order to eliminate the need for the class deviation. An additional objective of the two clauses is to include the term small disadvantaged joint ventures in the definition of small disadvantaged business concerns. Small disadvantaged joint ventures will now be eligible to receive the evaluation preference for those items solicited under these clauses if the small disadvantaged business or small disadvantaged joint venture manufactures or supplies the products of small disadvantaged businesses.

B. Regulatory Flexibility Act

The proposed clauses are not expected to have significant economic impacts on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* since the clauses have been utilized for many years by Defense Fuel Supply Center as deviations to DFARS. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS sections will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite this case in correspondence.

C. Paperwork Reduction Act

The proposed rules do not impose any reporting or record keeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR 5419 and 5452

Government procurement.

Therefore, it is proposed that 48 CFR chapter 54 consisting of parts 5419 and 5452, be added to read as follows:

CHAPTER 54—DEFENSE LPGISTICS AGENCY, DEPARTMENT OF DEFENSE

PART 5419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

PART 5452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

PART 5419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, 48 CFR Part 1, subpart 1.3 and 48 CFR Part 201, subpart 201.3.

5419.001 Definitions.

The definition of "small disadvantaged business concern" to be used for DFSC competitive bulk solicitions and contracts is in the provision at 5452.219–9F06 and is different from the definition in DFARS 252.219–7001. For purposes of contract opportunities, Small Disadvantaged Business Joint Ventures, as defined in 252.219–7001 have the same status as small disadvantaged business concerns.

PART 5452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 5452.2—Texts of Provisions and Clauses

Sec.

5452.219–F05 Notice of Evaluation Preference for Small Disadvantaged Business Concerns

5452.219–F06 Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business Concerns

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, 48 CFR part 1, subpart 1.3 and 48 CFR part 201, subpart 201.3

5452.219–9F05. Notice of Evaluation Preference for Small Disadvantaged Business Concerns.

As prescribed by DFARS 219.7003, the Defense Fuel Supply Center will use the following clause in competitive domestic bulk solicitations and contracts when (a) solicitation contains one or more DOD set-aside items, and (b) when Small Disadvantaged Business (SDB) or Small Disadvantaged Business Joint Ventures are expected to offer:

5452.219–9F05 Notice of Evaluation Preference for Small Disadvantaged Business Concerns (Dec 1991 (DFSC) (Deviation).

(a) *Definitions.* (1) The term "small disadvantaged business (SDB) concern," has the meaning set forth in the Representation clause of this contract and includes the term small disadvantaged business joint venture. SDB concerns must supply petroleum product from an SDB manufacturer who complies with the petroleum products size standards at 13 CFR part 121, to be eligible for the evaluation preference.

(b) *Evaluation preference.* (1) After all evaluation factors described in this solicition are applied, offers will be evaluated by adding a factor of 10 percent to the price of all offers except—

(i) Offers from SDB concerns which have not waived the preferenced;

(ii) Otherwise successful offers of eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is exceeded.

(2) The 10 percent factor will be applied on a line item by line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation will be applied before application of the 10 percent factor. However, in no event may award be made to an SDB concern at a price which exceeds fair market price (as determined under FAR 19.806–2) by more than ten percent (10%).

(c) Waiver of Evaluation Preference.

An SDB may elect to waive the preference, in which case the 10 percent factor will be added to its offer for evaluation purposes.

[ ] Offeror elects to waive the preference in paragraph (6) above.

[End of Clause]

5452.219–9F06 Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business Concerns.

As prescribed in DFARS 219.7002(d), the Defense Fuel Supply Center will use the following clause in lieu of DFARS clause 52.219–7001 in competitive domestic bulk solicitations and contracts when the solicitation contains one or more DOD set-aside items:

5452.219–9F06 Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business Concerns. (DEC 1991)(DFSC) (Deviation).

(a) *Definitions.* (1) Small Business concern means a concern including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(2) Small disadvantaged business concern means a small business concern or small disadvantaged joint venture, owned and controlled by individuals who are both socially and economically disadvantaged, as defined by the Small Business Administration at 13 CFR part 124, the majority of earnings which directly accrue to such individuals. This term also means a small business concern owned and controlled by an economically disadvantaged Indian tribe or native Hawaiian organization which meets the requirements of 24 CFR 124.112 or 13 CFR 124.113, respectively. In order to be eligible for preferential consideration set forth in paragraph (c) below, SDB concerns must supply product from an SDB manufacturer.

(b) *General.*

(1) A portion of certain items of this procurement, as listed in the Schedule, has (have) been set aside for award to eligible small businesses, with preferential consideration for SDB concerns. The quantities indicated for such items in the Schedule include the set-aside portion. All offerors are urged to offer the maximum quantities they desire and are capable of delivering. Small businesses and SDB concerns interested in receiving a set-aside contract should submit an offer in the same manner as though there were no set-aside. Volumes offered by qualified small businesses or SDB concerns will be evaluated for the non set-aside and set-aside portions of the procurement. Separate offers should not be submitted on the non set-aside and set-aside portions.

(2) The partial small business set-aside of the procurement is based on a determination by the Contracting Officer that it is in the interest of maintaining or mobilizing the nation's full production capacity or in the interest of national defense programs, or in the interest of assuring that a fair portion of Government procurement is placed with small business concerns.

(3) All of the offers received under this solicitation will be first negotiated as to price and an evaluation will be made as though there were no set-aside.

(4) For the purposes of set-aside evaluation, when an offer contains increments at different prices, each increment will be considered a separate offer. Except as provided in paragraph (e) below, negotiations will be limited to the offered quantities not awarded under the provisions of subparagraph (d)(2).

(c) *Set-aside award procedure (preferential consideration for SDB concerns).*

(1) Offers from SDBs and small business concerns will be evaluated with preferential consideration, as described below, given to eligible SDB concerns.

(2) Offers from SDB concerns will be reviewed first to determine if an award can be made to an SDB concern at its offered price, beginning with the SDB concern offering the lowest evaluated price for that item. Awards to SDB concerns on the set-aside portion of this procurement will be made at the price offered by the SDB concern if that evaluated price does not exceed the highest award price on the non set-aside portion by more than 10 percent, as adjusted for transportation charges and other factors. If the SDB price exceeds the highest non set-aside price by more than 10 percent, the SDB will be treated as a small business and the procedures set forth in paragraph (d) below will apply.

(3) Any volumes remaining on the set-aside portion that are not awarded to the lowest priced eligible SDB concern under subparagraph (c)(2) will be awarded to any other SDBs eligible for award under the procedures set forth above, beginning with the SDB concern offering the next lowest price.

(d) *Set-aside award procedure (small business concerns).*

(1) After evaluation and award to eligible SDB concerns, if any, negotiations will be conducted with small business concerns for any set-aside volumes not awarded to eligible SDB concerns under paragraph (c).

(2) The price for the small business set-aside portion will be negotiated by the Contracting Officer based upon prices the Government would otherwise pay under this solicitation had there been no set-aside for supply of the location at which the set-aside is placed, adjusted for transportation charges, and other factors. For the set-aside portion of an item not already awarded to SDB concerns, awards will be made to the small business concern whose offer is determined by this evaluation to be low without further negotiations. Contracts for the remaining set-aside portions will be negotiated with those eligible small business concerns who have submitted a responsive offer on the various items for which a set-aside has been established.

(3) Negotiations for small business set-aside awards will begin with the small business concern with the lowest evaluated price and a quantity of offered product remaining. If the low small business concern on the item does not offer to supply product at the set-aside price, the next low small business concern on the item will be given the same opportunity and continuing with the next low small business concern until all small business concerns have been contacted.

(e) After the set-aside negotiations have been concluded, a final evaluation will be accomplished. All eligible offerors, without regard to the size of the company, will be afforded an opportunity to compete for non set-aside quantities. The Government reserves the right to make awards to the otherwise low offeror for all or any portion of the set-aside quantities, without regard to the size of the company, if eligible SDB or small business concerns do not offer a quantity of product sufficient to meet a set-aside requirement or do not offer to supply at the set-aside prices. The total quantity which will be awarded a small business or an SDB offeror on both the unreserved and reserved portions will not exceed the total quantity offered under this solicitation by such small business or SDB offerors. However, if insufficient product is offered by small business and SDB concerns to meet the quantity set-aside for small business, SDB and small business concerns with whom the Government has already commenced negotiations may be given an opportunity to offer additional product.

(f) Where the Trade Agreement Act applies to the non set-aside portion, offers of eligible products will be treated as if they were qualifying country end products.

(g) *Token offers.* The Government reserves the right to not consider token offers or offers designed to secure an unfair advantage over other offerors eligible for the set-aside portion.

[End of Clause]

Marilyn S. Barnett,

Executive Director, (Procurement).

[FR Doc. 94–9960 Filed 4–26–94; 8:45 am]

BILLING CODE 3620–01–M

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48 CFR Part 5452

DLA Acquisition Regulation; Fuel Allocation Procedures

AGENCY: Defense Logistics Agency, DoD.

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Logistics Agency (DLA) proposes to add coverage to a proposed to 48 CFR Chapter 54, which is published elsewhere in this issue of the **Federal Register**. The proposed changes affect regulations on Solicitation Provisions and Contract Clauses. Comments are hereby requested on the proposed changes which implement and supplement the Federal Acquisition Regulation 49.504(a)(1) which requires the use of FAR Default clause 52.249–8. The changes are required in order to incorporate three nonstandard clauses in bulk, bunkers, intoplane, and posts, camps, and stations petroleum solicitations and contracts concerning fuel allocation procedures. These allocation clauses permit DFSC contractors to supply less than the full amount of fuel contracted by the government, without being terminated for default, during periods of exceptional fuel shortages. The proposed coverage is being published in the **Federal Register** because it is expected to have an effect beyond the internal operating procedures of DLA and, in some cases, a significant cost or administrative impact on contractors.

DATES: Comments on the proposed DLAR rules must be submitted in writing to the address shown below on or before June 27, 1994, to be considered in the formulation of the final rules.

ADDRESSES: Interested parties should submit written comments to Defense Logistics Agency, Directorate of Procurement, Contract Policy Team (AQPLL), Ms. Melody Reardon, Cameron Station, Alexandria, Virginia 22304–6100 FAX: (703) 274–0130.

FOR FURTHER INFORMATION CONTACT: Ms. Melody Reardon, Defense Logistics Agency, AQPLL (703) 274–6431.

SUPPLEMENTARY INFORMATION:

A. Background

Defense Fuel Supply Center has historically utilized deviations to FAR termination for default clauses in order to provide for contingencies in the case of fuel allocations by contractors. These deviations have been approved on an annual basis since 1974. Defense Fuel Supply Center proposed incorporating these three nonstandard clauses in DLAR to eliminate the need for annual review and approval. The clauses are necessary to protect potential contractors from default proceedings and ensure the continuance of a competitive procurement environment for government petroleum requirements. Allocation of fuel to customers on a pro rata basis during periods of extreme shortage is a standard practice in the petroleum industry.

B. Regulatory Flexibility Act

The proposed clauses are not expected to have significant economic impacts on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C1 601 *et seq.* since the clauses have been utilized for many years by Defense Fuel Supply Center as deviations to FAR. An initial regulatory flexibility analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR sections will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite this case in correspondence.

C. Paperwork Reduction Act

The proposed rules do not impose any reporting or record keeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR 5452

Government procurement.

Therefore, it is proposed that 48 CFR chapter 54 part 5452, which is proposed to be added elsewhere in this issue of the **Federal Register**, be amended to add the following coverage:

PART 5452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for part 5452 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, 48 CFR part 1, subpart 1.3 and 48 CFR part 201, subpart 201.3.

2. Part 5452 is amended by adding sections 5452.249–9 F01, 5452.249–9F02 and 5452.249–9F04 reading as follows:

5452.249–9F01 Allocation.

The Defense Fuel Supply Center will use the following clause in overseas petroleum solicitations/contracts including those for Canal Zone and Puerto Rico when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation.

5452.249–9F01 Allocation (DFSC) (May 1992) (Deviation)

(a) Reduced supplies.

If, for any cause beyond the control and without the fault or negligence of the Contractor, the total supply of crude oil and/or refined petroleum product is reduced below the level that would have otherwise been available to the Contractor, the Contractor allocates to its regular customers its remaining available supplies of crude oil or product, then the Contractor may also allocate to the U.S. Government supplies to be delivered under this contract, provided—

(1) Prompt notice of and evidence substantiating the necessity to allocate and describing the allocation rate for all the Contractor's customers are submitted to the Contracting Officer;

(2) Allocation among the Contractor's regular customers is made on a fair and reasonable basis (except where allocation on a different basis is required by a governmental authority, agency or instrumentality); and

(3) Reduction of the quantity of product due the Government under this contract shall not exceed the pro rata amount by which the Contractor reduces delivery to its other customers similarly situated.

(b) *Additional supplies.*

If, after the event causing the shortage of crude oil and/or refined petroleum product as described in (a) above, additional supply becomes available to the Contractor, the Contracting Officer may choose any one of the following three possible courses of action:

(1) accept an updated pro rata reduction as outlined in paragraph (a); or

(2) Determine that continuance of the contract with the quantities as originally stated in the Schedule is in the best interests of the Government, in which case negotiations for an equitable adjustment in price will be properly undertaken; or

(3) Terminate the contract as permitted in paragraph (d) below.

(c) *Reduced deliveries.*

If the Contractor believes that a law, regulation, or order of a foreign government requires the Contractor to deliver less than the quantity set forth in the Schedule for any location within that country, the Contractor may request allocation in accordance with paragraph (a) of this clause. In addition, to the criteria in paragraph (a) above, the Contractor's request shall cite—

(1) The law, regulation or order, furnishing copies of the same;

(2) The authority under which it is imposed; and

(3) The nature of the Government's waiver, exception, and enforcement procedure. The Contracting Officer will promptly review the

matter and advise the Contractor whether or not the need to allocate has been substantiated. If the law, regulation, or order requiring the Contractor to reduce deliveries ceases to be effective, the Contractor shall resume deliveries in accordance with the original Schedule.

(d) If, as a result of reduced deliveries permitted by (a), (b) or (c) above, the Contracting Officer decides that continuation of this contract is no longer in the best interests of the Government, the Government may terminate this contract or any quantity thereunder, by written notice, at no cost to the Government. However, the Government shall not be relieved of its obligation to pay for supplies actually delivered to and accepted by it.

(d) Except as otherwise stated in paragraph (b), any volumes omitted pursuant to paragraphs (a) or (b) of this clause shall be deleted from this contract, and the Contractor shall have no continuing obligation, so far as this contract is concerned, to make up such omitted supplies.

[End of Clause]

5452.249–9F02 Domestic Allocation.

The Defense Fuel Supply Center will use the following clause in domestic bulk, bunkers, and posts, camps, and stations solicitations/contracts when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation.

5452.249–9F02 Domestic Allocation (DFSC) (Jun 1989) (Deviation)

(a) If the Contractor's total available supply of refined petroleum products is reduced due to factors beyond its control and without its fault or negligence, and if as a result of this reduced supply, the Contractor is forced to allocate remaining supplies among its regular customers and does so on a fair and equatable basis, then the Contractor may reduce the quantity of product due the Government under this contact on a pro rata basis with the Contractor's other regular customers.

(b) The contractor shall provide prompt written notice to the Contracting Officer of its intention to allocate, provide evidence substantiating the necessity for allocation, and describe the allocation rates applicable to all regular customers.

(c) If, as a result of reduced deliveries permitted by paragraph (a) above, the Contracting Officer decides that continuation of this contract is no longer in the best interests of the Government, the Government may terminate this contract or any quantity thereunder, by written notice and at no cost to the Government. However, the Government shall pay for supplies actually delivered to and accepted by it.

(d) Department of Energy priority orders and allocation regulations will take precedence over any provisions of this clause.

(e) For domestic bulk and bunkers solicitations/contracts, the provisions contained in (a) above shall be inoperative where the Secretary of Defense makes a written determination that it is essential to the National Defense that the Defense Fuel Supply Center be provided contract volumes exceeding the amount of product to which it would otherwise be entitled. However, in no case will the Contractor be required, under this contract, to supply more than 100 percent of the quantity specified in the Schedule.

[End of Clause]

5452.249–9F04 Product Availability.

The Defense Fuel Supply Center will use the following clause in all domestic into-plane solicitations/contracts when a firm fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation.

5452.249–9F04 Product Availability (DFSC) (Jun 1979) (Deviation)

(a)(1) If, a result of the actions of the supplier(s) listed by reference in the Economic Price Adjustment clause which are beyond the control and without the fault or negligence of the Contractor, reduced supply of a referenced product is made available to the Contractor, and

(2) If, as a result of this reduced supply the contractor allocates its remaining supply among it regular customers on a fair and reasonable basis, the contractor may reduce the quantity of product due the Government under this contract on a pro rata basis with the Contractor's other regular customers.

(b) The Contractor will provide prompt written notice to the Contracting Office of its intention to allocate, provide evidence substantiating the necessity for allocation, and describe the allocation rates applicable to all regular customers.

(c) If, as a result of reduced deliveries permitted by (a)(2) above, the Contracting Officer decides that continuation of this contract is no longer in the best interest of the Government, the Government may terminate this contract, or any quantities thereunder, by written notice at no cost to the Government.

[End of Clause]

Marilyn S. Barnett,

Executive Director (Procurement).

[FR Doc. 94–9961 Filed 4–26–94; 8:45 am]

BILLING CODE 3620–01–M

Notices

Federal Register
Vol. 59, No. 81
Thursday, April 28, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Types and Quantities of Agricultural Commodities Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, As Amended, in Fiscal Year 1994

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This Notice sets forth the determination that quantities of corn and sorghum may be made available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1994.

FOR FURTHER INFORMATION CONTACT: Mary Chambliss, Director, Program Analysis Division, Office of the General Sales Manager, FAS, USDA, (202) 720–3573.

SUPPLEMENTARY INFORMATION: It has previously been determined that a total of 70,000 metric tons of dairy products may be made available for donation under section 416(b) during fiscal year 1994. This determination was published in the **Federal Register** on October 7, 1993. The purpose of this Notice is to inform the public that such previous determination is revised by adding 100,000 metric tons of corn and 30,000 metric tons of sorghum.

Determination

Accordingly, a total of 130,000 metric tons of grains and 70,000 metric tons of dairy products may be available for donation overseas under Section 416(b) during fiscal year 1994. The total kinds and quantities of commodities that may be made available for donation are as follows:

Commodity	Quantity (metric tons)
Grains:	
Corn	100,000
Sorghum	30,000
Total	130,000
Dairy Products:	
Butter/Butteroil*	60,000
Nonfat Dry Milk	10,000
Total	70,000

*At least 34,000 metric tons must be butter.

Done at Washington, DC, this 30th day of December 1993.

Mike Espy,

Secretary of Agriculture.

[FR Doc. 94–10095 Filed 4–26–94; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–601]

Brass Sheet and Strip From Sweden Affirmation of the Results of Redetermination Pursuant to Court Remand

SUMMARY: On March 16, 1994, the United States Court of International Trade (CIT) affirmed the Department of Commerce's redetermination on remand of the final results of the 1988–89 and the 1989–90 administrative reviews of the antidumping duty order on brass sheet and strip from Sweden (57 FR 2706, January 23, 1992). *Outokumpu Cooper Rolled Products AB and Outokumpu Copper (USA), Inc.* v. *United States* (Slip Op. 94–45, March 16, 1994) (*Outokumpu*). The results covered the periods March 1, 1988 through February 28, 1989, and March 1, 1989 through February 28, 1990.

EFFECTIVE DATE: April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Valerie Turoscy or John Kugelman at (202) 482–5253, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 1993, the CIT in *Outokumpu Copper Rolled Products AB and Outokumpu Copper (USA) Inc.* v. *United States,* Slip Op. 93–155 (August 12, 1993), issued an order remanding to the Department the final results of the 1988–89 and 1989–90 administrative reviews of the antidumping duty order on brass sheet and strip from Sweden (57 FR 2706, January 23, 1992). On September 27, 1993, the Department submitted its redetermination on remand to the CIT. On March 16, 1994, the CIT affirmed the Department's redetermination on remand (*Outokumpu*).

In its decision in *Timken Co.* v. *United States,* 893 F. 2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in *Outokumpu* on March 16, 1994, which affirmed the Department's redetermination, constitutes a decision not in harmony with the Department's affirmative final results. Publication of this notice fulfills the *Timken* requirement.

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise. Further, absent appeal, or, if appealed, upon a "conclusive" court decision affirming the CIT's opinion, the Department will amend the final affirmative results of review of the antidumping duty order on brass sheet and strip from Sweden to reflect the amended margins of the Department's redetermination on remand, which was affirmed by the CIT.

Dated: April 20, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–10164 Filed 4–26–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–580–008]

Color Television Receivers From the Republic of Korea Amendment to Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration/ Commerce.

ACTION: Notice of Amendment to final results of antidumping duty administrative review.

SUMMARY: On March 23, 1994, the Department of Commerce published in the **Federal Register** the final results of its administrative review of the antidumping duty order on color television receivers from the Republic of Korea (59 FR 13700) covering seven manufacturers/exporters and the period April 1, 1991, through March 31, 1992.

Based on the correction of ministerial errors, we are amending the final results with respect to color television receivers sold by one company, Daewoo Electronics Co., Ltd.

EFFECTIVE DATE: April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Wendy Frankel, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1994, the Department of Commerce (the Department) published in the **Federal Register** (59 FR 13700) the final results of its administrative review of the antidumping duty order on color television receivers (CTVs) from the Republic of Korea (ROK) (49 FR 18336, April 30, 1984). The review covers seven manufacturers/exporters and the period April 1, 1991, through March 31, 1992.

After publication of our final results, we received timely allegations of ministerial errors, pursuant to § 353.28 of the Department's regulations, from the petitioners (the Independent Radionic Workers of America, the United Electrical Workers of America, the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO, and Industrial Union Department, AFL–CIO), and one respondent, Daewoo Electronics Co., Ltd. (Daewoo). We have corrected the ministerial errors, as discussed below, and we have amended the final results of review for Daewoo to reflect those corrections pursuant to § 353.28(c) of the Department's regulations.

Ministerial Errors

We have corrected the following ministerial errors:

1. In the computer program instructions for Daewoo's purchase price (PP) calculations, we had used an incorrect model designation ("DTV–9234N"). We have changed this to the correct designation ("DTV9234N").

2. In the exporter's sales price (ESP) final results computer program, we included the commission offset in the home market tax adjustment calculation. However, in the PP final results computer program, we inadvertently failed to include the commission offset in the home market tax adjustment calculation. We have corrected the equation by including that offset in the PP final results computer program.

3. When comparing home market price, based on constructed value (CV), to United States Price (USP), we removed the tax adjustment on the home market side. However, in both the PP and ESP computer programs, we inadvertently retained the tax adjustment component in USP. We have corrected the calculated by removing the tax adjustment component from USP.

4. The Department intended to treat all pre-sale freight expenses as indirect selling expenses and did so in the PP and ESP computer programs. However, in the CV calculation, we inadvertently omitted those pre-sale freight expenses. We have corrected the computer instructions to reflect that change.

We do not agree with Daewoo's claim that the Department's treatment of all of its pre-sale movement expenses as indirect expenses constitutes a clerical error as described in section 353.28(d). We believe this to be a methodological issue and refer Daewoo to *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, Slip Op. 93–1239 (Fed. Cir., January 5, 1994), which discusses the methodological treatment of these pre-sale expenses.

Amended Final Results of Review

As a result of our corrections of ministerial errors, we have determined that a weighted-average margin of 0.90 percent exists for Daewoo for the period April 1, 1991, through March 31, 1992.

The Department will issue appraisement and revised cash deposit instructions with regard to Daewoo directly to the U.S. Customs Service. All other results of this administrative review remain the same as published in the **Federal Register** on March 23, 1994 (59 FR 13700).

These amended final results of administrative review and notice are in accordance with section 751(f) of the Tariff Act and 19 CFR 353.28(c).

Dated: April 21, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–10165 Filed 4–26–94; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

[Docket No. 930532–3329]

RIN 0648–AF59

Guidelines for Nondiscretionary Financial Assistance

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is issuing guidelines to ensure that applications for financial assistance under nondiscretionary assistance programs will be processed and approved or disapproved within 75 days after submission of the application; and that applicants will be notified within 14 days after receipt of an application whether or not the application is complete.

DATES: The provisions of this notice become effective April 28, 1994.

FOR FURTHER INFORMATION CONTACT: David Litton, Chief, Policy & Planning Branch, Grants Management Division, room 5440, 1325 East-West highway, Silver Spring MD, 20910; telephone (301) 713–0942.

SUPPLEMENTARY INFORMATION: The authority for these guidelines is the NOAA Authorization Act of 1992, Public Law No. 102–567, § 404, 15 U.S.C. 1539 (Supp. IV 1992), which directed that the Secretary develop, and after notice and after notice and opportunity for comment, promulgate guidelines for processing nondiscretionary assistance awards within 75 days after submission of the application to the responsible program office of NOAA. In the case of a program for which the recipient of a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, a State or an interstate fishery commission, such financial assistance may be provided by the Secretary to that recipient on a sole-source basis, notwithstanding any other provision of law. These final guidelines include revisions based on comments received on draft guidelines published in the **Federal Register** on August 30, 1993 (58 FR 45487).

Comments and Changes to the Proposed Guidelines

Following is a summary of the major comments, and a response to each comment.

Concurrent Review

Comment: Concurrent review of applications to the National Marine Fisheries Service, as proposed in the draft guidelines, would not be practical, because proposals are frequently modified by the program office prior to approval for funding.

Response: Since the program office frequently modifies proposals, concurrent review by the program office and the Grants Management Divisions will not be provided. Instead, when a application is determined by the program office to be complete and acceptable, the original application will be forwarded to the Grants Management Division as soon as the applicant is notified (within 14 days after receipt), to permit prompt administrative review and issuance of an award within 75 days after submission. Since applications will not receive concurrent review, applications should be submitted only to the appropriate program office.

Clarifications

Comment: The guidelines should define "Complete application".

Response: "Complete application" has been defined in the guidelines.

Comment: Will applications be processed in 75 calendar days or work days?

Response: The intent is to process award within 75 calendar days.

Applicability

Comment: The guidelines should apply to Fishery Management Councils and other applicants.

Response: The guidelines implement a law which defined the categories of applications to which it applies. This would not include Fishery Management Councils or other applicants unless they fall within the definition established by section 404.

Budget Detail

Comment: Less budget detail should be required for applications from States, Commissions, and Councils because they must comply with Federally mandated accounting and fiscal procedures.

Response: Our position is that we require only sufficient detail to carry out our responsibility to determine the adequacy and reasonableness of proposed costs.

Role of Grants Office

Comment: Is there duplication of functions between the program office and the grants office in reviewing grant applications?

Response: We do not believe there is duplication between program and grants office functions. The program office assures that proposed project activities are technically sound and allowable under program regulations and that proposed costs are adequate. The Grants Management Division assures that financial and administrative requirements are met, and that costs are reasonable, allocable, and necessary.

Avilability of Funds

Comment: The National Marine Fisheries Service should notify applicants of the amount of funding available prior to submission of applications. Another comment requested a specific time frame after funding authorizations become available, within which applicants would be notified of the amount of funding available.

Response: The National Marine Fisheries Service notifies applications as soon as possible after it determines how much will be available for nondiscretionary awards.

Paperwork Reduction

Comment: Applicants with more than one award should be required to submit certain documents, such as audit and indirect cost information, only once a year, instead of once per application.

Response: To expedite processing, the Grants Management Division currently requires a copy of each document for each grant file. We will keep this comment in mind for possible future implementation.

Guidelines for National Oceanic and Atmospheric Administration Nondiscretionary Assistance

1. Definitions

"Complete application" for a non-construction program means one that includes an original and two signed copies of the following correctly completed documents: SF–424 "Application for Federal Assistance", SF–424A "Budget Information Non-Construction Programs", SF–424B "Assurances—Non-Construction Programs", Form CD–511 "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements; and Lobbying", Statement of Work, and Detailed Budget and Budget Justification. It must also include the following documents, if applicable; SF–LLL "Disclosure of Lobbying Activities", SF–LLLA "Disclosure of Lobbying Activities (Continuation Sheet)", and current Negotiated Indirect Cost Rate Agreement. Administrative or program-related requirements for specific programs are published annually in program announcements, application packages, or other documentation.

"Nondiscretionary assistance program" means any NOAA program for providing financial assistance: (1) Under which the amount of funding for, and the intended recipient of, the financial assistance is specified by Congress; or (2) the recipients of which have customarily been a State or an interstate fishery commission.

Programs whose recipients have customarily been a State or an interstate fishery commission are:

Anadromous Fish Conservation Act Program (CFDA 11.405)
Interjurisdictional Fisheries Act of 1986 (CDFA 11.407)
Cooperative Fishery Statistics (CFDA 11.434)
Southeast Area Monitoring & Assessment Program (CFDA 11.435)
Columbia River Fisheries Development Program (CFDA 11.436)
West Coast Fisheries Data Program (CFDA 11.437)
Pacific Salmon Treaty Program (CFDA 11.438)
Marine Mammal Data Program (CFDA 11.439)
Alaska Salmon Enhancement (CFDA 11.458)

2. Notification of Applicant

A NOAA program office will notify eligible applicants for nondiscretionary assistance programs of application requirements and deadlines. A complete and acceptable application must be submitted by the applicant to the appropriate program office at least 75 days prior to the proposed effective date of the award. The applicant must write "Nondiscretionary" in block 8 of the Standard Form 424, Application for Federal Assistance, to identify applications subject to these guidelines. Within 14 days after receipt of the application, the program office will notify the applicant in writing whether the application is complete; if it is not, the notification will specify what additional material must be provided before the application will be considered complete and processing initiated.

3. Processing of Application

Within 75 calendar days after a complete and acceptable application is received, the NOAA Grants Management Division will notify the applicant of approval or disapproval of the application.

Classification

This notice of guidelines was not subject to review by the Office of Management and Budget under Executive Order 12866. The Standard Forms 424, 424A, 424B and LLL have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB Control Nos. 0348–0043, 0348–0044, 0348–0040, and 0348–0046. This notice does not contain policies with sufficient federalism implications to warrant preparation of a federalism assessment under E.O. 12612. The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that these guidelines, if adopted, will not have a significant economical impact on a substantial number of small entities because they specify only internal procedures for ensuring that NOAA meets the deadlines established by section 404 of the NOAA Authorization Act.

Dated: April 19, 1994.

Diana H. Josephson,

Deputy Under Secretary for Oceans and Atmosphere.

[FR Doc. 94–10085 Filed 04–26–94; 8:45 am]

BILLING CODE 3510–12–M

[I.D. 041294D]

Endangered Species; Permits

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

ACTION: Notice of receipt of application for a scientific research permit (P163A).

Notice is hereby given that the Virginia Institute of Marine Science has applied in due form to take listed sea turtles, as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

The applicant requests authorization to conduct scientific research on loggerhead (*Caretta carretta*), Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), green (*Chelonia mydas*), and hawksbill (*Eretmochelys imbricata*) sea turtles. Turtles would primarily be taken in poundnets at the mouth of the Potomac River or off Gynns Island, Virginia. Other turtles would be taken in the coastal waters off the east coast of the United States by experimental trawls, in order to better define population sizes in areas where commercial fishing or hopper dredging might pose a potential threat. The applicant requests this authorization for a duration of five years.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910–3226, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application summary are those of the Applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910–3226 (301–713–2322); and

National Marine Fisheries Service, Northeast Region, One Blackburn Drive, Gloucester, MA 01930 (508–281–9250).

Dated: April 14, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–10084 Filed 4–26–94; 8:45 am]

BILLING CODE 3510–22–F–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Indonesia

April 21, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: April 25, 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) 927–6704. 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 current limits for various categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 31190, published on June 1, 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.

Ronald I. Levin,

Chairman Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 21, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 25, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1993 and extends through June 30, 1994.

Effective on April 25, 1994, you are directed to amend further the directive dated May 25, 1993, to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Indonesia:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
317/617/326	19,958,151 square meters.
336/636	474,880 dozen.
342/642	296,800 dozen.
347/348	1,151,620 dozen.
351/651	366,340 dozen.
359–C/659–C [2]	838,107 kilograms.
359–S/659–S [3]	569,619 kilograms.
634/635	226,840 dozen.
641	1,810,126 dozen.

Category	Adjusted twelve-month limit [1]
847	312,439 dozen.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1993.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.2010, 6211.11.2020, 6211.12.3003 and 6211.12.3005; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–10163 Filed 4–26–94; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Thailand

April 21, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, 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) 927–6717. 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).

During recent consultations, the Governments of the United States and Thailand agreed to amend and extend their bilateral agreement through December 31, 1994.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the period beginning on January 1, 1994 and extending through December 31, 1994. The 1994 Group II limit is reduced for carryforward applied to the 1993 agreement period.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 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 MOU, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 21, 1994.

Commissioner of Customs, Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1993; pursuant to the Memorandum of Understanding dated April 1, 1994 between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 28, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Thailand 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 [1]
239	4,700,000 kilograms.
Levels in Group I:	
200	893,262 kilograms.
218	15,000,000 square meters.
219	4,764,064 square meters.
300	3,573,048 kilograms.
301–P [2]	3,573,048 kilograms.
301–O [3]	714,610 kilograms.
313	16,674,224 square meters.
314	38,112,512 square meters.
315	23,820,320 square meters.
317/326	10,000,000 square meters.
363	15,483,208 numbers.
369–D [4]	170,316 kilograms.
369–S [5]	238,203 kilograms.
604	557,315 kilograms of which not more than 375,305 kilograms shall be in Category 604–A.[6]
607	2,382,032 kilograms.
611	12,363,612 square meters.
613/614/615	36,000,000 square meters of which not more than 20,961,882 square meters shall be in Category 614 and not more than 20,961,882 square meters shall be in Categories 613/615.
617	13,000,000 square meters.
619	5,359,572 square meters.
620	5,359,572 square meters.
625/626/627/628/629.	10,500,000 square meters of which not more than 8,337,112 square meters shall be in Category 625.
669–P [7]	5,023,900 kilograms.
Group II:	
237, 330–359, 431–459, 630–659 and 831–859, as a group..	208,248,000 square meters equivalent.
Sublevels in Group II:	
331/631	1,300,130 dozen pairs.
334/634	464,496 dozen.
335/635/835	369,215 dozen.
336/636	238,203 dozen.
338/339	1,574,810 dozen.
340	214,383 dozen.
341/641	506,182 dozen.
342/642	440,676 dozen.
345	226,293 dozen.
347/348/847	622,306 dozen.
351/651	178,652 dozen.
359–H/659–H [8].	1,045,016 kilograms.
433	9,181 dozen.
435	51,500 dozen.
434	11,333 dozen.
438	17,000 dozen.
442	19,741 dozen.
638/639	1,856,026 dozen.
640	393,035 dozen.
645/646	238,203 dozen.
647/648	848,003 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Category 301–P: only HTS numbers 5206.21.0000, 5206.22.0000, 5206.23.0000, 5206.24.0000, 5206.25.0000, 5206.41.0000, 5206.42.0000, 5206.43.0000, 5206.44.0000 and 5206.45.0000.

[3] Category 301–O: only HTS numbers 5205.21.0000, 5205.22.0000, 5205.23.0000, 5205.24.0000, 5205.25.0000, 5205.41.0000, 5205.42.0000, 5205.43.0000, 5205.44.0000 and 5205.45.0000.

[4] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[5] Category 369–S: only HTS number 6307.10.2005.

[6] Category 604–A: only HTS number 5509.32.0000.

[7] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[8] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

Imports charged to these category limits, except Category 218, for the period January 1, 1993 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.

Goods in Category 239 which are exported in excess of the 1993 Group II limit shall be charged to the 1994 limit for Category 239. In a subsequent directive, CITA will direct the Commissioner of Customs to deduct these charges from the 1994 limit for Category 239 and charge these same amounts to the 1994 Group II limit.

Import charges already made to Group II for Category 239 for the 1994 monitoring period (see directive dated December 2, 1993) shall be deducted from Group II and charged to the limit established in this directive for Category 239.

For goods exported and imported during the period January 1, 1994 through February 28, 1994, you are directed to charge 231,566 square meters to the limit established in this directive for Category 218.

The conversion factors for merged Categories 359–H/659–H and 638/639 are 11.5 and 12.96, respectively.

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,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–10162 Filed 4–26–94; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Open Meeting

AGENCY: Department of Defense, Advisory Board on the Investigative Capability of the Department of Defense.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Advisory Board on the Investigative Capability of the Department of Defense. The purpose of the meeting is to discuss the progress of the study and further courses of action. This meeting is open to the public.

DATE AND TIME: May 13, 1994 from 8:30 a.m.–5:30 p.m.

ADDRESSES: 1700 N. Moore Street, suite 1425, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: E. Vaughn Dunnigan, Deputy Staff Director, Advisory Board on the Investigative Capability of the Department of Defense, 1700 N. Moore Street, Suite 1420, Arlington, VA 22209; telephone (703) 696–6055.

Dated: April 22, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–10127 Filed 4–26–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 10 May 1994.

Time of Meeting: 0830–1100 (classified).

Place: McLean, VA.

Agenda: The Threat Team I of the Army Science Board's 1994 Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to receive an Intelligence Support Status Report. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–10252 Filed 4–26–94; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Availability for Exclusive, Partially Exclusive or Nonexclusive Licensing of U.S. Patents Concerning the Control of the Hardening of Cements and Binders

AGENCY: U.S. Army Engineer Waterways Experiment Station, DOD.

ACTION: Notice of availability for licensing.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of the availability of U.S. Patents 5,252,266 and 5,268,032 for licensing. These patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

ADDRESSES: United States Army Corps of Engineers, Waterways Experiment Station, Attn: CEWES–CT–C, Vicksburg, MS 39180–6199.

FOR FURTHER INFORMATION CONTACT: Ms. Ruth C. Little, (601)–634–2420.

SUPPLEMENTARY INFORMATION: The patents cover techniques for controlling the hardening or setting reactions of binders or cements of the type which require specific alkaline or acidic condition to initiate the reactions. The techniques described involve mixing an alkali- or acid-reactive cement with an electrolyte to form a paste. An electric current is passed through the paste to decompose the electrolyte and generate an activating agent. The techniques described allow the paste to be handled and placed prior to the beginning of the setting reaction thereby avoiding the problems caused by short setting times that can result in serious flaws in the finished product and/or damaging or clogging of the mixing equipment. Further, because the activating agent is first generated at the electrode surface, the techniques are useful in casting hollow products from the cements and binders mentioned because there is no need to rotate the mold. The mold can be fabricated with one electrode in the center and the second electrode forming the outside of the mold. The acid or alkaline activator can be generated on the outside edge of the paste. The paste in the center of the mold remains soft and can be removed. Using this technique there is no need to rotate the mold to hold the paste out against the

mold. The approach described can be used with starting materials such as ground granulated blast-furnace slag and a sodium chloride solution.

Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and section 207 of Title 35, United States Code, the Department of the Army, Corps of Engineers, Waterways Experiment Station wishes to license the above United States Patents in an exclusive, partially exclusive or nonexclusive manner to any party interested in using the technology described in the above mentioned patents.

Each interested party is requested to submit a proposal for an exclusive, partially exclusive or nonexclusive license. The proposals for using this technology will be evaluated using the following criteria: royalty, technical capability, size of business, and development plan.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–10187 Filed 4–26–94; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Naval Research Advisory Committee Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Modeling and Simulation will meet on May 3, 4, and 5, 1994. The meeting will be held at the Office of Naval Research, 800 North Quincy Street, Ballston Center Tower One, room 915, Arlington, Virginia. The first session will commence at 8:30 a.m. and terminate at 5 p.m. on May 3; the second session will commence at 8:30 a.m. and terminate at 5 p.m. on May 4; and the third session will commence at 8 a.m. and terminate at 4 p.m. on May 5, 1994. All sessions of the meeting will be open to the public.

The purpose of the meeting is to provide the Department of the Navy with an assessment of the importance of high fidelity models and Advanced Distributed Simulation technologies to enhance Department of the Navy test and evaluation, and acquisition programs. The panel will evaluate current utilization of modeling and simulation; identify specific programs that would benefit from an investment in modeling and simulation; identify specific areas and/or programs that are good candidates for demonstration projects to evaluate the effect of available capabilities of Advanced Distributed Simulation; evaluate the strengths and weaknesses of Advanced Distributed Simulation technologies and relevant modeling from a Department of the Navy perspective; and recommend specific research areas related to Advanced Distributed Simulation technologies and relevant modeling that warrant investments by the Department of the Navy.

The meeting will include briefings and discussions relating to modeling and simulation management initiatives and challenges from the Defense Modeling and Simulation Office, Advanced Research Projects Agency, U.S. Navy, U.S. Marine Corps, U.S. Air Force, Office of Naval Research, and Center for Naval Analyses; Global Grid; current operational test and evaluation policy and procedures, and developmental test and evaluation policy and procedures and future applications for modeling and simulation technologies in the Department of Defense; the application of modeling and simulation technologies to joint war fighting; and the Joint Advanced Distributed Simulation Feasibility Study.

This Notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the **Federal Register** at least 15 days before the date of the meeting.

For further information concerning this meeting contact: Commander R. C. Lewis, USN, Office of Naval Research, Ballston Center Tower One, 800 North Quincy Street, Arlington, VA 22217–5660, Telephone Number: (703) 696–4870.

Dated: April 22, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN Federal Register Liaison Officer.

[FR Doc. 94–10193 Filed 4–26–94; 8:45 am]

BILLING CODE 3810–AE–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before May 31, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Wallace McPherson, Department of Education, 400 Maryland Avenue SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Wallace McPherson (202) 401–3200. 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: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Wallace McPherson at the address specified above.

Dated: April 22, 1994.

Wallace McPherson,

Acting Director, Information Resources Management Service.

Office of Educational Research and Improvement

Type of Review: Extension

Title: Final Performance Report for the Library Services for Indian Tribes and Hawaiian Natives Program

Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 250
Burden Hours: 625
Recordkeeping Burden:
Recorkeepers: 250
Burden Hours: 300
Abstract: This report form is used to determine the use of grant funds awarded by the Library Services for Indian Tribes Program. The Department will use the information to evaluate project performance.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement
Title: Annual Vocational Rehabilitation Program/Cost Report
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 84
Burden Hours: 395
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: State vocational rehabilitation agencies provided data for the Department on the Annual Vocational Rehabilitation Program/Cost Report. The Department uses this information to manage and administer the Basic Support Program and Title VI.

[FR Doc. 94–10136 Filed 4–26–94; 8:45 am]
BILLING CODE 4000–01–M

Intent To Repay to the Arizona State Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Under section 459 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234h (1988), the U.S. Secretary of Education (Secretary) intends to repay to the Arizona State Department of Education, the State educational agency (SEA), the sum of $438,750, an amount that is 75 percent of the funds recovered by the U.S. Department of Education (Department) under Chapter 2 of the Education Consolidation and Improvement Act of 1981 (ECIA) as a result of a final audit determination and settlement agreement. This notice describes the SEA's plans for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATES: All comments must be received on or before May 31, 1994.

ADDRESSES: Comments concerning the grantback should be addressed to Alicia Coro, Director, School Improvement Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW., Portals Room 4520, Washington, DC 20202–6140.

FOR FURTHER INFORMATION CONTACT: Alicia Coro, Telephone: (202) 260–2431. Individuals who use a telecommunication 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:

A. Background

The Department recovered $585,000 from the SEA in response to claims arising from a special investigative audit conducted by the Office of the Arizona Auditor General of the SEA's discretionary funding programs for the period January 1979 through June 1989.

The claims primarily involved the SEA's administration and supervision of funds under Chapter 2 of the ECIA. Specifically, the final audit determination of the Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) found that official records, such as sole source procurement authorizations, vendor invoices, and receiving reports, were falsified to circumvent internal control procedures. As a result of collusion between a former Deputy Superintendent of the SEA and two vendors, Chapter 2 funds paid for consulting services that were never performed, educational materials that did not exist, and other fraudulent schemes. Therefore, the Assistant Secretary demanded repayment of $777,745.46 to the Department for misspent funds. The SEA appealed the determination of the Assistant Secretary to the Office of Administrative Law Judges (OALJ) on February 20, 1991. Subsequently, on July 23, 1993, while the case was pending, the Department and the SEA executed a settlement agreement, wherein the SEA would repay $585,000 to the Department in full settlement of the appeal. On October 22, 1993, the SEA repaid the full amount of $585,000 to the Department for misspent funds under Chapter 2 of the ECIA.

B. Authority for Awarding a Grantback

Section 459(a) of GEPA, 20 U.S.C. 1234h(a), provides that, whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or local educational agency (LEA) affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that—

(1) The practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) The SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 459(a)(2) of GEPA, the SEA has submitted a plan for use of the $438,750 in grantback funds under Chapter 2 of Title I of the Elementary and Secondary Education Act of 1965 (ESEA).

The SEA proposes to use the grantback funds to supplement a portion of its Chapter 2 effective schools program, specifically the Arizona Student Assessment Program (ASAP), by developing performance-based assessments tailored to the State's Spanish-speaking pupils—many of whom are at risk and whose education entails higher costs. The grantback plan also includes teacher and parent training related to the new assessments.

One of ASAP's components prescribes a comprehensive performance-based assessment system with broad capabilities for reporting test results. The SEA has designed performance assessments that effectively test student mastery of the Arizona Essential Skills, Statewide academic standards, at grades 3, 8, and 12 in the areas of reading, writing, and mathematics. These tests, known as "Form A," are administered

in both English and Spanish. However, the Riverside Publishing Company has developed a "Form B" for testing one to two grade levels preceding "Form A," and a "Form C" that will test two to three grade levels preceding "Form A." Presently, there are no Spanish versions of "Form B" or "Form C." Spanish versions are greatly needed because approximately one quarter of Arizona's student population is from native Spanish-speaking backgrounds and nearly 9 percent are enrolled in bilingual education classes. Currently, no legislative or State board mandate exists to obtain Spanish versions nor has a funding source to develop them been identified. Under the grantback plan, Arizona would use the grantback funds to pay the Riverside Publishing Company to produce Spanish editions of the tests called "Forms B and C" that would reflect appropriate cultural content. Teachers would receive training in the use of "Forms B and C" and parent and community workshops would be held to inform the public at large about ASAP initiatives and to invite participation.

D. The Secretary's Determination

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon that review, the Secretary has determined that the conditions under section 459 of GEPA have been met. In particular, with respect to correcting the practices that led to the audit determination, the SEA has demonstrated that its system of internal controls has been greatly strengthened and that recently adopted policies and procedures governing the distribution of grant funds should prevent recurrence of the fraudulent activities that precipitated this case. Arizona has also criminally prosecuted the former Deputy Superintendent as well as the principal vendor involved in the scheme to misappropriate Chapter 2 funds.

This determination is based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action. In finding that the conditions of section 459 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 459(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 459(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Arizona SEA under a grantback arrangement. The grantback award would be in the amount of $438,750, which is 75 percent of the Chapter 2 funds recovered by the Department as a result of the audit.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA agrees to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to the plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1996 in accordance with section 459 (c) of GEPA.

(3) The SEA will, not later than January 1, 1998, submit a report to the Secretary that—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget; and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(5) Before funds will be repaid pursuant to this notice, the SEA must repay to the Department any debts that become overdue or enter into a repayment agreement for those debts.

(Catalog of Federal Domestic Assistance Number 84.151, Chapter 2 of Title I of the Elementary and Secondary Education Act of 1965)

Dated: April 21, 1994.

Thomas W. Payzant,

Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 94–10135 Filed 4–26–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Golden Field Office

Solicitation for Financial Assistance Applications; Electrochromic Window Technologies Program

AGENCY: Department of Energy.

ACTION: Notice of solicitation for financial assistance applications number DE–PS36–94GO10001.

SUMMARY: The U.S. Department of Energy (DOE), through the Electrochromic Window Technologies Program, announces its intention to issue a competitive solicitation and make multiple (at least two (2)) awards to accelerate commercialization of electrochromic window technologies. This action is subject to the DOE Financial Assistance Rules, which can be found in title 10 of the Code of Federal Regulations (10 CFR part 600).

AVAILABILITY OF THE SOLICITATION: To obtain a copy of the solicitation once it is issued on or about May 12, 1994, write to the U.S. Department of Energy's Golden Field Office, 1617 Cole Blvd, Golden, CO 80401, Attn: Mr. John Meeker, Contract Specialist. Only written requests for the solicitation will be honored. For convenience, requests for the solicitation may be faxed to Mr. Meeker at (303) 275–4790.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, is planning to assist in the funding of the development and demonstration of an electrochromic window product that would be fully marketable within 4 years. Awards under the solicitation will be Cooperative Agreements administered in accordance with 10 CFR part 600, DOE's Financial Assistance Rules.

DOE is interested in promoting and supporting innovative system approaches to the development of electrochromic windows for building applications. Electrochromic windows are expected to reduce energy and resource use, reduce environmental impacts, increase affordability, improve quality, increase productivity in the U.S. building sector and increase the competitiveness of the U.S. window industry. It is expected that multi-disciplinary teams would be organized to respond to the solicitation. It is desired that each team have sufficient breadth to include all the major types of companies involved in the manufacture and fabrication of electrochromic devices as well as commercial building windows. Each team must provide the expertise and proven capability to

conduct the necessary electrochromic device development and window commercialization. Qualified prospective sources must demonstrate an electrochromic material development capability, glass or plastic film coating capability and window fabrication capability. The project is expected to be completed in three phases covering a four year period. The first phase, running for 1 to 1.5 years, will culminate with the production of several test specimens or prototypes. These specimens should be sufficient in number and size (e.g., 30 sq. ft. of samples greater than 1.0 sq. ft. each) to conduct a thorough test and evaluation of the technology, reasonably assuring success in phase 2. The second phase, running for 1.5 to 2 years, will result in demonstration prototypes, which when produced in limited quantities, would be suitable for niche markets. This Phase will require development of device manufacturing processes and market evaluation. Phase 3 will address demonstration and deployment activities and will not be specifically defined in the resulting agreement. However, Phase 3 will be subject to the commercial readiness of the electrochromic windows at the end of Phase 2 and availability of DOE funds.

It is anticipated that requirements of the solicitation will include that:

(1) All teams or applicants in projects shall include at least one for-profit entity; and

(2) Projects selected shall require manufacture and reproduction substantially within the United States for any invention or product that may result from the project.

In general, the solicitation will require cost sharing by applicants of at least 50% of the total project costs in order to receive an award under the solicitation. The Phase 1 award minimum cost share is 25% though a higher level is desirable. The level of cost sharing will be one criterion in selecting the winning teams. All participant cost sharing must come from non-Federal funding sources. It is anticipated that total DOE funding in the amount of $1,200,000 will be available for Phase 1 activities. It is anticipated that up to $5,000,000 of DOE funding will be available for Phase 2 activities. All DOE funding, however, is subject to availability of appropriations.

The solicitation will be issued on or about May 12, 1994, and will contain detailed information on funding, cost sharing requirements, eligibility, application preparation, and evaluation. Responses to the solicitation will be due 45 days after solicitation release. However, applications are encouraged to be submitted prior to the closing date. All responsible sources are encouraged to submit an application and all applications will be considered.

Issued in Golden, Colorado, on April 15, 1994.

Christine A. Phoebe,

Director, Administrative Division, Golden Field Office.

[FR Doc. 94–10157 Filed 4–26–94; 8:45 am]

BILLING CODE 6450–01–M

Morgantown Energy Technology Center, Research Opportunity Announcement, Applied Research and Development

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of a Research Opportunity Announcement (ROA).

SUMMARY: The objective of this program is to support the U.S. Department of Energy's (DOE's) Office of Technology Development's applied research efforts for the development of technologies having potential applications in the Environmental Restoration and Waste Management (EM) program. This is the second ROA to be issued in support of that program. Technologies which: Do not duplicate existing work; complement or enhance existing or planned work; and best serve the needs of the EM program are desired. A proposed technology may be a device, process, material or method that improves DOE's capabilities in the following areas: in situ remediation of contaminated sites; characterization, sensors and monitoring; low-level mixed waste processing; efficient separations technology for radioactive wastes; robotics; materials disposition technologies; improved engineered barriers for waste storage and disposal; and improved waste forms.

For the purpose of this program, "applied research" is the systematic application of knowledge toward the production of useful devices, materials or methods, including design, development, and improvement of prototypes and processes to meet specific requirements. Proposals for basic research are not desired under this ROA.

It is not the purpose of this solicitation to support, and no proposal will be selected to conduct, support service activities, conference or training activities, or for work who's primary purpose is the demonstration of existing technologies.

DATES: Proposals may be submitted at any time after the issuance date of this ROA up to and including one year after the issue date. The issue date is the date on which this notice appears in the **Federal Register**. Proposals must state an acceptance period of at least 180 days.

ADDITIONAL INFORMATION AND FOR FURTHER INFORMATION CONTACT:

1. Additional information concerning DOE's requirement is available as an information package. The package will be made available on a 3.5" disc in Wordperfect™, version 5.2. The information package includes a more complete description of the research areas identified in the areas of research section and guidelines for preparing various section of the proposal as well as other information and forms. The information package will be updated periodically.

2. Requests for the information package and other information concerning the ROA can be obtained by telephoning (304) 291–4634.

SUPPLEMENTARY INFORMATION:

1. Identification number, authority for issuance, and title:

a. DE–RO21–94MC31305.

b. The use of broad agency announcements is authorized by the Competition in Contracting Act of 1984 (CICA) (41 U.S.C. 259(b)(2)) and the Federal Acquisition Regulation at part 6.102(d)(2) as supplemented by the Department of Energy Acquisition Regulation.

c. Title of Research Opportunity Announcement: Applied Research and Development of Technologies For Environmental Restoration and Waste Management II.

d. Areas of Research in Which Contracts May be Awarded:

1. In situ remediation. There is a need for innovative and improved in situ remediation methods for the cleanup of contaminated soils and groundwater. In situ treatment refers to treatment of contaminated material with minimal, or no, excavation, as well as any enhancement of contaminant removal from the subsurface. In situ remediation includes on-site treatment of groundwater and soils. In situ containment refers to technologies which retard or eliminate contaminant migration to the surrounding environment. The EM program has focused on three areas in which to develop in situ remediation technologies. They are: (1) In situ containment, (2) in situ biological treatment and (3) physical/chemical in situ treatment.

2. Characterization, sensors and monitoring. Technologies for

characterization and monitoring are required for site clean-up and waste processing applications. There is a need for greater use of field-deployable methods and devices including real-time monitoring of process streams to reduce dependency on laboratory analyses which are costly and time consuming. In addition, techniques, including information management systems, are required that can better elucidate the physical, hydrogeological and chemical properties of the subsurface while minimizing or optimizing the use of boreholes. Finally, improved sensors are needed to better measure contaminants in varied, hazardous environments.

3. Low-level mixed waste processing. DOE has identified the need for the development of new technologies for reducing current mixed (hazardous with a radioactive component) waste inventories. Low-level mixed waste is categorized into the following generic descriptions: Aqueous liquid wastes, organic liquid wastes containing organic chemicals, wet solid wastes, and dry solid wastes.

Six treatment technology areas, ranging from front-end waste handling through the generation of a final waste form, are identified for focusing applied research and development efforts. The treatment technology areas are: (1) Front-end waste handling and feed preparation, (2) non-thermal waste treatment, including decontamination, recycling and separation of suspended and dissolved materials, (3) mercury control, (4) waste destruction and stabilization, (5) secondary destruction and off-gas treatment and (6) final waste forms. Processing low-level mixed wastes will emphasize, where appropriate, use of methods to treat and/or separate the hazardous component to simplify the handling and disposal of materials in subsequent steps.

4. Efficient separations technology for radioactive wastes. Separations technologies are required to process a wide spectrum of highly radioactive defense wastes. These wastes may include high-level wastes, low-level wastes, transuranic wastes, and mixed wastes in all three categories. Highly radioactive defense wastes are anticipated to be processed into waste forms suitable for disposal in deep geologic repositories. Innovative applications of appropriate separation technologies will substantially decrease the volume of waste to be disposed of in repositories resulting in significant cost savings.

5. Robotics. Five areas have been identified within the EM program for development and application of advanced robotics and automation technologies. These are: (1) The characterization and remediation of waste storage tanks, (2) the characterization and remediation of buried waste sites, (3) the automation of contaminant analysis, (4) the decontamination and decommissioning of inactive nuclear facilities, and (5) operations for waste handling. Advancements in the development of robotics and automation technologies are needed in the areas of mechanical, control, and sensor systems.

6. Material disposition technology. Decontamination and decommissioning of surplus DOE facilities will result in the need to dispose of concrete, metals, sludges, contaminated soil, chemicals, and hazardous and mixed wastes. The implementation of recycling and reuse technologies is desired due to the great volumes and potential value of the material that is present at these facilities. Volume reduction technologies are also needed to minimize the costs associated with storage and disposal.

7. Improved engineered barriers for waste and disposal. There is a need for improved engineered barriers, i.e, any man-made structures, devices or practices that enhance the performance of a waste storage or disposal facility. Engineered barriers are required to contain wastes which might otherwise release contaminants along air, surface water and/or groundwater pathways. Technology is needed for the design, construction and performance assessment of improved engineered barriers relative to low-level radioactive waste disposal and the interim storage of high-level radioactive wastes.

8. Improved waste forms. Technologies producing improved waste forms for hazardous, radioactive and mixed wastes are desired. Waste forms must meet certain performance requirements, including durability and resistance to leaching. Waste types for which improved waste forms are desired are: low-level mixed wastes, incinerator ash and various special radioactive wastes including spent nuclear fuels, calcine waste, cesium and strontium halides, and transuranic waste. In addition, DOE is seeking performance assessment methodologies to rapidly and reliably determine the leachability and durability of waste forms.

Submission, Withdrawal, and Unsuccessful Proposals

1. Proposals are to be submitted to the following address: U.S. Department of Energy, Morgantown Energy Technology Center, Attn: Thomas L. Martin, M.S. I07, 3610 Collins Ferry Road, Morgantown, WV 26505.

2. Proposals may be withdrawn by the offeror at any time prior to award of a contract by written notice to the individual identified in item 1 above.

3. Unsuccessful proposals will be retained by the receiving office and will not be returned to unsuccessful offerors. Unsuccessful offerors will be given an opportunity for a debriefing which will describe the evaluation process and discuss the major strengths and weaknesses found in their proposal. Proposals received subsequent to the close of the submission deadline may be considered and evaluated under a succeeding ROA if one is issued by METC, provided that the offeror so affirms, in writing, and provides METC, as part of its affirmation, any needed updated information relating to its proposal and the proposed research is consistent with the objectives of the succeeding ROA.

Funding Availability

The amount of money which is available for initial funding of awards during FY 1995 is approximately $6,000,000.

Evaluation Factors and Proposal Preparation Instructions

1. Technical Evaluation Factors: The following factors will be used for the evaluation of proposals submitted under this solicitation: a. Technical Approach and Understanding: Proposals will be evaluated considering the offeror's understanding of the need(s) or problem(s) the technology will address and the soundness and likelihood of success of the proposed research effort in meeting the research objective(s).

b. Merit of the Technology: Proposals will be evaluated considering the offeror's discussion of the technology's merit in terms of anticipated performance improvements and cost savings compared to existing technology.

c. Personnel Qualifications, Project Organization and Experience: Proposals will be evaluated considering the offeror's technical and managerial experience, qualifications, and the availability of personnel who are proposed to work on the project; project organization and management structure; and prior experience in managing projects similar in type, technology, size and complexity.

d. Facilities and Equipment: Proposals will be evaluated considering the quality, availability, and appropriateness of the offeror's proposed facilities and equipment.

2. Relative Importance of the Evaluation Criteria: The Technical Proposal Evaluation Criteria, as listed above, are in descending order of importance. Criteria a and b are of equal importance. Criterion c is twice as important as criterion d. Criteria a and b are each more than three times as important as criterion d.

3. Cost Evaluation: Proposed cost will be evaluated for reasonableness, appropriateness, and probable cost to the Government.

4. Proposal Preparation Instructions: a. Offerors who include in their proposal data that they do not want disclosed to the public for any purpose or used by the Government except for evaluation purposes shall: 1. Mark the title page with the following legend: This proposal or quotation includes data that shall not be disclosed outside of the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal or quotation. If, however, a contract is awarded to this offeror or quoter as a result of—or in connection with—the submission of this data, the government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets (insert number or other identification of sheets); and

2. Mark each sheet of data it wishes to restrict with the following legend: "Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal or quotation."

b. Each proposal will be submitted in the quantities specified below to the address given in the summary section, above, designated as the delivery point for proposals. Proposals are not to be submitted in three-ring or similar binders. Each proposal will be comprised of three separate volumes, numbered and submitted in the number of copies as follows:

Volume	Title	Number of copies
Volume I	Offer and Other Document	Original and 1.
Volume II	Technical Proposal	Original and 5.
Volume III	Cost Proposal	Original and 3.

Brief, but complete, proposals are desired. The *Technical Proposal* shall be as brief as possible while addressing all of the technical evaluation criteria and preparation instructions. The technical proposal shall not exceed 50 pages in length including figures and tables but excluding resumes of proposed personnel and the statement of work. The statement of work shall not exceed 10 pages and is not included in the technical proposal's 50 page limitation. There is no limitation on the length of the other two volumes of the proposal.

The Volumes of the Proposal Must Contain the Following:

1. Volume I—Offeror Information: (Original and 1 Copy)

a. A publically releasable abstract: This section shall contain a public abstract of not more than one page describing the proposed project, the objective, methodology, sponsoring organization(s), the schedule. Diagrams should not be included with the abstract. The abstract may be released to the public by DOE in whole or in part at any time. It is, therefore, required that it shall not contain proprietary data or confidential business information.

b. Name and address of the offeror.

c. The ROA solicitation number: DE–RO21–94MC31305.

d. The date of submission of the proposal (Month, day, and year) and the offer acceptance period (minimum of 180 days).

e. The names and addresses of any other Federal, State, or local government entity who has in the past, or is currently, or expects in the future, to provide funds for the same or similar research activities of the offeror.

f. A proposal cover sheet, containing the information noted above, signed by an individual authorized to contractually obligate the offeror.

g. DOE Representations, Certifications, and Other Statements of Bidders/Offerors.

h. Certificate of Environmental Safety and Health.

2. Volume II—Technical Proposal: (Original and 5 Copies)

The offeror shall identify the specific area(s) of research the proposed project addresses. These areas are defined in the section titled, "Areas of Research in Which Contracts May be Awarded".

a. Technical Approach and Understanding

This section shall describe the offeror's technical approach to accomplish the work.

The offeror shall provide a description of the technology, its intended use(s), and the need(s) or problem(s) the technology will address. The offeror shall provide a clear description of the project objective(s) and deliverables (e.g. reports, device(s)).

The offeror shall provide a statement of work (SOW) which shall be divided into logical tasks and subtasks necessary to accomplish the project objective(s). The SOW shall include, where applicable, key go/no-go decision points (it is understood that because of the nature of the work proposed that some, though few, will not lend themselves to go/no-go decision points) which will be used to evaluate project success. These decision points may be identified as options in any resulting contract. The offeror shall identify specific success criteria which must be satisfied to demonstrate success for each key go/no-go decision point.

Note: The statement of work will contain Task 1 which will require the preparation of documentation and submission of information necessary for DOE to comply with the National Environmental Policy Act requirements if the project does not qualify as a categorical exclusion. Offerors may receive the Statement of Work format, which includes Task 1, from the individual identified in Article 9, as part of the information package.

Where applicable the offer should provide a preliminary test plan which shall include, but not be limited to, objectives of the test, description of test equipment and experimental setup, test procedures, test conditions, number of tests, duration of tests, data to be collected, and criteria to determine success of a test. Also where applicable, the offeror shall provide a preliminary process flow diagram and material balance for the proposed technology.

The proposer shall provide a PERT (Program Evaluation and Review Technique) chart or equivalent depicting the project schedule, milestones, and interrelationship of the project tasks. The offeror shall identify the critical path which identifies the sequential tasks which, if not completed

on time, will result in a delay in the overall project schedule.

The offeror shall provide a table listing the estimated labor hours and labor categories (e.g., management, engineering, scientific, technician, analytical, clerical) required for each task. The offeror shall include a table showing labor hours and labor categories for any proposed subcontracting or consulting effort for each task, including Task 1. The offeror shall discuss the rationale used to develop estimates for labor hours, labor categories, subcontracting effort, consulting effort, and travel. Cost information is not to be included in the technical proposal volume.

The offeror shall describe the proposed travel. The purpose of the trip, number of trips, the origin and destination, trip duration, and the number of personnel shall be included in the explanation.

b. Merit of the Technology

The offeror shall describe the merit of the proposed technology in terms of anticipated performance and/or cost savings over existing technologies and how the technology is an improvement, where applicable, in the following areas:

- Reducing public and occupational health risks
- Reducing environmental impacts
- Improving clean-up and waste management/processing operations
- Cost reduction
- Reducing the time required for remediation and or waste management/processing
- Minimizing generated or secondary wastes
- Ability to meet regulatory requirements
- Feasibility in implementing the technology
- Breadth of application

c. Personnel Qualifications, Project Organization and Experience

The offeror shall describe relevant technical and managerial experience, qualifications, and availability of the proposed project personnel including subcontractors and consultants. Résumés of key project personnel (e.g., project manager, principal investigator) shall be included in an appendix to the proposal.

The offeror shall provide a description of the project organization structure and the lines of authority, both technical and administrative, and the relationship to the proposed research effort.

The offeror shall discuss any prior experience in managing project that were similar in type, size, and complexity. The offeror shall discuss experience in developing the proposed or similar technologies.

d. Facilities and Equipment

The offeror shall provide a discussion of the type, quality, availability and appropriateness of the proposed facilities and equipment, including a description of any facilities and/or non-monetary resources requested to be furnished by the Government for use by the offeror in performance of the proposed research.

The offeror shall discuss any special existing permits and licenses for handling, treating, storing and disposing of hazardous and radioactive waste at their facilities.

3. Volume III—Cost Proposal: (Original and 3 Copies)

a. A fully executed Standard Form (SF) 1411.

b. Supporting cost exhibits for the total project, by task, and between go/no-go decision points to include labor hours, rates and costs; equipment and supplies lists and costs; subcontracted costs in the same level of detail; indirect costs and all other costs proposed. The same level of detail shall be provided for shared costs, if proposed.

DOE Obligation for Proposal Preparation

DOE is under no obligation to reimburse the offeror for any costs associated with the preparation or submission of proposals; however, bid and proposal preparation costs which are a portion of an established indirect cost rate will be paid to successful offerors to the extent that such costs have been reviewed and approved by the appropriate auditing agency.

Funding of Proposals

DOE reserves the right to fund, in whole or in part (including any options that may be negotiated), any, all, or none of the proposals submitted.

Return of Unsuccessful Proposals

DOE is not required to, and will not, return to the offeror a proposal which is not selected.

Proposal Review and Selection

1. Each proposal will be objectively reviewed on its own merit against the evaluation criteria stated in the ROA. A two-step review process will be employed. The initial evaluation will be performed to determine if the proposal is responsive to this ROA. Proposals passing the initial evaluation will be subject to a comprehensive evaluation using scientific and/or peer reviewers, some of whom may be DOE contractors. Offerors who object to review of their proposal by persons other than Government employees shall so state in Volume I of their proposal. Offerors are cautioned that DOE may be unable to give full consideration to proposals which indicate that only Government evaluation is authorized.

2. Proposals will be reviewed in groups which will be assembled as often as practical considering the number of proposals received and the availability of competent reviewers.

3. Selection of proposal(s) will be made in consideration of the evaluation, the importance of the proposed research to DOE's overall program objectives, and the availability of funds.

Proposal Evaluation and Award

DOE is not obligated to award a contract to an offeror merely because the offeror's proposal was accepted by DOE for evaluation.

Set-aside Information, Standard Industrial Classification, and Qualified Offerors

1. *Set Aside Information:* A minimum of twenty percent (20%) of the number of awards made as a result of this solicitation are set aside for small businesses.

2. *Standard industrial classification:* The standard industrial classification (SIC) code for this acquisition is 8731. The small business size standard is 500. The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

3. *Qualified Offerors:* Individuals, educational institutions, large and small businesses, and all other organizations, with the exceptions noted below, may submit proposals under this ROA.

Proposals are not solicited from and contracts will not be awarded to any specific entity which operates a Government-owned or Government-controlled research, development, special production, or testing establishment, such as DOE's management and operating contractors facilities, or Federally Funded Research and Development Centers chartered by other agencies. For further information see DEAR 935.016–2(b)(2).

Dated: April 20, 1994.

Thomas F. Bechtel,

Director, Morgantown Energy Technology Center.

[FR Doc. 94–10154 Filed 4–26–94; 8:45 am]

BILLING CODE 6450–01–P

Golden Field Office; Cooperative Agreement Award to Geothermal Education Office

AGENCY: Department of Energy.

ACTION: Notice of financial assistance award in response to a non-competitive financial assistance application.

SUMMARY: The U.S. Department of Energy (DOE) pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2) is announcing its intention to make a multi-year financial assistance award to the Geothermal Education Office to develop, publish and distribute user-friendly information about geothermal energy.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden CO 80401, Attention: Ruth E. Adams, Contract Specialist, at (303) 275–4722. The Contracting Officer for this action is John W. Meeker.

SUPPLEMENTARY INFORMATION: This proposal was a solicited application. The work being done at the Geothermal Education Office is a continuation of a program that was funded by DOE through a contract with Sandia National Laboratory. However, the Department believes that the effort contemplated is more appropriate to be funded through a grant mechanism because the intent of the program is to benefit the public through development and distribution of geothermal energy educational information to American youth. Competition for this effort would have an adverse effect on continuity of these on-going activities.

The programmatic evaluation [see 10 CFR 600.7(b)(2)(ii)(D)] completed for this proposal resulted in a recommendation to fund this application for the following reasons:

The proposed project will contribute to the DOE mission of "* * * providing the scientific and educational foundation, * * * necessary to achieve efficiency in energy use, diversity in energy sources, * * *." by developing, publishing and distributing user friendly information about geothermal energy. The target group is Kindergarten through 12th Grade (K–12) teachers and students.

The objectives of the Geothermal Education Office (an educational non-profit organization) are to develop, publish and distribute user-friendly information about geothermal energy. Its target group is K–12 teachers and students. The Geothermal Education Office staff coordinates educational workshops and booths, does extensive mailings, publishes in educational and geothermal industry newsletters, gives input to textbook and other publishers, works on joint projects with other geothermal and energy education organizations, and attends appropriate geothermal association meetings.

The probability of meeting the objectives listed below are very high, given that the Geothermal Education Office has been successful in the past for similar endeavors.

The staff of the Geothermal Education Office is uniquely qualified to provide this service. Marilyn Nemzer, Director of the Geothermal Education Office, has spent her career in education and has developed the support of other geothermal organizations. At the 1993 Geothermal Resource Council Conference, Marilyn Nemzer, director of the Geothermal Education Office, was honored by the Council for her efforts and accomplishments.

The Geothermal Education Office's facilities are fully capable of meeting their needs and the accomplishment of the effort under this grant.

The budget proposed for the anticipated work was reviewed and is considered to be appropriate and adequate.

The major public benefit to be derived from this project is providing an educational background to the youth of the United States as well as others who might be interested. Informing others about geothermal energy provides a positive public outlook toward all renewable energies and energy efficient products and ideas.

Providing an educational foundation of Geothermal Energy fits comfortably within the program's direction and objectives. The Geothermal Education Office has established an information network which is continually growing and is providing educational material and hands-on projects. This experience further enhances the ability of the applicant to achieve the public benefits to be derived from accomplishment of the objectives of this effort. The proposed effort is a continuation of work currently being funded by DOE. Competition for this effort would have a significant adverse impact on the continuity of the proposed activities.

Issued in Golden, CO, on April 15, 1994.

Christine A. Phoebe,

Director, Administrative Div., Golden Field Office.

[FR Doc. 94–10156 Filed 4–26–94; 8:45 am]

BILLING CODE 6450–01–M

Golden Field Office; Grant Award to Howard University

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to Howard University for continuing research efforts in support of the Biological and Chemical Technologies Research (BCTR) program at DOE. The BCTR program seeks to improve operations and decrease energy use in the chemical and petrochemical industries.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John W. Meeker, Contract Specialist, phone number (303) 275–4748. The Contracting Office is Paul K. Kearns.

SUPPLEMENTARY INFORMATION: Howard University has been conducting research for a number of years to develop genetic engineering techniques to enhance the capability of fungi/bacteria to degrade lignocellulose to simpler materials. Successful completion of this research would advance the public goal of converting biomass to useful chemicals and other products. A detailed understanding of the processes that control the reactivity and specificity of enzymatic reactions within the fungi/bacteria will provide the knowledge needed to exploit these reactions for technological applications.

The proposed award will be an extension of work currently supported by the Department of Energy and constitutes an integral part of the DOE program by further developing genetic engineering techniques to enhance the decomposition of lignocellulose to simpler materials. This application represents a unique approach in this area and one in which the applicant has the exclusive capacity to perform as required. DOE has performed a review in accordance with 10 CFR 600.7 and has determined that the activity to be funded is necessary to satisfactorily complete the current research and that a noncompetitive award is duly justified. DOE funding for this grant is estimated at $150,000 and the anticipated period of performance is twelve (12) months.

Issued in Golden, CO on April 18, 1994.

Christine A. Phoebe,

Director, Administrative Div., Golden Field Office.

[FR Doc. 94–10155 Filed 4–26–94; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Efficiency and Renewable Energy

Regional Roundtables on Climate Change Action Plan for Stabilizing Greenhouse Gas Emissions

AGENCY: Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of roundtables.

SUMMARY: The U.S. DOE is announcing the fourth and fifth in a series of regional roundtables to solicit comments and feedback from stakeholders, which include state and local officials, utility representatives, industry representatives, public interest groups and other interested parties on the *Climate Change Action Plan*, the Clinton Administration's blueprint for stabilizing greenhouse gas emissions at 1990 levels by the year 2000.

DATE AND LOCATION:

May 4, 1994, Radisson Hotel Atlanta, Courtland and International Blvd., Atlanta, Georgia,

May 11, 1994, Park Hyatt Chicago Hotel, 800 North Michigan Avenue, Chicago, Illinois.

FOR FURTHER INFORMATION CONTACT:

Arlene Anderson or Carol Tombari, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Green Room, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–7541.

SUPPLEMENTARY INFORMATION: On October 19, 1993, President Clinton made a national commitment to stabilizing greenhouse gas (GHG) emissions at 1990 levels by the year 2000. The blueprint for achieving this goal is known as the *Climate Change Action Plan* (CCAP), a volume of 46 emissions-reducing "actions" the U.S. will take during the remainder of the decade. The Plan is founded on the principle that cost-effective energy efficiency programs provide energy cost reductions that more than offset the investment to increase efficiency. The CCAP focuses on and accelerates the implementation of the Energy Policy Act of 1992. As a result, the overall Plan is estimated to require no net increase in Federal funding as it creates jobs, reduces home and business energy bills, and induces over $60 billion in new domestic investment. The Department of Energy's (DOE's) Office of Energy Efficiency and Renewable Energy has the responsibility for implementing the renewable energy and energy efficiency actions in the President's plan. An executive summary of the Plan may be obtained by calling DOE, (202) 586–7541. Several other Federal agencies and offices have important implementation responsibilities for the remaining actions and for other aspects of the Plan.

DOE's Office of Energy Efficiency and Renewable Energy and the National Association of State Energy Officials will conduct regional roundtables to solicit comments and feedback on the *Climate Change Action Plan*. The purpose of the roundtables is to describe and solicit feedback on DOE's preliminary proposals to implement its actions under the Plan. Rather than design individual implementation plans, however, DOE has examined its implementation responsibilities from the standpoint of comprehensiveness, integration, and leverage. As a result, DOE has developed an implementation approach that has the potential to integrate all CCAP activities, not only into DOE's programs, but also into other energy efficiency activities and programs.

Through these roundtables DOE hopes to begin soliciting input from a wide variety of stakeholders. The agency seeks feedback on the comprehensive strategy as well as specifics of proposed implementation activities. Comments or questions from the public may be submitted in person or in writing at the roundtable. Following the roundtable, written comments or questions may be sent to the address listed above. For several of the actions, DOE presents several implementation options rather than a single proposed implementation plan. In these instances, DOE seeks input that will help guide our selection of one of these options.

The roundtable format will provide a forum for representatives from state and local governments, utilities, industry, public interest groups and other interested parties to provide comments. The roundtable format is sufficiently flexible to allow participants to offer comments, either on specific actions or on the entire package, through the use of breakout sessions for key groups of actions. All comments will be considered. Facilitators will be provided for each session. A copy of a summary of the roundtable proceedings may be obtained by calling or writing to the address listed above.

PROPOSED AGENDA:

8 a.m.
Registration
Welcome and Introduction
Overview of Climate Change Action Plans
Break-out Sessions
- Utilities/Energy Supply
- Buildings
- Industry
- Transportation (Chicago)

12 p.m.
Working Lunch
Break-out Sessions (Cont'd)
Feedback and Closing Comments
Adjourn

Detailed information about the roundtables can be obtained from: Carol Tombari or Arlene Anderson (202) 586–7541.

Issued in Washington, D.C., on April 20, 1994.

Frank M. Stewart, Jr.,

Chief of Staff, Energy Efficiency and Renewable Energy.

[FR Doc. 94–10079 Filed 4–26–94; 8:45 am]

BILLING CODE 6450–01–P

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before May 31, 1994. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–547
3. 1902–0084
4. Gas Pipeline Rates: Refund Report Requirements
5. Extension
6. On occasion
7. Mandatory
8. Businesses or other for-profit
9. 80 respondents
10. 0.94 response
11. 75 hours per response
12. 5,625 hours
13. FERC–547 is required by the Commission to carry out its refund policy. The data are used to insure the pass-through to gas customers/consumers of refunds required to correct rates charged by jurisdictional companies in excess of NGPA and NGA maximum lawful and just and reasonable rates.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. No. 96–511), which amended chapter 35 of title 44 United States Code (See 44 U.S.C. 3506 (a) and (c)(1)).

Issued in Washington, DC, April 20, 1994.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 94–10153 Filed 4–26–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 2541–004 North Carolina]

Cascade Power Co., Notice of Availability of Final Environmental Assessment

April 21, 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 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for a subsequent minor license for the existing Cascade Project, located on the Little River in Transylvania County, North Carolina, near the city of Brevard, and has prepared a final Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that approval of the project, with appropriate environmental protective or enhancement measures, would not constitute a major federal action that would significantly affect quality of the human environment.

Copies of the EA are available for review 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. 94–10088 Filed 4–26–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1085–000, et al.]

Central Maine Power Company, et al.; Electric Rate and Corporate Regulation Filings

April 19, 1994.

Take notice that the following filings have been made with the Commission:

1. Central Maine Power Company

[Docket No. ER94–1085–000]

Take notice that on March 24, 1994, Central Maine Power Company (CMP), tendered for filing a Consent, Assignment and Assumption Agreement (Agreement) among CMP Newport Electric Corporation (Newport) and Montaup Electric Company (Montaup). The agreement provides for the assignment to Montaup of Newport's rights and obligations under the Transmission Agreement under which CMP currently provides transmission service to Newport for Newport's entitlement in W.F. Wyman Unit No. 4.

Comment date: May 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. San Diego Gas & Electric Company

[Docket No. ER94–1105–000]

Take notice that on March 31, 1994, San Diego Gas & Electric Company (SDG&E) tendered for filing a change in rates for service under the following Agreements with Southern California Edison Company (Edison):

(1) Short-Term Firm Transmission Service Agreement, Rate Schedule FERC No. 58;

(2) Interruptible Transmission Service Agreement, Rate Schedule FERC No. 59; and

(3) Firm Transmission Service Agreement, Rate Schedule FERC No. 60.

SDG&E respectfully requests, pursuant to § 35.11, waiver of prior notice requirements specified in § 35.3 of the Commission's regulations, and an effective date of January 1, 1994.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Edison.

Comment date: May 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Gas and Electric Company

[Docket No. ER94–1104–000]

Take notice that on March 31, 1994, Pacific Gas and Electric Company (PG&E) tendered for filing proposed changes to transmission service rates, terms, and conditions for service rendered by PG&E to the Modesto Irrigation District (MID).

The proposed modifications to Appendix B of the MID Interconnection Agreement (Rate Schedule FERC No. 116) would (i) decrease the transmission rate levels, and (ii) annually adjust transmission rate levels pursuant to a formula to be applied on July 1, 1995 and July 1, 1996.

Copies of this filing were served upon MID and the California Public Utilities Commission.

Comment date: May 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Company of New York, Inc.

[Docket No. ER94–939–000]

Take notice that on April 14, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing revised proposed supplements to its Rate Schedules FERC No. 96 and FERC No. 92.

The revised proposed Supplement No. 2 to Supplement No. 6 to Rate Schedule FERC No. 96 increases the

rates and charges for electric delivery service furnished to public customers of the New York Power Authority (NYPA) by $1,952,000 annually based on the 12-month period ending March 31, 1995.

The revised proposed Supplement No. 2 to Supplement No. 5 to Rate Schedule FERC No. 96, applicable to electric delivery service to NYPA's non-public, economic development customers, and the revised proposed Supplement No. 2 to Supplement No. 3 to Rate Schedule FERC No. 92, applicable to electric delivery service to commercial and industrial economic development customers of the County of Westchester Public Service Agency (COWPUSA) and the New York City Public Utility Service (NYCPUS), decrease the rates and charges for the service by $668,000 annually based on the 12-month period ending March 31, 1995.

These supplements would supersede proposed Supplements No. 2 to Supplement No. 5 and Supplement No. 2 to Supplement No. 6 to Rate Schedule FERC No. 96 and proposed Supplement No. 2 to Supplement No. 3 to Rate Schedule FERC No. 92 which Con Edison tendered to the Commission on January 31, 1994. These supplements have never been made effective and should be deemed superseded upon grant of the relief requested in the present filing.

Con Edison seeks permission to make the rate increases to NYPA, COWPUSA and NUCPUS effective as of April 1, 1994.

A copy of this filing has been served on NYPA, COWPUSA, NYPUS, and the New York Public Service Commission.

Comment date: May 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Tenaska Power Services, Company

[Docket No. ER94–389–000]

Take notice that on March 29, 1994, Tenaska Power Services, Company tendered for filing an amendment to its December 23, 1993 filing in the above-referenced docket.

Comment date: May 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Louisiana Public Service Commission Attorney General of the State of Mississippi and Mississippi Public Service Commission v. Entergy Services, Inc.

[Docket No EL94–57–000]

Take notice that on April 5, 1995, the Louisiana Public Service Commission (Louisiana Commission), the Attorney General of the State of Mississippi (Attorney General) and the Mississippi Public Service Commission (Mississippi Commission) (jointly Complainants), tendered for filing a Complaint against Entergy Services, Inc. Complainants request that the Commission consider its Complaint expeditiously and consolidate it with a pending case set for hearing by the Commission in Opinion No. 385, which involves Entergy's treatment of generating units in extended reserve shut down.

Comment date: May 19, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power & Light Company; Seminole Electric Cooperative, Inc. v. Florida Power & Light Company; Florida Municipal Power Agency v. Florida Power & Light Company

[Docket No. ER93–465–007 ER93–922–006 ER93–507–000 EL94–12–000; Docket No. EL93–28–000; Docket No. EL93–40–000]

Take notice that on April 11, 1994, Florida Power & Light Company (FPL) tendered for filing revisions to its July 26, 1993 and September 1, 1993, filings in this proceeding in order to comply with the Commission's February 24, 1994 order on policy issues, Florida Power & Light Co., 66 FERC ¶ 61,227 (1994). FPL's compliance filing contains the following:

(i) Changes to Transmission Service Tariff Nos. 1, 2 and 3, FPL's long-term transmission service agreements, and FPL's short-term transmission service agreements to comply with the Commission's order on policy issues 2 and 5;

(ii) Changes to Service Schedules AF and A–S, to the Service Schedule DF Capacity Charge Formula Rate, and to the Service Schedule D–S Capacity Charge Formula Rate to comply with the Commission's order on policy issues 6 and 7;

(iii) A change to FPL's Wholesale Electric Service Tariff for partial requirements to comply with the Commission's order on policy issue 4.

Comment date: May 19, 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. 94–10108 Filed 4–26–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EG94–42–000 et al.]

Sarnia Cogeneration Joint Venture et al.

Electric Rate and Corporate Regulation Filings

April 14, 1994.

Take notice that the following filings have been made with the Commission:

1. Sarnia Cogeneration Joint Venture

[Docket No. EG94–42–000]

On March 31, 1994, Sarnia Cogeneration Joint Venture (the "Applicant") whose address is c/o Mark Bradley, Dow Chemical Canada Inc., 1086 Modeland Road, P.O. Box 1012, Sarnia, Ontario, Canada N7T7K7, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Applicant states that it will be engaged directly and exclusively in the business of owning and operating one gas turbine and associated electric generator, a heat recovery steam generator, five fired steam boilers and five steam turbine generators, located at Sarnia, Province of Ontario, Canada, with an aggregate rated electric generating capacity of approximately 120 megawatts, and selling electric energy exclusively at wholesale. The Applicant requests a determination that the Applicant will be an exempt wholesale generator under section 32(a)(1) of the Public Utility Holding Company Act of 1935.

Comment date: April 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. SEI Bahamas Argentina I, Inc.

[Docket No. EG94–44–000]

On April 6, 1994, SEI Bahamas Argentina I, Inc. (the "Applicant") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator ("EWG") status pursuant to

part 365 of the Commission's regulations.

The Applicant is a wholly-owned subsidiary of SEI Holdings VI, Inc., which, in turn, is a wholly-owned subsidiary of The Southern Company. The Applicant is participating in several bids for the purpose of owning and/or operating "eligible facilities" as defined in section 32(a)(2) of PUHCA. The currently identified facilities consist of several hydroelectric generating stations with a total combined installed capacity of approximately 650 MW produced by several generating units and associated interconnection facilities. The facilities are located on the Atuel and Diamante River Systems in the Province of Mendoza and other provinces in the Republic of Argentina.

In addition, the Applicant intends to engage in project development activities on its own behalf associated with the acquisition of ownership interests in additional as-yet unidentified eligible facilities and/or EWGs. These development activities will be limited to activities associated with the acquisition of ownership interests in additional facilities or entities that meet the criteria for eligible facilities and/or EWGs set out in section 32 of the Public Utility Holding Act of 1935.

Comment date: April 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. COE Argentina I Corp.

[Docket No. EG94–46–000]

On April 6, 1994, COE Argentina I Corp. (the "Applicant") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator ("EWG") status pursuant to part 365 of the Commission's regulations.

The Applicant is a wholly-owned subsidiary of Charter Oak Energy, Inc., which, in turn, is a wholly-owned subsidiary of Northeast Utilities. The Applicant is participating in several bids for the purpose of owning and/or operating "eligible facilities" as defined in section 32(a)(2) of the 1935 Act. The currently identified facilities consist of several hydroelectric generating stations with a total combined installed capacity of approximately 650 MW produced by several generating units and associated interconnection facilities. The facilities are located on the Atuel and Diamante River Systems in the Province of Mendoza and other provinces in the Republic of Argentina.

In addition, COE Argentina intends to engage in project development activities associated with the acquisition of ownership interests in additional as-yet unidentified eligible facilities and/or EWGs. These development activities will be limited to activities on its own behalf associated with the acquisition of ownership interests in additional facilities or entities that meet the criteria for eligible facilities and/or EWGs set out in Section 32 of the Public Utility Holding Act of 1935.

Comment date: April 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. L'Energia, Limited Partnership

[Docket Nos. EL94–58–000 and QF87–249–004]

Take notice that on April 6, 1994, L'Energia, Limited Partnership, a Delaware limited partnership (Applicant), filed a petition with the Federal Energy Regulatory Commission (the Commission) requesting a temporary waiver of the operating standard set forth in 18 CFR 292.205(a)(1) for calendar years 1992 and 1993 and the efficiency standard set forth in 18 CFR 292.205(a)(2)(i)(B) for calendar year 1992, as those standards apply to Applicant's cogeneration facility located in Lowell, Massachusetts.

Comment date: April 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Portland General Electric Company

[Docket No. ER94–924–000]

Take notice that on April 8, 1994, Portland General Electric Company (PGE) tendered for filing a request for deferral of Commission action for fourteen (14) days in the above Docket, to allow time for PGE to supplement its original filing in Docket No. ER94–924–000.

Comment date: April 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Pacific Gas and Electric Company

[Docket No. ER94–1133–000]

Take notice that on April 4, 1994, Pacific Gas and Electric Company (PG&E) tendered for filing as a supplement to an agreement dated May 21, 1993 between the Trinity Public Utilities District (Trinity) and PG&E, an amendment associated with the installation of three 60 Kv switches. Under this arrangement, Trinity and PG&E are sharing the cost of the switches, with PG&E performing the work.

PG&E has requested that the rate schedule change be effective on the date accepted for filing by the Commission.

Copies of this filing were served on Western Area Power Administration, Trinity, and the California Public Utilities Commission.

Comment date: April 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Services, Inc.

[Docket No. ER94–1138–000]

Take notice that on April 5, 1994, Entergy Services, Inc. (Entergy Services), as agent for Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (collectively the Entergy Operating Companies) tendered for filing the Fourth Transmission Service Agreement (Fourth TSA) between Entergy Services, Inc. and Entergy Power, Inc. The Fourth TSA sets out the terms and conditions of firm transmission service under the Entergy Operating Companies' Transmission Service Tariff for a sale of unit capacity to East Texas Electric Cooperative, Inc.

Comment date: April 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Orange and Rockland Utilities, Inc.

[Docket No. ER94–1140–000]

Take notice that on April 5, 1994, Orange and Rockland Utilities, Inc. (Orange and Rockland) tendered for filing pursuant to the Federal Energy Regulatory Commission's order issued January 15, 1988, in Docket No. ER88–112–000, an executed Service Agreement between Orange and Rockland and Wakefern Food Corporation.

Comment date: April 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Company

[Docket No. ER94–1141–000]

Take notice that on April 6, 1994, Northeast Utilities Service Company (NUSCO) tendered for filing a Service Agreement to provide non-firm transmission service to Central Maine Power Company (CMP) under the NU System Companies' Transmission Service Tariff No. 2. NUSCO requests that the Service Agreement become effective April 1, 1994 in order to accommodate transmission for CMP's transaction which begins on that date.

NUSCO states that a copy of the filing has been mailed to CMP.

Comment date: April 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Great Bay Power Corporation

[Docket No. ER94–1142–000]

Take notice that on April 6, 1994, Great Bay Power Corporation (Great

Bay) tendered for filing two executed service agreements, one between the Vermont Public Power Supply Authority and Great Bay, and the other between Consolidated Edison Company of New York, Inc. and Great Bay; both service agreements are for service under Great Bay's Tariff for Short-Term Sales. This Tariff was accepted for filing by the Commission on November 11, 1993, in Docket No. ER93–924–000. The service agreements are proposed to be effective April 1, 1994.

Comment date: April 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Alabama Power Company

[Docket No. ER94–1145–000]

Take notice that on April 11, 1994, Alabama Power Company tendered for filing a Delivery Point Specification Sheet dated as of May 15, 1994, which reflect the addition of a delivery point to the City of Opelika. This delivery point will be served under the terms and conditions of the Agreement for Partial Requirements Service and Complementary Services between Alabama Power Company and the Alabama Municipal Electric Authority dated February 24, 1986, being designated as FERC Rate Schedule No. 165. The parties request an effective date of May 15, 1994, for the addition of said delivery point.

Comment date: April 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. New England Power Company

[Docket No. ER94–1146–000]

Take notice that on April 11, 1994, New England Power Company (NEP), tendered for filing executed Service Agreements and Certificates of Concurrence by the Taunton Municipal Lighting Plant under NEP's FERC Electric Service Tariffs, Original Volume Nos. 5 and 6.

Comment date: April 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Madison Gas and Electric Company

[Docket No. ER94–1147–000]

Take notice that on April 11, 1994, Madison Gas and Electric Company (MGE) tendered for filing with the Federal Energy Regulatory Commission an Interchange Agreement between it and Otter Tail Power Company (OTP) for Negotiated Capacity and General Purpose Energy. MGE and OTP respectfully request an effective date of April 8, 1994.

MGE states that a copy of the filing has been provided to OTP and also to the Public Service Commission of Wisconsin.

Comment date: April 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. Pacific Gas and Electric Company

[Docket No. ER94–1150–000]

Take notice that on April 12, 1994, Pacific Gas and Electric Company (PG&E) tendered for filing a Control Area Rate Schedule for the City of Redding (Redding) provided by PG&E.

PG&E states that the Control Area Rate Schedule specifies the control area standards and requirements Redding will need to meet to operate independently within PG&E's Control Area. PG&E states that this rate schedule replaces and supersedes the present partial-requirements agreement on file with the Commission. PG&E states that copies of the filing were served upon Redding, the Western Area Power Administration and the California Public Utilities Commission.

Comment date: April 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. LG&E-Westmoreland Southampton

[Docket Nos. QF88–84–005 and EL94–45–000]

On April 6, 1994, LG&E-Westmoreland Southampton (Applicant) tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining primarily to the technical data and operating procedure of the cogeneration facility.

Comment date: May 6, 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. 94–10103 Filed 4–26–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EG94–43–000, et al.]

SEI Holdings VI, Inc., et al.; Electric Rate and Corporate Regulation Filings

April 18, 1994.

Take notice that the following filings have been made with the Commission:

1. SEI Holdings VI, Inc.

[Docket No. EG94–43–000]

On April 6, 1994, SEI Holdings VI, Inc. (the "Applicant") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator ("EWG") status pursuant to Part 365 of the Commission's regulations.

The Applicant is a wholly-owned subsidiary of The Southern Company. The Applicant is participating in several bids for the purpose of owning and/or operating "eligible facilities" as defined in section 32(a)(2) of PUHCA. The currently identified facilities consist of several hydroelectric generating stations with a total combined installed capacity of approximately 650 MW produced by several generating units and associated interconnection facilities. The facilities are located on the Atuel and Diamante River Systems in the Province of Mendoza and other provinces in the Republic of Argentina.

In addition, the Applicant intends to engage in project development activities on its own behalf associated with the acquisition of ownership interests in additional as-yet unidentified eligible facilities and/or EWGs. These development activities will be limited to activities associated with the acquisition of ownership interests in additional facilities or entities that meet the criteria for eligible facilities and/or EWGs set out in section 32 of the Public Utility Holding Act of 1935.

Comment date: May 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. SEI Inversora S.A.

[Docket No. EG94–45–000]

On April 6, 1994, SEI Inversora S.A. (the "Applicant"), 900 Ashwood Parkway, Suite 500, Atlanta, Georgia 30338, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (EWG) status pursuant to part 365 of the Commission's regulations.

The Applicant is jointly owned by SEI Bahamas Argentina I, Inc. ("SEI Bahamas Argentina"), which owns 65% of the voting securities of the Applicant, and by COE Argentina I Corp., a Connecticut corporation, which owns 35% of the voting securities of the Applicant. SEI Bahamas Argentina is a subsidiary of SEI Holdings VI, Inc., which, in turn, is a wholly-owned subsidiary of The Southern Company. The Applicant is participating in several bids for the purpose of owning and/or operating "eligible facilities" as defined in section 32(a)(2) of PUHCA. The currently identified facilities consist of several hydroelectric generating stations with a total combined installed capacity of approximately 650 MW produced by several generating units and associated interconnection facilities. The facilities are located on the Atuel and Diamante River Systems in the Province of Mendoza and other provinces in the Republic of Argentina.

In addition, the Applicant intends to engage in project development activities on its own behalf associated with the acquisition of ownership interests in additional as-yet unidentified eligible facilities and/or EWGs. These development activities will be limited to activities associated with the acquisition of ownership interests in additional facilities or entities that meet the criteria for eligible facilities and/or EWGs set out in section 32 of the Public Utility Holding Act of 1935.

Comment date: May 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Company

[Docket No. ER94–993–000]

Take notice that New England Power Company (NEP), on March 22, 1994, tendered for filing an amendment to its filing in this docket.

Comment date: May 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas and Electric Company

[Docket No. ER94–1129–000]

Take notice that on April 1, 1994, Pacific Gas and Electric Company (PG&E) tendered for filing a letter on behalf of the City of Redding, California (Redding), stating that, effective the first day of June, 1994, Service Agreement No. 9, FPC Original Volume No. 2 (Agreement), which was filed with the Federal Energy Regulatory Commission (Commission) by PG&E in FERC Docket No. ER80–577–000 and Amendment 1 thereto, designated as "PG&E Supplement No. 6 to Supplement No. 1," which was filed by PG&E in FERC Docket No. ER89–300–000, is hereby terminated.

Under the Agreement, as supplemented, PG&E presently sells supplemental power to the City of Redding. The Agreement is designed to supplement Redding's allocation of power from the Western Area Power Administration. The Agreement automatically terminates the occurrence of certain conditions which will occur on June 1, 1994, and notice thereof is hereby given in accordance with the 60 day notice period required by Commission regulations for the filing of this Notice. 18 CFR § 35.15 (1993).

There are no purchasers, other than the City of Redding, affected by this cancellation. Representatives of PG&E have been appropriately notified of the circumstances under which the Agreement will terminate.

Comment date: May 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Continental Power Exchange on Behalf of Central Illinois Public Service Company

[Docket No. ER94–1156–000]

Take notice that on April 14, 1994, the Continental Power Exchange (CPE), on behalf of Central Illinois Public Service Company (CIPS), tendered for filing pursuant to section 205(d) of the Federal Power Act, 16 U.S.C. 824(d), and section 35.13 of the Commission's Regulations under the Federal Power Act, 18 CFR 35.13, the National Interchange Agreement. Under the National Interchange Agreement, CIPS, and other Parties, may sell Next Hour Interruptible Energy, Next Hour Non-Interruptible Energy and Next Hour Firm Wheeling Services at either market-based rates, which have been previously accepted or approved by the Commission, or rates up to a cost-based ceiling utilizing the CPE System.

CPE states that a copy of this filing has been served by mail upon the Illinois Commerce Commission.

Comment date: May 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Kansas City Board of Public Utilities

[Docket No. EL94–60–000]

Take notice that on April 12, 1994, the Kansas City Board of Public Utilities tendered for filing a letter requesting that the Commission waive the annual requirements to file FERC Form 715.

Comment date: May 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Okanogan County Public Utility District

[Docket No. EL94–61–000]

Take notice that on April 6, 1994, Okanogan County Public Utility District tendered for filing a letter requesting that the Commission waive the annual requirements to file FERC Form 715.

Comment date: May 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp

[Docket No. EC94–13–000]

Take notice that PacifiCorp, on March 21, 1994, tendered for filing an application seeking an order authorizing PacifiCorp to convey to The Washington Water Power Company (WWP) certain transmission facilities located in Bonner County, Idaho.

PacifiCorp requests that, pursuant to Section 33.10 of the Commission's Regulations, the Commission accept this application for filing, to be effective forty-five (45) days after the date of filing to accommodate the conveyance of the facilities by the June 30, 1994 closing date.

Copies of this filing were supplied to WWP and the Idaho Public Utility Commission.

Comment date: May 2, 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. 94–10104 Filed 4–26–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EG94–47–000, et al.]

Jamaica Private Power Company Limited, et al.; Electric Rate and Corporate Regulation Filings

April 15, 1994.

Take notice that the following filings have been made with the Commission:

1. Jamaica Private Power Company Limited

[Docket No. EG94–47–000]

Jamaica Private Power Company Limited (JPPC) (c/o Lee M. Goodwin, Reid & Priest, 701 Pennsylvania Avenue, NW., Washington, DC 20004) filed with the Federal Energy Regulatory Commission an application on April 7, 1994, for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

JPPC is a Jamaican limited liability company formed to directly own and operate, through a sister company, Caribbean Power Operations, an electric generating facility to be located in Rockfort, Kingston, Jamaica.

Comment date: April 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. City of Bedford, Virginia, City of Danville, Virginia, City of Martinsville, Virginia, Town of Richlands, Virginia, and Blue Ridge Power Agency v. Appalachian Power Company

[Docket No. EL94–59–000]

Take notice that on April 11, 1994, the Cities of Bedford, Danville, and Martinsville, and Town of Richlands (Virginia Municipals), together with the Blue Ridge Power Agency, tendered for filing a complaint against the wholesale rate schedules of Appalachian Power Company insofar as they include provisions purportedly authorizing Appalachian to charge the Virginia Municipals for power and energy supplied by others.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Eclipse Energy, Inc.

[Docket No. ER94–1099–000]

Take notice that on March 30, 1994, Eclipse Energy, Inc. (Eclipse) tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective May 31, 1994.

Eclipse intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Eclipse sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Eclipse is not in the business of generating, transmitting, or distributing electric power.

Comment date: April 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. The Kansas City Power & Light Company

[Docket No. ER94–1107–000]

Take notice that on March 31, 1994, the Kansas City Power & Light Company (KCPL) tendered for filing Amendment No. 1 to the General Participation Agreement of Mokan Power Pool members.

Amendment No. 1 is to provide a new service by which a Mokan Power Pool member may purchase or sell Operating Reserves.

In addition, Emergency Energy, System Energy, Economy Energy and Term Energy are being revised to allow "up to" pricing and/or allow cost of compliance with environmental regulation.

KCPL states that the following are presently Participants under the General Participation Agreement with the following FERC Rate Schedule Numbers:

Kansas City Power & Light Company—Rate Schedule FERC No. 106
Missouri Public Service Company, a division of Utilicorp United, Inc.—Rate Schedule FERC No. 51
The Empire District Electric Company—Rate Schedule FERC No. 97
Kansas Gas and Electric Company—Rate Schedule FERC No. 180
Western Resources, Inc.—Rate Schedule FERC No. 257
West Plains Energy, a division of Utilicorp United, Inc.—Rate Schedule FERC No. 119
St. Joseph Light & Power Company—Rate Schedule FERC No. 18
Midwest Entergy, Inc.
Sunflower Electric Power Corporation
Board of Public Utilities of the City of Kansas City, Kansas
City Power & Light Department of the City of Independence, Missouri

KCPL states that all Participants under the General Participation Agreement or their corporate successors filed certificates of concurrence to the proposed change with KCPL's submittal.

KCPL requests that the filing be permitted to become effective June 1, 1994.

Comment date: April 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Alabama Power Company

[Docket No. ER94–1115–000]

Take notice that on March 31, 1994, Alabama Power Company tendered for filing two (2) separate Transmission Service Delivery Point Agreements dated November 19, 1993, which reflect the addition of certain delivery points to Central Alabama Electric Cooperative, Inc. and Tallapoosa River Electric Cooperative, Inc. These delivery points will be served under the terms and conditions of the Agreement for Transmission Service to Distribution Cooperative Member of Alabama Electric Cooperative, Inc., dated August 28, 1980 (designed FERC Rate Schedule No. 147). The parties request an effective date of June 1, 1994, for the addition of a delivery point to Central Alabama Electric Cooperative, and of December 1, 1994, for the addition of a delivery point to Tallapoosa River Electric Cooperative.

Comment date: April 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Services, Inc.

[Docket No. ER94–1126–000]

Take notice that Entergy Services, Inc. (Entergy Services), acting as agent for Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (collectively the Entergy Operating Companies), on April 1, 1994, tendered for filing rate schedule changes regarding the assignment by Sam Rayburn G&T Electric Cooperative, Inc. (SRG&T) of its agreements with the Entergy Operating Companies to East Texas Electric Cooperative, Inc. (ETEC), Entergy Services requests an effective date of the later of April 1, 1994, the first day of the month following the acceptance for filing of ETEC's wholesale agreements with SRG&T in Docket No. ER94–891–000, or the first day of the month following Rural Electrification Administration approval of the assignments. To the extent necessary, Entergy Services requests a waiver of the notice requirements of the Federal Power Act and the Commission's regulations to allow such effective date.

Comment date: April 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Services, Inc.

[Docket No. ER94–1128–000]

Take notice that on April 1, 1994, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company (AP&L), filed a Power

Agreement (Agreement) between the City of North Little Rock, Arkansas (North Little Rock) and AP&L, which will supersede the September 11, 1985, Agreement (Rate Schedule FERC No. 108) as amended. Entergy Services states that the rates under the proposed Agreement will result in a rate decrease to North Little Rock. Entergy Services requests that the Agreement be made effective on March 1, 1994.

Comment date: April 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Kansas Gas and Electric Company

[Docket No. ER94–1130–000]

Take notice that on April 1, 1994, Western Resources, Inc. (WRI), on behalf of Kansas Gas and Electric Company (KG&E), submitted for filing the Second Amendment to Service Schedule STP between KG&E and The Empire District Electric Company (EDE). WRI states that the rate schedule change provides a short term capacity sale to support EDE's capacity responsibilities under the MOKAN General Participation Agreement.

Copies of the filing were served on EDE and the Kansas Corporation Commission.

Comment date: April 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Kansas Gas and Electric Company

[Docket No. ER94–1131–000]

Take notice that on April 1, 1994, Western Resources, Inc. (WRI), on behalf of Kansas Gas and Electric Company (KG&E), tendered for filing a proposed change to KG&E's Rate Schedule FPC No. 93. WRI states that the proposed change is to add one year to the term of Service Schedule SP–1 between KG&E and WRI, and to decrease the capacity nomination thereunder.

A copy of the filing has been served upon the Kansas Corporation Commission.

Comment date: April 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Oklahoma Gas and Electric Company

[Docket No. ER94–1132–000]

Take notice that on April 4, 1994, Oklahoma Gas and Electric Company (OG&E) tendered for filing a Supplemental Power Purchase Agreement with the Oklahoma Municipal Power Authority (OMPA).

Copies of this filing have been sent to OMPA, the Oklahoma Corporation Commission, and the Arkansas Public Service Commission.

Comment date: April 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Robert W. Jackson

[Docket No. ID–2828–000]

Take notice that on April 1, 1994, Robert W. Jackson (Applicant) tendered for filing a supplemental application under Section 305(b) of the Federal Power Act to hold the following positions:

Director—Central Illinois Public Service Company
Director—Firstbank of Illinois Co.[1]
Director—Central Bank[1]
Director—City Bank of Bloomington-Noraml[1]
Director—Elliott State Bank/Jacksonville[1]
Director—Farmers & Merchants Bank of Carlinville[1]
Director—The First National Bank of Springfield[1]
Director—First Trust and Savings Bank of Taylorville[1]
Director—United Illinois Bank of Southern Illinois[1]

Comment date: April 29, 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 N.E., 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. 94–10107 Filed 4–26–94; 8:45 am]

BILLING CODE 6717–01–P

[1] Applicant seeks authority to hold interlocking positions with a public utility and other companies which are affiliate corporations of a company authorized by law to underwrite or participate in the marketing of securities. Rowe, Henry & Deal, Inc. (RHD), is authorized to underwrite. Authority to hold the position with Firstbank of Illinois Co. and each of its above listed wholly-owned subsidiary bank is sought solely because RHD became a wholly-owned subsidiary of Firstbank of Illinois Co. on March 3, 1994. Unless indicated otherwise, information provided herein for Firstbank includes Firstbank of Illinois Co. and each of its wholly-owned subsidiary banks listed above (the Subsidiary Banks). Exhibit A attached to the filing shows the corporate relationships between Firstbank of Illinois Co. and its subsidiaries. Additional information regarding the Subsidiary Banks will be provided, if requested.

[Docket No. CP94–342–000, et al.]

Crossroads Pipeline Co., et al.; Natural Gas Certificate Filings

April 14, 1994.

Take notice that the following filings have been made with the Commission:

1. Crossroads Pipeline Co.

[Docket No. CP94–342–000]

Take notice that on April 8, 1994, Crossroads Pipeline Company (Crossroads), 801 East 86th Avenue, Merrillville, Indiana 46410, filed in Docket No. CP94–342–000, an application, pursuant to section 7(c) of the Natural Gas Act and Part 284 of the Commission's Regulations for a certificate of public convenience and necessity to acquire, construct, own and operate as natural gas pipeline facilities subject to the jurisdiction of the Commission a 201 mile, 20-inch pipeline extending from Schererville, Indiana to Cygnet, Ohio, formerly used as a crude oil pipeline; to establish and operate up to two receipt and six delivery point regulator stations and taps for natural gas transportation service; to extend pipeline facilities a distance of one mile to a new interconnection and delivery point; to provide open-access firm and interruptible transportation of natural gas through the facilities; and to establish rates and terms of conditions of service for the firm and interruptible services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Crossroads states that the portions of the facilities located in the state of Indiana are currently in service providing natural gas transportation service pursuant to a certificate of public convenience and necessity issued by the Indiana Utility Regulatory Commission and pursuant to the Hinshaw exemption to the Natural Gas Act. Crossroads proposes to interconnect the pipeline with the facilities of Trunkline Gas Company at a point near Lapaz, Indiana, with the facilities of Panhandle Eastern Pipe Line Company near Defiance, Ohio, and with the facilities of Columbia Gas Transmission Company near Cygnet, Ohio. In addition, it is stated that Crossroads will operate existing

delivery points and taps in Indiana for deliveries to the facilities of Northern Indiana Public Service Company and Northern Indiana Fuel and Light Company, and to establish and operate delivery points for Ohio Gas Company at Sherwood, Ohio and Kalida Natural Gas Company at Custar, Ohio.

Crossroads states that it will provide up to 150,000 Mcf per day of firm and interruptible transportation service to shippers on an open-access basis. Crossroads further states that the cost of acquiring and installing the facilities will be $31.5 million, of which $16.0 million represents the cost to acquire the existing installed facilities of the former crude oil pipeline. It is stated that firm capacity on the pipeline will be allocated in an open season to be conducted beginning on or about June 1, 1994.

Comment date: May 5, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. ANR Pipeline Co.

[Docket No. CP94–344–000]

Take notice that on April 8, 1994, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP94–344–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate an interconnection under ANR's blanket certificate issued in Docket No. CP82–480–000 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.

ANR proposes to construct and operate an interconnection in Daviess County, Kentucky, for deliveries of gas to Scott Paper Company. ANR states that the quantity of gas to be delivered is approximately 6.5 MMcf/d. ANR indicates that this will have no adverse impact on the peak and annual entitlements of any of ANR's existing customers.

Comment date: May 31, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Co.

[Docket No. CP94–346–000]

Take notice that on April 11, 1994, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP94–346–000 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 operate an existing delivery point under Tennessee's blanket certificate issued in Docket No. CP82–413–000 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.

Tennessee proposes to operate an existing delivery point located in Kanawha County, West Virginia that was initially constructed under section 311(a) of the Natural Gas Policy Act.

Tennessee states that it renders significant transportation service under its Subpart G blanket certificate, it is imperative that maximum flexibility be attained so that its facilities can be used for the benefit of all customers on Tennessee's system. Tennessee further states that the delivery of volumes through the existing delivery point would not impact Tennessee's peak day and annual deliveries.

Comment date: May 31, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. Transcontinental Gas Pipe Line Corp.

[Docket No. CP94–354–000]

Take notice that on April 14, 1994, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP94–354–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate facilities to implement a new delivery point to Piedmont Natural Gas Company (Piedmont), in Lincoln County, North Carolina, under the blanket certificate issued in Docket No. CP82–426–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco states that the new delivery point to Piedmont, an existing customer, referred to as the Duke Lincoln Meter Station, would consist of two 20-inch hot taps. It is indicated that one is located on Transco's 36-inch Main Line "C" and one is located on Transco's 42-inch Main Line "D". Transco also states that it would construct a new metering station located north of its mainline right-of-way near the intersection on North Carolina State Route 1511 and Killian Creek. It is stated that the meter station would be used by Piedmont to receive up to 440,000 Mcf per day, on a firm or interruptible basis, in order to serve a new turbine peaking facility. Transco indicates that it is not proposing to alter the authorized total firm service entitlement for Piedmont.

Transco states that it has sufficient system delivery flexibility to accomplish these deliveries without detriment or disadvantage to Transco's other customers. Transco further states that the addition of the delivery point would have no impact on its peak day or annual deliveries. Transco estimates that the facilities would cost $1,881,000, which Transco indicates would be reimbursed by Piedmont.

Comment date: May 31, 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 or 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. 94–10105 Filed 4–26–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–364–000, et al.]

Equitrans, Inc., et al.; Natural Gas Certificate Filings

April 19, 1994.

Take notice that the following filings have been made with the Commission:

1. Equitrans, Inc.

[Docket No. CP94–364–000]

Take notice that on April 18, 1994, Equitrans, Inc., 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP94–364–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate one new delivery tap under Equitrans' blanket certificate issued in Docket Nos. CP83–508–000 and CP86–676–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Equitrans proposes to construct and operate a delivery tap on its transmission line H–108 in the City of Ellsworth, Pennsylvania. Equitrans states that it would use this tap to deliver gas to Equitable Gas Company (Equitable) for retail gas service to a domestic customer. Equitrans estimates the peak day deliveries to be one Mcf.

Equitrans states that the proposed service is within Equitable's entitlements and that the proposed service will not impact Equitrans' peak day and annual deliveries. Equitrans further states that it has sufficient capacity to accomplish the deliveries without detriment to its other customers and that its tariff does not prohibit this type of service.

Comment date: June 3, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Questar Pipeline Co.

[Docket No. CP94–353–000]

Take notice that on April 14, 1994, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP94–353–000 an application pursuant to section 7(b) of the Commission's Regulations under the Natural Gas Act for permission and approval to abandon certain interstate facilities by reclassification to a nonjurisdictional gathering designation, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Questar states that it proposes to reclassify its jurisdictional Lateral (JL) No. 21 and Lateral 495 to a gathering designation. Questar explains that these existing non-main-line, single-well connection facilities, comprising 7,916 feet of 3-inch and 4-inch pipeline, are used to gather volumes produced from the Antelope production area of Sweetwater County, Wyoming, for delivery into the Table Rock facilities of Colorado Interstate Gas Company. Questar further states that its JL No. 21 and Lateral 495 were installed under certifications issued to Questar's predecessor, Mountain Fuel Supply Company, in Docket No. CP74–133, as amended, on May 3, 1976 (55 FPC 2074) and on March 21, 1978 (2 FERC ¶ 61,255). Questar states that as of December 31, 1993, the total gross plant investment associated with the facilities is approximately $38,200. Questar now believes that the facilities now qualify as "gathering" in light of the Commission's "modified primary function test." Questar states that no customer's service will be terminated as the result of granting the requested authorization.

Comment date: May 10, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Koch Gateway Pipeline Co.

[Docket No. CP94–357–000]

Take notice that on April 14, 1994, Koch Gateway Pipeline Company ("Gateway"), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP94–357–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to revise an existing metering facility through which Gateway proposes to serve Cornerstone Natural Gas Company ("Cornerstone") under a blanket certificate issued in Docket No. CP82–430–000 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.

Gateway proposes to revise an existing meter station to deliver natural gas to Cornerstone pursuant to a transportation agreement dated November 11, 1988 under Gateway's ITS Rate Schedule. Specifically, Gateway proposes to reverse the meter tube, check valve and tap valve at an existing receipt side meter station located in Claiborne Parish, Louisiana. The service provided through these facilities will remain within certificated entitlements.

Comment date: June 3, 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 or 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. 94–10106 Filed 4–26–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. JD94–05569T Oklahoma–73]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

April 21, 1994.

Take notice that on April 20, 1994, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Red Fork Formation, underlying a portion of Blaine County, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area consists of all of Section 27, in Township 16 North, Range 11 West.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10100 Filed 4–26–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD94–05567T Oklahoma–74]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

April 21, 1994.

Take notice that on March 11, 1994, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's Regulations, that the Sycamore and Hunton Formations, underlying a portion of Garvin County, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area consists of the E/2 of section 8, W/2 of sections 9 and 16, the NW/4 and SE/4 of section 21, and the NE/4 of section 28 in T3N, R3W, in Garvin County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 27.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10098 Filed 4–26–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD94–05568T Oklahoma–72]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

April 21, 1994.

Take notice that on April 20, 1994, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Red Fork Formation, underlying a portion of Blaine County, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area consists of the W/2 of sections 4, 9, and 16, plus all of sections 5 and 8, in Township 16 North, Range 11 West.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR § 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10099 Filed 4–26–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2283–ME]

Central Maine Power Co.; Amendment to the Notice of Project Site Visits and Scoping Meetings

April 21, 1994.

The Federal Energy Regulatory Commission (Commission) is reviewing the application for a new license for the continued operation of the Gulf Island–Deer Rips Project on the Androscoggin River, Maine.

As part of the licensing proceedings for the Gulf Island—Deer Rips Project, the Commission issued a "Notice of Intention to Prepare an Environmental Impact Statement for the Lower Androscoggin River, Conduct Project Site Visits, and Hold Public Scoping Meetings" on April 11, 1994. The Staff was informed by the Maine Department of Environmental Protection that the agency scoping meeting scheduled for May 13, 1994, conflicted with a scheduled furlough day for state employees in Maine.

Due to the above conflict, the morning scoping meeting, originally scheduled for May 13, 1994, will be held on May 12, 1994, from 8 a.m. to 10 a.m., at the Quality Inn, 1777 Washington Street, Auburn, Maine. The site visit for the Gulf Island—Deer Rips Project will begin at 10:30 a.m. May 12, 1994, or immediately following the agency scoping meeting, at the Gulf Island Powerhouse.

For further information, please contact Robert Bell, Federal Energy Regulatory Commission, Office of

Hydropower Licensing, 825 North Capitol Street NE., Washington, DC 20426 (Telephone 202–219–2806), or Allan Creamer (Telephone (202) 219–0365).

Lois D. Cashell,

Secretary.

[FR Doc. 94–10096 Filed 4–26–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–258–003]

Mojave Pipeline Co.; Amendment to Application

April 21, 1994.

Take notice that on April 18, 1994, Mojave Pipeline Company ("Mojave") filed in Docket No. CP93–258–003, pursuant to section 7(c) of the Natural Gas Act ("Act") and Rule 215 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), an amendment to its initial application for a certificate of public convenience and necessity, filed March 17, 1993 and amended on November 8, 1993 in Docket CP93–258–000, all as more fully set forth in the amendment to the application on file with the Commission and open to public inspection.

On March 17, 1993, Mojave filed an application for an optional certificate of public convenience and necessity to construct, install, and operate certain pipeline, compression and related facilities for the purpose of extending its pipeline into central and northern California (the "Northward Expansion"). An Amendment to that application was filed on November 8, 1993. To facilitate the transportation of gas to these new markets, Mojave's application also proposed to expand Mojave's existing mainline through the addition of looping and compression. Mojave requested the Commission to issue a certificate prior to April, 1, 1994, in order to meet a projected in-service date of April 1, 1995.

In its initial application, Mojave submitted for Commission review two alternative designs for the Northward Expansion facilities. Under the first alternative, "Case 1", Mojave proposed to construct a 475 Mmcf/d expansion on a stand-alone basis, requiring the construction of new mainline and related facilities and additional looping on Mojave's existing facilities, as well as a number of additional meter stations. Under the second alternative, "Case 2", Mojave's proposed 475 Mmcf/d expansion would be built in conjunction with a proposed 475 Mmcf/d expansion would be built in conjunction with a proposed expansion by Kern River Gas Transmission Company ("Kern River") of 452 Mmcf/d. Kern River's proposal is currently pending at Docket No. CP92–198–000.

Mojave states that the Amendment has two purposes. One is to identify 29 minor route modifications to the previously-proposed Cases 1 and 2 that more specifically address environmental, cultural resource, engineering and/or right-of-way matters. Mojave also states that 24 of these alternates constitute route revisions of approximately 1000 feet or less and affect, in total, approximately 47.3 miles of its proposed pipeline route and do not result in changes to the previously-filed cost estimate.

Mojave states that the second purpose is to present to the Commission for review, two alternative project designs (Case 3 and Case 4) that incorporate recent developments in the Northern and Central California markets to be served by the Northern Expansion. Mojave indicates that Case 3 consists 635.1 miles of pipeline of various diameters, related facilities and 103,228 horsepower of compression at an estimated cost of $488,084,000 dollars while Case 4 consists of 679 miles of pipeline of various diameters, related facilities and 92,728 horsepower of compression at and estimated cost of $494,907,000 dollars. Cases 3 and 4 do not supersede the previously-filed alternation project designs.

Any person desiring to be heard or to make any protest with reference to said application should, on or before May 5, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a protest or motion to intervene in accordance with the requirements of Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the Regulations Under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition 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 is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Lois D. Cashell,

Secretary.

[FR Doc. 94–10101 Filed 4–26–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–355–000]

Transcontinental Gas Pipe Line Corporation; Request Under Blanket Authorization

April 15, 1994.

Take notice that on April 14, 1994, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP94–355–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate an additional delivery point for service to Piedmont Natural Gas Company (Piedmont) in Rowan County, North Carolina, under TGPL's blanket certificate issued in Docket No. CP82–426–000 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.

TGPL proposes to add the delivery point on TGPL's 42-inch Main Line "D" in Rowan County in order to continue its existing service to Piedmont, a transportation and storage customer of TGPL, during replacement of a 1.2 mile segment of TGPL's Main Line "A". TGPL estimates that the construction cost would be $68,000. It is asserted that TGPL delivers up to 17,000 Mcf of natural gas per day to Piedmont, and that this volume would not be altered by the proposal. It is further asserted that the deliveries are within Piedmont's existing entitlement from TGPL. It is stated that TGPL has sufficient system delivery capability to accomplish deliveries at the proposed delivery point without detriment or disadvantage to TGPL's other customers. It is explained that the addition of the proposed delivery point will have no effect on TGPL's peak day deliveries and little or no impact on TGPL's annual deliveries.

Any person or 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 Section 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. 94–10102 Filed 4–26–94; 8:45 am]

BILLING CODE 6717–01–P

Office of Hearings and Appeals

Cases Filed During the Week of March 25 through April 1, 1994

During the Week of March 25 through April 1, 1994, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. A submission inadvertently omitted from an earlier list has also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: April 21, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

SUBMISSION OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of March 25 to April 1, 1994]

Date	Name and location of applicant	Case No.	Type of submission
Mar. 24, 1994 ..	Hunt Oil Company, Pierce, ID	LEN–0086	Request for Interim Relief. If granted: Hunt Oil Company would receive exception relief on an interim basis pending a final determination on its Application for Exception (Case No. LEE–0086).
Mar. 28, 1994 ..	Saupé Enterprises, Inc., Fairbanks, AK	LEE–0105	Exception to the Reporting Requirements. If granted: Saupe Enterprises, Inc. would not be required to file Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Mar. 29, 1994 ..	Economic Regulatory Administration, Washington, DC.	LRZ-0028	Interlocutory Order. If granted: The Office of Hearings and Appeals would provide detailed summaries of the subject matter of the testimony of eight of the witnesses in the OXY USA, Inc.'s Submission in Response to the December 17, 1993 Decision and Order.
Do	Economic Regulatory Administration, Washington, DC.	LRZ-0029	Interlocutory Order. If granted: The Office of Hearings and Appeals would strike from the record the Affidavit of Sim Lake, which OXY USA, Inc. submitted in the proceeding on March 18, 1994.
Mar. 30, 1994 ..	Helen Gaidine Oglesbee, Seattle, WA	LWD–0011	Motion for Discovery. If granted: Discovery would be granted to Helen Gaidine Oglesbee in connection with the Supplemental Order of October 15, 1993 (Case No. LWA–0006).
Do	OXY USA, Inc., Washington, DC	LRR–0016	Request for Modification/Rescission. If granted: The February 9, 1994 Dismissal Letter (Case No. LRZ-0024) issued to OXY USA, Inc. would be modified regarding the Supreme Court's decision in Liteky v. United States.
Mar. 31, 1994 ..	Clyde Excell Clements, Jr., Lynchburg, VA	LFA–0364	Appeal of an Information Request Denial. If granted: The March 16, 1994 Freedom of Information Request Denial issued by the Pittsburgh Naval Reactors Office would be rescinded, and Clyde Excell Clements, Jr. would receive access to all tape recordings of a personnel security interview conducted by Charles E. McCracken, Security Specialist, Pittsburgh Naval Reactors Office.
Do	Texaco/Dental's Automotive Center, Salem, OR.	RR321–156	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The December 3, 1992 Decision and Order (Case No. RF321–5260) issued to Dental's Automotive Center would be modified regarding the firm's application for refund submitted in the Texaco Refund Proceeding.
Do	The Reedy Company, Abilene, TX	LEE–0106	Exception to the Reporting Requirements. If granted: The Reedy Company would not be required to file Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."

REFUND APPLICATIONS RECEIVED

[Week of March 25 To April 1, 1994]

Date received	Name of refund proceeding/name of refund applicant	Case No.
Mar. 29, 1994	Griffin Oil Co	RF321–20966
Do	Griffin Oil Co	RF321–20967
Do	Sears Roebuck & Co	RC272–235
Do	Hillsdale Shell	RF315–10284
Mar. 30, 1994	John Sorum Texaco	RF321–20968
Mar. 28, 1994	Blue Flame Gas Company	RF300–21781
Mar. 29, 194	Village One Stop #1	RF300–21782
Mar. 31, 1994	Oasis Gulf	RF300–21783
Do	T&G Oil Co	RF300–21784
Do	Cline St. Gulf	RF300–21785
Mar. 25, 1994 thru Apr. 1, 1994	Crude Oil Refund Applications Received	RF272–95199 thru RF272–95207

[FR Doc. 94–10151 Filed 4–26–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Cases Filed During the Week of March 18 Through March 25, 1994

During the Week of March 18 through March 25, 1994, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: April 21, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of March 18 through March 25, 1994]

Date	Name and location of applicant	Case No.	Type of submission
	Texaco/Gallaway Texaco Truck Stop, Tlafurrias, TX.	RR321–155	Request for modification/rescission in the Texaco refund proceeding. If granted: The March 19, 1991 Decision and Order (Case No. RF321–1555) issued to Gallaway Texaco Truck Stop would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Mar. 21, 1994	Carter Oil Company, Sheffield, AL	LEE–0100	Exception to the reporting requirements. If granted: Carter Oil Company would not be required to file Form EIA–82B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Do	Enron/Amoco Corporation, Chicago, IL	RR340–2	Request for modification/rescission in the Enron refund proceeding. If granted: The July 30, 1993 Decision and Order (Case No. RF340–124) issued to Amoco Corporation would be modified regarding the firm's application for refund submitted in the Enron refund proceeding.
Do	Fitch Oil Company, Inc., Holly Springs, MS	LEE–0101	Exception to the reporting requirements. If granted: Fitch Oil Company, Inc. would not be required to file Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Do	Texaco/Sunderman Texaco, Amarillo, TX	RR321–154	Request for modification/rescission in the Texaco refund proceeding. If granted: The January 25, 1994 Decision and Order (Case No. RF321–16637) issued to Sunderman Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Do	The Phillipsburg Cooperative Assn., Phillipsburg, KS.	LEE–0099	Exception to the reporting requirements. If granted: The Phillipsburg Cooperative Assn. would not be required to file Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Do	Vista Control Systems, Inc., Los Alamos, NM	LFA–0362	Appeal of an information request denial. If granted: The March 4, 1994 Freedom of Information Request Denial issued by the Albuquerque Field Office would be rescinded, and Vista Control Systems, Inc. would receive access to all of the technical documentation for the control system software called EPICS and GTACS.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of March 18 through March 25, 1994]

Date	Name and location of applicant	Case No.	Type of submission
Mar. 22, 1994	Reynolds Electrical & Engineering Company, Inc., Washington, DC.	LWA–0007	Request for hearing under DOE contractor employee protection program. If granted: A hearing under 10 C.F.R. Part 708 would be held, and the Hearing Officer would find no merit in the complaint of Dr. Leonard Kreisler that reprisals were taken against him by the Reynolds Electrical & Engineering Company, Inc. as a consequence of his having allegedly disclosed health and safety concerns to the DOE.
Do	Alabama, California, Connecticut, et al., Washington, DC.	LFA–0363	Appeal of an information request denial. If granted: The States of Alabama, California, Connecticut, Idaho, Indiana, Maryland, Michigan, Mississippi, Montana, Ohio, South Dakota, Vermont, Wisconsin, Wyoming, and New York State Energy Office would receive access to names of people working and records prepared by those working on DOE issues for the Presidential Transition and contacts between those people and representatives of the Cities Service Oil and Gas Corporation (Cities).
Mar. 24, 1994	Arco/B&P Motor Express, Inc., Earlington, KY.	RR304–67	Request for modification/rescission in the Arco refund proceeding. If granted: The December 15, 1993 Decision and Order (RF304–12218) issued to B&P Motor Express, Inc. would be modified regarding the firm's application for refund submitted in the Arco refund proceeding.
Do	Boeing Petroleum Services, Inc., Baton Rouge, LA.	LWZ-0026	Interlocutory order. If granted: The complaint of Francis M. O'Laughlin (Case No. LWA–0005) would be dismissed.
Do	Economic Regulatory Administration, Washington, DC.	LRZ-0025	Interlocutory order. If granted: Chevron would be compelled to comply immediately with the December 8, 1993 Discovery Order, Case No. LRD–0010 and produce all documents.
Mar. 25, 1994	DynMcDermott Petroleum, Operations Company, New Orleans, LA.	LWZ-0027	Interlocutory Order. If granted: DynMcDermott Petroleum Operations Company would be dismissed as a party to the hearing request filed by Frances M. O'Laughlin (Case No. LWA–0005).
Do	Kadane Corporation, Wichita Falls, TX	LEE–0103	Exception to the reporting requirements. If granted: Kadane Corporation would not be required to file Form EIA–23, "Annual Survey of Domestic Oil and Gas Reserves."
Do	Ullman Oil Company, Chagrin Falls, OH	LEE–0102	Exception to the reporting requirements. If granted: Ullman Oil Company would not be required to file Form EIA–782A, "Refiners'/Gas Plant Operators' Monthly Petroleum Product Sales Report," and Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Do	Woodman-Iannitti Oil Company, Great Bend, KS.	LEE–0104	Exception to the reporting requirements. If granted: Woodman-Iannitti Oil Company would not be required to file Form EIA–23, "Annual Survey of Domestic Oil and Gas Reserves."

REFUND APPLICATIONS RECEIVED

[Week of March 18 Through March 25, 1994]

Date received	Name of refund proceeding/name of refund applicant	Case No.
Mar. 25, 1994	National Helium/California	RQ3–588
Mar. 24, 1994	Bryant Oil Co., Inc.	RF321–20964
Do.	Haak's Texaco	RF321–20965
Mar. 22, 1994	Antonio Rivera-Pagan	RF321–20963
Mar. 31, 1994	Oasis Gulf	RF300–21783
Do.	T & G Oil Co.	RF300–21784
Do.	Cline St. Gulf	RF300–21785
Mar. 18, 1994 thru Mar. 25, 1994	Crude Oil Refund, Applications Received	RF272–95189 thru RF272–95199

[FR Doc. 94–10152 Filed 4–26–94; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4879–2]

Acid Rain Program: Public Comment Period and Retired Unit Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft retired unit exemptions.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for comment draft, five-year retired unit exemptions to 6 utility units under the Acid Rain Program regulations (40 CFR part 72).

DATES: Comments on retired unit exemptions must be received no later than 30 days after the date of this notice or the publication date of this notice in local newspapers.

ADDRESSES: *Administrative Records.* The administrative record for each exemption, except information protected as confidential, may be viewed at the addresses listed in **SUPPLEMENTARY INFORMATION.**

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions concerning a retired unit exemption to Thomas J. Maslany, Director, Air, Radiation and Toxics Division (3AT00), USEPA Region III, 841 Chestnut Building, Philadelphia, PA 19107.

Submit all comments in duplicate and identify the unit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of the unit covered by the exemption. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 and issues not relevant to the exemption.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting the exemption.

FOR FURTHER INFORMATION CONTACT: Kimberly Peck at (215) 597–9839, Air, Radiation and Toxics Division, US EPA Region III.

SUPPLEMENTARY INFORMATION:

Retired Unit Exemptions

EPA proposes to issue exemptions from the Acid Rain permit and continuous emission monitoring requirements for the following units in Pennsylvania: Richmond units 63 and 64; and Southwark units 11, 12, 21 and 22. The designated representative is John M. Madara, Jr.

Addresses

The administrative records for each plant may be viewed between 8:15 a.m. and 4:45 p.m. on weekdays at U.S. EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107.

Dated: April 19, 1994.

Renee Rico,

Acting Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94–10141 Filed 4–26–94; 8:45 am]
BILLING CODE 6560–50–P

[FRL–4878–9]

Public Water Supervision Program: Program Revisions for the Commonwealth of Massachusetts

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commonwealth of Massachusetts is revising it's approved State Public Water Supervision Primacy Program. Massachusetts has adopted (1) drinking water regulations for controlling lead and copper in drinking water that correspond to the National Primary Drinking Water Regulations for controlling lead and copper in drinking water requirements promulgated on June 7, 1991 (56 FR 26460). EPA has determined that the State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions. All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by May 31, 1994 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by May 31, 1994, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective May 31, 1994.

Any request for a public hearing shall include the following:

(1) The name, address, and telephone number of the individual, organization or other entity requesting a hearing.

(2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intended to submit at such hearing.

(3) The signature of the individual making the request: or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m. Monday through Friday, at the following offices:

Massachusetts Department of Environmental Protection, Division of Water Supply, One Winter Street, Boston, MA 02108.

and

U.S. Environmental Protection Agency–Region I, Water Management Division, Ground Water Management and Water Supply Branch, One Congress Street–11th Floor, Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: Kevin Reilly, U.S. Environmental Protection Agency–Region I, Ground Water Management and Water Supply Branch, JFK Federal Building, Boston, MA 02203, Telephone: (617) 565–3619.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1986); and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: April 18, 1994

Patricia L. Meaney,

Acting Regional Administrator.

[FR Doc. 94–10143 Filed 4–26–94; 8:45 am]
BILLING CODE 6560–50–F

[FRL–4879–1]

Public Water Supervision Program: Program Revisions for the State of Vermont

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Vermont is revising it's approved State Public Water Supervision Primacy Program. Vermont has adopted (4) drinking water regulations for: (1) Filtration, disinfection, turbidity, Giardia lamblia, viruses, Legionella, and heterotrophic bacteria; (2) public notice requirements; (3) total coliforms (including fecal

coliforms and E. Coli); and (4) controlling lead and copper in drinking water requirements that correspond to the National Primary Drinking Water Regulations for: (1) Filtration, disinfection, turbidity, Giardia lamblia, viruses, Legionella, and heterotrophic bacteria requirements promulgated by EPA on June 29, 1989 (54 FR 27486); (2) public notice requirements promulgated by EPA on October 8, 1987 (52 FR 41534); (3) total coliforms (including fecal coliforms and E. Coli) promulgated by EPA on June 29, 1989 (54 FR 27544); and (4) controlling lead and copper in drinking water requirements promulgated by EPA on June 7, 1991 (56 FR 26460). EPA has determined that the State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions. All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by May 31, 1994 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by May 31, 1994, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective May 31, 1994.

Any request for a public hearing shall include the following:

(1) The name, address, and telephone number of the individual, organization or other entity requesting a hearing.

(2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intended to submit at such hearing.

(3) The signature of the individual making the request: or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m. Monday through Friday, at the following offices:

Water Supplies Division, Vermont Department of Environmental Conservation, 103 South Main Street, Waterbury, VT 05676.

and

U.S. Environmental Protection Agency–Region I, Ground Water Management and Water Supply Branch, One Congress Street–11th Floor, Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: A. Hatzopoulos, U.S. Environmental Protection Agency–Region I, Ground Water Management and Water Supply Branch, JFK Federal Building, Boston, MA 02203, Telephone: (617) 565–4884.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1986); and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: April 18, 1994

Patricia L. Meaney,

Acting Regional Administrator.

[FR Doc. 94–10144 Filed 4–26–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4879–3]

Ozone Design Value Study of the Clean Air Act Amendments of 1990

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period for draft report on the "Clean Air Act Ozone Design Value Study".

SUMMARY: Section 183(g) of title I of the Clean Air Act Amendments of 1990 requires the Administrator to conduct a study of whether the methodology in use by the EPA, as of the date of enactment, for establishing a design value for ozone, provides a reasonable indicator of the ozone air quality of ozone nonattainment areas. The EPA is directed to obtain public review of the study report prior to submitting the report to Congress.

The focus of the Ozone Design Value Study is EPA's ozone design value methodology. A design value may be viewed intuitively as a concentration value used to quantify the degree to which the level of an air quality standard has been exceeded. With the wording of the ozone standard, the appropriate design value is the concentration with expected number of exceedances equal to 1. These ozone design values were used to classify areas as marginal, moderate, serious, severe, or extreme in accordance with the provisions of the Clean Air Act Amendments of 1990.

This notice extends the period for public review and comment of the draft report of the "Clean Air Act Ozone Design Value Study" from 30 days to 60 days.

DATES: Comments must be received by May 31, 1994.

Availability of Draft Report

Single copies of the report are available from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "The Clean Air Act Ozone Design Value Study."

ADDRESSES: Written comments should be submitted to Mr. Warren P. Freas, U.S. Environmental Protection Agency, Data Analysis Section, Monitoring and Reports Branch, Technical Support Division MD–14, Research Triangle Park, North Carolina, 27711.

FOR FURTHER INFORMATION CONTACT: Mr. Warren P. Freas at (919) 541–5469, Data Analysis Section. Monitoring and Reports Branch (MD–14), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Dated: April 19, 1994.

Mary D. Nichols,

Assistant Administrator, for Air and Radiation.

[FR Doc. 94–10142 Filed 4–26–94; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 123]

RIN 0905–ZA04

National Institute for Occupational Safety and Health; Grants for Education Programs in Occupational Safety and Health Notice of Availability of Funds for Fiscal Year 1995

Introduction

The Centers for Disease Control and Prevention (CDC) announces that applications are being accepted for fiscal year (FY) 1995 training grants in occupational safety and health. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the Section Where To Obtain Additional Information.)

Authority

This program is authorized under section 21(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670(a)). Regulations applicable to this program are in 42 CFR part 86, "Grants for Education Programs in Occupational Safety and Health."

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Any public or private educational or training agency or institution that has demonstrated competency in the occupational safety and health field and is located in a State, the District of Columbia, or U.S. Territory is eligible to apply for a training grant.

Availability of Funds and Recipient Activities

CDC expects approximately $11,472,000 to be available in FY 1995.

A. Approximately $10,422,000 of the total funds available will be utilized as follows:

1. To award approximately ten non-competing continuation and four competing continuation Educational Resource Center (ERC) training grants totaling approximately $8,354,000 and ranging from approximately $400,000 to $800,000 with the average award being approximately $595,000. The following are the required characteristics of Educational Resource Centers. An Occupational Safety and Health Educational Resource Center shall be an identifiable organizational unit within the sponsoring organization and shall consist of the following characteristics:

a. Cooperative arrangements with a medical school or teaching hospital (with an established program in preventive or occupational medicine); with a school of nursing or its equivalent; with a school of public health or its equivalent; and with a school of engineering or its equivalent. Other schools or departments with relevant disciplines and resources shall be expected to be represented and contribute as appropriate to the conduct of the total program, e.g., epidemiology, toxicology, biostatistics, environmental health, law, business administration, education. Specific mechanisms to implement the cooperative arrangements between departments, schools/colleges, universities, etc., shall be demonstrated in order to assure that the multidisciplinary training and education that is intended will be engendered.

b. A Center Director who possesses a demonstrated capacity for sustained productivity and leadership in occupational health and safety education and training. The Director shall oversee the general operation of the Center Program and shall, to the extent possible, directly participate in training activities. Provisions shall be made to employ a Deputy Director who shall be responsible for managing the daily administrative duties of the Center and to increase the Center Director's availability to ERC staff and to the public. At least one full-time equivalent effort shall be demonstrated between the two positions.

c. Program Directors who are full-time faculty and professional staff representing various disciplines and qualifications relevant to occupational safety and health who are capable of planning, establishing, and carrying out or administering training projects undertaken by the Center. Each academic core program as well as the continuing education and outreach program shall have a Program Director.

d. Faculty and staff with demonstrated training and research expertise, appropriate facilities and ongoing training and research activities in occupational safety and health areas.

e. A program for conducting education and training of occupational physicians, occupational health nurses, industrial hygienists, industrial hygiene engineers and occupational safety personnel. There shall be a minimum of five full-time students in each of the core programs, with a goal of a minimum of 30 full-time students (total in all of core programs together). It is most desirable for a Center to have the full range of core programs; however, a Center with three core programs is eligible for support providing it is demonstrated that students will be exposed to the principles and issues of all four core disciplines. Training may also be conducted in other allied occupational safety and health disciplines, e.g., industrial toxicology, biostatistics and epidemiology, and ergonomics. Each core program curriculum shall include courses from non-core categories as well as appropriate clinical rotations and field experiences with public health and safety agencies and with labor-management health and safety groups. Where possible, field experience shall involve students representing other disciplines in a manner similar to that used in team surveys and other team approaches.

f. A specific plan describing how trainees will be exposed to the principles of all other occupational safety and health core and allied disciplines. Consortium Centers generally have geographic, policy and other barriers to achieving this Center characteristic and, therefore, must give special, if not innovative, attention to thoroughly describing the approach for fulfilling the multidisciplinary interaction between students.

g. Demonstrated impact of the ERC on the curriculum taught by relevant medical specialties, including family practice, internal medicine, dermatology, orthopaedics, pathology, radiology, neurology, perinatal medicine, psychiatry, etc., and on the curriculum of other schools such as engineering, business, law and the medical school.

h. An outreach program to interact with and help other institutions or agencies located within the region. Examples of outreach activities might include activities such as: Interaction with other colleges and schools within the ERC and with other universities or institutions in the region to integrate occupational safety and health principles and concepts within existing curricula (e.g., Colleges of Business Administration, Engineering, Architecture, Law, and Arts and Sciences); exchange of occupational safety and health faculty among regional educational institutions; providing curriculum materials and consultation for curriculum/course development in other institutions; use of a visiting faculty program to involve labor and management leaders; cooperative and collaborative arrangements with professional societies, scientific associations, and boards of accreditation, certification, or licensure; and presentation of awareness seminars to undergraduate and secondary educational institutions (e.g., high school science fairs and career days) as well as to labor, management and community associations.

i. A specific plan for preparing, distributing and conducting courses, seminars and workshops to provide short-term and continuing education training courses for physicians, nurses, industrial hygienists, safety engineers and other occupational safety and health professionals, paraprofessionals and technicians, including personnel from labor-management health and safety committees, in the geographical region in which the Center is located. The goal shall be that the training be made available to a minimum of 400 trainees/year representing all of the above categories of personnel, on an approximate proportional basis with emphasis given to providing occupational safety and health training to physicians in family practice, as well as industrial practice, industrial nurses, and safety engineers. Where appropriate, it shall be professionally

acceptable in that Continuing Education Units (as approved by appropriate professional associations) may be awarded. These courses should be structured so that higher educational institutions, public health and safety agencies, professional societies or other appropriate agencies can utilize them to provide training at the local level to occupational health and safety personnel working in the workplace. Further, the Center shall conduct periodic training needs assessments, shall develop a specific plan to meet these needs, and shall have demonstrated capability for implementing such training directly and through other institutions or agencies in the region. The Center should establish and maintain cooperative efforts with labor unions, government agencies, and industry trade associations, where appropriate, thus serving as a regional resource for addressing the problems of occupational safety and health that are faced by State and local governments, labor and management.

j. A Board of Advisors or Consultants representing the user and affected population, including representatives of labor, industry, government agencies, academic institutions and professional associations, shall be established by the Center. The Board shall meet regularly to advise a Center Executive Committee and to provide periodic evaluation of Center activities. The Executive Committee shall be composed of the Center Director and Deputy Director, academic Program Directors, the Directors for Continuing Education and Outreach and others whom the Center Director may appoint to assist in governing the internal affairs of the Center.

k. A defined research plan for the purposes of establishing a research base within the core occupational safety and health disciplines and within the ERC infrastructure as a whole, and for the training of researchers in occupational safety and health. The plan will include how the Center intends to strengthen existing research training efforts, and how it will expand these research activities to impact on other primarily clinically-oriented disciplines, such as nursing and medicine. (In nursing, for example, the development of the nursing research area should be consistent with national strategies outlined by professional nursing and occupational health nursing specialty groups to enhance nursing research productivity and to increase the number of nurse researchers for the future.) Each ERC is required to identify or develop a minimum of one, preferably more, areas of research focus related to work environment problems. Consideration shall be given to, but not limited to, the top ten work-related diseases and injuries targeted by CDC/NIOSH. In addition to the research and research training components, the plan will also include such items as specific strategies for obtaining student and faculty funding, plans for renovating or acquiring facilities and equipment, if appropriate, and a plan for developing research-oriented faculty.

l. Evidence in obtaining support from other funds, including other Federal grants, support from States and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

2. Approximately $247,000 of the available funds as specified in A.1. will be awarded to ERCs to support the development of specialized educational programs in agricultural safety and health within the existing core disciplines of industrial hygiene, occupational medicine, occupational health nursing, and occupational safety. Program support is available for faculty and staff salaries, trainee costs, and other costs to educate professionals in agricultural safety and health.

3. To award approximately twenty-six non-competing continuation and thirteen competing continuation long-term training project grants (TPG) totaling $2,068,000 and ranging from approximately $10,000 to $500,000, with the average award being $53,000, to support academic programs in the fields of industrial hygiene, occupational health nursing, occupational/industrial medicine, and occupational safety. The following are the types of occupational safety and health training programs that are eligible for support. The awards are normally for training programs of 1 academic year. They are intended to augment the scope, enrollment, and quality of training programs rather than to replace funds already available for current operations. The types of training currently eligible for support are:

a. Graduate training for practice, teaching, and research careers in occupational safety and health. Priority will be given to programs producing graduates in areas (i.e., disciplines such as occupational health nursing) of greatest occupational safety and health need.

b. Undergraduate and other pre-baccalaureate training providing trainees with capabilities for positions in occupational safety and health professions.

c. Special technical or other programs for training of occupational safety and health technicians or specialists.

d. Special programs for development of occupational safety and health training curricula and educational materials, including mechanisms for effectiveness testing and implementation.

Awards will be made for a 1- to 5-year project period with an annual budget period. Funding estimates may vary and are subject to change. Non-competing continuation awards within the approved project periods will be made on the basis of satisfactory progress and the availability of funds.

B. Approximately $1,050,000 of the total funds available will be awarded to ERCs to support the development and presentation of continuing education and short courses and academic curricula for trainees and professionals engaged in the management of hazardous substances. These funds are provided to NIOSH/CDC through an Interagency Agreement with the National Institute of Environmental Health Sciences as authorized by section 209(b) of the Superfund Amendments and Reauthorization Act (SARA) of 1986 (100 STAT. 1708–1710). The hazardous substance training (HST) funds are being used to supplement previous hazardous substance continuing education grant support provided to the ERCs in FY 1984 and 1985 under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 as amended by SARA for the ERC continuing education program. The hazardous substance academic training (HSAT) funds are being used to supplement continuing industrial hygiene core program support to develop and offer academic curricula in the hazardous substance field primarily for industrial hygiene trainees. Program support is available for faculty and staff salaries, trainee costs, and other costs to provide training and education for occupational safety and health and other professional personnel engaged in the evaluation, management, and handling of hazardous substances. The policies regarding project periods also apply to these activities.

Purpose

The objective of this grant program is to award funds to eligible institutions or agencies to assist in providing an adequate supply of qualified professional and para-professional occupational safety and health personnel to carry out the purposes of the Occupational Safety and Health Act.

Review and Evaluation Criteria

In reviewing ERC grant applications, consideration will be given to:

1. Needs assessment directed to the overall contribution of the training program toward meeting the job market, especially within the applicant's region, for qualified personnel to carry out the purposes of the Occupational Safety and Health Act of 1970. The needs assessment should consider the regional requirements for outreach, continuing education, information dissemination, and special industrial or community training needs that may be peculiar to the region.

2. Plans to satisfy the regional needs for training in the areas outlined by the application, including projected enrollment, recruitment and current workforce populations. The need for supporting students in allied disciplines must be specifically justified in terms of user community requirements.

3. Extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve Characteristics of an Educational Resource Center. (See A.1.a.-1.)

4. Extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve certificate or degree, course descriptions, course sequence, additional related courses open to occupational safety and health students, time devoted to lecture, laboratory and field experience, and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

5. Academic training including the number of full-time and part-time students and graduates for each core program, the placement of graduates, employment history, and their current location by type of institution (academic, industry, labor, etc.). Previous continuing education training in each discipline and outreach activity and assistance to groups within the ERC region.

6. Methods in use or proposed methods for evaluating the effectiveness of training and services including the use of placement services and feedback mechanisms from graduates as well as employers, critiques from continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

7. Competence, experience and training of the Center Director, the Deputy Center Director, the Program Directors and other professional staff in relation to the type and scope of training and education involved.

8. Institutional commitment to Center goals.

9. Academic and physical environment in which the training will be conducted, including access to appropriate occupational settings.

10. Appropriateness of the budget required to support each academic component of the ERC program, including a separate budget for the academic staff's time and effort in continuing education and outreach.

11. Evidence of a plan describing the research and research training the Center proposes. This shall include goals, elements of the program, research faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

12. Evidence of success in attaining outside support to supplement the ERC grant funds including other Federal grants, support from States and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

In reviewing long-term TPG applications, consideration will be given to:

1. Need for training in the program area outlined by the application. This should include documentation of ability and a plan for student recruitment, projected enrollment, job opportunities, regional/national need both in quality and quantity, and similar programs, if any within the geographic area.

2. Potential contribution of the project toward meeting the needs for graduate or specialized training in occupational safety and health.

3. Curriculum content and design which should include formalized program objectives, minimal course content to achieve certificate or degree, course sequence, related courses open to students, time devoted to lecture, laboratory and field experience, nature and the interrelationship of these educational approaches.

4. Previous records of training in this or related areas, including placement of graduates.

5. Methods proposed to evaluate effectiveness of the training.

6. Degree of institutional commitment: Is grant support necessary for program initiation or continuation? Will support gradually be assumed? Is there related instruction that will go on with or without the grant?

7. Adequacy of facilities (classrooms, laboratories, library services, books, and journal holdings relevant to the program, and access to appropriate occupational settings).

8. Competence, experience, training, time commitment to the program and availability of faculty to advise students, faculty/student ratio, and teaching loads of the program director and teaching faculty in relation to the type and scope of training involved. The program director must be a full-time faculty member.

9. Admission Requirements: Student selection standards and procedures, student performance standards and student counseling services.

10. Advisory Committee (if established): Membership, industries and labor groups represented; how often they meet; who they advise, role in designing curriculum and establishing program need.

Funding Allocation Criteria

For Educational Resource Center grants, the following criteria will be considered in determining funding allocations.

1. Academic Core Programs

a. Budget to support programs primarily for personnel and other personnel-related costs. Advanced (doctoral and post-doctoral) and specialty (master's) programs will be considered.

b. Budget to support programs based on program quality and need. Factors considered include faculty commitment/breadth, faculty reputation/strength, national/regional workforce needs, unique program contribution, interdisciplinary interaction, and technical merit.

c. Budget to support students based on the program level and the number of students supported.

d. Budget to support research training programs to establish a research base within core disciplines and for the training of researchers in occupational safety and health.

2. Center Administration

Budget to support Center administration to assure coordination and promotion of academic programs.

3. Continuing Education/Outreach Program

Budget to support outreach and continuing education activities to prepare, distribute, and conduct short courses, seminars, and workshops.

4. Hazardous Substance Training Programs

Budget to support the development and presentation of continuing education courses for professionals

engaged in the management of hazardous substances.

5. Hazardous Substance Academic Training Programs

Budget to support the development and presentation of specialized academic programs in hazardous substance management.

6. Agricultural Safety and Health Academic Programs

Budget to support the development and presentation of specialized academic programs and continuing education courses in agricultural safety and health. For Long-Term Training Project grants, the following factors will be considered in determining funding allocations:

Academic Core Programs

a. Budget to support programs primarily for personnel and other personnel-related costs. Advanced (doctoral and post-doctoral), specialty (master's), and baccalaureate/associate programs will be considered.

b. Budget to support programs based on program quality and need. Factors considered include faculty commitment/breadth, faculty reputation/strength, national/regional workforce needs, unique program contribution, interdisciplinary interaction, and technical merit.

c. Budget to support students based on the program level and the number of students supported.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance Number is 93.263.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Application Submission and Deadline

Applications should be clearly identified as an application for an Occupational Safety and Health Long-Term Training Project Grant or ERC Training Grant. The submission schedule is as follows:

New, Competing Continuation and Supplemental Receipt Date: July 1, 1994. An original and two copies of new, competing continuation and supplemental applications (Form CDC 2.145A ERC or TPG) should be submitted to: Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Non-Competing Continuation Receipt Date: November 15, 1994.

An original and two copies of non-competing continuation applications (Form CDC 2.145B ERC or TPG) should be submitted to: Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement Number 123. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Adrienne S. Brown, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, (404) 842–6630. Programmatic technical assistance may be obtained from John T. Talty, Chief, Educational Resource Development Branch, Division of Training and Manpower Development, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 4676 Columbia Parkway, Cincinnati, Ohio 45226, (513) 533–8241.

Please refer to Announcement Number 123 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: April 19, 1994.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–10112 Filed 4–26–94; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity and Housing—Federal Housing Commissioner

[Docket No. N–94–3757; FR–3673–N–01]

Revision to Chapter 2 of HUD Handbook on Occupancy Requirements of Subsidized Multifamily Housing Programs

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD; and Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to advise the public, particularly housing managers, owners and residents of certain HUD-assisted housing, that the Department has revised Chapter 2 of its Handbook entitled "Occupancy Requirements of Subsidized Multifamily Housing Programs" (Handbook 4350.3, Chg–24) to address concerns raised by members of the public about certain provisions of the Handbook relating to occupancy policies in housing for elderly (age 62 and over) persons. The supplementary information section of this notice provides additional information on the changes made to Chapter 2 of the Handbook.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Acting Director of the Office of Elderly and Assisted Housing,

Office of Housing, Department of Housing and Urban Development, Room 6130, or Albert Sullivan, Director of the Office of Multifamily Management, Room 6160, 451 Seventh Street, SW, Washington, DC 20410. Telephone number (202) 708–4542 (voice) for Ms. Milner; (202) 708–3730 for Mr. Sullivan; or (202) 708–4594 (TDD). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Department's Handbook 4350.3 on Occupancy Requirements of Subsidized Multifamily Housing Programs (the "Handbook") provides guidance on the occupancy policies and procedures governing multifamily housing subsidized under the following programs: the Section 221(d)(3) (Below Market Interest Rate) Program; the Rent Supplement Program; the Section 236 Interest Reduction Program; the Rental Assistance Program; the Section 8 Loan Management Set-Aside Program; the Section 8 Property Disposition Set-Aside Program; the Section 515/8 Farmers Home Administration Program; and the Section 8 New Construction and Substantial Rehabilitation Program.

Chapter 2 of the Handbook entitled "Eligibility for Assistance; Eligibility for Admission, Marketing and Tenant Selection" addresses, among other things, the eligibility of elderly persons and persons with disabilities for multifamily housing subsidized under the covered programs. Members of the public, including groups representing persons with disabilities, have raised certain "nondiscrimination" issues with respect to those portions of Sections 2–1 through 2–19 of Chapter 2 of the Handbook which relate to the identification of projects or portions of projects that are for the exclusive use of elderly persons under the following programs: Sections 221(d) (3) and (4), Section 231, and Section 236.

To clarify the Department's position on these issues, the Department has revised Sections 2–1 through 2–19 of the Handbook. The Department believes that the revisions made to these sections provide clear and consistent direction to housing providers and to the HUD Field Offices on the nondiscrimination issues raised by members of the public.

Because of the broad interest among housing managers, owners, residents, and other members of the public in the subject matter addressed by Chapter 2, and to ensure wide dissemination of the Department's position on these issues, the Department is taking the unusual step of publishing in the Federal Register its notice to the Field Offices on the revisions made to Chapter 2. The notice is attached as Appendix A to this document.

In publishing this notice, the Department also clarifies that Chapter 2 of the Handbook, and the revisions made to Chapter 2, do not implement Subtitle D of Title VI of the Housing and Community Development Act of 1992. Subtitle D addresses the subject of "Authority to Provide Preferences for Elderly Residents and Units for Disabled Residents in Certain Section 8 Assisted Housing." The Department will be issuing an interim rule on Subtitle D of Title VI.

Chapter 2 will remain in effect, as revised by the accompanying notice, pending the effective date of interim regulations for Subtitle D. When interim regulations for Subtitle D have been issued, the Department intends to review Chapter 2 and to make any further revisions as may be appropriate.

Dated: April 21, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix A

Special Attention of: All Regional Administrators; Regional Directors of Housing; Regional Directors of Fair Housing and Equal Opportunity; Managers, Categories A, B and C Offices; Directors, Housing Management Divisions, Categories A, B and C Offices; Directors, Fair Housing and Equal Opportunity Divisions, Categories A, B and C Offices, Loan Management Branch Chiefs

Subject: Elderly Persons and Persons with Disabilities in Assisted Housing—Population Mix

Revisions to Chapter 2 of Handbook 4350.3, Chg–24, Occupancy Requirements of Subsidized Multifamily Housing Programs, were issued by the Office of Housing on January 19, 1993. Sections 2–1 through 2–19 of the Chapter have been questioned by a number of groups representing interested parties on several grounds, including that the potential exclusion of persons with disabilities could violate the Fair Housing Act and section 504 of the 1973 Rehabilitation Act. The questioned sections of the Handbook relate to the identification of projects or portions of projects for the exclusive use of elderly persons under the Sections 221(d) (3) and (4), 231 and 236 programs.

Handbook guidance is necessary to insure clear and consistent direction to housing providers and to the Field, and the withdrawal of sections 2–1 through 2–19 of Chapter 2 could create further inconsistencies, confusion, and a greater likelihood of discrimination. The Department, therefore, has determined that Chapter 2, sections 2–1 through 2–19 would remain in effect, as modified by this Notice, pending issuance of regulations implementing subtitle D of Title VI of the Housing and Community Development Act of 1992. These changes do not involve provisions of the handbook related to the Section 202 program. When the regulations implementing subtitle D of Title VI are issued, the Department intends to review Chapter 2, making revisions where appropriate.

In the interim, until handbook revisions consistent with this Notice are published, the Office of Housing and the Office of Fair Housing and Equal Opportunity (FH&EO) are issuing this Notice which provides the following clarifications of Chapter 2:

- It was not the intent of Chapter 2 to require owners of projects with units covered by the Sections 221, 231 and 236 programs to identify their projects or portions of their projects as exclusively elderly. Therefore, the deadline for project identification (next application for a rent increase or June 1994, at the latest), as indicated in Figure 2–1, page 2–9, paragraph 3, is hereby deleted. Owners who have not already designated their project as elderly (age 62 or over) housing may choose to identify the project as elderly housing at any time in the future (e.g., after publication of regulations implementing subtitle D of Title VI).
- If an owner identifies the project as described in paragraph 2 of Figure 2.1 of Chapter 2, he or she is reminded that the burden of proof supporting the identification of a project or portion of a project as elderly-only housing remains with them, and they may be required to document that proof to HUD and/or another party at some future time.
- The number of units which are constructed to be accessible to people with physical disabilities is not intended to dictate any standard or cap on the number of units serving persons with disabilities. In addition, references to the term "mobility impaired" are being deleted from Chapter 2; wherever that term was used, it should be replaced by "tenants needing the accessibility features of the units."
- In Handbook 4350.3, Chg–24, Occupancy Requirements of Subsidized Multifamily Housing Programs, Chapter 2, Figure 2–1, page 2–8:

—Remove the text of the second Note, which reads: "In some elderly projects, a percentage of the units have been designed for households whose heads or spouse have mobility impairments, regardless of age. See paragraph 2–8c."

—Replace that language with the second paragraph of the "Note" under Item No. 3, on page 2–9, which begins: "Housing must be both designed and operated for the elderly.* * *"

These paragraphs were incorrectly placed when Chapter 2 was printed, and this change merely corrects that error.

Project owners are also reminded that Chapter 2 includes the requirement to make reasonable accommodations to individuals with disabilities and other Civil Rights

requirements in addition to requirements under the National Housing Act.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

Roberta Achtenberg,

Assistant Secretary for Fair Housing-Equal Opportunity.

[FR Doc. 94–10146 Filed 4–26–94; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–942–04–4730–02 and 4–00162]

Filing of Plats of Survey

April 18, 1994.

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A plat representing the dependent resurvey of Mineral Survey No. 29, Trench Mill Site; and a metes-and-bounds survey of Tract 38, in unsurveyed Township 23 South, Range 16 East, Gila and Salt River Meridian, Arizona, was accepted January 20, 1994, and was officially filed February 3, 1994.

A plat representing a metes-and-bounds survey of Tract 39, in unsurveyed Township 11 South, Range 15 East, Gila and Salt River Meridian, Arizona, was accepted February 4, 1994, and was officially filed February 10, 1994.

These plats were prepared at the request of the United States Forest Service, Coronado National Forest.

A supplemental plat, showing new lots 5 and 6, a subdivision of original lot 4, in section 33, Township 2 North, Range 15 East, Gila and Salt River Meridian, Arizona, was accepted February 2, 1994, and was officially filed February 10, 1994.

This plat was prepared at the request of the United States Forest Service, Tonto National Forest.

A plat representing the dependent resurvey of a portion of Mineral Survey No. 3207; in unsurveyed Township 3 North, Range 16 West, Gila and Salt River Meridian, Arizona, was accepted February 11, 1994, and was officially filed February 15, 1994.

This plat was prepared at the request of the Bureau of Land Management, Yuma District Office.

A plat representing the dependent resurvey of a portion of the northeast boundary of the Gila River Indian Reservation, between the 2½ and 3½ mile posts in Townships 1 South, Ranges 1 and 2 East, Gila and Salt River Meridian, Arizona, was accepted March 11, 1994, and was officially filed March 17, 1994.

This plat was prepared at the request of the Federal Public Defender, District of Arizona.

A plat representing the dependent resurvey of a portion of the subdivisional lines; and the subdivision and a metes-and-bounds survey in section 20, Township 17 North, Range 5 East, Gila and Salt River Meridian, Arizona, was accepted March 16, 1994, and was officially filed March 24, 1994.

This plat was prepared at the request of Federal Land Exchange, Incorporated.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

James P. Kelley,

Chief Cadastral, Surveyor of Arizona.

[FR Doc. 94–10179 Filed 4–26–94; 8:45 am]

BILLING CODE 4310–32–M

[NM–070–4350–1]

Intent To Prepare Resource Management Plan Amendment; Farmington District, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent and invitation to participate in a plan amendment/environmental assessment to address the impacts of implementing restrictions on off highway vehicle travel in the BLM's Farmington District, New Mexico.

SUMMARY: The BLM will prepare a RMP plan amendment/environmental assessment for the purpose of addressing the impacts related to imposing travel restrictions on off highway vehicle travel in the Farmington District. The travel restrictions will apply to the entire Farmington District which occupies approximately three million acres of mixed land status in the northwest quadrant of New Mexico. Within this area there are about 1.5 million acres of public land with significant amounts of private, indian allotted, Navajo Tribal trust, state of New Mexico and lands withdrawn for the exclusive use of Navajo Indians under Public Land Order 2198 and 1483.

DATES: Comments must be submitted on or before June 1, 1994. Two methods will be employed to obtain public input into the planning process. The first method will be to receive written comments from the public in response to this Notice of Intent. The second method will be to hold two public meetings.

ADDRESSES: Comments should be sent to the RMP Amendment/EA Team Leader, BLM, Farmington District Office, 1235 Laplata Highway, Farmington, New Mexico 87401.

FOR FURTHER INFORMATION CONTACT: John Hansen at the address above or at (505) 599–6325.

PUBLIC MEETINGS: An additional opportunity will be provided to the public to comment through two public meetings that will be held at the following times and locations.

Date: May 11, 1994.
Time: 7 p.m.
Location: Farmington Civic Center, 200 W. Arrington, Farmington, New Mexico.

Date: May 17, 1994.
Time: 10 a.m.
Location: Crownpoint Institute of Technology, Crownpoint, New Mexico.

SUPPLEMENTARY INFORMATION: Description of Proposed Planning Action: the proposed action is to amend the existing Farmington Resource Management Plan for the purpose of implementing off highway vehicle travel restrictions on public lands within the Farmington District.

Type of Issues Anticipated

1. The ability of industry personnel to conveniently and cost effectively access oil and gas wells may be impacted due to the obliteration of some duplicate roads.

2. Enforcement of area limitations and road closures through installation of signs may be very difficult.

3. If benefits are expected to accrue to big game animals couldn't this be accomplished through means other than limiting vehicle travel.

4. Visual resources have already been significantly altered in the Farmington District as a result of energy development. Is it reasonable to assume that additional, similar development will have any more of a negative impact?

5. Off road vehicle enthusiasts may object to increasing the limited designation acreage.

6. How many miles of road will need to be closed by ripping and seeding, signing or gating?

7. Some people may object to the limited designation due to its impact on their ability to travel off road by vehicle

in search of firewood, pinyon nuts and livestock.

Criteria to Guide Development of the Planning Action: The planning criteria were identified to help guide the resolution of the issues.

Non-Discretionary Criteria

1. The proposed action must comply with laws, executive orders and regulations.

2. The proposed action must be reasonable and achievable with available technology.

Discretionary Criteria

1. Evaluate and consider long term benefits to the public in relation to short term benefits.

As new information becomes available during the planning process or through public participation, additional criteria may be developed for future guidance of this planning effort.

The Disciplines to be Represented on the Interdisciplinary Team: The planning amendment/environmental assessment will be prepared by an interdisciplinary team consisting of a wildlife biologist, rangeland management specialist, geologist, recreation planner, surface protection specialist and an environmental coordinator. A habitat management specialist and a conservation officer with the New Mexico Department of Game & Fish will also be on the team to provide additional wildlife input.

The Kind and Extent of Public Participation Activities To Be Provided

A press release will be sent to the local newspapers informing them of the proposed planning action.

Two public meetings will also be held to inform the public of the proposed action and solicit comments.

The Location and Availability of Documents Relevant to the Planning Process

Pertinent information is available at the BLM Office at 1235 Laplata Highway, Farmington, New Mexico 87401 and is subject to public review on weekdays from 7:45 a.m. to 4:30 p.m.

Dated: April 18, 1994.

Patricia E. McLean,

Acting Associate State Director.

[FR Doc. 94–9823 Filed 4–26–94; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for a Permit To Allow Incidental Take of the Endangered Stephens' Kangaroo Rat by John Laing Homes, Inc., Laguna Hills, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that John Laing Homes, Inc. (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The application has been assigned permit number PRT–788945. The requested permit would authorize the incidental take of the endangered Stephens' kangaroo rat (*Dipodomys stephensi*) in the city of Corona, Riverside County, California. The proposed incidental take would occur as a result of grading and construction activities in Stephens' kangaroo rat occupied habitat for a residential development (Tract 22579).

The Service also announces the availability of an Environmental Assessment (EA) for the proposed issuance of the incidental take permit. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application and EA should be received on or before May 31, 1994.

ADDRESSES: Comments regarding the application or adequacy of the EA should be addressed to Mr. Gail Kobetich, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2740 Loker Avenue West, Carlsbad, California 92008. Please refer to permit No. PRT–788945 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. John Bradley, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2740 Loker Avenue West, Carlsbad, California 92008 (619–431–9440). Individuals wishing copies of the application or EA for review should immediately contact the above individual.

SUPPLEMENTARY INFORMATION:

Background

Under section 9 of the Act, "taking" of Stephens' kangaroo rats, an endangered species, is prohibited. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are in 50 CFR 17.22.

The Applicant proposes to implement a Habitat Conservation Plan (HCP) for the Stephens' kangaroo rat that will allow clearing, grading and construction of a residential development (Tract 22579), in the city of Corona, Riverside County, California. The permit would authorize the destruction of up to 10.4 acres of occupied Stephens' kangaroo rat habitat, which is estimated to include approximately 15 Stephens' kangaroo rats. The permit would be in effect for five years. The application includes an HCP and Implementation Agreement.

The Applicant proposes to mitigate for the incidental take prior to site disturbance by: (1) Acquiring 10.4 acres of occupied Stephens' kangaroo rat habitat within a Stephens' kangaroo rat Study Area administered by the Riverside County Habitat Conservation Agency (RCHCA) to be managed in perpetuity to benefit the Stephens' kangaroo rat; (2) implementing this requirement by payment of $91,000 to the RCHCA for the habitat acquisition; (3) paying $9,100 to the RCHCA for the long-term management of the acquired habitat; and (4) providing evidence confirming acquisition of the habitat within 180 days of payment of the mitigation fee.

The EA considers the environmental consequences of five alternatives, including the proposed action and no-action alternatives. The proposed action is the issuance of a permit under section 10(a) of the Act that would authorize removal of 10.4 acres of Stephens' kangaroo rat habitat during the residential development. The proposed action would result in minimizing incidental take by limitations on and monitoring of proposed construction activities. Mitigation under proposed action would enhance Stephens' kangaroo rat conservation by the acquisition and management of 10.4 acres of occupied habitat to be managed for the Stephens' kangaroo rat. Under the no-action alternative, the project would not occur and the permit would not be issued. The present habitat fragmentation and isolation due to off-road vehicle use, surrounding development, and other on-site disturbances would remain under the no-action alternative, and the Stephens' kangaroo rat population on the site likely would disappear in time. In addition, proposed funding for acquisition of habitat within the RCHCA reserve areas would not be available.

The third alternative is to completely avoid occupied habitat on the project site. A fourth alternative is to trap and relocate Stephens' kangaroo rats as a means of avoiding the killing or serious injury of the animals. The fifth alternative is to obtain a take allocation from the city of Corona as a co-permittee to the existing RCHCA section 10(a) incidental take permit and HCP.

(Notice: Availability of an Environmental Assessment and Receipt of an Application for a Section 10(a) Permit of the Endangered Species Act)

Dated: April 19, 1994.

Marvin L. Plenert,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 94–10114 Filed 4–26–94; 8:45 am]

BILLING CODE 4310–55–M

Office of Surface Mining Reclamation and Enforcement

Notice of Intent To Prepare an Environmental Impact Statement

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

ACTION: Notice of intent to prepare an environmental impact statement and to hold scoping meetings.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) proposes to revise a draft environmental impact statement (EIS) which analyzed the environmental impacts of the alternatives for rulemakings that would (1) define the term Valid Existing Rights (VER), and (2) determine the degree, if any, to which subsidence resulting from underground coal mining is subject to the prohibitions of section 522(e) of the Surface Mining Control and Reclamation Act of 2977 (SMCRA). OSM invites comments on the scope of the analysis and will hold scoping meetings upon request. OSM would like to emphasize, however, the comments received on the previous draft EIS are being considered and need not be re-submitted.

DATES: *Written comments:* OSM will accept written comments on the scope of the EIS until 5 p.m. Eastern Time on May 31, 1994.

Scoping meetings: OSM will meet with interested persons upon request to discuss the scope of the EIS until May 31, 1994. See **ADDRESSES** for the location of the meetings.

ADDRESSES: *Written comments:* Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol Street, NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record 660–NC, 1951 Constitution Avenue NW., Washington, DC 20240.

Scoping meetings: Upon request, OSM staff will be available to meet with interested persons, individually or in groups, during the comment period at the following OSM locations: Eastern Support Center, Ten Parkway Center, Pittsburgh, Pennsylvania 15220 (Contact: Chuck Wolf, 412–937–2897); Western Support Center, 1020 15th Street, Second Floor, Denver, Colorado 80202 (Contact: Floyd McMullen, 303–844–3104); Knoxville Field Office, 530 Gay Street, suite 500, Knoxville, Tennessee 37902 (Contact: Gary Tucker, 615–545–4122); and Branch of Environmental and Economic Analysis, rm 640, 800 North Capitol Street, Washington, DC 20002 (Contact: Andy Devito, 202–343–5150).

FOR FURTHER INFORMATION CONTACT: Andy DeVito, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., room 640–NC, Washington, DC 20240; Telephone: 202–343–5150.

SUPPLEMENTARY INFORMATION: OSM proposes to revise the draft EIS that was made available to the public on April 19, 1991 (56 FR 16102). The draft EIS analyzed the environmental impacts of the alternatives for a rulemaking that would (1) define the term VER, and (2) determine the degree, if any, to which subsidence resulting from underground coal mining is subject to the prohibitions of section 522(e) of SMCRA.

OSM had decided to issue a revised draft for two reasons. First, prior to the close of the comment period on the April 1991 draft EIS, OSM published a notice (56 FR 33170, July 18, 1991), which informed the pubic that, in response to an inquiry from OSM, the Department of the Interior's Office of the Solicitor had recently revised the issue of whether the prohibitions of section 522(e) of SMCRA apply to subsidence resulting from underground coal mining, and issue a Memorandum Opinion (M–36971, July 10, 1991). The Solicitor's Memorandum Opinion concluded that the best interpretation of SMCRA is that subsidence is not a surface coal mining operation subject to the prohibitions of section 522(e). The July 18, 1991 **Federal Register** notice also stated that OSM had determined that existing regulations were consistent with the position and, therefore, no further rulemaking on the issue was necessary. In an August 1, 1991 notice (56 FR 36843), extending the comment period on the draft EIS, OSM informed the public that commenters should be aware that since the issuance of the draft EIS, the issue of whether and to what degree subsidence is covered by the mining prohibitions set forth in section 522(e) of SMCRA, had been resolved as a result of the Solicitor's Opinion and the July 18 1991 **Federal Register** notice.

In September 1991, a lawsuit was filed against the Secretary, challenging the July 18, 1991 **Federal Register** notice. On September 22, 1993, in *National Wildlife Federation* v. *Babbitt*, No. 91–2275, (D.D.C.), the court held that OSM's July 18, 1991 **Federal Register** notice concerning the applicability of section 522(e) to subsidence was a legislative rule issued in violation of the Administrative Procedure Act (APA). The court remanded the matter to the Secretary for rulemaking in accordance with the requirements of the APA. The court also noted for the record that OSM must either prepare an EIS or state on the record the reasons why an EIS had not bee prepared.

OSM also intends to publish a new proposed rule defining VER.

Since both the VER rule and the rule on the applicability of 522(e) to subsidence relate to the scope of the prohibitions of 522(e), and both rules have been previously addressed in a combined draft EIS on two occasions, OSM again intends to issue a revised draft EIS addressing both rules.

The second reason for a revised draft EIS is that it will have the benefit of the many comments that were submitted on the April 1991 draft EIS.

Previous Scoping Activity

OSM published a notice of intent to conduct rulemaking on the applicability of the prohibitions in section 522(e) (4) and (5) to subsidence resulting from underground mining on April 3, 1985 (50 FR 13250). Subsequently, OSM published a notice of intent to prepare an EIS to analyze the environmental impacts of the rulemaking on subsidence, as required by the National Environmental Policy Act (NEPA), on June 19, 1985 (50 FR 25473). Scoping meetings were then held in Pittsburgh, Pennsylvania, on August 1, 1985; in St. Louis, Missouri, on August 6, 1985; and in Washington, DC, on August 9, 1985. OSM received written comments during that period also.

Based on the comments received, OSM decided to combine the environmental analysis of a rulemaking on VER with the analysis of the rulemaking on subsidence. On January 22, 1987 (52 FR 2421), OSM published a notice of intent to (1) prepare an EIS

on those rulemakings, and (2) hold a scoping meeting to address public comments on February 6, 1987, in Washington, DC. The public meeting was held to receive comments from interested persons on the specific alternatives evaluated in the EIS and on the scope and significance of the issues to be analyzed. Federal agencies whose lands would be affected also were invited to discuss data problems. Upon request, OSM held a second meeting on February 23, 1987, to hear comments from environmental groups unable to attend the February 6, 1987 meeting. Again, OSM received written comments.

All written comments submitted as part of scoping for the EIS, as well as all testimony presented at the public meetings on the EIS, were considered in the preparation of that draft EIS, which was published concurrently with a proposed rule addressing both VER and subsidence on December 27, 1988. However, on July 21, 1989 (54 FR 30557), OSM withdrew the proposed rule.

Subsequently, OSM made a decision to consider the VER rulemaking and the rulemaking on the applicability of section 522(e) to subsidence separately. At the same time, OSM decided to continue to include analysis of both rulemakings in the same EIS due to the interrelated nature of their effects, and the draft EIS, entitled OSM–EIS–29, was issued on April 19, 1991. The comment period on the draft EIS closed on October 16, 1991.

As a result of prior scoping meetings and the publication of the draft EIS, OSM has received numerous comments on both the scope of the analysis and the alternatives considered in the draft EIS. However, the public is again invited to submit comments on the scope of the analysis, the assumptions and scope of data relating to the analysis, and the issues and alternatives to be analyzed in the revised draft EIS. OSM would like to emphasize that comments received on the previous draft EIS are being considered and need not be re-submitted. OSM staff will be available to meet with interested persons upon request to discuss the scope of the revised draft EIS. Since the meetings will be informal, OSM will not be using a court reporter and would appreciate receiving, if possible, a written copy of the comments they intend to present at the meeting.

Alternatives Considered

The alternatives considered in the April 1991 draft EIS are listed below. It is possible that the number of alternatives actually considered in the revised draft EIS may be revised as a result of comments received during scoping, analysis of comments received on previous drafts, further legal analysis, or further analysis by the Department. The public is invited to submit any other alternatives that it believes are reasonable and should be considered.

VER Alternatives

For the definition of VER, the four alternatives considered were:

1. No Action

No Action means that OSM would not promulgate a rule defining VER and that OSM would continue to make VER determinations consistent with existing law.

2. Good Faith All Permits Standard

The good faith all permits Standard (GFAP) would require any person seeking confirmation of VER to show that he had made a good faith effort to obtain all permits before August 3, 1977, or before the date the land in question became subject to the prohibitions of section 522(e). It is anticipated that few persons would be able to meet this test for determining VER.

3. GFAP or Takings Standard

Under this alternative, VER would be found to exist if the person can demonstrate that he had made a good faith effort to obtain all permits before August 3, 1977 (or before the date the land became subject to the prohibitions of section 522(e)), or if denial of VER would be projected to result in a compensable taking of property.

4. Ownership and Authority Standard

Under the Ownership and Authority (O&A) standard for VER, the person claiming VER for a surface coal mining operation would have to demonstrate ownership of the coal and the authority to extract the coal by the method intended, as determined by the laws of the State in which the property is located.

Subsidence Alternatives

There were five alternatives in the draft EIS for determining the degree, if any, to which subsidence resulting from underground coal mining is subject to the prohibitions of section 522(e) of SMCRA. Because the Solicitor's Memorandum Opinion M–36971 advised that the best reading of SMCRA is that the prohibitions of section 522(e) do not apply to subsidence resulting from underground coal mining, OSM is considering this opinion and will consult further with the Solicitor on this issue. OSM anticipates including in the revised draft EIS the five alternatives which were analyzed in the April 1991 draft EIS.

OSM intends to ensure that, whatever rule is proposed and adopted, the impacts of that alternative will already have been analyzed. Therefore, it would not be necessary to again undertake the time consuming and expensive task of preparing another EIS. The alternatives in the April 1991 draft EIS were.

1. No Action

Under this alternative, OSM would not promulgate new rules to clarify whether subsidence is subject to the prohibitions of section 522(e). The determination of the applicability of the prohibitions to subsidence would continue to be made by OSM and the States pursuant to the applicable approved regulatory programs.

2. No Mining Standard

Underground extraction would be considered subject to the prohibitions of section 522(e). Because virtually all underground mining may eventually result in subsidence, all underground extraction would be prohibited within the 522(e) areas. Depending on the angle of draw and depth of seam characteristics, some extraction of coal outside the protected areas might also be prohibited if it would be expected to cause subsidence within the protected areas.

3. No Subsidence Standard

Subsidence would be considered prohibited by section 522(e). Mining operations that would be expected to cause subsidence within the section 522(e) areas in the reasonably foreseeable future would be subject to the prohibitions of section 522(e).

4. No Material Damage Standard

Subsidence that would be expected to cause material damage would be considered subject to the prohibitions of section 522(e). Unless an operator can demonstrate that underground mining would not reasonably be expected to result in subsidence that causes material damage such as functional impairment to protected surface features, structures, or facilities, underground mining would be prohibited in the section 522(e) areas.

5. Prohibitions Do Not Apply Standard

Subsidence would not be considered subject to the prohibitions of section 522(e). Restrictions set forth in section 515 of SMCRA and the implementing regulations in 30 CFR part 817 would still apply. Surface activities and facilities related to underground coal

mining would continue to be prohibited in the 522(e) areas.

Considerations

The proposed Federal actions would be programmatic national rulemaking that would clarify the meaning of statutory prohibitions, but would neither allow nor prohibit mining in any site-specific case. Therefore, the analysis in the revised draft EIS will be programmatic in nature rather than site-specific. OSM anticipates including a generic discussion of the impacts that could be expected to result from various types of surface and underground coal mining activities should they occur in each of the protected areas, 522(e)(1)–(5).

Dated: April 19, 1994.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 94–9966 Filed 4–26–94; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–361]

Designation of Additional Commission Investigative Attorney

In the Matter of certain portable on-car disc brake lathes and components thereof.

Notice is hereby given that, as of this date, Juan S. Cockburn, Esq. and John M. Whealan, Esq. of the Office of Unfair Import Investigations are designated as the Commission investigative attorneys in the above-cited investigation instead of Juan S. Cockburn, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: April 19, 1994.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 94–10145 Filed 4–26–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, room 3219, Washington, DC 20423, (202) 927–6212 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

AB–227 (SUB–NO. 4X), Wheeling & Lake Erie Railway Company—Abandonment Exemption—in Stark and Wayne Counties, Ohio. EA available 4/22/94.

Comments on the following assessment are due 30 days after the date of availability: None

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–10118 Filed 4–26–94; 8:45 am]

BILLING CODE 7035–01–P–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;
(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) how often the form must be filled out or the information is collected;
(4) who will be asked or required to respond, as well as a brief abstract;
(5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) an estimate of the total public burden (in hours) associated with the collection; and,
(7) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/850 WCTR, Department of Justice, Washington, DC 20530.

New Collection

(1) INSPASS User Survey
(2) None. Office of Inspector General
(3) On occasion
(4) Individuals or households. The survey is part of an audit of INSPASS. This survey will be sent to INSPASS users. the results will be used to help make INSPASS more effective and efficient
(5) 670 annual responses at 0.5 hours per response
(6) 335 annual burden hours
(7) Not applicable under Section 3504(h)

Public comment on this item is encouraged.

Dated: April 21, 1994.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 94–10117 Filed 4–26–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Partial Consent Decrees Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in *United States* v. *New York City Board of Education, et al.*, Civil Action No. 89–0856, was lodged on April 14, 1994 with the United States District Court for the Eastern District of New York. Defendant New York City Board of Education (New York) owns and operates schools in the New York City metropolitan area. New York contracted with Defendants Hollywood Commercial Renewals, Inc. (Hollywood) and A. Grgas Contracting, Inc. (Grgas) to undertake renovation activities at schools in New York City. Hollywood and Grgas engaged in these renovation activities but neither they nor New York notified the Environmental Protection Agency (EPA) of these activities, in violation of the Clean Air Act (Act) and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) for asbestos. Under the terms of the proposed partial consent decree, Hollywood and Grgas will pay civil penalties in the amounts of $3,500 and

$1,500, respectively and agree to be enjoined from further violations of the Act and the NESHAPS.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *New York City Board of Education, et al.*, D.J. reference #90–5–2–1–1300.

The proposed consent decree may be examined at the Office of the United States Attorney for the Eastern District of New York, One Pierrepont Plaza, 11th floor, Brooklyn, New York; the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York; and at the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC. In requesting a copy, please enclose a check in the amount of $2.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environment Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–10182 Filed 4–26–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree United States v. City of Tacoma, Washington

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a Consent Decree in *United States* v. *City of Tacoma, Washington*, Civil Action No. C94–5193 was lodged with the United States District Court for the Western District of Washington on April 11, 1994. This action was brought under Section 309 (b) and (d) of the Clean Water Act 33 U.S.C. 1319 (b) and (d).

The proposed Consent Decree is designed to bring Tacoma's North End Wastewater Treatment Plant (North End Plant) into compliance with the technology-based secondary treatment standards mandated by section 301(b)(1)(B) of the Clean Water Act and by 40 CFR part 133. In addition, Tacoma will pay a civil penalty of $550,000, half to the United States and half to the State of Washington Department of Environmental Quality, which assisted EPA in bringing this enforcement action.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Amended Partial Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *City of Tacoma, Washington*, DOJ. No. 90–5–1–1–3908.

The Consent Decree may be examined at the Offices of the United States Attorney for the Western District of Washington, 3600 Seafirst Fifth Avenue Plaza, 800 Fifth Avenue, Seattle, Washington, at the Region 10 Office of the United States Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, and at the Consent Decree Library, 1120 G Street NW., 4th floor, Washington, DC 20005 (telephone number (202) 624–0892).

A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center. The proposed Amended Partial Consent Decree consists of a thirty-two page consent decree and two pages of appendices. A request for a copy of the proposed Consent Decree with appendices should be accompanied by a check in the amount $8.50 (25 cents per page per reproduction charge) made payable to "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–10183 Filed 4–26–94; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the ATM Forum

Notice is hereby given that, on February 16, 1994, pursuant to Section 6(a) of the National Cooperative Research Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The ATM Forum (the "ATM Forum") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purposes of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members of ATM Forum are: 3DO Company, Redwood City, CA; Allied Telesis, Inc., Mountain View, CA: AWA Networks, Sydney, NSW, Australia; Adaptec, Inc., Milpitas, CA; Bipolar Integrated Technology, Beaverton, OR; Boeing Company, Seattle, WA; COMSAT World Systems, Clarksburg, MD; Cray Research, Inc., Eagan, MN; Cypress Semiconductor, San Jose, CA; Data Communications Technology, Santa Clara, CA; David Sarnoff Research Center, Princeton, NJ; Digiboard, Eden Prairie, MN; FiberCom, Inc., Roanoke, VA; Fujikura Technology America, Sunnyvale, CA; Information Comm Inst Singapore, Singapore Telecommunications Academy, Singapore; KDD, Tokyo, JAPAN; Kalpana, Sunnyvale, CA; LANSpeed Inc., Mountain View, CA; Lawrence Livermore Labs, Livermore, CA; Lightstream Corp., Billerica, MA; MCNC, Research Triangle Park, NC; Microsoft Corp., Redmond, WA; National Inst of Standards & Tech, Gaithersburg, MD; Network Peripherals, Milpitas, CA; Novell, San Jose, CA; Olicom A/S, Lyngry, DENMARK; Scientific Atlanta, Atlanta, GA; Sierra Research and Technology, Mountain View, CA; SuperNet Networking, New York, NY; T3plus Networking, Inc., Santa Clara, CA; Tektronix, Beaverton, OR; Telecom Finland, Tampere, Finland; Telefonica I&D, Madrid, SPAIN; Unisys, Paoli, PA; Verilink, San Jose, CA; Whitetree Network Technologies, Palo Alto, CA; and Xylan, Chatsworth, CA.

No changes have been made in the planned activities of ATM Forum. Membership remains open, and the members intend to file additional written notifications disclosing all changes in membership.

On April 19, 1993, ATM filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on June 2, 1993 (58 Fed. Reg. 31415).

The last notification was filed with the Department on November 18, 1993. A notice was published in the Federal Register pursuant to section 6(b) of the Act of February 17, 1994 (59 FR 8020).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–10186 Filed 4–26–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Corporation for Open Systems International

Notice is hereby given that, on March 31, 1994, pursuant to Section 6(a) of the National Cooperative Research and

Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Corporation for Open Systems International ("COS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain information. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: Apple Computer, Inc., Bull HN Information Systems, Inc., Control Data Systems, Inc., General Motors Corporation, International Business Machines Corporation, ISODE Consortium, Inc., RETIX, Siemens Stromberg-Carlson, U.S. Air Force Communications Command, U.S. Department of Energy, and U.S. Department of the Navy Data Automation Command, ceased membership in COS effective December 31, 1993.

No other changes have been made in either the membership or planned activities of COS. Membership in COS remains open, and COS intends to file additional written notifications disclosing all changes in membership.

On May 14, 1986, COS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 11, 1986 (51 FR 21260).

The last notification was filed with the Department on October 20, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 10, 1994 (59 FR 1408).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–10185 Filed 4–26–94; 8:45 am]

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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 April 2, 1994, through April 15, 1994. The last biweekly notice was published on April 13, 1994 (59 FR 17591).

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 May 27, 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: January 4, 1994.

Description of Amendment Requests: The proposed amendment would change Technical Specification 3/4.2.3 Azimuthal Power Tilt and its associated bases. The licensee proposed to change the Azimuthal Power Tilt limit from less than or equal to 10 percent to less than or equal to 3 percent when the Core Operating Limit Supervisory System is out of service.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis about the issue of no significant hazards consideration, which is presented below:

Standard 1—Involve a significant increase in the probability or consequences of an accident previously evaluated.

Decreasing the COLSS [Core Operating Limit Supervisory System] out-of service Azimuthal Power Tilt Technical Specification limit does not increase the probability or consequences of an accident previously evaluated. The Technical Specification operating limit is being conservatively reduced to conform to the assumptions used in the safety analysis. The reduced operating limit requires a more uniform power distribution in the reactor core. The uniform power distribution may reduce the consequences of an accident previously evaluated by not allowing regions in the core to operate at higher power levels.

Standard 2—Create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed amendment will result in an alarm setpoint change, but does not involve any equipment changes and will not alter the manner in which the plant will be operated. For this reason, this amendment will not create the possibility of an new or different kind of accident from any previously evaluated. The proposed operating range is smaller and completely within the existing Technical Specification limits; thus, there are no mechanisms to create the possibility of a new or different kind of accident from those previously evaluated.

Standard 3—Involve a significant reduction in a margin of safety.

The proposed amendment conservatively reduces the COLSS out-of-service Azimuthal Power Tilt Technical Specification limit, thereby increasing the margin of safety. The proposed operating range is smaller and completely bounded by the existing Technical Specification limits.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to

determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room Location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for Licensees: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Project Director: Theodore R. Quay.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of Amendment Request: March 25, 1994.

Description of Amendment Request: The amendment would revise Technical Specification 3/4.8.4.2, Motor Operated Valves Thermal Overload Protection, with a more accurate description of the motor-operated valve (MOV) bypass configuration.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change is administrative in nature, providing a more accurate description of the MOV electrical supply configuration related to the thermal overload bypass function. Therefore, the change in terminology would not increase the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve any modifications or additions to plant equipment and the design and operation of the plant will not be affected. Therefore, the change in MOV thermal overload bypass function terminology would not increase the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed terminology change does not affect any parameters which relate to the margin of safety as defined in the Technical Specifications or in the FSAR [Final Safety Analysis Report]. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for Licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: William H. Bateman.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of Application for Amendments: March 7, 1994, as supplemented on March 24, 1994.

Description of Amendment Requests: The proposed amendment would change Technical Specification 4.6.1.2 by removing the specific schedules for containment integrated leak rate testing (CILRT) and specifying that the testing will be done in accordance with Appendix J to 10 CFR part 50.

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. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will allow flexibility in the scheduling for Type A tests in the 10-year service period while still meeting the requirements in 10 CFR 50 Appendix J. Additional flexibility is needed for plants using an 18-month fuel cycle to allow refueling outages and 10-year inservice testing intervals to coincide. For performance of the third Type A test at Byron, the change would allow an extension of four (4) months beyond the current maximum 50-month surveillance interval. The third test would be completed at the fifty-four (54) month interval for Byron Units 1 and 2.

For Braidwood Units 1 and 2, an extension on the surveillance time interval will not be necessary to satisfy the requirements of Appendix J. The Braidwood Units have scheduled the third Type A test to be conducted with the 10-year Inservice Inspection.

The results of the previous Type A leak tests show the overall leakage from the Byron containment buildings at very low levels. The extension of the Type A test by four months would not cause the consequences of a previously evaluated accident to increase. By continuing to conform to the requirements of 10 CFR 50 Appendix J, the test frequency, methodology, and acceptance criteria for containment leakage remains the same. Therefore, there is no significant increase in the probability or the consequences of an accident previously evaluated.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not affect the design or operation of any system, structure or component in the plant. There are no changes to parameters governing plant operation and no new or different type of equipment will be installed. No new accident scenarios are created by the proposed change because the test frequency continues to meet the requirements of Appendix J of 10 CFR part 50. There is no affect on containment structure, the penetrations, or the facility. The proposed change to the test schedule only provides flexibility in meeting the same requirement for three tests in a 10-year period. The testing method and bases have not changed. Therefore, operation of the units with this more flexible test schedule will not result in an accident previously not analyzed in the Updated Final Safety Analysis Report (UFSAR). The proposed changes do not impact the design bases of the containment and do not modify the response of the containment during a design basis accident. Therefore, the changes do not create the possibility of a new or different type of accident from any accident previously evaluated.

C. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes do not affect the margin of safety for any Technical Specifications. The initial conditions and methodologies used in the accident analyses remain unchanged, therefore, the results of the accident analyses are not impacted. The proposed change to the schedule allows for additional flexibility in meeting the requirement for three tests in a 10-year period. Elimination of the specified time interval for Type A testing would allow Byron Units 1 and 2 to extend the surveillance requirement of the third Type A test by four (4) months. This would exceed the existing maximum 50 month interval currently specified in Technical Specifications. The extension will allow performance of the Type A test to coincide with the seventh refueling outage, 10 year Inservice Inspection, and continue to meet the requirements of Appendix J to 10 CFR part 50. These proposed changes do not affect or change any limiting conditions for operation (LCO), or any other surveillance requirements in the Technical Specifications.

The results of the previous Type A leak tests have shown that the overall leakage rates from the Byron containment buildings were at low levels. The latest test results for Units 1 and 2 were 0.0175 weight percent per day and 0.0376 weight percent per day, respectively. The overall containment leakage rates have consistently remained well below the acceptance criteria for Byron

Station Type A tests of 0.075 weight percent per day. The testing method, acceptance criteria, and bases for the surveillance requirement will not be changed by the proposed amendment.

The present test performance margins, coupled with the Type B & C test program for monitoring and repairing individual leakage components provides justification for the proposed change. The Type B & C tests provide added assurance that the overall containment integrated leakage rates remain satisfactory. No significant leakage trends have been identified which threaten the overall containment leakage specifications.

In summary, Commonwealth Edison concludes that this change does not involve a significant reduction in a margin of safety because the containment integritiy will be maintained. Testing in accordance with Appendix J requirements ensures confidence is containment intergity. The proposed Technical Specifications amendment will continue to require testing that is consistent with Appendix J requirements. Additionally, results from previous tests have shown acceptable low overall containment leakage rates. Extension of Type A testing for four months would not involve a signficant 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: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481

Attorney for Licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: James E. Dyer.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York Date of Amendment Request: February 18, 1994

Description of Amendment Request: This amendment is an additional followup to the amendment request of May 29, 1992, published in the **Federal Register** on July 8, 1992 (57 FR 30242), which changed the Technical Specifications § 1.0, Definitions, to accommodate a 24-month fuel cycle and which proposed the extension of the test intervals for specific surveillance tests. This amendment proposes extending the surveillance intervals to 24 months for the following additional surveillance tests:

(1) Analog Rod Position Indication.

(2) Plant Noble Gas Activity Monitor (R–44).

(3) Low Turbine Auto Stop Oil Pressure Reactor Trip.

(4) 6.9 KV Undervoltage Relays.

(5) Boric Acid Tank Level.

(6) Vapor Containment Sump Discharge Flow and Temperature Channel.

(7) Loss of Power Undervoltage and Degraded Voltage Relays.

(8) Over-pressurization Protection System (OPS) and Control Rod Protection System (for use with Low Parasite [LOPAR] fuel) Trip.

(9) Condenser Evacuation System Activity Monitor (R–45).

(10) Service Water Inlet Temperature Monitoring Instrumentation.

(11) Sampler Flow Rate Monitors.

(12) Boric Acid Makeup Flow System.

(13) Plant Vent Noble Gas Effluent Monitor (R–27).

The amendment also proposes to change the surveillance interval for the Refueling Water Storage Tank Level to quarterly and to change the trip setpoint for the Control Rod Protection System. The changes requested by the licensee are in accordance with Generic Letter 91–04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24–Month Fuel Cycle."

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) Analog Rod Position Indication:]

The proposed change does not involve a significant hazards consideration since:

1. A significant increase in the probability or consequences of an accident previously evaluated will not occur.

It is proposed that the channel calibration frequency for the analog rod position indication channel be changed from every 18 months (+25%) to every 24 months (+25%).

A statistical analysis of channel uncertainty for a 30 month operating cycle has been performed. Based upon this analysis it has been concluded that none of the major error contributors are time dependent and that it can be reasonably expected that the channel will remain within calibration tolerance over a possible 30 month operating cycle. In addition, the rod bottom bistable is subject to monthly testing which would detect any abnormalities in an extended operating cycle. Due to this monthly test and the acceptable past test history, it is concluded that the channel will continue to operate within tolerance over an extended operating cycle and will not contribute to a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any accident previously evaluated has not been created.

The proposed change in operating cycle length due to an increased surveillance interval is not expected to affect the ability of the instrument channel to remain within calibration tolerance. Furthermore, the rod position indicator is used in normal operation only as an aid in control rod movement. Normally, very little control rod movement occurs during normal operation. Furthermore, it is not relied upon for accident prevention or accident mitigation. In accordance with existing Technical Specifications, normal operation can continue even if one channel is inoperable because alternate means (core instrumentation) exists to monitor rod position. The frequent monthly test tends to minimize the effect of a longer operating cycle for the rod position indication channel as any malfunction induced by time would be detected. Thus, it is concluded that the possibility of a new or different kind of accident from any accident previously evaluated has not been created.

3. A significant reduction in a margin of safety is not involved.

A statistical analysis of past calibration data has not identified any time dependent error contributors. Also, past test data indicates that the channel remains within calibration tolerance over the existing operating cycle. A longer operating cycle would increase the risk of drift, however accuracy is not a prime requirement for the RPI. Therefore, it is concluded that a longer operating cycle will not result in a significant reduction in a margin of safety.

[(2) Plant Noble Gas Activity Monitor (R–44):]

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

It is proposed that the channel calibration frequency for the Plant Noble Gas Activity Monitor (R–44) be changed from every 18 months (+25%) to every 24 months (+25%).

The function of R–44 is to respond to high activity levels during normal operation.

The setpoint for R–44 is established sufficiently above the expected radioactivity level in the discharge stream to preclude false actions but sufficiently below the allowed discharge radioactivity concentration so that discharge in excess of permissible limits does not occur. Monitor readouts are not used for quantitative purposes, but are used to respond to relative changes in radioactivity concentration.

There is limited data to support an unqualified extension of the surveillance interval. However, the instrument is checked for operability prior to release. Should the instrument be inoperable releases may continue provided grab sample analysis is performed. Since the monitor is subject to daily channel checks, monthly source checks, and quarterly functional channel tests, abnormal instrument behavior or inoperability would be detected permitting corrective actions during the extended surveillance interval.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

Operability of the instrument is important rather than ability to maintain a specific setpoint. Operability of the instrument is verified prior to a planned discharge and this

is independent of an extended surveillance cycle.

3. There has been no reduction in the margin of safety.

As the Technical Specifications permit pre-planned release even with an inoperable instrument, the margin of safety is not impacted by an extended surveillance interval provided that instrument operability is verified prior to release. This is also required by the Technical Specifications.

[(3) Low Turbine Auto Stop Oil Pressure Reactor Trip:]

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

It is proposed that the channel calibration frequency for the Low Turbine Auto Stop Oil Pressure system be changed from every 18 months (+25%) to every 24 months (+25%).

No credit is taken for a reactor trip from a low turbine auto stop oil pressure signal resulting from a turbine trip. Rather, the safety analysis assumes this reactor trip does not occur during full load rejection until an overpower delta T condition causes a reactor trip. In addition, no credit is taken for this system for turbine missile protection. Therefore, extending the surveillance interval for this parameter has no impact upon the probability or consequences of an accident.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

As no credit is taken in the safety analysis for this trip, the possibility of a new or different kind of accident has not been created by extending the surveillance interval.

3. There has been no reduction in the margin of safety.

Past test results have not identified any failures. Therefore, pursuant to Generic Letter 91–04, it is reasonably expected that this system will continue to function in an acceptable manner over an extended operating cycle.

[(4) 6.9 kv Undervoltage Relays:]

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

It is proposed that the calibration frequency for the 6.9 kv undervoltage channel be changed from every 18 months (+25%) to every 24 months (+25%).

Quarterly testing of these relays is required by Technical Specifications. The data from the quarterly tests of the new relays will be used to assure that drift does not exceed projected values. The quarterly tests provide a means of maintaining calibration within specified values, virtually eliminating any impact upon safety from an extended operating cycle.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

Because the quarterly tests assure that relay performance remains within specified limits, there is no possibility of creating a new or different kind of accident from any previously analyzed.

3. There has been no reduction in the margin of safety.

The requirement for a channel functional test each quarter minimizes any potential impact upon safety due to an extended operating cycle.

[(5) Boric Acid Tank Level:]

The proposed change does not involve a significant hazards consideration since:

1. A significant increase in the probability or consequence of an accident previously evaluated will not occur.

It is proposed that the channel calibration frequency for the Boric Acid Tank Level instrumentation be changed from every 18 months (+25%) to every 24 months (+25%).

A statistical analysis of channel uncertainty for a 30 month operating cycle has been performed. Based upon this analysis it has been concluded that sufficient margin exists between the existing Technical Specification limit and the licensing basis Safety Analysis limit to accommodate the channel statistical error resulting from a 30 month operating cycle. The existing margin between the Technical Specification limit and the Safety Analysis limit provides assurance that plant protective actions will occur as required. It is therefore concluded that changing the surveillance interval from 18 months (+25%) to 24 months (+25%) will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any accident previously evaluated has not been created.

The proposed change in operating cycle length due to an increased surveillance interval will not result in a channel statistical allowance which exceeds the current margin between the existing Technical Specification limit and the Safety Analysis limit. Plant equipment, which will be set at (or more conservatively than) Technical Specification limits, will provide protective functions to assure that Safety Analysis limits are not exceeded. This will prevent the possibility of a new or different kind of accident from any previously evaluated from occurring.

3. A significant reduction in a margin of safety is not involved.

The above change in surveillance interval resulting from an increased operating cycle will not result in a channel statistical allowance which exceeds the margin which exists between the current Technical Specification limit and the licensing basis Safety Analysis limit. This margin, which is equivalent to the existing margin, is necessary to assure that protective safety functions will occur so that Safety Analysis limits are not exceeded.

[(6) Vapor Containment Sump Discharge Flow and Temperature Channel:]

The proposed change does not involve a significant hazards consideration since:

1. A significant increase in the probability or consequences of an accident previously evaluated will not occur.

It is proposed that the calibration frequency for the VC sump discharge flow and temperature channel be changed from every 18 months (+25%) to every 24 months (+25%).

A statistical analysis of channel uncertainty for a 30 month operating cycle has been performed. Based upon this analysis it has been concluded that sufficient margin exists between the existing Technical Specification and the licensing basis Safety Analysis to accommodate the channel statistical error resulting from a 30 month operating cycle. The existing margin between the Technical Specification and the Safety Analysis provides assurance that plant protective actions will occur as required. It is therefore concluded that changing the surveillance interval from 18 months (+25%) to 24 months (+25%) will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any accident previously evaluated has not been created.

The proposed change in operating cycle length due to an increased surveillance interval will not result in a channel statistical allowance which exceeds the current margin between the existing Technical Specification and the Safety Analysis. Plant equipment, which will be set at (or more conservatively than) Technical Specification limits, will provide protective functions to assure that Safety Analysis limits are not exceeded. This will prevent the possibility of a new or different kind of accident from any previously evaluated from occurring.

3. A significant reduction in a margin of safety is not involved.

The above change in surveillance interval resulting from an increased operating cycle will not result in a channel statistical allowance which exceeds the margin which exists between the current Technical Specification and the licensing basis Safety Analysis. This margin, which is equivalent to the existing margin, is necessary to assure that protective safety functions will occur so that Safety Analysis limits are not exceeded.

[(7) Loss of Power Undervoltage and Degraded Voltage Relays:]

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

The Technical Specifications specify that the Loss of Power (undervoltage and degraded voltage) relays be calibrated and tested at a refueling interval; that the undervoltage alarm be calibrated at a refueling interval, and that the undervoltage (station blackout) input to Auxiliary Feedwater be calibrated at refueling intervals. It is proposed that the surveillance frequency be revised from 18 months (+25%) to 24 months (+25%).

All of the undervoltage and station blackout relays were found to be within specification at each of the refueling outage calibration periods.

Since the old relays have been replaced with relays from a different manufacturer whose drift characteristics are expected to be superior, extending the surveillance interval by several months will not significantly increase the probability or consequences of an accident.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

Past test results provide reasonable assurance that the relays will perform in an

acceptable manner for an extended operating cycle. With the installation of the new relays, whose performance will surpass the old relays, it is concluded that the plant will perform within its design basis for an extended operating cycle. Therefore, the possibility of a new or different kind of accident from any previously analyzed has not been created.

3. There has been no significant reduction in the margin of safety.

Since the new relays will surpass the performance of the old relays, there is reasonable assurance that a significant reduction in the margin of safety has not resulted from an extended operating cycle.

[(8) Over-pressurization Protection System (OPS) and Control Rod Protection System (for use with Low Parasite (LOPAR) fuel) Trip:]

The proposed change does not involve a significant hazards consideration since:

1. A significant increase in the probability or consequences of an accident previously evaluated will not occur.

It is proposed that the channel calibration frequency for the Over-pressurization protection system and the LOPAR trip system be changed from every 18 months (+25%) to every 24 months (+25%). This necessitates a change in the LOPAR Technical Specification trip setpoint from 350 °F to 381 °F.

A statistical analysis of channel uncertainty for a 30 month operating cycle has been performed based upon historical test data. Based on this analysis, a change to the Technical Specifications is required. Sufficient margin exists between the Safety Analysis limit and the proposed Technical Specification limit to accommodate projected channel uncertainty over a 30 month operating cycle. A statistical basis exists to assure that protective action will occur to prevent Safety Analysis limits from being exceeded. Thus, there will not be a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident previously evaluated has not been created.

Based upon a statistical analysis of past historical test data it has been demonstrated that reasonable assurance exists to conclude that Safety Analysis limits will not be exceeded over a 30 month operating cycle. The proposed Technical Specification limits provide margin with respect to the Safety Analysis limits and confidence that appropriate plant protective response will be provided to prevent the possibility of a new or different kind of accident from that previously evaluated from being created.

3. A significant reduction in a margin of safety is not involved.

The proposed changes to the Technical Specification limits are being made to assure that the previously established margin remains the same between plant protective function set points and Safety Analysis limits. This margin is based upon an evaluation of past historical test data and analytical methods for projecting instrument channel uncertainty over a 30 month operating cycle. It is therefore concluded that the existing margin of safety has been preserved.

[(9) Condenser Evacuation System Activity Monitor (R–45):]

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

It is proposed that the channel calibration frequency for the Condenser Evacuation System Noble Gas Activity Monitor (R–45) be changed from every 18 months (+25%) to every 24 months (+25%).

Since this radiation monitor is relatively new a degree of uncertainty is introduced by extending the surveillance interval by several months. However, the setpoint for automatic diversion is set some what conservatively. It is established sufficiently high to avoid spurious actuations and yet sufficiently low so that diversion and alarm can occur should a step increase in radioactivity level occur. Under these circumstances considerable departure from the setpoint can be accommodated and the monitor will still perform its intended safety function. Continued monitor operability is important and malfunction would be detected by monthly checks during the extended operating cycle. Thus, despite the introduction of a new monitor, the capability of R–45 to tolerate drift in addition to monthly operator checks, leads to the conclusion that an extended operating cycle will not result in a significant increase in the probability or consequences of an accident.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

Monthly checks would identify abnormal operating characteristics, should the instrument fail to perform its intended function. In the event of tube rupture with a reactor coolant system radioactivity concentration corresponding to 1% defective fuel, the resultant site boundary dose would be within 10 CFR [part] 20 limits should the monitor fail to perform its function (as discussed in FSAR [Final Safety Analysis Report]). In addition, alternate means of alarms to indicate a tube rupture event are available. Thus, the possibility of a new or different kind of accident has not been created.

3. There has been no reduction in the margin of safety.

Although this monitor is not necessary to mitigate releases below regulatory limits, it does provide the earliest of a steam generator tube leak. In this regard, continued instrument operation is important. Continued instrument operability would be verified by the monthly checks in an extended operating cycle.

[(10) Service Water Inlet Temperature Monitoring Instrumentation:]

The proposed change does not involve a significant hazards consideration since:

1. A significant increase in the probability or consequences of an accident previously evaluated will not occur.

It is proposed that the channel calibration frequency for the Service Water Inlet Temperature Monitoring Instrumentation be changed from every 18 months (+25%) to every 24 months (+25%).

A statistical analysis of channel uncertainty for a 30 month operating cycle has been performed. Based upon this analysis it has been concluded that sufficient margin exists between the existing Technical Specification and the licensing basis Safety Analysis to accommodate the channel statistical error resulting from a 30 month operating cycle. The existing margin between the Technical Specification and the Safety Analysis provides assurance that plant protective actions will occur as required. It is therefore concluded that changing the surveillance interval from 18 months (+25%) to 24 months (+25%) will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any accident previously evaluated has not been created.

The proposed change in operating cycle length due to an increased surveillance interval will not result in a channel statistical allowance which exceeds the current margin between the existing Technical Specification and the Safety Analysis. Plant equipment, which will be set at (or more conservatively than) Technical Specification limits, will provide protective functions to assure that Safety Analyses are not exceeded. This will prevent the possibility of a new or different kind of accident from any previously evaluated from occurring.

3. A significant reduction in a margin of safety is not involved.

The above change in surveillance interval resulting from an increased operating cycle will not result in a channel statistical allowance which exceeds the existing margin between the current Technical Specification and the licensing basis Safety Analysis. This margin, which is equivalent to the existing margin, is necessary to assure that the protective safety functions occur and that the Safety Analysis limits are not exceeded.

[(11) Sampler Flow Rate Monitor:]

1. There is no significant increase in the probability or consequences of an accident.

It is proposed that the channel calibration frequency for the Sample Flow Rate Monitors be changed from every 18 months (+25%) to every 24 months (+25%).

The flow rate monitors are used to estimate the total volume of air passed through filters. There is no setpoint or safety function served by these monitors. A high level of radioactivity in the discharge stream is detected by R–43 and/or R–44.

Insofar as discharge via the unit vent is permissible with the monitors inoperable, extension of the surveillance interval will have no impact upon safety.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

As the nuclear safety function is provided by other monitors in the event of high radioactivity levels in the discharge stream, extension of the surveillance interval will have no impact upon the creation of a new or different kind of accident.

3. There has been no reduction in the margin of safety.

These flow monitors are utilized to determine the total air flow through filters for computational purposes. As adequate measures (other monitors) exist to prevent

the possibility of discharging radioactivity in excess of applicable limits, there is virtually no impact upon safety incurred by extending the surveillance interval.

[(12) Boric Acid Makeup Flow System:]

The proposed change does not involve a significant hazards consideration since:

1. A significant increase in the probability or consequences of an accident previously evaluated will not occur.

It is proposed that the channel calibration frequency for the Boric Acid Makeup Flow System be revised from every 18 months (+25%) to every 24 months (+25%). A statistical analysis of channel uncertainty for a 30 month operating cycle has been performed. Based upon this analysis it has been concluded that sufficient margin exists between the existing Technical Specification limit and the licensing basis Safety Analysis limit to accommodate the channel statistical error resulting from a 30 month operating cycle. The existing margin between the Technical Specification limit and the Safety Analysis limit provides assurance that plant protective actions will occur as required. It is therefore concluded that changing the surveillance interval from 18 months (+25%) to 24 months (+25%) will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any accident previously evaluated has not been created.

The proposed change in operating cycle length due to an increased surveillance interval will not result in a channel statistical allowance which exceeds the current margin between the existing Technical Specification limit and the Safety Analysis limit. Plant equipment, which will be set at (or more conservatively than) Technical Specification limits, will provide protective functions to assure that Safety Analysis limits are not exceeded. This will prevent the possibility of a new or different kind of accident from any previously evaluated from occurring.

3. A significant reduction in a margin of safety is not involved.

The above change in surveillance interval resulting from an increased operating cycle will not result in a channel statistical allowance which exceeds the margin which exists between the current Technical Specification limit and the licensing basis Safety Analysis limit. This margin, which is equivalent to the existing margin, is necessary to assure that protective safety functions will occur so that Safety Analysis limits are not exceeded.

[(13) Plant Vent Noble Gas Effluent Monitor (R–27):]

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

It is proposed that the channel calibration frequency for the Plant Vent Noble Gas Effluent Monitor (R–27) be changed from every 18 months (+25%) to every 24 months (+25%).

R–27 is a high range noble gas monitor intended for use after an accident to provide information about the magnitude of radioactive releases. It serves no purpose during normal operation. It provides no function to prevent or mitigate an accident but does provide a role in assessing the consequences of an accident. As the monitor is a high range monitor, an estimate of the magnitude of release rather than accuracy is important. Accordingly, continued operability of the instrument during an extended operating cycle is more important than the device exhibiting minimal drift characteristics. Malfunction of the instrument would be detected by the shift checks and functional tests performed during the extended operating cycle.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

Since the monitor provides no preventive or mitigating action in the event of an accident, no new or different type of accident has been created by extending the operating cycle. In terms of post accident assessment capability, alternate means exist to assess offsite releases in the event of failure of this instrument.

3. There has been no reduction in the margin of safety.

Since the instrument provides no safety function and alternate means exist for post accident assessment purposes, there will be no impact on safety due to an extended period between calibrations.

[(14) Refueling Water Storage Tank Level:]

The proposed change does not involve a significant hazards consideration since:

1. A significant increase in the probability or consequences of an accident previously evaluated will not occur.

It is proposed that the channel calibration frequency for the RWST instrumentation be changed from every 18 months (+25%) to quarterly (once every 3 months).

A statistical analysis of channel uncertainty for a 3 month surveillance has been performed. Based upon this analysis it has been concluded that sufficient margin exists between the existing Technical Specification limit and the licensing basis Safety Analysis limit to accommodate the channel statistical error resulting from a 3 month quarterly surveillance. The existing margin between the Technical Specification limit and the Safety Analysis limit provides assurance that plant protective actions will occur as required. It is therefore concluded that changing the surveillance interval from 18 months (+25%) to quarterly will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any accident previously evaluated has not been created.

The proposed change in surveillance interval will result in a channel statistical allowance which provides the necessary margin between the existing Technical Specification limit and the Safety Analysis limit. Plant equipment, which will be set at (or more conservatively than) Technical Specification limits, will provide protective functions to assure that Safety Analysis limits are not exceeded. This will prevent the possibility of a new or different kind of accident from any previously evaluated from occurring.

3. A significant reduction in a margin of safety is not involved.

The above change in surveillance interval will result in a channel statistical allowance which is necessary between the current Technical Specification limit and the licensing basis Safety Analysis limit. This margin is necessary to assure that protective safety functions will occur so that Safety Analysis limits are not exceeded.

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 10610.

Attorney for Licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Robert A. Capra.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of Amendment Request: March 24, 1994.

Description of Amendment Request: The changes are in support of the forthcoming Cycle 7 for Catawba, Unit 2. The proposed Technical Specification (TS) changes reflect:

(1) An increase from 2000 parts per million (ppm) to 2175 ppm in the required spent fuel storage pool minimum boron concentration during Modes 1–3 operation,

(2) An increase from 2000 ppm to 2175 ppm in the required reactor coolant system (RCS) and refueling canal minimum boron concentration during Mode 6 operation,

(3) The inclusion of two reload related topical reports into TS 6.9.1.9, and

(4) The revision of an administrative nature to correct errors in nomenclature and to remove obsolete footnotes.

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:

Increase in Boron Concentration Limit for the Spent Fuel Storage Pool (Standby Makeup Pump Water Supply)

The required spent fuel storage pool minimum boron concentration was increased from 2000 ppm to 2175 ppm during Modes 1–3.

The proposed revision is conservative, and is required only to maintain consistency

between the boron concentration of the spent fuel storage pool and the boron concentration of the RWST [refueling water storage tank] during Modes 1–3 operation. Therefore, there will be no adverse impact upon the probability or consequences of any previously analyzed accident.

Likewise, the proposed change will not create the possibility of a new or different kind of accident, since no new failure modes are identified.

Finally, no negative impact upon any safety margin is created since the proposed change is conservative.

Increase in Boron Concentration Limits for the RCS and Refueling Canal in Mode 6

The increase in the required RCS and refueling canal minimum boron concentration was added only to maintain consistency between the boron concentration of the RCS and refueling canal and the RWST in Mode 6.

The change in boron concentration limits for the RCS and refueling canal will not increase the probability of an accident since no accident initiators are involved with this change. Since the change is conservative, the consequences of an accident previously evaluated will not be increased. The increase in the boron concentration limit for the RCS and refueling canal in Mode 6 adds further margin to the initial conditions assumed for the boron dilution accident in the safety analysis. Therefore, the consequences of the boron dilution accident previously evaluated will not be increased.

The possibility of a new or different kind of accident from any previously evaluated will not be created since this change is bounded by previously evaluated accidents and does not introduce any new failure modes.

This change does not involve a significant reduction in the margin of safety since the analyses performed demonstrate that the limits imposed meet all accident analysis and design basis requirements.

Addition of Two Reload Related Topical Reports

This change is administrative in nature and adds two previously approved topical reports to the list of methodologies used to determine core operating limits. The change will have no impact upon either the probability or consequences of a previously analyzed accident. The methodologies described in the topical reports have been previously reviewed and approved by the NRC. Also, no new accident possibilities are created, since this is an administrative change. Finally, no impact upon any safety margin is created, since the change is administrative in nature and the described topical reports have received full NRC approval.

Correction of Errors in Nomenclature and Removal of Obsolete Footnotes

These changes are also administrative in nature and are intended to correct miscellaneous errors and obsolete references. As such, the changes will have no impact upon either the probability or consequences of any previously analyzed accidents, will not create the possibility of any new accident scenarios, and will not impact any safety margins.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for Licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: David B. Matthews.

Duke Power Company, Docket Nos. 50–269, 50–270 and 50–287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of Amendment Request: March 23, 1994.

Description of Amendment Request: The proposed amendments would revise Technical Specification (TS) 6.9.2, "Core Operating Limits Report," to include a reference to a Duke Power Company (DPC) Topical Report describing an analytical method for determining the core operating limits.

Specifically, the amendments would add: "(4) DPC–NE–1004A, Nuclear Design Methodology Using CASMO–3/SIMULATE–3P, November 1992," to TS 6.9.2.

Basis for Proposed No Significant Hazards Consideration Determination: The NRC staff reviewed Topical Report DPC–NE–1004A and concluded in a Safety Evaluation Report dated November 23, 1992, that the described nuclear design methodology is acceptable for performing reload analyses for the DPC B&W 177-assembly cores in the Oconee units. The addition of this approved nuclear design methodology to those referenced in TS 6.9.2 provides an alternative method for determining core operating limits such that all applicable limits (e.g., fuel thermal mechanical limits, core thermal hydraulic limits, ECCS limits, nuclear limits such as shutdown margin, and transient and accident analysis limits) of the safety analysis are met. Therefore, the proposed change to the TS (1) does not involve a significant increase in the probability or consequences of an accident previously evaluated, (2) does not create the possibility of a new or different kind of accident than previously evaluated, and (3) does not involve a significant reduction in the margin of safety.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Duke Power Company (Duke) has made the determination that this amendment request involves a No Significant Hazards Consideration by applying the standards established in 10 CFR 50.92. This ensures that operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated:

Each accident analysis addressed within the Oconee Final Safety Analysis Report (FSAR) has been examined with respect to this amendment request. The Technical Specifications will continue to require operation within the bounds of the cycle-specific parameter limits. The cycle-specific parameter limits will be calculated using NRC approved methodology. The proposed amendment is simply an administrative change to update the list of NRC approved methods in Technical Specification 6.9.2. Therefore, the probability of any Design Basis Accident (DBA) is not affected by this change, nor are the consequences of a DBA affected by this change. This is because the addition of an NRC approved reference to Technical Specification 6.9.2 is not considered to be an initiator or contributor to any accident analysis addressed in the Oconee FSAR.

(2) Create the possibility of a new or different kind of accident from any kind previously evaluated:

Operation of ONS [Oconee Nuclear Station] in accordance with these Technical Specifications will not create any failure modes not bounded by previously evaluated accidents. Consequently, this change will not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

(3) Involve a significant reduction in a margin of safety:

The Technical Specifications will continue to require operation within the bounds of the cycle-specific parameter limits. Duke will continue to calculate the cycle-specific parameter limits using NRC approved methodology. In addition, each future reload will require a 10 CFR 50.59 safety review to ensure that operation of the unit within the cycle-specific limits will not involve a reduction in a margin of safety. Therefore, no margins of safety are affected by the addition of an NRC approved methodology to Technical Specification 6.9.2.

Based on the staff's analysis and its review of the licensee's analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Oconee County Library, 501

West South Broad Street, Walhalla, South Carolina 29691.

Attorney for Licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036.

NRC Project Director: David B. Matthews.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of Amendment Request: March 18, 1994.

Description of Amendment Request: The proposed amendments would revise Technical Specification (TS) 3/4.3.3.6, Accident Monitoring Instrumentation, TS 3/4.6.4.1, Hydrogen Monitors, and their associated bases to incorporate the technical substance of Specification 3.3.3 from NUREG–1431, Revision O (Standard Technical Specifications) for the Westinghouse Owners Group.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1.The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes affect instrumentation that would be used to assess the condition of the plant during and following an accident. As such, the changes can have no effect on the probability of any accident previously evaluated since this instrumentation has no bearing on initiating events. The proposed changes will continue to ensure the capability to monitor plant conditions during and following an accident by requiring redundancy or diversity and timely corrective action in the event of inoperable instrumentation. Therefore, the proposed changes will not significantly increase the consequences of any accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes affect the operability and action requirements for the post accident monitoring instrumentation system. Accordingly, the proposed changes do not involve any change to the configuration or method of operation of any plant equipment, and no new failure modes have been defined for any plant system or component nor has any new limiting failure been identified as a result of the proposed changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety. The intent of the existing TS requirements is to ensure the capability to monitor the plant condition during and following an accident so that the operators will have the information necessary to monitor and evaluate the course of the event and take any necessary action. Under the proposed changes this capability will be maintained by ensuring redundancy or diversity and by requiring timely corrective action in the event of inoperable instrumentation. In addition, the proposed changes would avoid unnecessary plant shutdowns by specifying an appropriate level of action in response to inoperable instrumentation. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for Licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308.

NRC Project Director: David B. Matthews.

GPU Nuclear Corporation, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of Amendment Request: April 6, 1994.

Description of Amendment Request: The proposed amendment changes the Technical Specifications to eliminate the main steam line radiation monitor(s) (MSLRMs) reactor scram and isolation functions of the MSLRMs currently contained in Tables 3.1.–1 and 4.1–1 of the Technical Specifications and the associated Bases statements. This action follows the recommendations of the BWR Owners Group (BWROG) in their Safety Evaluation, NEDO–31400A, previously approved by the NRC Staff on May 15, 1991 by letter to the BWROG. Following is a brief description of the proposed changes:

Tech. Spec. 3.1, "Protective Instrumentation" Bases is revised to delete reference to the paragraph describing the Main Steam Line (MSL) radiation monitoring functions for indication of excessive fuel failure and initiation of a reactor scram and MSL isolation.

Tech. Spec. Table 3.1.1., "Protective Instrumentation Requirements - A. Reactor Scram Functions," is revised to delete line Item No. 7 - "High Radiation in Main Steam Line Tunnel."

Tech. Spec. Table 3.1.1., "Protective Instrumentation Requirements - B. Reactor Isolation Functions," is revised to delete line Item No. 6 - "High Radiation in Main Steam Line Tunnel."

Tech. Spec. Table 3.1.1., "Protective Instrumentation Requirements - L. Condenser Vacuum Pump Isolation Function," is revised to delete line Item No. 1 - "High Radiation in Main Steam Line Tunnel."

Tech. Spec. Table 4.1.1., "Minimum Check, Calibration and Test Frequency For Protective Instrumentation," is revised to delete Instrumentation Channel No. 13 - "High Radiation in Main Steam Line."

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

The objective of the MSLRMs is to provide early indication of gross fuel failure. The monitors provide an alarm function, and signals that lead to a scram function and [main steam isolation valve] MSIV isolation functions. The basis for the MSIV isolation on an MSL high radiation signal is to reduce the quantity of fission products transported from the reactor vessel to the condenser in the event of gross fuel failure. No [design basis accident] DBA takes credit for a reactor scram resulting from an MSL high radiation signal.

The proposed change removes all trip functions of the MSLRMs. The only modification attendant to this change is the removal of contacts derived from the MSLRM logic to the reactor scram, reactor isolation and offgas system isolation initiation logic. This change does not affect the operation of any equipment having the potential to cause a [control rod drop accident] CRDA. Therefore, the probability of a CRDA is not increased or in any way affected by the proposed change.

However, the CRDA analysis does take credit for MSIV isolation. As discussed above, assuming no MSIV isolation in the event of a CRDA, the offsite radiation doses will remain a small fraction of the 10 CFR part 100 Reactor Site Criteria.

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 function of an MSLRM trip is to detect abnormal fission product release and isolate the steam lines, thereby stopping the transport of fission products from the reactor to the main condenser. No credit is taken for

the reactor scram function due to the action of these monitors on high radiation in the MSLs in any design basis accident. Removing the MSLRMs MSL isolation trip and its subsequent reactor scram will not affect the operation of other equipment or systems necessary for the prevention or mitigation of accidents.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Eliminating the MSLRM trip functions as analyzed in NEDO–31400A will result in a potential increase in the margin of safety because of:

a. Improvement in the availability of the main condenser for decay heat removal; and,

b. Elimination of inadvertent reactor scrams and challenges to safety systems.

Therefore, operation of the facility in accordance with the proposed changes will not result in a reduction of safety margin.

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: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

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.

Indiana Michigan Power Company, Docket No. 50–316, Donald C. Cook Nuclear Plant, Unit No. 2, Berrien County, Michigan

Date of Amendment Request: March 9, 1994

Description of Amendment Request: The proposed amendment would modify the Technical Specification to allow a one time exemption from certain Appendix J testing. This exemption would extend the interval for Type B and C testing until the Unit 2 refueling outage currently scheduled for August 1994.

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:

As stated in 10 CFR 50.92(c), a proposed change does not involve a significant hazards consideration if the change does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) the change does not create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) the change does not involve a significant reduction in a margin of safety.

Criterion 1

The limiting conditions for operation involving containment integrity are not altered by this proposed change. The surveillance requirement concerning the Type B and C leak rate test is slightly relaxed by the proposed change. The function of the components affected by this surveillance are to ensure containment integrity. Delaying the surveillance approximately two months would not change the probability of an accident. Our significant improvement in Type B and C leak rate test results, low anticipated leak rate for the next surveillance, aggressive corrective actions taken, and excellent ILRT [integrated leak rate test] results indicate there is no reason to believe that delaying the Type B and C leak rate tests approximately two months will cause serious deterioration to these components. Furthermore, similar requests by utilities to extend the surveillance beyond two years have already been found acceptable by the NRC. Therefore, it is concluded that the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2

No changes to the limiting conditions for operation for containment integrity are proposed as part of this amendment request. The proposed change does not involve any physical changes to the plant or any changes to plant operations. Thus, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3

The intent of the Type B and C leak rate surveillance is to ensure that containment integrity does not significantly deteriorate. This is established by measuring a total leak rate of less than 0.60 L_a. Our significant improvement in Type B and C leak rate tests results, aggressive corrective actions taken, and excellent ILRT results indicate there is no reason to believe that delaying the Type B and C leak rate tests approximately two months will cause serious deterioration to these components. The "As Found" trend of the leak rates over the past three surveillances indicate that the leak rate for the next surveillance will be below the Appendix J leak rate acceptance criteria. Therefore, it is concluded that the proposed amendment does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for Licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: Ledyard B. Marsh.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of Amendment Request: March 23, 1994.

Description of Amendment Request: The licensee proposed to modify Technical Specification Table 3.7–6, Area Temperature Monitoring, by creating two zones for the main steam valve building (MSVB) and increasing the maximum normal excursion (MNE) temperature limit for this area from 120 °F to 140 °F.

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 does not involve an SHC [significant hazards consideration] because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The increase of the MNE temperature from 120 °F to 140 °F for the main steam valve building has been evaluated. The equipment in the building has been shown to be qualified for continuous operation at 140oF. The effect of this temperature change has decreased slightly the qualified life of the components in the building. For those components with a qualified life of less than 40 years, they will be replaced as a scheduled maintenance item.

An engineering review of the MSLB profile for this building was conducted and it was concluded that those components required to operate post accident, will continue to perform their safety function. Therefore, since the equipment will continue to operate as designed both during normal conditions and subsequent to a MSLB, the probability or consequences of an accident previously evaluated is not increased.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The effect of increasing the MNE temperature to 140 °F has been evaluated and judged acceptable. The possible failure of the equipment in this building due to the increase in temperature is no more likely than it was before, since the equipment has been shown to be qualified to 140 °F. Failure of any equipment in this building at the new temperature will not create any new accidents or consequences that were not considered previously.

Finally, since there are no changes in the way the plant is operated, there is no possibility of an accident of a new or

different type than previously evaluated due to the proposed change.

3. Involve a significant reduction in margin of safety.

The proposed change increases the MNE temperature within the MSVB. The equipment in the building has been reviewed to ensure operability. There is a slight decrease in the qualified life, but this was anticipated and scheduled previously and any such replacement of equipment will continue as a maintenance item. A review of the MSLB profile was performed for this area and it was shown that the required equipment will continue to operate as required.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for Licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: John F. Stolz.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of Amendment Request: March 15, 1994.

Description of Amendment Request: The proposed amendment would include the use of integral fuel burnable absorbers as a method of controlling core excess reactivity and maintaining the core power distribution within acceptable peaking limitations.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

1. The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Any fuel containing integral burnable absorbers will be analyzed using NRC approved methods and acceptance criteria prior to being loaded into Maine Yankee's reactor vessel core. Verification of adequate shutdown margin is performed during low power physics testing after each refueling. In addition, core physics monitoring is required during power operation by Technical Specifications sections 3.10, "CEA Group, Power Distribution, Moderator Temperature Coefficient Limits and Coolant Conditions," and 3.15 "Reactivity Anomalies." Such testing and monitoring ensures adequate margin exists to accommodate the anticipated transients and accidents postulated in Maine Yankee's Final Safety Analysis Report.

The licensee therefore concludes that implementation of the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

A determination of compliance with approved acceptance criteria is made for every Maine Yankee fuel reload prior to loading fuel. The use of approved methodologies and acceptance criteria ensure that new or different accidents will not be created by the use of integral fuel burnable absorbers.

The licensee therefore concludes that implementation of the proposed change will not create any or new or different kind of accident from any accident previously evaluated.

3. The proposed amendment would not involve a significant reduction in a margin of safety.

The safety evaluation performed for each core reload ensures that the core design meets appropriate acceptance criteria. Because these criteria remain unchanged as approved by the NRC, the margin of safety remains the same.

The licensee therefore concludes that implementation of the proposed change would not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Attorney for Licensee: Mary Ann Lynch, Esquire, Maine Yankee Atomic Power Company, 83 Edison Drive, Augusta, Maine 04336.

NRC Project Director: Walter R. Butler.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of Amendment Request: January 26, 1994.

Description of Amendment Request: The proposed amendment would revise the Technical Specifications and associated Bases to reflect the fact that the main steam isolation valves can now be tested at a pressure of greater than or equal to P_a (42 psig) thereby eliminating the need for the previously granted exemption to certain Appendix J testing requirements. The exemption would no longer be necessary because of improvements in testing technology.

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. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment is limited to changes to the surveillance testing requirements (test pressure and allowable leakage criteria) applicable to the main steam line isolation valves. The proposed criteria are equivalent to the current criteria with respect to monitoring main steam isolation valve performance to ensure that leakage past the valves would be within acceptable limits under accident conditions. This surveillance test is performed while the plant is in a cold shutdown condition at a time when the main steam isolation valves are not required to be operable. Performance of the test itself is not an input or consideration in any accident previously evaluated, thus the proposed change will not increase the probability of any such accident occurring.

The proposed amendment will not adversely affect the function, operation, or reliability of the valves, nor will it diminish the capability of the valves to perform as required during an accident. There will be no increase in post accident off-site or on-site radiation dose, since the adjusted leakage limit is consistent with inputs previously established for the dose analyses. The proposed amendment is consistent with regulatory requirements (10 CFR Part 50, Appendix J) and guidance (TER–C5257–30) that has been previously reviewed by the NRC and found to be acceptable. Therefore, the amendment will not increase the consequences of any accident previously evaluated.

b. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed amendment does not involve any modification to plant equipment or operating procedures, nor will it introduce any new main steam isolation valve failure

modes that have not been previously considered. The proposed amendment is limited to a change in the surveillance test pressure & acceptance criteria used to leak test the valves. This test is performed while the plant is in a cold shutdown condition at a time when the valves are not required to be operable. We therefore conclude the proposed changes will not create the possibility of a new or different kind of accident from any accident previously analyzed.

c. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed amendment will result in the main steam isolation valves being subjected to the maximum pressure (P_a, 42 psig) calculated to occur under worst case accident conditions, and will therefore provide a more realistic and challenging test of valve performance under those conditions. The leakage rate criteria for the test has been adjusted upward to be commensurate with the higher test pressure, but this does not represent any increase in actual leakage under accident conditions. On-site and off-site dose analyses will not be affected. The proposed amendment does not involve any change in operability requirements or limiting conditions for operation beyond the replacement of the old test pressure & acceptance criteria with equivalent criteria consistent with 10 CFR Part 50, Appendix J, NUREG–1433, and TER–C5257–30. Based on these considerations, we conclude the proposed amendment will 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: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for Licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Ledyard B. Marsh.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50–277, Peach Bottom Atomic Power Station, Unit No. 2, York County, Pennsylvania

Date of Application for Amendment: April 6, 1994.

Description of Amendment Request: The amendment would reflect the incorporation of the end-of-cycle Minimum Critical Power Ratio Recirculation Pump Trip (MCPR–RPT) system and the replacement of the Reactor Recirculation System (RRS) Motor Generator (M–G) Sets with solid state adjustable speed drives (ASDs).

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The addition of the end-of-cycle MCPR–RPT System, which utilizes ASDs, will not have a significant increase in the probability or consequences of an accident previously evaluated.

The end-of-cycle MCPR–RPT System has been designed to appropriate standards and specifications to ensure that the ability of the plant to mitigate the effects of accidents is maintained. Additionally, the MCPR–RPT System has been analyzed such that no new accident initiators will be created such that the probability of an accident previously evaluated will not increase.

No new challenges to the reactor coolant pressure boundary will result from the incorporation of the end-of-cycle MCPR–RPT System which could result in an increase in the consequences of an accident. All engineered safety features will function as described in the PBAPS UFSAR [Peach Bottom Atomic Power Station Updated Final Safety Analysis Report] in order to mitigate the consequences of accidents previously evaluated in the PBAPS UFSAR. Additionally, all fission product barriers and safety margins will be maintained.

(2) The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The end-of-cycle MCPR–RPT System, which utilizes ASDs, has been designed to appropriate standards and specification to ensure that no new sequence of events or failure modes will occur such that a transient event will escalate into a new or different type of accident.

The software used in the digital system of the ASDs is not subject to the verification and validation requirements discussed in the NRC memorandum dated July 1, 1991, from A. C. Thadoni [sic] [Thadani] (NRC) to S. A. Varga (NRC) and B. A. Bolger [sic] [Boger] (NRC), because this equipment is neither safety-related nor important to safety. There is no software used in the trip circuit of the end-of-cycle MCPR–RPT System, except for the ASDs. Additionally, the design of the modification will assure that the new equipment EM emissions will not cause inadvertent operation of existing plant equipment and that harmonic filters have been incorporated to minimize electrical noise on the 13kV input power buses.

(3) The proposed change does not result in a significant reduction in the margin of safety.

The incorporation of the end-of-cycle MCPR–RPT System, which utilizes ASDs, will not result in a reduction in the margin of safety. All safety margins will be maintained.

The end-of-cycle MCPR–RPT System will aid in protecting the integrity of the fuel barrier by tripping the recirculation pumps early in the pressurization phase of the load rejection with no bypass event, the turbine trip with no bypass event, and the feedwater controller failure—maximum demand event. The early tripping of the recirculation pumps will introduce negative void reactivity thus reducing reactor power and maintaining safety margins. The end-of-cycle MCPR–RPT System will ensure CPR safety margins which protect fuel barrier integrity.

General Electric has performed a qualitative assessment of transients that would be impacted as a result of replacing the M–G Sets with ASDs. General Electric concluded that the faster coastdown of the recirculation pumps during a Loss of Coolant Accident (LOCA) due to the removal of the M–G Set inertia may slightly increase the peak clad temperature during this event. This increase is expected to be less than 50° F. The small increase will not exceed the 2200° F peak cladding temperature regulatory limit. No design or safety limit will be exceeded.

The replacement of the M–G Sets with the ASDs will not impact the recirculation flow controller failure—increase flow transient. The UFSAR analysis assumes a 25%/sec rate of increase. The ASD control system will include rate limiters that prevent a pump speed increase greater than 25%/sec in the event of a failure. Thus, the consequences of this transient remain bounded and safety margins will be maintained.

The ASDs will also allow a "soft start" of the recirculation pumps with the recirculation discharge valves closed prior to pump start and a gradual increase in pump speed. This results in a gradual change in core flow. Thus, the response to a startup of an idle recirculation pump remains bounded by the transient analysis and safety margins will be maintained in the transient analyses.

Changes to the fire protection equipment will still maintain the capability to shutdown the plant in the event of a fire.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for Licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101.

NRC Project Director: Charles L. Miller.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of Application for Amendments: March 28, 1994.

Description of Amendment Request: The proposed Technical Specifications (TS) changes relocate the TS fire protection requirements to the Updated Final Safety Analysis Report.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative in nature and are consistent with the guidance provided in NRC GL's [Generic Letters] 86–10 and 88–12. They do not affect the initial conditions or precursors assumed in the Updated Final Safety Analysis Report Section 14. These changes do not decrease the effectiveness of equipment relied upon to mitigate the previously evaluated accidents.

Therefore, there is no increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not make any physical changes to the plant or changes to operating procedures. Therefore, implementation of the proposed changes will not affect the design function or configuration of any component or introduce any new operating scenarios or failure modes or accident initiation.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes are administrative in nature and are consistent with the guidance provided in NRC GL's 86–10 and 88–12. The proposed changes do not adversely affect the assumptions or sequence of events used in any accident analysis.

Therefore, the proposed changes do not involve a reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for Licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101.

NRC Project Director: Charles L. Miller.

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: January 21, 1994.

Description of Amendment Request: These amendments would revise Technical Specifications 3.8.2.3 for both Salem Unit 1 and Salem Unit 2 to include the battery acceptance criteria, corresponding allowed outage times and additional surveillance requirements recommended in NUREG–1431, Standard Technical Specifications—Westinghouse Plants.

TS 3.8.2.4 "125 Volt D.C. Distribution—Shutdown" would also be indirectly affected by these changes because it refers to the surveillance requirements of TS 4.8.2.3.2 to demonstrate the battery and chargers Operable.

In addition, Salem Unit 1 TS 3.8.2.3 Limiting Condition for Operation (LCO) would be revised to define the specific battery charger required for each train. Salem Unit 1 TS 3.8.2.3 Action Statement would also be revised to restrict the use of the backup battery charger to a period not to exceed 7 days.

Additionally, the Unit 1 action statement for an inoperable 125 volt DC bus would be modified to add the requirement that the bus also be energized.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not alter plant configuration or operation. The proposed changes do not invalidate any of the parameters assumed in the plants UFSAR Design Basis Accident or Transient Analyses. The proposed changes provide additional guidance to be used to ensure operability of the safety related batteries. New surveillance requirements and specific battery cell parameters offer improved monitoring of the battery status. The new guidance and surveillance requirements are consistent with the recommendations of NUREG–1431, Standard Technical Specifications—Westinghouse Plants, and current industry recommendations.

The changes to the Unit 1 LCO and corresponding Action Statement restrict the use of the backup battery charger, thereby limiting the amount of time that one AC Vital bus is allowed to power the chargers of more than one DC train. This change brings the TS for both Units into agreement and results in a more conservative Unit 1 TS.

Therefore, the probability or consequences of an accident previously evaluated are not increased by the proposed change.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not introduce any design or physical configuration changes to the facility or change the method by which any safety-related system performs its function. The proposed changes are consistent with the recommendations of NUREG–1431, Standard Technical Specifications—Westinghouse Plants. Therefore, the proposed changes will not increase the possibility of a new or different kind of accident from any accident previously identified.

3. Does not involve a significant reduction in a margin of safety.

The proposed changes do not alter the manner in which safety limits or limiting safety system setpoints are determined. The new cell parameter table and additional surveillance requirements provide improved means to monitor and evaluate overall battery performance. Therefore, the proposed changes do not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: 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.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of Amendment Request: October 29, 1993.

Description of Amendment Request: The licensee is preparing to replace the

currently installed steam generators with new model Delta 75 steam generators (SGs). The new steam generators will be larger than those currently installed. The physical changes to the plant and the accident reanalyses needed to support those changes will necessitate increasing the maximum tested charging/safety injection pump flow rate from 680 gallons per minute to 700 gallons per minute.

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 VCSNS [Virgil C. Summer Nuclear Station] in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Implementation of the [Delta] 75 SGs and revised operating conditions do not contribute to the initiation of any accident evaluated in the FSAR [Final Safety Analysis Report]. Supporting factors are as follows:

—The [Delta] 75 SG is designed in accordance with ASME [American Society of Mechanical Engineers] Code Section III, 1986 edition [sic] and other applicable federal, state, and local laws, codes and regulations and meets the original interfaces for the Model D3 SGs with exception that provisions for a larger blowdown nozzle have been made and the feedwater inlet nozzle is located in the upper shell.

—All NSSS [nuclear steam supply system] components (i.e., reactor vessel, RC Pumps, pressurizer, CRDM's [control rod drive mechanisms], [Delta] 75 SGs, and RCS piping) are compatible with the revised operating conditions. Their structural integrity is maintained during all proposed plant conditions through compliance with the ASME code.

—Fluid and auxiliary systems which are important to safety, including the CHG/SI [charging and safety injection] system with maximum pump flows up to 700 gpm, are not adversely impacted and will continue to perform their design function.

—Overall plant performance and operation are not significantly altered by the proposed changes.

Therefore, since the reactor coolant pressure boundary integrity and system functions are not adversely impacted, the probability of occurrence of an accident evaluated in the VCSNS FSAR will be no greater than the original design basis of the plant.

An extensive analysis has been performed to evaluate the consequences of the following accident types currently evaluated in the VCSNS FSAR:

—Non-LOCA [non-loss-of-coolant accident]
—Large Break and Small Break LOCA
—Steam Generator Tube Rupture

With the [Delta] 75 SGs and revised operating conditions, the calculated results (i.e., DNBR [departure from nucleate boiling ratio], Primary and Secondary System Pressure, Peak Clad Temperature, Metal Water Reaction, Challenge to Long Term Cooling, Environmental Conditions Inside and Outside Containment, etc.) for the accidents are similar to those currently reported in the VCSNS FSAR. Select results (i.e., Containment Pressure during a Steam Line Break, Minimum DNBR for Rod Withdrawal from Subcritical, etc.) are slightly more limiting than those reported in the current FSAR due to the use of the assumed operating conditions with the new [Delta] 75 SGs, and in some cases, use of an uprated core power of 2900 MWt. However, in all cases, the calculated results do not challenge the integrity of the primary/secondary/containment pressure boundary and remain within the regulatory acceptance criteria applied to VCSNS's current licensing basis. The assumptions utilized in the radiological evaluations, described in Section 3.7, are thus appropriate and are judged to provide a conservative estimate of the radiological consequences during accident conditions. Given that calculated radiological consequences are not significantly higher than current FSAR results and remain well within 10CFR100 limits, it is concluded that the consequences of an accident previously evaluated in the FSAR are not increased.

(2) The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The [Delta] 75 SGs, revised operating conditions, and higher allowable CHG/SI pump flows will not introduce any new accident initiator mechanisms. Structural integrity of the RCS is maintained during all plant conditions through compliance with the ASME code. No new failure modes or limiting single failures have been identified. Design requirements of auxiliary systems are met with the RSGs [Replacement Steam Generators]. Since the safety and design requirements continue to be met and the integrity of the reactor coolant system pressure boundary is not challenged, no new accident scenarios have been created. Therefore, the types of accidents defined in the FSAR continue to represent the credible spectrum of events to be analyzed which determine safe plant operation.

(3) The proposed license amendment does not involve a significant reduction in a margin of safety.

Although the [Delta] 75 SGs, revised operating conditions, and higher allowable CHG/SI pump flows will require changes to the VCSNS Technical Specifications, it will not invalidate the LOCA, non-LOCA, or SGTR [steam generator tube rupture] conclusions presented in the FSAR accident analyses. For all the FSAR non-LOCA transients, the DNB design basis, primary and secondary pressure limits, and dose limits continue to be met. The LOCA peak cladding temperatures remain below the limits specified in 10 CFR 50.46. The calculated doses resulting from a SGTR event will continue to remain within a small fraction of the 10 CFR 100 permissible releases.

Environmental conditions associated with High Energy Line Break (HELB) both inside and outside containment have been evaluated.

The containment design pressure will not be violated as a result of the HELB. Equipment qualification will be updated, as necessary, to reflect the revised conditions resulting from HELB. The margin of safety with respect to primary pressure boundary is provided, in part, by the safety factors included in the ASME Code. Since the components remain in compliance with the codes and standards in effect when VCSNS was originally licensed (with the exception of the [Delta] 75 RSGs which use the 1986 ASME Code Section III Edition), the margin of safety is not reduced. Thus, there is no reduction in the margin of safety as defined in the bases of the VCSNS 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: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Attorney for Licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Project Director: William H. Bateman.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of Amendment Request: March 12, 1993.

Description of Amendment Request: The proposed amendment would revise Technical Specification Table 3.3.7.1–1, to clarify the actions to be taken if the control room ventilation radiation monitor is not operable.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change clarifies Technical Specification 3.3.7.1, "Radiation Monitoring Instrumentation" by revising Action 72 (for an inoperable

Control Room Ventilation Radiation Monitor) to remove several inconsistencies between it and Action 3.7.2.b.2 of the Control Room Emergency Recirculation System Specification. Revised Action 72 simply makes the two Specifications more consistent by incorporating alternative compensatory measures that the operators may take after the Control Room Ventilation Radiation Monitor has been inoperable for more than seven days. The proposed Action would retain the choice of initiating at least one train of the Control Room Emergency Recirculation System, while providing a second option to take which would depend on the current Operational Condition. In Operational Conditions 4, 5 and * * * the current Specification 3.3.7.1 Action 72 does not contain the provisions of the Control Room Emergency Recirculation System Action 3.7.2.b.2 which directs the Operators to suspend performance of Core Alterations, handling of irradiated fuel and operations with a potential for draining the reactor vessel instead of initiating the Control Room Emergency Recirculation System. This inconsistency between the two specifications has caused compliance difficulties; therefore, the proposed Action adds this alternative. Also, in Operational Conditions 1, 2 and 3 a shutdown provision is being added. The other changes are editorial, in order to clarify the applicability of the proposed alternative compensatory measures, to be consistent with PNPP-specific terminology, and to be more consistent with Action b of Specification 3.7.2.

In summary, there is no change in the probability or consequences of any accident since the revision of Specification 3.3.7.1 Action 72 is simply proposed in order to achieve consistency with the current Action 3.7.2.b.2. Incorporation of the already approved 3.7.2.b.2 compensatory measures to suspend possible radiation accident initiating activities provides an alternative which would actually reduce the probability of occurrence of a previously analyzed accident, and would have no adverse effect on accident consequences. None of the proposed changes to the clarified action, including the editorial changes, involves a change to the design of the plant, nor the operational characteristics of any plant system, nor the procedures by which the Operators run the plant.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

No design changes are being made that would create a new type of accident or malfunction, and the methods and manner of plant operation remains unchanged. The proposed revisions to Action 72 will remove several inconsistencies between the two Specifications by providing consistent actions within the Radiation Monitoring Instrumentation Specification with those currently existing in the Control Room Emergency Recirculation System Specification and provide an additional shutdown requirement in Operational Conditions 1, 2 and 3. The other changes to Action 72 are editorial, and therefore cannot affect accident initiation parameters. The instrument to which Action 72 applies (the Control Room Ventilation Radiation Monitor (Noble Gas)) simply serves as a supporting instrumentation channel for the Control Room Emergency Recirculation System, therefore no new or different kind of accident can be created.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed change to Specification 3.3.7.1 Action 72 simply makes the two Specifications more consistent by making the Action for a supporting instrumentation channel, the Control Room Ventilation Radiation Monitor (Noble Gas), more consistent with those of the supported system Specification, the Control Room Emergency Recirculation System. A shutdown requirement is also being added if the operators should choose not to initiate the supported system in Operational Conditions 1, 2, and 3. Since the Actions of the two Specifications will now correspond, the margin of safety as currently exists today for the governing Specification (the Control Room Emergency Recirculation System Specification) is maintained and the proposed changes do not therefore reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for Licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of Amendment Request: March 18, 1994.

Description of Amendment Request: The proposed amendment would revise TS 2.1.2 (Reactor Core), TS 2.2.1 (Reactor Protection System Setpoints), Bases 2.1.1 and 2.1.2 (Reactor Core), Bases 2.2.1 (Reactor Protection System Instrumentation Setpoints), TS 3.2.2 and 3.2.3 (Power Distribution Limits), Bases 3/4.2 (Power Distribution Limits), and TS 6.9.1.7 (Administrative Controls, Core Operating Limits Report). This amendment would remove cycle-specific limits from TS and relocate them in the Core Operating Limits Report.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, indicating that the proposed changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators, assumptions or probabilities are affected by the proposed relocation of cycle-specific core operating limits to the Core Operating Limits Report.

1b. Not involve a significant increase in the consequences of an accident previously evaluated. The proposed changes do not affect any equipment, accident conditions, or assumptions which could lead to a significant increase in radiological consequences.

2a. Not create the possibility of a new kind of accident from any accident previously evaluated because no new accident initiators are introduced by these proposed changes.

2b. Not create the possibility of a different kind of accident from any accident previously evaluated because no different accident initiators are introduced by these proposed changes.

3. Not involve a significant reduction in a margin of safety because the proposed changes only relocate cycle-specific core operating limits to the Core Operating Limits Report; they do not allow less conservative operating limits. The analytical methods to be used in the determination of cycle-specific core operating limits are previously approved by the NRC. The same margin of safety provided in the current Technical Specifications will continue to be maintained.

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 Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for Licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of Amendment Request: March 30, 1994.

Description of Amendment Request: The proposed amendment would add a new TS Limiting Condition for Operation 3/4.4.12, Pilot Operated Relief Valve and Block Valve, and would include associated Bases and 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, indicating that the proposed additions and changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no change is being made to any accident initiator. Automatic actuation of the PORV is not assumed to mitigate the consequences of a design basis accident as described in Chapter 15 of the USAR. The proposed changes will continue to ensure the PORV and block valves are available to perform their functions when required to do so. Therefore, it can be concluded that the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not invalidate accident conditions or assumptions used in evaluating the radiological consequences of an accident.

2a. Not create the possibility of a new kind of accident from any accident previously evaluated because the proposed changes do not delete any function previously provided by the PORV nor has the possibility of inadvertent opening been increased. No new types of failures or accident initiators are introduced by the proposed changes.

2b. Not create the possibility of a different kind of accident from any accident previously evaluated because no new failure modes have been defined for any plant system or component important to safety, nor has any new limiting single failure been identified as a result of the proposed changes. No different accident initiators or failure mechanisms are introduced by the proposed changes.

3. Not involve a significant reduction in a margin of safety because the proposed changes continue to ensure the availability of the PORV and block valve when called upon to perform their function and will not impact any safety analysis assumptions.

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 Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for Licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of Amendment Request: February 14, 1994.

Brief Description of Amendments: The proposed amendment would revise the Comanche Peak Steam Electric Station (CPSES) Units 1 and 2 technical specifications to increase the Unit 2 boron concentration for the refueling water storage tank (RWST) and the emergency core cooling system (ECCS) accumulators to support Unit 2 operation with extended fuel cycles. These changes are applicable to Unit 2 only and are identical to those previously approved for Unit 1.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change would not increase the probability or consequences of a previously evaluated accident.

The proposed changes are related to the boron concentration in the RWST and ECCS accumulators. This increased concentration does not constitute a change expected to increase the probability of a previously evaluated accident. The means by which the proposed changes might result in increased radiological consequences of various accidents are discussed below.

The higher boron concentration may result in increased probability of equipment failure following an accident due to in-containment or in-process equipment being exposed to a more severe post-accident environment. The general chemical properties of the slightly higher boron concentration fluid indicates no mechanism that would result in an appreciable increase in the component failure rate. While the corrosive nature of the fluid will increase, this increase will be only minimal. Thus, there is no significant increase in the consequences of any accident due to an increase in the probability of equipment failure.

The changes in containment spray and sump solution pH may change the radioisotope removal and partition characteristics. While some relevant characteristics are affected, the resulting limiting coefficient values associated with the pH changes are bounded by the values used in the design calculations for CPSES. Thus, no adverse impact of the radiological consequences arising from this mechanism has been identified.

The impact of the containment spray, with a lower pH, upon the combustible gas production rate was also evaluated. No mechanism for increased combustible gas production was identified.

The higher boron concentration could have an adverse impact on the inadvertent actuation of the ECCS event. Although the timing of the sequence of events may be affected, the departure from nucleate boiling ratio continues to increase from its initial value throughout the event. On the basis of its review of this event, the licensee has identified no changes in the event probability or consequences; however, the continued validity of this conclusion will be reconfirmed by the licensee on a cycle-specific basis.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change only changes the allowable boron concentration. No new or different accident sequences have been identified. Furthermore, the licensee has reviewed the heat tracing requirements and determined that there are no additional requirements resulting from the boron concentration increase. There are no previously unconsidered failure mechanisms.

3. The proposed change would not involve a significant reduction in the margin of safety.

The decrease in the containment spray and sump solution pH could be expected to result in higher airborne

iodine concentrations. The accident source terms could be impacted by variations in the iodine spray removal and partition factors. A comparison of the coefficients for the minimum equilibrium containment sump solution pH to those used in the CPSES design analyses indicated that the expected coefficient values would remain bounded by the values used in the previous analyses. Thus, no significant reduction in the margin of safety has been identified.

Based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room Location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Attorney for Licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, NW., suite 1000, Washington, DC 20036.

NRC Project Director: Suzanne C. Black.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of Amendment Request: February 14, 1994.

Brief Description of Amendments: The proposed amendment will revise the Comanche Peak Steam Electric Station, Units 1 and 2, technical specifications to be consistent with the new 10 CFR part 20.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of a previously evaluated accident.

The proposed revisions to the liquid and gaseous effluent release limits will not change the type or amount of effluent released nor will there be an increase in individual or cumulative dose. The changes will result in levels of radioactive materials in effluents being maintained ALARA [as low as reasonably achievable] and comply with 10 CFR 50.36a and 10 CFR 50 Appendix I. The change to the high radiation area dose measurement distance will ensure that high radiation areas are conservatively posted per 10 CFR 20.1601(a)(1) and provide controls to minimize individual dose. The changes do not impact the operation or design of any plant structure, system or component. Other proposed changes are administrative only. Therefore, the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not affect the plant design or operation nor do they result in a change to the configuration of any equipment. No change is proposed that will change the type or quantity of effluents released off site or change the source terms available for release. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes do not change the type or increase the amount of effluents released offsite. No change in the methodology used to control radioactive waste or radiological environmental monitoring is proposed. Control of radioactive effluents and effluent monitor setpoints will be based on current dose to the public limitations. Under the proposed change, high radiation area measurements are more conservative and will not result in an increase in individual or cumulative occupational radiation exposures. Compliance with the limits of the revised 10 CFR 20.1301 will be demonstrated by operating within the limits of 10 CFR 50, Appendix I and 40 CFR 190. Therefore, these changes do not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Attorney for Licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street NW., suite 1000, Washington, DC 20036.

NRC Project Director: Suzanne C. Black.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of Amendment Request: February 14, 1994.

Brief Description of Amendments: The proposed amendment would revise the Comanche Peak Steam Electric Station Units 1 and 2 technical specifications by reducing the frequency of reports for radiological effluents from semiannual to annual, and change the due date from within 60 days after January 1 and July 1 to prior to May 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:

1. The proposed changes do not involve a significant increase in the probability or consequences of a previously evaluated accident.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The amendment involves only changes of reporting frequency and due date requirements for radiological effluent release reporting. These changes are administrative in nature and do not affect safe operation of the plant; therefore, accident probabilities or consequences are unaffected.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment is administrative in nature and does not involve any changes to plant design of configuration. For this reason, it will not create the possibility of a new or different kind of accident.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed amendment does not involve a significant reduction in the margin of safety. The proposed amendment only changes the reporting frequency and due date requirements for radiological effluent release reporting. The reporting requirements for radiological effluent releases are administrative changes: therefore, there is not 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 Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Attorney for Licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street NW., suite 1000, Washington, DC 20036.

NRC Project Director: Suzanne C. Black.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of Amendment Request: March 30, 1994.

Description of Amendment Request: The proposed changes would revise the North Anna Power Station, Units No. 1 and No. 2 (NA–1&2) Technical Specifications (TS). Specifically, the proposed changes would revise the High Head Safety Injection (HHSI) flow balance surveillance requirements by removing specific numerical values. The numerical values would be replaced with broader requirements to ensure that the HHSI flow rates meet the loss of coolant accident (LOCA) analysis acceptance criteria and pump runout limits. The NA–1&2 TS 4.5.2.h requires a surveillance test of the HHSI system following the completion of any modification to the Emergency Core Cooling System (ECCS) subsystems that could alter the subsystem flow characteristics. The current surveillance criteria specify values for the sum of the injection line flow rates, excluding the highest flow rate, and the total pump flow rate. These correspond to requirements for the safety analysis flow input and the HHSI pump runout limit, respectively.

The HHSI test acceptance criteria in the current TS are very narrow because of the various system physical and technical constraints that need to be considered in the flow balance testing. These acceptance criteria may also be more restrictive than required by either the LOCA analysis or the actual pump runout requirements. For example, the LOCA analysis contains input conservatisms that could be used to offset a reduction in the required HHSI flow while still meeting the 10 CFR 50.46 LOCA acceptance criteria. The proposed TS changes would permit the use of additional available margin, while maintaining a strong technical linkage between the measured system performance and the safety analysis. Although these proposed TS changes remove the numerical values from TS 4.5.2.h, neither the methodology nor the acceptance criteria for LOCA analysis are affected.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of North Anna Power Station in accordance with the proposed Technical Specification changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed Technical Specification changes continue to require that with one HHSI pump running, the sum of the flows through the two lowest branch lines shall be [greater than or equal to] the minimum HHSI flow required by the safety analysis and that the total HHSI pump flow rate shall be [less than or equal to] the evaluated HHSI pump runout limit.

Likewise, the consequences of the accidents previously evaluated will not increase as a result of the proposed Technical Specification changes. The system performance will remain bounded by the safety analysis for all postulated conditions. The safety analysis will continue to be performed and evaluated in accordance with the requirements of 10 CFR 50.59 and 10 CFR 50.46.

2. Create the possibility of a new or different kind of accident or malfunction from any previously evaluated. The proposed Technical Specification changes will not affect the capability of the HHSI System to perform its intended function. The proposed Technical Specification changes are bounded by the existing safety analysis and do not involve operation of plant equipment in a different manner from which it was designed to operate.

Since a new failure mode is not created, a new or different type of accident or malfunction is not created.

3. Involve a reduction in a margin of safety. The system performance will continue to bound the flow rates specified in the safety analysis, therefore safety margins are not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Attorney for Licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

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, STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of Application for Amendments: March 21, 1994.

Description of Amendment Requests: The proposed amendments would permit continued activities at all four units with main steam Code safety valve tolerances of plus or minus 3% until the lift setpoints can be reset to within plus or minus 1%.

Date of Publication of Individual Notice in **Federal Register:** March 29, 1994 (59 FR 14685).

Expiration Date of Individual Notice: April 29, 1994.

Local Public Document Room Location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

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: March 24, 1994.

Description of Amendment Request: The proposed amendment would revise section 6.0 (Administrative Controls). Specifically, the plant staff requirement (specified in Technical Specification (TS) 6.2.2.i) would be revised to temporarily allow the operations manager to have held a senior reactor operator (SRO) license at a pressurized water reactor (PWR) other than Indian Point 3. The TS currently requires the operations manager to have or have held an SRO license at Indian Point 3 only. This proposed change is needed to allow management changes at the facility in an effort to improve overall performance. The proposed changes would be in effect for a period ending 3 years after restart from the 1993/1994 Performance Improvement Outage.

Date of Publication of Individual Notice in **Federal Register**: April 1, 1994 (59 FR 15464).

Expiration Date of Individual Notice: May 3, 1994.

Local Public Document Room Location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for Licensee: Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

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.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of Application for Amendments: December 2, 1993.

Brief Description of Amendments: The amendments will modify TS 3/4.6.1.2 by removing the schedular requirements for a Type A (overall integrated containment leakage rate) test to be performed specifically at 40 plus or minus 10-month intervals and replacing these requirements with a requirement to perform Type A testing in accordance with Appendix J to 10 CFR part 50.

Date of Issuance: April 6, 1994.

Effective date: April 6, 1994.

Amendment Nos.: 73, 59, and 45.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of Initial Notice in **Federal Register**: January 5, 1994 (59 FR 616) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 6, 1994.

No significant Hazards Consideration Comments Received: No.

Local Public Document Room Location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

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 Application for Amendments: August 27, 1993, as supplemented March 11, 1994.

Brief Description of Amendments: The amendments revise the Calvert Cliffs Nuclear Power Plant, Units 1 and 2, Technical Specifications (TSs) by removing the list of containment isolation valves in Table 3.6–1. The amendments also make accompanying changes to various TSs and to the TS Bases. These amendments are a "line-item" TS improvement and follow the guidance of Generic Letter 91–08, "Removal of Component Lists From Technical Specifications."

Date of issuance: April 7, 1994.

Effective Date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 187 and 164

Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of Initial Notice in **Federal Register**: September 29, 1993 (58 FR 50966) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated April 7, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Calvert County Library, Prince Frederick, Maryland 20678.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of Application for Amendment: June 7, 1993, August 9, and December 10, 1993.

Brief Description of Amendment: This amendment revises the Technical Specification (TS) to support a 24-month fuel cycle. The TS changes include extending surveillance intervals and adjusting setpoints as justified in the Safety Evaluation.

Date of Issuance: April 6, 1994.

Effective Date: April 6, 1994.

Amendment No.: 151.

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications.

Date of Initial Notice in **Federal Register**: March 16, 1994 (59 FR 2863) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 6, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

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: March 26, 1993.

Brief Description of Amendments: The amendments modify the trip level settings for the Isolation Condenser and High Pressure Core Injection System Steam lines to more conservative values. In addition, the proposed amendments revise the ECCS Low-Low Water Level initiation trip setting to a more conservative number.

Date of Issuance: April 5, 1994.

Effective Date: April 5, 1994.

Amendment Nos.: 126 and 120.

Facility Operating License Nos. DPR–19 and DPR–25. The amendments revised the Technical Specifications.

Date of Initial Notice in **Federal Register**: March 2, 1994 (59 FR 10002) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 5, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of Application for Amendments: January 24, 1994.

Brief Description of Amendments: The amendments implement line item 5.9 of Generic Letter 93–05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation", which provided recommendations for deleting the requirement to perform response time testing where the required time corresponds to the diesel start time.

Date of issuance: April 7, 1994.

Effective Date: April 7, 1994.

Amendment Nos.: 98 and 82.

Facility Operating License Nos. NPF–11 and NPF–18. The amendments revised the Technical Specifications.

Date of Initial Notice in **Federal Register**: February 16, 1994 (59 FR 7686). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 7, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of Application for Amendments: February 22, 1993 as supplemented August 16, 1993.

Brief Description of Amendments: The amendments allow continued operation of one unit for a period of seven days while the common plant (Division 1) emergency diesel generator ("O" DG) is out of service for the performance of specified Technical Specification surveillance requirements and the performance of planned maintenance and/or modification work. Also, the amendments clarify Surveillance Requirement 4.8.1.1.2.a.7 to allow an emergency diesel generator to remain Operable with only one air start subsystem pressurized.

Date of Issuance: April 11, 1994.

Effective Date: April 11, 1994.

Amendment Nos.: 99 and 83.

Facility Operating License Nos. NPF–11 and NPF–18. The amendments revised the Technical Specifications.

Date of Initial Notice in **Federal Register**: July 7, 1993 (58 FR 36430) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 11, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of Application for Amendments: September 28, 1993, as supplemented February 17, 1994.

Brief Description of Amendments: The amendments delete the portion of the 18-month surveillance requirement contained in Technical Specification (TS) 4.5.2.d associated with verifying that the decay heat removal system suction isolation valves automatically close on a reactor coolant system pressure signal. Also, an obsolete footnote to TS 4.5.2.e is being deleted. This footnote is no longer necessary since the first Unit 1 refueling outage is complete.

Date of Issuance: April 4, 1994.

Effective Date: April 4, 1994.

Amendment Nos.: 117 and 111.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of Initial Notice in **Federal Register**: March 2, 1994 (59 FR 10004) The February 17, 1994, letter provided clarifying information that did not change the scope of the initial September 28, 1993, application and initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 4, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room Location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of Application for Amendment: July 22, 1993, as supplemented by letter dated October 20, 1993.

Brief Description of Amendment: The amendment removed the cycle-specific variables from the Technical Specifications (TSs) and controlled them under a new document called the Core Operating Limits Report (COLR), in accordance with Generic Letter 88–16.

Date of Issuance: April 11, 1994.

Effective Date: April 11, 1994.

Amendment No.: 157.

Facility Operating License No. NPF–6. Amendment revised the Technical Specifications.

Date of Initial Notice in **Federal Register**: September 1, 1993 (58 FR 46230). The additional information contained in the supplemental letter dated October 20, 1993, was clarifying in nature and, thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1994.

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: January 13, 1994.

Brief Description of Amendment: The amendment requested the removal of the temporary technical specification limit on the number of spent fuel assemblies that may be stored in the spent fuel pool at Grand Gulf Nuclear Station pending licensee verification of the adequacy of the spent fuel pool heat removal capability.

Date of Issuance: April 4, 1994.

Effective Date: April 4, 1994.

Amendment No: 113.

Facility Operating License No. NPF–29. Amendment revises the Technical Specifications.

Date of Initial Notice in **Federal Register**: March 2, 1994 (59 FR 10006) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 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.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of Application for Amendments: April 20, 1993.

Brief Description of Amendments: These amendments delete the lead/lag compensator term on the measured reactor coolant system loop temperature difference from the overtemperature and overpower Delta T reactor trip functions.

Date of Issuance: April 4, 1994.
Effective Date: April 4, 1994.
Amendment Nos. 161 and 155.
Facility Operating Licenses Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.
Date of Initial Notice in Federal Register: June 9, 1993 (58 FR 32383) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 4, 1994.
No significant hazards consideration comments received: No.
Local Public Document Room Location: Florida International University, University Park, Miami, Florida 33199.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of Application for Amendments: September 20, 1993.
Brief Description of Amendments: The amendments revise the Units 1 and 2 Channel Functional Test frequency from quarterly to once per 18 months for the scram discharge volume float type level switches.
Date of Issuance: April 15, 1994.
Effective Date: To be implemented within 60 days from the date of issuance.
Amendment Nos.: 193 and 133.
Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.
Date of Initial Notice in Federal Register: October 27, 1993 (58 FR 57852) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 15, 1994.
No significant hazards consideration comments received: No.
Local Public Document Room Location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket No. 50–499, South Texas Project, Unit 2, Matagorda County, Texas

Date of Amendment Request: January 25, 1994.
Brief Description of Amendment: The amendment added new Technical Specifications, 3/4.10.6 and 3/4.10.7, to the Special Test Exceptions section. TS 3/4.10.6 allows the restart of Unit 2 with expired calibrations on the core exit thermocouples (CET) and the reactor coolant system (RCS) resistance temperature detectors (RTD) by setting aside the affected limiting conditions for operation (LCOs) until the calibrations are complete. This is a one-time only change that is valid during the third refueling outage for Unit 2 until the calibrations are complete. TS 3/4.10.7 adds a new technical specification to allow the ascension to 75 percent rated thermal power with an expired precision heat balance reactor coolant flow measurement. This change is effective only for Unit 2, Cycle 4, until the surveillance requirement is completed.
Date of Issuance: April 1, 1994.
Effective Date: April 1, 1994, to be implemented within 10 days of issuance.
Amendment No.: Amendment No. 48.
Facility Operating License No. NPF–80. Amendment revised the Technical Specifications.
Date of Initial Notice in Federal Register: February 16, 1994 (59 FR 7690) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 1, 1994.
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.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of Application for Amendment: January 21, 1994.
Brief Description of Amendment: The amendment revises Technical Specification 4.6.3 (Emergency Power Sources), to eliminate unnecessary testing of an operable emergency diesel generator (EDG) when the redundant EDG becomes inoperable. This amendment is intended to increase EDG reliability and the overall level of plant safety by reducing the stresses on the EDGs caused by unnecessary testing. This amendment also eliminates the requirement to load the operable EDG with the offsite network when it is tested with one EDG inoperable.
Date of Issuance: April 6, 1994.
Effective Date: As of the date of issuance to be implemented within 30 days.
Amendment No.: 147.
Facility Operating License No. DPR–63: Amendment revises the Technical Specifications.
Date of Initial Notice in Federal Register: March 2, 1994 (59 FR 10009) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 6, 1994.
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.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of Application for Amendment: November 18, 1993.
Brief Description of Amendment: The amendment revises the setpoints for the degraded voltage relays for the 4.16kV Power Boards 102 and 103 as specified in Technical Specification Table 3.6.2i. The setpoints have been revised from 3580 volts ± 3 seconds to 3705 volts > 3.4 seconds and < 60 seconds. This change has been made in response to findings of the NRC's Electrical Distribution System Functional Inspection conducted at Nine Mile Point Nuclear Station Unit No. 1 from September 23, 1991, to October 25, 1991.
Date of Issuance: April 7, 1994.
Effective Date: As of the date of issuance to be implemented prior to startup from the next refueling outage.
Amendment No.: 148.
Facility Operating License No. DPR–63: Amendment revises the Technical Specifications.
Date of Initial Notice in Federal Register: December 22, 1993 (58 FR 67851).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 7, 1994.
No significant hazards consideration comments received: No.
Local Public Document Room Location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: October 28, 1993.
Description of Amendment Request: The amendment implements 13 of 47 line item Technical Specification (TS) improvements recommended by Generic Letter 93–05. Most of the changes revise the allowable time intervals for performing certain Surveillance Requirements (SR) on various plant components during power operation or delete the requirement entirely or under

certain conditions. One change modifies testing requirements identified in an ACTION statement. Specifically, the amendment modifies Surveillance Requirements 4.1.3.1.2, 4.6.4.1, 4.3.2.1 (Table 4.3–2, Functional Unit 3.c.4), 4.3.3.1 (Table 4.3–3, Functional Units 1 through 6), 4.4.6.2.2, 4.4.11.1, 4.4.3.2, 4.5.1.1.1, 4.5.1.1.2, 4.5.2, 4.6.2.1, 4.6.4.2, 4.7.1.2.1, and the ACTION statements in Technical Specification 3.8.1.1.

Date of Issuance: April 7, 1994.

Effective Date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 30.

Facility Operating License No. NPF–86: Amendment revised the Technical Specifications.

Date of Initial Notice in **Federal Register**: February 2, 1994 (59 FR 4942). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 7, 1994.

No Significant Hazards Consideration Comments Received: No.

Local Public Document Room Location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of Application for Amendment: July 7, 1993.

Brief Description of Amendment: The amendment changes Technical Specification 3.6.D, "Primary System Boundary, Coolant Leakage," and the corresponding surveillance requirements. The amendment adds a clause to make the operability requirements of leakage measurement instruments applicable only when irradiated fuel is in the reactor and reactor water temperature is above 212°F. With regards to leakage measurement instruments, it is now required that leak rate measurements be made once per 12 hours. In addition, instruments must be restored to operable status within 30 days or else shutdown would be required. Operability requirements for the drywell particulate radioactivity monitoring system are now addressed. Surveillance requirements regarding primary containment atmosphere, identified and unidentified leakage of reactor coolant, and performance of a sensor check for the primary containment sump leakage measurement system are changed to once per shift, not to exceed 12 hours.

Date of Issuance: April 15, 1994.

Effective Date: April 15, 1994.

Amendment No.: 87.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications.

Date of Initial Notice in **Federal Register**: August 4, 1993 (58 FR 41507) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 15, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Pennsylvania Power and Light Company, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of Application for Amendment: November 24, 1993, and supplemented by letters dated January 7, and February 14, 1994.

Brief Description of Amendment: The amendment raised the authorized power level from the 3293 MWt to a new limit of 3441 MWt. The amendment also changed the Technical Specifications to implement uprated power operation.

Date of Issuance: April 11, 1994.

Effective Date: As of its date of issuance and is to be implemented prior to startup in Cycle 7, currently scheduled to occur May 21, 1994.

Amendment No.: 103.

Facility Operating License No. NPF–22. This amendment revised the Technical Specifications and the License.

Date of Initial Notice in **Federal Register**: December 22, 1993 (58 FR 67852)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket Nos. 50–387 and 50–388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania.

Date of Application for Amendments: April 16, 1993.

Brief Description of Amendments: The amendments revised the Technical Specifications to conform to the NRC staff positions on Inservice Inspection and on monitoring of unidentified leakage in Generic Letter 88–01, "NRC Position On Intergranular Stress Corrosion Cracking In BWR Austenitic Stainless Steel Piping".

Date of Issuance: April 15, 1994.

Effective Date: April 15, 1994.

Amendment Nos.: 134 and 104.

Facility Operating License Nos. NPF–14 and NPF–22. These amendments revised the Technical Specifications.

Date of Initial Notice in **Federal Register**: May 12, 1993 (58 FR 28058). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 15, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of Application for Amendments: May 21, 1992

Brief Description of Amendments: The amendments revised the expiration dates from January 31, 2008, for Units 2 and 3, to August 8, 2013, for Unit 2, and July 2, 2014, for Unit 3. The original expiration date is 40 years from the date of issuance of the Construction Permit for both units. The revised dates are 40 years from the date of issuance of the respective Operating Licenses (i.e., August 8, 1973 for Unit 2 and July 2, 1974 for Unit 3).

Date of Issuance: March 28, 1994.

Effective Date: March 28, 1994.

Amendments Nos.: 186 and 191.

Facility Operating License Nos. DPR–44 and DPR–56: Amendments revised the Licenses.

Date of Initial Notice in **Federal Register**: August 5, 1992 (57 FR 34590). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 28, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Government Publications Section, State Library of Pennsylvania (Regional Depository), Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of Application for Amendments: November 17, 1993.

Brief Description of Amendments: These amendments revise the surveillance requirements to eliminate unnecessary diesel generator testing when a diesel generator or an offsite power source becomes inoperable. This change reduces the stresses on the diesel generators caused by unnecessary testing.

Date of Issuance: April 5, 1994.

Effective Date: April 5, 1994.

Amendments Nos.: 187 and 192.

Facility Operating License Nos. DPR–44 and DPR–56: Amendments revised the Technical Specifications.

Date of Initial Notice in Federal Register: January 5, 1994 (59 FR 628). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 5, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Government Publications Section, State Library of Pennsylvania (Regional Depository), Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of Application for Amendments: May 25, 1993, as supplemented March 11, 1994.

Brief Description of Amendments: These administrative amendments (1) remove references to the Service Platform Hoist, (2) correct a typographical error concerning the Emergency Transformer Degraded Voltage relay setpoint tolerance, and (3) clarify that the basis for recalibration of certain pressure switches is reactor thermal power instead of turbine first stage pressure.

Date of Issuance: April 7, 1994.

Effective Date: April 7, 1994.

Amendments Nos.: 188 and 193.

Facility Operating License Nos. DPR–44 and DPR–56: Amendments revised the Technical Specifications.

Date of Initial Notice in Federal Register: July 21, 1993 (58 FR 39059). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 7, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Government Publications Section, State Library of Pennsylvania (Regional Depository), Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of Application for Amendments: December 21, 1993, as supplemented on March 11, 1994.

Brief Description of Amendments: These amendments revise Technical Specification (TS) Table 3.2.F to accurately describe the main stack high range and reactor building roof vent high range radiation monitors, and delete previously approved Amendment No. 168 for Unit 3. Amendment No. 168 was an emergency temporary change which is no longer requested.

Date of Issuance: April 7, 1994.

Effective Date: April 7, 1994.

Amendments Nos.: 189 and 194.

Facility Operating License Nos. DPR–44 and DPR–56: Amendments revised the Technical Specifications.

Date of Initial Notice in Federal Register: February 16, 1994 (59 FR 7697) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 7, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

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: December 28, 1993.

Brief Description of Amendment: The amendment clarifies Limiting Condition for Operation (LCO) 3.5.D.4. Amendment No. 179 to the TS added LCO 3.5.D.4 to permit hydrostatic and leakage testing at temperatures up to 300 °F without requiring certain equipment, including the automatic depressurization system (ADS), to be operable. However, LCO 3.5.D.4 can be mistakenly interpreted to require the ADS be operable at temperatures less than 212 °F. Requiring the ADS to be operable during hydrostatic and leakage testing with temperatures below 212 °F was clearly not the intent of Amendment No. 179. The amendment clarifies LCO 3.5.D.4 to resolve this concern and is considered an administrative change.

Date of Issuance: April 6, 1994.

Effective Date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 209.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of Initial Notice in Federal Register: March 2, 1994 (59 FR 10014) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 6, 1994.

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: December 29, 1993.

Brief Description of Amendment: The Technical Specifications (TSs) amendment revised Section 3.6.D.4 to eliminate an inconsistency between the operability requirements for the reactor coolant system (RCS) leakage detection and the specified requirements for monitoring RCS leakage. Additionally, the amendment revised the TSs to make numerous editorial corrections which are administrative in nature.

Date of Issuance: April 13, 1994.

Effective Date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 210.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of Initial Notice in Federal Register: February 2, 1994 (59 FR 4945) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 13, 1994.

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: August 30, 1993, and supplement dated March 21, 1994.

Brief Description of Amendment: The amendment revises the composition of

the Station Operations Review Committee (SORC) and increases the submittal interval of the Radiological Effluent Release Report from semiannually to annually.

Date of Issuance: April 15, 1994.
Effective Date: April 15, 1994.
Amendment No.: 67.
Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.
Date of Initial Notice in Federal Register: September 29, 1993 (58 FR 50973)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 15, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of Application for Amendment: April 23, 1993, and supplemented by letters dated November 10, 1993 and January 13, 1994.

Brief Description of Amendment: The amendment lowers the technical specification limit for the maximum ultimate heat sink temperature and revise the bases for the station service water system.

Date of Issuance: April 15, 1994.
Effective Date: April 15, 1994.
Amendment No.: 68.
Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.
Date of Initial Notice in Federal Register:

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 15, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of Application for Amendments: December 8, 1993.

Brief Description of Amendments: These amendments incorporate the guidance of NRC Generic Letter 90–06 that addresses power-operated relief valve and block valve reliability and additional low-temperature overpressure protection for light water reactors.

Date of Issuance: April 7, 1994.
Effective Date: April 7, 1994.
Amendment Nos. 150 and 130.
Facility Operating License Nos. DPR–70 and DPR–75: These amendments revised the Technical Specifications.
Date of Initial Notice in Federal Register: January 19, 1994 (59 FR 2870) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 7, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Southern Nuclear Operating Company, Inc., Docket No. 50–348, Joseph M. Farley Nuclear Plant, Unit 1, Houston County, Alabama

Date of Application for Amendment: December 9, 1993, as supplemented February 23, and April 1, 1994

Brief Description of Amendment: The amendment modifies 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 is being modified in the TS to incorporate a 2.0 volt steam generator tube support plate interim plugging criteria for Cycle 13 only. 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 for Cycle 13 only.

Date of Issuance: April 5, 1994.
Effective Date: April 5, 1994.
Amendment No.: 106.
Facility Operating License No. NPF–2. Amendment revises the Technical Specifications.
Date of Initial Notice in Federal Register: January 19, 1994 (59 FR 2871) The February 23, 1994, and April 1, 1994, letters provided supplemental information and deleted the requested TS upper limit bobbin voltage of 5.7 volts for tube plugging that was requested in the December 9, 1993, letter and retained the current value of 3.6 volts. The February 23 and April 1, 1994, supplements did not change the original no significant hazards consideration finding.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 5, 1994.

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

Texas Utilities Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of Amendment Request: May 21, 1993, as supplemented by letter dated February 23, 1994.

Brief Description of Amendment: The amendments change the technical specifications by replacing the requirements associated with the control room heating and ventilation system with requirements related to operation of the control room filtration system and control room air conditioning system. The proposed change is consistent with the requirements of the Westinghouse Standard Technical Specifications (NUREG–1431) issued on September 28, 1992.

Date of Issuance: April 6, 1994
Effective Date: April 6, 1994, to be implemented within 30 days of issuance.
Amendment Nos: Unit 1—Amendment No. 23; Unit 2—Amendment No. 9
Facility Operating License Nos. NPF–87 and NPF–89: Amendments revised the Technical Specifications.
Date of Initial Notice in Federal Register: August 18, 1993 (58 FR 43933). The February 23, 1994, submittal provided supplemental information to the application and did not change the initial no significant hazards determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 6, 1994.

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: September 24, 1993.

Brief description of amendment: The amendment revises the Technical Specifications to extend the reporting period of the Semiannual Radioactive Effluent Release Report from semiannually to annually. Additionally, the report submission date changes from 60 days after January 1 and July 1 of each year to before May 1 of each year. The changes to the reporting period and report date are being made to implement the August 31, 1992, change to 10 CFR

50.36a. The affected Technical Specification Sections are 1.18, 3.11.1.4, 3.11.2.6, 6.9.1.7, 6.14c, and the Index.

Date of Issuance: April 14, 1994.

Effective Date: April 14, 1994.

Amendment No.: 89.

Facility Operating License No. NPF–30. Amendment revised the Technical Specifications.

Date of Initial Notice in **Federal Register:** March 2, 1994 (59 FR 10016).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 14, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of Application for Amendment: February 1, 1994.

Brief Description of Amendment: The amendment revises the TS by removing the review of the Emergency Plan and its implementing procedures from the list of responsibilities of the Plant Operations Review Committee (PORC). Guidance for this change was provided in Generic Letter 93–07, "Modification of the Technical Specification Administrative Control Requirements for Emergency and Security Plans," dated December 28, 1993. Several other administrative TS changes were also made including removing specific titles from the list of PORC members in TS 6.5.a.2 and deleting TS 6.5.b which describes the Corporate Support Staff.

Date of Issuance: April 7, 1994.

Effective Date: April 7, 1994.

Amendment No.: 107.

Facility Operating License No. DPR–43. Amendment revised the Technical Specifications.

Date of Initial Notice in **Federal Register:** March 2, 1994 (59 FR 10017) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 7, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room Location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin.

Date of Application for Amendment: May 5, 1993 as supplemented March 4, 1994.

Brief Description of Amendment: The amendment changes the Kewaunee Nuclear Power Plant (KNPP) Technical Specifications (TS) in response to NRC Generic Letter 90–06. This letter deals with Generic Issue 70 and Generic Issue 94, which focus on power-operated relief valve and block valve reliability and additional low-temperature overpressure protection. The amendment revises TS Section 3.1 by adding restrictions on the restart of an inactive reactor coolant pump, modifying the limiting conditions for operation of the pressurizer power-operated relief valves (PORVs) and associated block valves, and adding provisions to ensure that adequate low-temperature overpressure protection (LTOP) is available. Additionally, this amendment modifies the limiting conditions for operation for reactor coolant temperature and pressure by adding Figure TS 3.1–4 to define 10 CFR 50 Appendix G pressure and temperature limitations for LTOP evaluation through the end of operating cycle 20.

Date of Issuance: April 7, 1994.

Effective Date: April 7, 1994.

Amendment No.: 108.

Facility Operating License No. DPR–43. Amendment revised the Technical Specifications.

Date of Initial Notice in **Federal Register:** July 21, 1993 (58 FR 39062) The March 4, 1994, submittal provided additional clarifying information and changed the LTOP allowed outage time from 7 days to a more conservative 5 days. This modification 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 April 7, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room Location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Dated at Rockville, Maryland, this 20th day of April 1994.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Acting Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–10011 Filed 4–26–94; 8:45 am]

BILLING CODE 7590–01–P

Abnormal Occurrences for Fourth Quarter CY 1993 Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events that the Commission determines are significant from the standpoint of public health and safety). During the fourth quarter of CY 1993, the following incidents at NRC licensees were determined to be abnormal occurrences (AOs) and are described below, together with the remedial actions taken. The events are also being included in NUREG–0090, Vol. 16, No. 4, ("Report to Congress on Abnormal Occurrences: October-December 1993"). This report will be available at NRC's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555 about three weeks after the publication date of this **Federal Register** notice.

Other NRC Licensees (Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

93–11 *Medical Branchytherapy Misadministration at Washington University Medical School in St. Louis, Missouri*

One of the AO reporting guidelines notes that a therapeutic dose that results in any part of the body receiving unscheduled radiation can be considered an abnormal occurrence.

Date and Place—January 7, 1993 and February 26, 1993; Washington University Medical School; St. Louis, Missouri.

Nature and Probable Consequences—On January 7, 1993, a Nucletron Micro-Selectron low-dose-rate (LDR) remote afterloader unit ejected a radioactive source without being programmed to do so and without a guide tube and applicator attached to the channel. The unguided source lay at an approximate distance of 3 centimeters (cm) (1.2 inches [in] from the nearest skin surface for approximately 5 minutes. The licensee estimated that less than 0.1 centigray (cGy) (0.1 rad) of additional dose was delivered to the skin surface.

On February 26, 1993, a very similar incident occurred at the same facility. The incident involved a different patient and the same remote afterloader unit. The device again ejected the same strength and type of radioactive source without being programmed to do so. However, in this case, the source lay near the patient's leg for approximately 60 to 75 minutes, at an approximate distance of 5 cm (2 in) from the nearest skin surface. The licensee estimated the additional dose to the patient's leg to be approximately 3.5 cGy (3.5 rad).

In both cases, the treatment of each patient was completed on another LDR remote afterloader unit in another room of the medical center.

Cause or Causes—After the first incident on January 7, 1993, a manufacturer service engineer, who studied the device malfunction, was unable to identify the cause of the failure during his repair visit. The licensee's staff subsequently tested the device for 20 hours without discovering the cause of the failure, and concluded that the device was acceptable for use. This decision was based on the fact that they could not reproduce the malfunction. The remote afterloader was put back into service. On February 26, 1993, the device failed again when a second unprogrammed source was ejected by the afterloader. After this incident, which resulted in the second misadministration, the manufacturer provided a different field engineer who correctly diagnosed the problem as a failure in an operational amplifier.

A previous recommendation made by the manufacturer to store unused sources in the auxiliary storage safe, instead of the remote afterloader's mobile storage container, may have contributed to the incident. The second field engineer indicated that some of the safety features which prevent sources from being erroneously ejected were not in effect or were not monitored by the device for the unprogrammed channels containing the unused sources.

Actions Taken To Prevent a Recurrence

Licensee—The licensee informed the NRC that use of the two Micro-Selectron-LDR remote afterloader units will be discontinued and a new model LDR afterloader will be installed. NRC has also asked the licensee to address the manufacturer's recommendation for storing the sources and the removal of some of the safety features, and any resulting corrective actions.

NRC—The vendor has now revised the device's operating software to monitor and generate error messages and audible alarms for unprogrammed (unused) channels. The NRC has sent a letter to the licensee identifying the two events as misadministrations and requesting that the licensee ensure the required notifications to the referring physicians and patients have been made. (Letter from Roy J. Caniano, Chief, Nuclear Materials Safety Branch, NRC Region III, to Robert J. Hickok, Assistant Vice President for Medical Affairs, Washington University Medical School, forwarding inspection reports No. 030–02271/93001, 030–31205/93001, 030–15101/93001, Docket No. 030/02271, 030–31205 and 030/15101, License No. 24–00167–11, dated January 12, 1994.)

During an NRC safety inspection conducted from November 15 to 18, 1993, the inspectors focused on these two incidents in addition to other inspection areas. The results of this inspection are still under review.

93–12 *Medical Brachytherapy Misadministration at Mercy Hospital in Scranton, Pennsylvania*

One of the AO reporting guidelines notes that a therapeutic dose that results in any part of the body receiving unscheduled radiation can be considered an abnormal occurrence.

Date and Place—October 15, 1993; Mercy Hospital; Scranton, Pennsylvania.

Nature and Probable Consequences—On October 15, 1993, Mercy Hospital in Scranton, Pennsylvania, notified NRC Region I of a therapeutic misadministration involving a Nucletron Micro-Selectron high dose rate (HDR) remote afterloader which occurred at the facility on April 23, 1993. The licensee identified this misadministration during a review of the past treatment records.

A patient was scheduled to receive brachytherapy treatment to the apex of her vagina in three fractions using a Nucletron Micro Selectron HDR remote afterloader. The prescribed dose was 500 centigray (cGy) (500 rad) for each fraction and the use of a ring applicator was specified. On April 13, 1993, the patient was administered the first fractional treatment. After an examination of the patient following the first treatment, the physician revised the written directive and prescribed a change from the ring applicator to a standard vaginal cylindrical applicator for the remaining two treatments. On April 23, 1993, during the administration of the second treatment, the therapist erroneously entered the catheter length of 920 millimeter (mm) (36.2 inch) into the treatment computer instead of the intended 992 mm (39.1 inch). The physician failed to identify this error during his review of the treatment parameters prior to the initiation of the treatment.

As a result of this erroneous entry, a majority of the treatment dose was administered to an unintended region near the opening of the vagina, and the intended site received an underdose differing from the prescribed dose by more than 20 percent. The physician stated that no adverse clinical effects are expected as a result of the underdose to the target site because this treatment was intended to administer a booster radiation dose. The oncologist also stated that the patient is not expected to experience any adverse effects as a result of the 500 cGy (500 rad) overexposure to the wrong treatment site misadministration. The NRC medical consultant, in his report to Region I, also stated a similar opinion (that it is unlikely the patient will suffer any adverse effects from the misadministration).

The third fraction of the treatment was administered to the patient on April 29, 1993, as prescribed.

The referring physician and the patient have been notified. The licensee submitted a written report of the misadministration to NRC Region I on October 29, 1993.

Cause or Causes—The therapist did not enter the correct catheter length during initial setup for the second treatment. The licensee followed established procedures; however, the procedure did not require verification of all parameters at the time of the second check prior to each treatment.

Actions Taken to Prevent Occurrence

Licensee—The licensee has instituted a requirement that a medical physicist also review the final treatment plan prior to initiating the treatment. The treatment parameters for all brachytherapy (HDR) treatments will be transferred electronically to the magnetic card directly from the simulator. The output of this card will be reviewed by the medical physicist and the oncologist before the initiation of the treatment.

NRC—Region I conducted a special inspection at Mercy Hospital on October 19, 1993. Inspection Report No. 030–02983/93–001, issued November 5, 1993, identified two apparent violations:

(1) Failure to require supervised individual to follow written quality management procedures (QMP) 10 CFR 35.25(a)(2);

(2) Failure to include policies and procedures in the QMP to meet the objective that each administration is in accordance with the written directive 10 CFR 35.32(a) After receipt and review of the medical consultant's report, Region I issued a Notice of Violation to the licensee on February 9, 1994, classifying the two violations at Severity Level IV in accordance with the NRC Enforcement Policy.

An NRC medical consultant has been retained to review this misadministration. The medical consultant's report was received by Region I on February 3, 1994. (The medical consultant's report is filed in Docket No. 030–02983 in the Region I Materials License Docket Room. Inspection Report No. 030–02983/93–001 issued November 5, 1993, and the February 9, 1994, Notice of Violation are in the PDR.) The medical consultant

questioned the licensee concerning its identification of a radiation oncologist as the referring physician. After discussion with the NRC's medical consultant, the licensee identified the patient's physician as the primary referring physician and then agreed to notify the physician. Following a review of the medical consultant's report, Region I confirmed in a telephone conversation that the licensee had contacted the patient's physician regarding the misadministration. The licensee stated that both referring physicians have been notified of this misadministration. The radiation oncologist had discussed the misadministration with the patient on October 21, 1993.

93–13 *Medical Brachytherapy Misadministration at Mountainside Hospital in Montclair, New Jersey*

One of the AO reporting guidelines notes that a therapeutic dose that results in any part of the body receiving unscheduled radiation can be considered an abnormal occurrence.

Date and Place—July 1, 1993; Mountainside Hospital; Montclair, New Jersey.

Nature and Probable Consequences—On December 1, 1993, during a routine inspection, NRC identified a therapeutic misadministration involving a high-dose-rate (HDR) remote afterloader, which occurred at Mountainside Hospital in Montclair, New Jersey, on July 1, 1993. NRC identified the misadministration while reviewing the licensee's Radiation Safety Committee (RSC) meeting minutes for 1993.

On July 1, 1993, a patient was scheduled to receive the last of three brachytherapy treatments to the right mainstem bronchus. Each fraction was to deliver 750 centigray (cGy) (750 rad) to the target using a Nucletron Mitro-Selectron HDR remote afterloader and an intrabronchial catheter. During the July 1, 1993 treatment, the radiation oncologist mistakenly connected the catheter to the HDR afterloader with a 750 mm (29.5 inch) transfer tube instead of a short connector. This prevented the source from entering the intrabronchial catheter, and while delivering a negligible dose to the tumor, the face, the lenses of the eyes, the thyroid, and the whole body of the patient received unscheduled exposure.

The source strength at the time of the incident was 161,000 megabecquerel (4.35 curie) of iridium-192 and the exposure time was 445.5 seconds. Following the reconstruction of the incident by the licensee, the surface does to the lens of the left eye was determined by the licensee to be 1.97 cGy (1.97 rad), the does to the chin (the closest surface of the body) was 4.56 cGy (4.56 rad), and the dose to the thyroid was 3.07 cGy (3.07 rad). The physician identified the error upon termination of the treatment and wrote a memorandum about the incident to the hospital's physicist and radiation safety officer (RSO).

The physician mistakenly determined that the incident was not a misadministration, and so advised the RSO. The RSO, relying on the physician's judgment, did not notify NRC and filed the report in the RSC minutes folder. The radiation oncologist decided against making up the missed third fraction of therapy.

On December 3, 1993, NRC notified the licensee by telephone that the event constituted a misadministration and the licensee notified the NRC Operations Center the same day. The licensee's written report of the misadministration, dated December 13, 1993, was received in the NRC Region I office on December 17, 1993.

After review of the report, Region I called the licensee to determine if the referring physician and the patient were notified of the misadministration. The licensee forwarded a copy of a letter dated December 20, 1993, from the radiation oncologist to the referring physician confirming a December 6, 1993, telephone conversation in which the referring physician was informed of the misadministration. The letter indicated that the referring physician did not feel it would be in the patient's best interest to be notified of the misadministration.

NRC contracted a medical consultant to determine the significance of the misadministration to the patient. The medical consultant's report was received by Region I on February 3, 1994. The consultant's calculations of doses to the lens of the left eye, the chin, and the thyroid of the patient agreed with the licensee's estimates, based on the strength of the source, the time of exposure and the distances of the source from the patient. The consultant concluded that the patient would not suffer any adverse effects from the misadministration. The medical consultant also determined that the oncologist failed to notify the patient of the misadministration because he did not fully understand the requirements of 10 CFR 35.33(a)(3). After discussions with the consultant, the referring physician agreed to inform the patient of the misadministration.

Cause or Causes—An error by the attending physician in connecting the catheter to the HDR remote afterloader, and the failure of the console operator to recognize the faulty connection were the direct causes of the event. Both individuals relied on the treatment computer to indicate any problems with the therapy setup. The computer on a Nucletron HDR is not designed to alert the user to an incorrect connection of a longer transfer tube.

In addition, the medical consultant's report indicates that the second individual observing the transfer tube connection during each treatment setup was a different console operator. Since the console operator in attendance during the third treatment had not been present during the prior treatments, he/she was unaware of the intended setup.

Actions Taken to Prevent Occurrence

Licensee—The licensee arranged for additional training by Nucletron on July 30, 1993. The training was attended by both HDR remote afterloader units authorized users and by three technologist-console operators.

NRC—NRC is reviewing the licensee's December 17, 1993 misadministration report and the findings of the December 1, 1993 NRC inspection. An NRC medical consultant was retained to review the misadministration.

The medical consultant's report dated February 1, 1994, was received by the NRC Region I office on February 3, 1994. (The medical consultant's report will be placed in the file for Docket No. 03–02470 located in the Region I Materials License Docket Room. An inspection report will be issued to the licensee by February 18, 1994, and will be available in the PDR.) In addition to the comment made in the above sections, the consultant indicated that if the licensee had required a medical physicist to be present during every setup and treatment as recommended in NRC Bulletin 93–01, it is likely that this misadministration would not have occurred. In the consultant's opinion, a medical physicist would have been more likely to have noticed the human error in the setup of the third HDR treatment. An enforcement conference has been scheduled.

94–14 *Exposure to a Nursing Infant at Queen's Hospital in Honolulu, Hawaii*

One of the AO reporting guidelines notes that a moderate exposure to, or release of, radioactive material licensed by or otherwise regulated by the Commission can be considered an abnormal occurrence.

Date and Place—December 2, 1991; Queen's Medical Center; Honolulu, Hawaii.

Nature and Probable Consequences—On October 25, 1993, during a routine safety inspection, a Region V inspector

discovered an unreported unscheduled exposure to the thyroid of a 9-month-old nursing infant. On December 2, 1991, a patient was administered 0.56 megabecquerel (15 microcuries) of iodine-131 for a diagnostic scan. Although the patient noted on a hospital form that she was breastfeeding, the technologist failed to notice this notation until the patient returned for a scan the following day. The patient was informed of the oversight by the licensee and was instructed to stop breastfeeding. The authorized user and the referring physician were also notified on December 3, 1991.

The licensee's Radiation Safety Officer calculated the infant's absorbed thyroid dose to be approximately 250 millisievert (mSv) (25 rem) based on information obtained during the uptake scan of the mother 6 hours after the administration.

The NRC retained a medical consultant to evaluate the circumstances of this misadministration. The consultant estimated the dose to the infant's thyroid to be between 160 to 650 mSv (16 to 65 rem). The medical consultant concluded that the infant is not likely to experience any adverse effects as a result of this misadministration.

Cause or Causes—Failure of a supervised technologist to adequately review the hospital form used to inform the hospital staff that a patient is pregnant or breastfeeding as he/she was instructed by the authorized user.

Actions Taken to Prevent Recurrence

Licensee—The screening procedure used to inform the hospital staff that a patient is pregnant or breastfeeding was incorporated into the clinical procedure manual. It was reviewed by each of the technologists, and it will be reviewed by all new technologists upon being hired. It will also be reviewed annually during a radiation safety training course.

NRC—NRC conducted inspections on September 28 and October 25–27, 1993. The December 2, 1991 misadministration was noted and reviewed during these inspections. A number of violations were identified as a result of these inspections and escalated enforcement actions are being considered. An NRC medical consultant was also retained to review the case.

93–15 *Medical Brachytherapy Misadministration at Good Samaritan Medical Center in Zanesville, Ohio*

One of the AO reporting guidelines notes that a therapeutic dose that results in any part of the body receiving unscheduled radiation can be considered an abnormal occurrence.

Date and Place—November 10, 1993; Good Samaritan Hospital; Zanesville, Ohio.

Nature and Probable Consequences—A patient was being treated for lung cancer. The treatment included performing an iridium-192 therapeutic implant. The prescribed treatment dose was 6000 rad to the patient's lung. On November 10, 1993, a catheter was surgically implanted in the patient. Iridium-192 seeds, contained in a ribbon, were inserted into the catheter.

Following normal licensee procedure, the physicist requested that the attending nurse order a "stat" chest x-ray in order to verify source position. The "stat" radiograph was completed and two hours later upon review of the film, the seed positions could not be visualized. Two additional radiographs using different techniques were done. In the second radiograph, completed one hour later, the seeds were located in the patient's throat. The ribbon was removed and the physician successfully reinserted the ribbon to the proper location. Another radiograph was done to verify the source location. The treatment time was recalculated to deliver the total original intended dose and the treatment was completed without further difficulty.

The sources were in the improper location for about three hours, delivering an estimated dose to the larynx area of about 282 centigray (282 rad). An NRC medical consultant evaluated the medical aspects of the brachytherapy misadministration and concluded that the dose to the larynx and surrounding area is not clinically significant.

The physician verbally notified the patient of the misadministration following the successful reinsertion of the source ribbon. A written report was provided to the patient on November 15 1993.

Cause or Causes—The immediate cause of the misadministration was an apparent crimp in the catheter which resulted in the seeds not being placed correctly. The seeds were blocked by the crimp at the level of the patient's larynx.

An inexperienced radiation therapy technician implanted the source. During interviews, the physician stated that it would be difficult for an inexperienced person to know the difference between a properly seated ribbon and when ribbon insertion was impeded by a crimp in the catheter.

Actions Taken To Prevent Recurrence

Licensee—The licensee's plan for preventing recurrence of the misadministration included:

(1) Formalizing the dosimetrist's "rule of practice" regarding comparison of the ribbon and catheter lengths prior to source implantation in order to ensure that the ribbon is properly seated;

(2) Providing training to all radiation therapy technologists and each medical physicist in the new procedure;

(3) Requiring that the authorized user physically implant source ribbons;

(4) Requiring that each radiation therapy technologist receive hands on training and instruction in source implantation; and

(5) Requiring that the "stat" post-insertion radiograph be hand carried to the prescribing physician for evaluation as soon as possible to determine proper source placement.

NRC—A special safety inspection was conducted by NRC Region III on January 19, 1994 to review the circumstances surrounding this misadministration. An NRC medical consultant was also retained to review this case. Based on the results of the special inspection, NRC identified an apparent violation that is being considered for escalated enforcement action. (Letter from W.L. Axelson, Director, Division of Radiation Safety and Safeguards, NRC Region III, to Dan Sylvester, Vice President for Professional Services, Good Samaritan Hospital, forwarded inspection report No. 030–30954/94001, Docket No. 030–30954, License No. 34–16725–02, dated February 11, 1994.)

93–16 *Medical Brachytherapy Misadministration at Marquette General Hospital in Marquette, Michigan*

One of the AO reporting guidelines notes that a therapeutic dose that results in any part of the body receiving unscheduled radiation can be considered an abnormal occurrence.

Date and Place—November 17–19, 1993; Marquette General Hospital, Marquette, Michigan.

Nature and Probable Consequences—On November 17, 1993, a patient was undergoing a brachytherapy procedure using cesium-137 sealed sources placed in a treatment device (catheter) inserted into the patient's uterus. When the catheter was removed on November 19, it was observed that it was too short to have been fully inserted into the uterine cavity. The three sources in the catheter had actually been in the patient's vagina instead of the uterus.

The case was evaluated by an NRC medical consultant who concluded that the lower vagina received a radiation dose of 2,700 centigray (2,700 rad) when it would not have received a significant dose if the treatment had been performed as planned. The medical consultant concluded that the radiation

doses to the vagina would not be expected to cause any acute or long term effects because the vaginal tissue is extraordinarily tolerant of radiation. This placement error did not result in additional exposure to other organs.

The intended treatment area received about 50 percent of the intended dose. Subsequently, the patient received an additional dose to the uterus to complete the prescribed treatment. The licensee informed the patient of the treatment error.

Cause or Causes—The hospital routinely uses two lengths of catheters for brachytherapy treatments, a shorter catheter for vaginal procedures and a longer one for uterine procedures. The medical physicist inadvertently placed the cesium-137 sources in the shorter (vaginal) catheter instead of the required long catheter for the uterin procedure prescribed.

Actions Taken To Prevent a Recurrence

Licensee—The hospital has revised its procedures to include added precautions for assuring the correct length catheter is used in each brachytherapy procedure.

NRC—The NRC conducted a special inspection beginning November 29, 1993, to review the circumstances surrounding the misadministration. No violations of NRC regulations were identified, but the licensee was directed to review its Quality Management Program to determine what modifications were needed to prevent similar misadministrations in the future. The NRC also retained a medical consultant to evaluate this case.

Dated at Rockville, MD, this 21st day of April 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Assistant Secretary of the Commission.

[FR Doc. 94–10123 Filed 4–26–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–368]

Entergy Operations, Inc.; Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has partially denied a request by Entergy Operations. Inc., (licensee) for an amendment to Facility Operating License No. NPF–6 issued to the licensee for operation of the Arkansas Nuclear One, Unit 2, located in Pope County, Arkansas. Notice of Consideration of Issuance of this amendment was published in the Federal Register on September 1, 1993 (58 FR 46230).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TSs) to remove the cycle-specific variables from the TSs and control them under a new document called the Core Operating Limits Report (COLR), in accordance with Generic Letter (GL) 88–16. In addition, the proposed amendment would also revise the definition of shutdown margin in TS 1.13.

The NRC staff has concluded that the licensee's request concerning the shutdown margin (SDM) definition, which is not related to GL 88–16, is denied since it does not accurately define the starting point for shutdown margin. The licensee was notified of the Commission's partial denial of the proposed change by a letter dated * * *

By May 27, 1994, the licensee may demand a hearing with respect to the partial denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or 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.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street NW., Washington, DC 20005–3502, attorney for the licensee.

For further details with respect to this action, see: (1) The application for amendment dated July 22, 1993, as supplemented by letter dated October 20, 1993, and (2) the Commission's letter to the licensee dated * * *

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 20th day of April 1994.

For the Nuclear Regulatory Commission.

William D. Beckner,

Project Director, Project, Directorate IV–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–10122 Filed 4–26–94; 8:45 am]

BILLING CODE 7590–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Columbia River Basin Fish and Wildlife Program

April 15, 1994.

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of Proposed Amendments to the Columbia River Basin Fish and Wildlife Program (mainstem passage survival hypotheses).

SUMMARY: Pursuant to the Pacific Electric Power and Conservation Act (the Northwest Power Act, 16 U.S.C. section 839, et seq.) the Pacific Northwest Electric Power and Conservation Planning Council (Council) has proposed amendments to the Columbia River Basin Fish and Wildlife Program (program). The amendments propose to establish hypotheses regarding the relationship between river flows, velocity, transportation, and the survival of anadromous fish in the mainstem of the Columbia and Snake Rivers. Copies of the proposed amendments are now available, and comments are solicited.

BACKGROUND: The proposed amendments are intended to facilitate investigation of the relationship between flow, water velocity and fish survival and the efficacy of smolt transportation. After the conclusion of this rulemaking process, the Council will consider the need for further actions to reduce mortalities to anadromous fish in the mainstem. The current rulemaking process, however, is not intended to predetermine any decisions made in the later, summer rulemaking.

OPPORTUNITY FOR COMMENT: The Council will receive written comment on the proposed amendments through 5 p.m. Pacific time, May 25, 1994. Comments should be clearly marked "Mainstem Hypothesis Comments," and submitted to the Council's Public Affairs Division, 851 S.W. Sixth Avenue, Suite 1100, Portland, Oregon 97204. After the close of comment, the Council may initiate further consultations, or reopen the record for further written comment. The

Council expects to make a final decision in this rulemaking process in June, 1994. HEARINGS: The Council is in the process of scheduling hearings in the four Northwest states. Please call the Council's public affairs division for information on the schedule and location for hearings, and watch for further information in the Council's newsletter, Update. To reserve a time to testify at a hearing, please call Ms. Judi Hertz at 1–800–222–3355 (if calling from Idaho, Montana or Washington), 1–800–452–2324 (if calling from Oregon), or 222–5161 (if calling from the Portland area).

Please contact the Council's Public Affairs Division to reserve a time to testify. Witnesses should be prepared to summarize briefly, rather than read, any written statement they wish to enter into the record.

FOR FURTHER INFORMATION: For copies of the proposed amendments and a background paper outlining their rationale, contact the Council's Public Affairs Division, 851 S.W. Sixth Avenue, Suite 1100, Portland, Oregon 97204 or (503) 222–5161, toll free 1–800–222–3355, and request document no. 94–11.

Edward W. Sheets,

Executive Director.

[FR Doc. 94–10180 Filed 4–26–94; 8:45 am]

BILLING CODE 0000–00–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33936); File No. SR–Amex–94–07]

Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Modification of Trading Hours for the EUROTOP 100 Index

April 20, 1994.

On March 7, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] a proposed rule change to amend Amex Rule 1 to modify the trading hours for the Exchange's EUROTOP 100 Index ("E–100").

The proposed rule change was published for comment in the **Federal Register** on March 21, 1994.[3] No comments were received on the proposed rule change. This order approves the proposal.

In October 1992, the Exchange began trading standardized options on the E–100. The E–100 measures the collective performance of the most actively traded stocks on Europe's major stock exchanges. This broad-based index is calculated continuously from 5 a.m. to 11:30 a.m. Eastern Standard Time (11 a.m. to 5:30 p.m. Central European time). The Exchange's trading hours for options on the E–100 are from 8:30 a.m. to 4:15 p.m. (New York time). The one hour earlier opening was adopted in order to attract European investors as well as to conform more closely with trading hours for futures contracts on the E–100 traded at the New York Commodity Exchange ("COMEX"), which begins trading at 7:30 a.m. (New York time).

However, in the aftermath of the bombing of the World Trade Center in February 1993, the COMEX curtailed trading hours for all of its products and has continued to cease trading the E–100 futures contract at 11:30 a.m. (New York time), since such time corresponds with the cessation of trading of the underlying component securities in the European markets.[4] The Exchange has proposed to modify the trading hours for its E–100 options to cease trading at 11:30 a.m. as well, since these hours will correspond more closely to the current trading hours for E–100 futures contract at the COMEX.

The Exchange believes that its current trading hours for E–100 options expose both the specialists and market makers to undue risk after both the underlying component securities and the E–100 futures contract have stopped trading, since they are unable to hedge their market risk effectively.

The Exchange will give its membership two weeks notice of the change in E–100 trading hours. An information circular advising the membership of the new closing time of 11:30 a.m. will be sent by facsimile to the Exchange's contracts at the major options firms, mailed to recipients of the Exchange's options related information circulars, and made available to subscribers of the Options News Network.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5),[5] in that the proposal is designed to facilitate transactions in securities and to protect investors and the public interest. Specifically, the Commission believes that the continuation of trading in options on the E–100 after trading in the E–100 futures contract has ended may place undue risks on Amex specialists and market makers in light of their inability to hedge their option positions effectively with the E–100 futures contract during that time. The Commission also believes that the Exchange's commitment to provide two weeks advance notice of the change in the E–100 options trading hours, as well as the manner in which such notice will be circulated, will ensure that all market participants are aware of the reduced trading hours, and as such will serve to protect investors and the public interest. Therefore, the Commission concludes that modifying the closing time for options on the E–100 from 4:30 p.m. to 11:30 a.m., to correspond the E–100 option trading hours more closely with the trading hours for the E–100 futures contract on the COMEX, will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market, and, generally, protect investors and the public interest.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**, in recognition of the fact that the closing time for the E–100 futures contract already had been changed to 11:30 a.m. as of March 1, 1993. Given the potential risks to which specialists and market makers have been exposed since the reduction of the E–100 futures trading hours, the Commission believes that accelerating approval of the proposed rule change will help to minimize such risks, and thus promote just and equitable principles of trade and perfect the mechanism of a free and open market. In addition, the original proposal was published for the full 21-day comment period, and no comments were received. As a result, the Commission finds good cause for accelerating approval of the proposed rule change.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–Amex–94–07) is approved on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993.

[3] Securities Exchange Act Release No. 33757 (March 11, 1994), 59 FR 13349 (March 21, 1994).

[4] The COMEX scaled back the trading hours on the E–100 futures contract on March 1, 1993.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2) (1982).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–10092 Filed 4–26–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33937; File No. SR–CBOE–93–58]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Maintenance by Members of Certain Written Policies and Procedures

April 20, 1994.

On December 20, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] a proposal to amend Exchange Rule 4.18, "Prevention of Misuse of Material, Nonpublic Information," to provide that a CBOE member who is a lessor of a membership and is not registered, not required to register, as a broker-dealer under section 15 of the Act, is not subject to the requirements of Exchange Rule 4.18 concerning the establishment, maintenance, and enforcement of written policies and procedures respecting the misuse of material, non-public information.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 33425 (January 5, 1994), 59 FR 1573. No comments were received on the proposed rule change.

Currently, CBOE Rule 4.18 requires every CBOE member to "establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such member's business, to prevent the misuse, in violation of the Act and Exchange Rules, of material, nonpublic information by such member or persons associated with such member." The CBOE proposes to amend Exchange Rule 4.18 to provide that a member who is a lessor of a membership, and who is not registered as a broker-dealer or required to be registered, and who performs no other function in respect of the membership is not subject to the requirements of Exchange Rule 4.18 concerning the establishment, maintenance, and enforcement of written policies and procedures respecting the misuse of material, non-public information. The Exchange believes that lessor members that do not conduct any securities business in respect of their membership, and, as a result, are not required to register as broker-dealers under Section 15 of the Act, should not be subject to the written policy and procedure requirements of Exchange Rule 4.18. Accordingly, the CBOE proposes to amend CBOE Rule 4.18 to clarify that members who perform no function in respect to their membership except as lessors, and that are not otherwise required to register as broker-dealers under the Act, do not have to establish, maintain or enforce written policies and procedures precluding the misuse of non-public information.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5) of the Act, in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by eliminating unnecessary costs and burdens without impairing the CBOE's capacity to meet the requirements of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5)[4] in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. The Commission believes that the proposal will benefit CBOE members who are lessors of memberships and who are not registered or required to register as broker-dealers under the Act by eliminating the costs and burdens of establishing the procedures required under CBOE Rule 4.18. The Commission agrees with the CBOE's assertion that lessor members who do not conduct any securities business in respect of their membership and who are not required to register as broker-dealers under the Act should not be subject to the requirements of Exchange Rule 4.18, which are meaningful only to an ongoing securities business. Because such lessor members, unlike other members involved in the securities business, are not likely to receive material, nonpublic information from their limited role as a lessor of a CBOE membership, the Commission believes that the CBOE's proposal is a reasonable effort by the Exchange to eliminate an unnecessary burden for lessor members.

In addition, the Commission believes that the proposal is consistent with the existing language of CBOE Rule 4.18, which requires members to establish, maintain, and enforce written policies "taking into consideration the nature of such member's business. . . ." Since CBOE Rule 4.18 is intended to require members to adopt procedures to prevent the misuse of material, non-public information, it is consistent with CBOE Rule 4.18 for the CBOE to exempt from the rule's requirements lessor members who are not involved in the securities business.

At the same time, the CBOE's proposal should not compromise the effectiveness of Exchange Rule 4.18. Specifically, the Commission notes that the exemption from the requirements of Exchange Rule 4.18 applies solely to lessor members who are not registered, or required to register, as broker-dealers under the Act. If a member is required to register as a broker-dealer, then he must immediately establish the procedures required under CBOE Rule 4.18.[5]

It is therefore ordered, pursuant to section 19(b)(2) of the Act[6] that the proposed rule change (SR–CBOE–93–58) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

[FR Doc. 94–10091 Filed 4–26–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33933; File No. SR–NYSE–94–14]

April 20, 1994.

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Health Care Portfolio Market Index Target-Term Securities

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2]

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[7] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] On April 11, 1994, the CBOE submitted a letter indicating that the exemption from CBOE Rule 4.18 would not apply to a broker-dealer once the member is registered as a broker-dealer. Since the exemption ceases to apply once the member is registered or required to register as a broker-dealer, there should be no gap in the application of CBOE Rule 4.18 after the member is required to register as a broker-dealer. See Letter from Michael L. Meyer, Schiff Hardin & Waite, to Yvonne Fraticelli, Staff Attorney, Options Branch, dated April 7, 1994 ("April 7 Letter").

[4] 15 U.S.C. 78f(b)(5) (1988).

[5] See April 7 Letter, *supra* note 3.

[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S. 78s(b)(1) (1988).

[2] CFR 240.19b–4 (1991).

notice is hereby given that on April 12, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 proposes to list for trading Market Index Target-Term Securities ("MITTS"),[3] the return on which is based upon a portfolio of securities of U.S. companies in the health care industry ("Health Care Portfolio"). Initially, the Health Care Portfolio will contain the securities of 22 health care companies that are traded in the United States on the NYSE or are National Market System securities traded through the facilities of the National Association of Securities Dealers Automated Quotation System ("NASDAQ").[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 Exchange 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 the Item IV below. The NYSE 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

Pursuant to the listing criteria set forth in Section 703.19 of the Exchange's Listed Company Manual ("Manual"), the Exchange proposes to list and trade MITTS. MITTS are securities that entitle the holder to receive from the issuer upon maturity an amount based upon the change in the market value of a stock index or portfolio, provided that a minimum amount (90% of the principal amount) will be repaid. The Exchange is submitting the proposed rule change specifically to enable the Exchange to list for trading MITTS on the Health Care Portfolio ("Health Care Portfolio MITTS") issued by Merrill Lynch.

Health Care Portfolio MITTS will allow investors to combine protection of a substantial portion of the principal amount of the MITTS with the potential additional payments based on a portfolio of securities of selected health care companies. The Health Care Portfolio MITTS will provide that at least 90% of the principal amount thereof will be repaid at maturity.

The Security

Health Care Portfolio MITTS will entitle the owner at maturity to receive an amount based upon the percentage change between the "Original Portfolio Value" and the "Ending Average Portfolio Value," subject to a minimum repayment amount. The "Original Portfolio Value" is the value of the Health Care Portfolio on the date on which the issuer prices the Health Care Portfolio MITTS issue for the initial offering to the public. The "Ending Average Portfolio Value" is the average of the values of the Health Care Portfolio at the end of the five calendar quarters preceding the expiration of the Health Care Portfolio MITTS on December 31, 1999.[5] The Ending Average Portfolio Value will be used in calculating the amount owners will receive upon maturity.[6]

If the market value of the portfolio has declined, the owner will receive not less than a specified percentage of the principal amount of the security. (For instance, if the market value of the portfolio used to calculate the amount payable at maturity has declined more than 10%, the owners of the Health Care Portfolio MITTS will receive 90% of the principal amount of the securities.) The payment at maturity is based on changes in the value of the portfolio, but does not reflect the payment of dividends on the securities that comprise the portfolio.

As with other MITTS, Health Care Portfolio MITTS may not be redeemed prior to maturity and are not callable by the issuer. Owners may sell the security on the Exchange. The Exchange anticipates that the trading value of the security in the secondary market will depend in large part on the value of the Health Care Portfolio and also on other factors, including the level of interest rates, the volatility of the value of the Health Care Portfolio, the time remaining to maturity, dividend rates, and the creditworthiness of the issuer.

The Exchange will only list for trading Health Care Portfolio MITTS issues that have at least one million outstanding securities, at least 400 owners, a minimum life of one year and at least a $4 million market value, and that otherwise comply with the Exchange's initial listing criteria. In addition, the Exchange will monitor each issue to verify that it complies with the Exchange's continued listing criteria.[7]

Merrill Lynch will deposit registered securities representing Health Care Portfolio MITTS with its depository, the Depository Trust Company ("DTC"), so as to permit book-entry settlement of transactions by participants in DTC.

The Portfolio

The Health Care Portfolio consists of the common stock of 22 highly capitalized health care companies. The common stock of the 22 companies initially will be equally weighted within the portfolio on the pricing date. The public float (i.e., the market price multiplied by the number of shares outstanding) of the 22 companies differ significantly (from a high of $28 billion (Bristol Meyers Squibb Co.) to a low of $285 million (Horizon Healthcare Corp.)), as do the market prices of their common stock (from a high of $84.625

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[3] "MITTS" and "Market Index Target-Term Securities" are service marks of Merrill Lynch & Co., Inc. ("Merrill Lynch").

[4] The companies represented in the Health Care Portfolio are: Abbott Laboratories; American Home Products Corporation; Baxter International Inc.; Beverly Enterprises, Inc.; Bristol-Meyers Squibb Company; FHP International Corporation; Foundation Health Corporation; Genesis Health Ventures, Inc.; Health Management Associates, Inc.; Health Care and Retirement Corporation; The Hillhaven Corporation; Horizon Healthcare Corporation; Johnson & Johnson; Eli Lilly and Company; Living Centers of America, Inc.; Pacificare Health Systems, Inc.; Pfizer Inc.; Sierra Health Services, Inc.; United Healthcare Corporation; U.S. Healthcare, Inc.; Warner-Lambert Company; and Wellpoint Health Networks Inc.

[5] Specifically, the Ending Average Portfolio Value will equal the average of the quarterly values of the Health Care Portfolio beginning in the calendar quarter ending December 31, 1998. The quarterly value for each of the first four of the final five calendar quarters shall be the Health Care Portfolio value on the last scheduled Exchange trading day on which there is no market disruption event. The quarterly value for the final calendar quarter shall be the Health Care Portfolio Value on the seventh scheduled Exchange trading day preceding maturity of the Health Care MITTS unless there is a market disruption event in which case the sixth trading day preceding maturity shall be used.

[6] The Health Care Portfolio MITTS will entitle a holder at maturity to receive for each $10 principal amount of MITTS an amount equal to the Ending Average Portfolio Value of the Health Care Portfolio divided by 10, but in any event no less than $9 per each $10 principal amount of Health Care Portfolio MITTS.

[7] See section 703.19 of the Manual.

(United Healthcare Corporation) to a low of $15.375 (Beverly Enterprises, Inc.)).[8]

The common stock of 19 of the 22 component companies is listed on the Exchange. The common stock of the other three component companies is traded through NASDAQ. At the outset, the common stock of each of the companies represented in the Health Care Portfolio will have equal representation. That is, the common stock of each company included in the portfolio shall be assigned a multiplier on the pricing date such that all component companies represent an equal percentage of the value of the entire portfolio on such date. The multiplier indicates the number of shares of common stock (or fraction of one share) included in the calculation of the portfolio. Thus, each of the 22 companies represented shall represent 4.545% of the total portfolio on the pricing date.

The multipliers assigned to the component companies will be adjusted for certain events such as stock splits, reverse stock splits, or stock dividends, and the value of the component securities will also be adjusted for certain events including a liquidation, bankruptcy, insolvency, merger, or consolidation involving the issuer of the underlying shares. For example, if the issuer of the shares underlying a component company has been subject to a merger or a consolidation and is not the surviving entity, then a value for such common stock will be determined at the time such issuer is merged or consolidated and will equal the last available market price for such common stock and that value will be constant for the remaining term of the Health Care Portfolio MITTS.[9]

Based upon the reported prices of the common stock, a Merrill Lynch affiliate or an independent third party will calculate the value of the Health Care Portfolio on at least a daily basis and make those values available to investors.

The Issuer

The Exchange has determined that the issuer of the Health Care Portfolio MITTS, Merrill Lynch, meets the listing criteria set forth in Section 703.19 of the Manual. The Exchange states that Merrill Lynch is an Exchange-listed company in good standing and has sufficient assets to justify the issuance of MITTS offerings of the size contemplated by the proposed rule change.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and with section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any inappropriate 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 proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 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 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–14 and should be submitted by May 19, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–10086 Filed 4–26–94; 8:45 am]

BILLING CODE 8010–01–M

[8] Prices specified in this paragraph, and prices and exchange rates used to calculate public float specified in this paragraph, are as of March 7, 1994.

[9] Merrill Lynch will not attempt to find a replacement stock or to compensate for the extinction of a security due to bankruptcy or a similar event.

[10] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–33939; File No. SR–NASD–93–65]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Exclusion of Class Action Claims From Arbitration

April 20, 1994.

On November 4, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and rule 19b-4 thereunder.[2] The proposal amends section 12 of the NASD Code of Arbitration Procedure[3] ("Code") by barring any NASD member or its associated persons from seeking to enforce an agreement to arbitrate against another member or associated person if that member or associated person has initiated in court a putative class action or is a member of a putative or certified class. The prohibition would extend to all claims encompassed by the class action.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 33506, February 9, 1994) and by publication in the **Federal Register** (59 FR 7282, February 15, 1994). No comment letters were received. This order approves the proposed rule change.

Section 12(d)(3) of the Code currently bars members or associated persons from seeking to enforce an agreement to

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1993).

[3] *NASD Manual*, Code of Arbitration Procedure, Part III, Sec. 12 (CCH), ¶3712.

arbitrate against a customer where the customer has initiated in court a putative class action or is a member of a putative or certified class with respect to any claims encompassed by the class action. The section, however, omits specific reference to claims filed by associated persons against members and claims filed by members against other members. As a result, some respondents have argued that class actions encompassing such claimants can be submitted to arbitration under the Code. The NASD determined that the original intent of the section was to exclude class action claims by associated persons, including employment-related claims, and other industry class actions from arbitration, as well as customer-related class actions. Accordingly, the NASD proposed to amend section 12(d)(3) of the Code to clarify that the prohibition in the provision is total and encompasses class actions in which a member or an associated person may be the subject of a class action.

The amendment to section 12(d)(3) of the Code adds references to "other member and person associated with a member" to clarify that the prohibition against seeking to enforce an agreement to arbitrate applies not only to class actions in which a claimant is a customer, but to class actions in which an associated person or a member is a party.[4]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A(b)(6) of the Act.[5] Section 15A(b)(6) requires, *inter alia*, that the NASD's rules be designed to prevent fraudulent and manipulative acts, promote just and equitable principles of trade, and protect investors and the public interest. Over the years of the evolution of class action litigation, the courts have developed the procedures and expertise for managing class actions. Duplication of the often complex procedural safeguards necessary for these lawsuits is unnecessary. The Commission also believes that access to the courts for class action litigation should be preserved for associated persons and member firms as well as for investors and that the rule change approved herein provides a sound procedure for the management of class actions. The proposed rule change also should prevent wasteful litigation over the possible applicability of agreements to arbitrate between members or between a member and a person associated with a member notwithstanding the exclusion of class action claims from NASD arbitration. Based on the above, the Commission believes that the rule change herein approved should promote the efficient resolution of these class action disputes. For these reasons, and for the reasons stated above, the Commission believes that the proposed rule change satisfies the requirements of section 15A(b)(6) of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the instant rule change be, and hereby is, approved.

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. 94–10087 Filed 4–26–94; 8:45 am]

BILLING CODE 8010–01–M

[4] The amendment limits those disputes between members or between a member and an associated person that are required to be submitted to arbitration under section 8(a) of the Code to the same extent as existing section 12(d)(3) limits those disputes between investors and members or associated persons that are required to be submitted to arbitration under section 12(d)(1) of the Code.

[5] 15 U.S.C. 78o-3.

[Release No. 34–33938; File No. SR–NASD–94–9]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Non-member Access to SelectNet

April 20, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 31, 1994 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[2] 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 proposing two modifications to the operation of SelectNet, the system designed to facilitate communication, negotiation and execution of orders between NASD member firms. The first such modification will provide real-time access to non-members to view all "broadcast" orders in SelectNet immediately as they are entered. The second modification provides for the transmission of such orders solely on an anonymous basis through the service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Nasdaq Stock Market is proposing modifications to the operations of the SelectNet service that would permit access by non-members who are subscribers to the Nasdaq Workstation Level 2 service to view broadcast orders immediately as they are entered into the service. SelectNet is the service operated by The Nasdaq Stock Market that permits NASD member firms to enter buy or sell orders in Nasdaq securities into the system, direct those orders to a single market maker (preferenced orders) or broadcast the order to all market makers in the security. Originally implemented in its predecessor form in 1988 as the Order Confirmation Transaction service,[3] the primary function of that service was to offer an automated alternative to the telephone as a method of contacting market makers in times of market stress. To this end, order entry firms could direct or preference an order to buy or sell a Nasdaq security to a single market maker in the issue. When the service was enhanced and renamed SelectNet in 1990,[4] the broadcast feature was added to permit a wider dissemination of orders to all market makers in an issue. In addition, the redesigned system

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The NASD amended the proposed rule change once subsequent to its original filing on February 15, 1994. This amendment clarified the NASD's basis for the rule change and provided a discussion of and the NASD's response to the objections of a commenter. File No. SR–NASD–94–9 (Amendment No. 1).

[3] Securities Exchange Act Release No. 25263 (Jan. 11, 1988), 53 FR 1430 (Jan. 19, 1988).

[4] Securities Exchange Act Release No. 28636 (Nov. 21, 1990), 55 FR 49732 (Nov. 30, 1990).

allowed market makers in a subject security to send a broadcast order to all member firms that had designated that security in their SelectNet "watch file," [5] whether the firm was a market maker or not. In 1992, the service was expanded to add pre-opening and after-hours sessions,[6] so that today SelectNet is available for members to negotiate and execute orders from 9 a.m. until 5:15 p.m. Eastern Time.[7]

The Nasdaq Stock Market operates SelectNet to provide investors and members with an automated system to facilitate communication of trading interest between members, negotiation of orders with the possibility of price improvement with automated, locked-in executions, and dissemination of last sale reports to the tape. In addition, SelectNet retains the original functionality of the service as a replacement for one-on-one communication between members, especially in times of market stress. Since its enhancement in December 1990, the service has grown in popularity with members and traffic has increased significantly—from an average of 3,000 transactions and 6 million shares daily in the first half of 1991 to over 11,000 transactions and more than 16 million shares daily in the last quarter of 1993. As the system's usage has increased, institutions and other non-members have expressed a desire to see the orders broadcast within the service. The NASD believes that it is now appropriate to disclose SelectNet broadcast orders to non-member Nasdaq Workstation Level 2 subscribers, in order to render the orders in the system more transparent to investors.

An important facet of the Division of Market Regulation's *Market 2000* study was increasing transparency in SelectNet by making SelectNet orders more visible for investors.[8] The Division recommended that the NASD examine how to improve access to information regarding orders entered into SelectNet, consistent with goals of increased transparency. Specifically, the Division stated that expanded dissemination of SelectNet information is essential for providing data to investors regarding the prices at which investors and dealers are willing to transact business in a particular security.[9] Accordingly, this rule proposal directly responds to one of the Division's key suggestions designed to improve the transparency of orders broadcast through the SelectNet service.

Because of the additional non-member constituencies that will be able to view all broadcast orders, the NASD is also proposing to modify its order-entry procedure for SelectNet to ensure that broadcast orders are entered into and displayed through SelectNet anonymously. This feature is proposed for two reasons: To preserve incentives for dealers to continue to make markets that add liquidity to the market and to avoid conditioning the market in one direction or another by orders identified with particular market makers or order entry firms. First, the NASD believes that it is very important to retain incentives for market makers to participate in the market. Market makers put quotes in the Nasdaq system as a form of advertisement that they stand ready and willing to transact business at their quoted prices and sizes. There are obligations that accrue to those market makers, however, the NASD and the SEC require market makers to be firm for their quotes and to participate in order execution systems. Enabling order entry firms to advertise buy and sell interest freely, with no concomitant market maker obligations, by attaching their names to SelectNet orders so that anyone with a Workstation would be able to contact the entity directly by telephone, would eviscerate the positive attributes of being a market maker with a quote in the Nasdaq system.

Second, allowing market makers (or order entry firms) to put their names on broadcast orders might condition or influence the market in a security by advertising the buying or selling power of the member firm. For example, if a broker/dealer that is considered a lead market maker or a major institutional block positioner in a security was interested in buying shares in the stock, it might broadcast a sell order in SelectNet, identify its name on the order, and cause the market to react to the sell interest and the power of the firm's name. Accordingly, other market makers in the stock might react to the sell interest by dropping their bids and the lead market maker would be able to buy stock at a lower price than would otherwise have been the case, simply because it was advertising its name, or conditioning the market. Indeed, similar conditioning effects might be caused by an firm, order entry firm or market maker, by entering orders that are quickly canceled without actual trading interest by the entry firm. Accordingly, the NASD proposes that member firms enter all broadcast orders anonymously.

Although orders must be entered on an anonymous basis, once two firms are in negotiation over the terms of the broadcast order, the order entry firm may of course identify itself to the contra side.[10] The information on SelectNet broadcast orders will be made available to members and non-member subscribers in the Nasdaq Workstation Level 2 service. This proposal is intended to avoid conditioning the market with orders that might be canceled at any time without actual trading interest by the order entry firm.

Accordingly, the Nasdaq Stock Market is proposing modifications to SelectNet to permit non-member, viewing access, to all SelectNet broadcast orders immediately as the orders are entered into the system; and to require all broadcast orders to be entered and disseminated on an anonymous basis.

The NASD believes the proposed rule change is consistent with sections 15A(b)(6) and 11A(a)(1)(C) of the Act and is a particularly timely and germane response to the recommendations contained in the *Market 2000* study. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Section 11A(a)(1)(C) finds that it is in the public interest to, among other things, assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities and economically efficient execution of securities transactions. The SelectNet service has served as an alternative to the telephone in times of

[5] The SelectNet watch file is established by each member firm and may contain as many as 300 securities. The member will then receive any preferenced or broadcast order selected for inclusion in the watch file.

[6] Securities Exchange Act Release No. 30581 (Apr. 14, 1992), 57 FR 14596 (Apr. 21, 1992).

[7] In 1992, the NASD also proposed expanding SelectNet to include exchange-listed securities in the service, but this proposal met with resistance from the exchanges and is still pending Commission action. Securities Exchange Act Release No. 30961 (July 27, 1992), 57 FR 34158 (Aug. 3, 1992).

[8] *Market 2000: An Examination of Current Equity Market Developments*, Division of Market Regulation, United States Securities and Exchange Commission, (Jan. 1994).

[9] The Division also recommended that SelectNet orders be disseminated to the public before the Commission took any action on the pending proposal to include exchange-listed securities in the service. The NASD believes this rule filing is a full response to the Division's request.

[10] Presently, SelectNet provides members the option of identifying themselves on broadcast orders through their market maker identification symbol, although this alternative is seldom used.

market stress and as a system to broadcast orders to market makers for economically efficient negotiations and executions. By permitting non-members to view those broadcast orders, the NASD is removing impediments to transparency of market information and is facilitating transactions for those non-members who will now be able to see all broadcast orders in the service and timely arrange for the execution of such orders by a member. Although the orders in SelectNet do not represent quotations or trades reports, which are customarily disseminated to the public by Nasdaq, the NASD believes that the information is valuable to investors and market participants and should be transparent and disseminated to non-members.

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 purposed of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The issue of non-member access to SelectNet has been the topic of careful, in depth discussion of many different committees of the NASD and its subsidiaries for the past two years. Discussions have fully aired the concerns of members with permitting disclosure to non-members of order information in an NASD-operated order negotiation system. While the constituencies agreed to open up SelectNet to non-members, differing degrees of non-member access were considered and debated. Some members recommended allowing non-member access to SelectNet following a short interval for market makers to interact with orders in the system. Non-members advocated immediate dissemination of SelectNet broadcast orders. All concurred that the original functionality of SelectNet as an alternative to the telephone should be preserved. After extensive venting of germane issues in numerous committees of members and non-members, a consensus position was achieved recommending Board approval of immediate non-member access to SelectNet broadcast orders. The Board received two comment letters on the proposal, one from the Investment Company Institute ("ICI") advocating approval of the proposal and another from the Security Traders Association ("STA") recommending disapproval. The ICI argued that in order for mutual funds and other institutions to be able to fulfill their fiduciary obligations it was vital that they be given access to all relevant market information. The STA took the opposite position and stated that since SelectNet was developed as a private means for market makers to communicate with each other and negotiate orders, it was not appropriate to make these private business communications available to customers. The STA also argued that the vocal institutional proponents of access to SelectNet are customers of NASD member firms and that there must be a separation between members, non-members and their customers without jeopardizing the customers' entitlement to best execution. The STA also predicted that non-member access to SelectNet might result in greater volatility, wider spreads and less liquidity because non-members may not demonstrate the same ethical standards with which members are required to abide. The NASD Board considered these arguments carefully. The SelectNet service retains its capacity for private communication between members in that the preferencing functions have not been modified or opened up to non-member access. In addition, the NASD Board concluded that displaying SelectNet orders to all investors who subscribe to Nasdaq Level II service would increase the efficiency of the market and enhance their ability to monitor the quality of executions they receive. Moreover, the Board concluded that there is no basis to assume that greater transparency of order information to investors will result in wider spreads or less liquidity; indeed, historically the opposite has proven to be the case. Accordingly, the Board approved non-member access to SelectNet broadcast orders in the interests of enhanced transparency of order information and more open market operations.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 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 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD 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.

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 principle office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by May 19, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–10093 Filed 4–26–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33950; File No. SR–CHX–93–33]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change To Adopt Interpretation and Policy to Exchange Rule Relating to the Filing of a Uniform Termination Notice for Securities Industry Registration

April 21, 1994.

I. Introduction

On December 23, 1993, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt Interpretation and Policy .03 to CHX Rule 3, Article VI relating to the filing of a Uniform Termination Notice for Securities Industry Registration ("Form U–5"). On January 21, 1994, the CHX submitted to

[11] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

the Commission Amendment No. 1 to the proposed rule change.[3]

The proposed rule change, together with Amendment No. 1, was noticed for comment in Securities Exchange Act Release No. 33499 (January 21, 1994), 59 FR 4127 (January 28, 1994). No comments were received on the proposal. This order approves the proposed rule change, including Amendment No. 1.

II. Description of the Proposal

The Exchange is adopting Interpretation and Policy .03 to CHX Rule 3, Article VI relating to the filing of a Form U–5 following the termination of a person associated with a member.[4] The new Interpretation and Policy requires members for which the Exchange is the Designated Examining Authority ("DEA") to notify the Exchange of the discharge or termination of any person associated with the member by submitting to the Exchange a Form U–5 within 30 days of such termination date. In addition, the new Interpretation and Policy requires similar notification by other member organizations with respect to their associated registered persons active on the Exchange trading floor.[5] Finally, the Interpretation and Policy requires members to provide a copy of the notice to the person whose association has been terminated.[6]

The Exchange stated that requiring the submission of a Form U–5 would allow the Exchange to more precisely monitor the authority of registered persons to act on behalf of member firms and monitor the reasons for termination. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act, which provides, in pertinent part, that the rules of an exchange be designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and, in general, protect investors and the public interest.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.[7] Section 6(b)(5) requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

The Commission believes that requiring members to report to the Exchange on Form U–5 following the termination of an associated person is consistent with the protection of investors and the public interest by assisting the Exchange in its oversight of industry personnel. The requirement for prompt submission of notices of termination should provide the Exchange with more accurate and timely reporting of information necessary for effective monitoring of personnel on the Exchange floor and other persons associated with members where the CHX is the DEA. The timely submission of this Form U–5 information should assist the Exchange in monitoring the continuous entry, movement, and departure of individuals associated with an Exchange member, as well as changes in their employment histories and the reasons for the termination. Such information will be useful to the Exchange in carrying out its responsibilities as DEA for members. This information also will be useful to the Exchange with respect to members where the CHX is not the DEA, but where registered associated persons of the member are active on the Exchange trading floor, by disclosing the reasons for the termination of various floor personnel and ensuring that the CHX has prompt notification of the termination.

The Commission believes that the new provision that requires a member to provide a copy of the notice to the terminated person would allow such terminated person an opportunity to review the statements made on the Form U–5, which in turn, should help ensure the accuracy and completeness of the statements made on the Form.

It is therefore ordered, pursuant to section 19(b)((2) of the Act,[8] that the proposed rule change (SR–CHX–93–33) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–120124 Filed 4–26–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33946; International Series Release No. 659; File No. SR–NASD–94–23]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. Notice of Filing and Order Granting Accelerated Temporary Approval of Proposed Rule Change Relating to the Quotation Linkage With the London Stock Exchange

April 21, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 12, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On October 2, 1987, the Commission issued an order approving operation of a market information linkage between the NASD and the London Stock Exchange ("LSE") (formerly, the International Stock Exchange of the United Kingdom and the Republic of Ireland) for a pilot term of two years.[2] This experimental linkage supports an interchange of quotation information ("linkage information") on about 740 securities ("linkage securities"); of that total, each marketplace has designated approximately half as its "pilot group" of linkage securities. NASD and LSE

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[3] See letter from David T. Rusoff, Attorney, Foley & Lardner, to Louis A. Randazzo, Attorney, Office of Derivative and Exchange Oversight, SEC, dated January 21, 1994. Amendment No. 1 made certain clarifying amendments to the proposal.

[4] The Form U–5 is employed in connection with the National Association of Securities Dealers, Inc. (NASD") Central Registration Depository ("CRD") system and is used by the various securities self-regulatory organizations ("SROs") as part of their registration and oversight of member organization personnel. Form U–5 contains information relating to the circumstances surrounding the termination of an applicant's prior employment.

[5] Conversation between David T. Rusoff, Attorney, Foley & Lardner, and Louis A. Randazzo, Attorney, SEC, on April 5, 1994.

[6] The text of Interpretation and Policy .03 is as follows: "Following the termination of a person associated with a member in a registered capacity, such member shall promptly, but in no event later than thirty calendar days after such termination, give written notice of such termination to the Exchange on Form U–5, and concurrently provide a copy of such notice to the person whose association has been terminated. This requirement shall only apply to member organizations for which the Exchange is the Designated Examining Authority and to registered persons of other member organizations active on the CHX trading floor."

[7] 15 U.S.C. 78f(b) (1988).

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 24979 (Oct. 2, 1987), 52 FR 37684 (Oct. 8, 1987) (the "October 1987 Order").

members that function as market makers in one or more of a subset of linkage securities that are quoted in both the Nasdaq and LSE dealer systems ("common issues") are entitled to access linkage information without paying a separate charge to receive it. Operation of the linkage in this fashion comports with the terms of the Commission's October 1987 Order. Most recently, the Commission authorized an extension of this pilot linkage through May 5, 1994, by approving File No. SR–NASD–93–55.[3]

Pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder, the NASD hereby files this proposed rule change to obtain Commission approval for continuation of the NASD/LSE pilot linkage through October 31, 1994.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule filing is to obtain an extension of the Commission's interim approval of the NASD/LSE linkage through October 31, 1994. Absent an extension, authorization for the linkage will expire as of May 5, 1994.

For some time now, the sponsors of this linkage have considered various possibilities for its future development in meeting the needs of the international investment community. Both markets have also launched major initiatives to migrate their core processing and communications facilities to state-of-the-art technologies that will yield operational efficiencies and enhanced capacity. In this connection, the LSE has notified the NASD that the progression of the LSE's technology migration will foreclose continued operation of the NASD/LSE linkage after October 31, 1994. Accordingly, the NASD is requesting that the Commission extend its interim approval of the NASD/LSE linkage through October 31, 1994. The NASD does not anticipate further extension beyond that date.

The NASD submits that the statutory basis for the NASD/LSE pilot linkage and the requested extension thereof, are contained in Sections 11A(a)(1) (B) and (C) and 15A(b)(6) of the Act. Subsections (B) and (C) of Section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through the application of new data processing and communications techniques. Section 15A(b)(6) requires, among other things, that the rules of the NASD be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. The NASD believes that the requested extension of the linkage's temporary authorization is fully consistent with the policy goals reflected in these statutory provisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

In its original release announcing interim approval of the NASD/LSE pilot linkage, the Commission referenced certain competitive concerns raised by Instinet Corporation ("Instinet") through counsel.[4] In response, the NASD, after consultation with the LSE, made a good faith effort to address those concerns by narrowing the universe of firms and terminals permitted access to linkage information at no cost. Those changes were reflected in File No. SR–NASD–87–20, which the Commission approved by issuing the October 1987 Order. With respect to File No. SR–NASD–89–44 (which resulted in extension of the linkage's authorization until December 1, 1990), the NASD also submitted statistical and cost information relative to its participation in the pilot project. Given that the NASD/LSE linkage will be terminated on or shortly before October 31, 1994, the NASD believes that the instant 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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requested that the Commission find good cause for approving this proposed rule change prior to the 30th day following publication of notice of the filing in the **Federal Register,** and, in any event, by May 5, 1994, the expiration of the linkage's present authorization. The NASD believes that the requested extension of the pilot period is fully consistent with the statutory provisions and policy goals referenced in Section II of this Rule 19b-4 filing. Moreover, the NASD argued the additional time will enable the sponsoring markets to effect an orderly termination of this experimental project. Under the circumstances, the Commission finds that allowing the NASD/LSE linkage to cease abruptly would be counterproductive.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Sections 11A(a)(1) (B) and (C) and 15A(b)(6), and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof. Accelerated approval will avoid an unnecessary interruption of the pilot linkage while allowing the NASD and LSE to provide for an orderly termination of this experimental program in the final quarter of 1994.[5] Accordingly, under these circumstances, the Commission believes the NASD/LSE linkage should be permitted to continue operating, without a hiatus, for a brief period sufficient to bridge the migration to new technologies being developed by the sponsoring markets.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing.

[3] Securities Exchange Act Release No. 33060 (Oct. 15, 1993), 58 FR 54616 (Oct. 22, 1993).

[4] See Securities Exchange Act Release No. 23158 (Apr. 21, 1986), 51 FR 15989 (Apr. 29, 1986). See also letter from Daniel T. Brooks, Counsel for Instinet, to John Wheeler, Secretary, SEC (Apr. 16, 1986).

[5] The NASD has represented that it will provide notice to its subscribers of the termination of the NASD/LSE linkage in its Subscriber Bulletin no later than August 30, 1994. Telephone conversation between Michael Kulczak, Associate General Counsel, NASD, with Michael Ryan, Attorney, SEC (Apr. 19, 1994).

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 May 19, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for an additional period, inclusive of October 31, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–10125 Filed 4–26–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33935; File No. SR–Phlx–94–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Enhanced Parity Split for Specialists.

April 20, 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 February 28, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 Phlx. 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 Phlx, pursuant to Rule 19b–4 of the Act, proposes a one-year pilot program to permit Phlx equity option specialists to receive an enhanced participation in parity trades based upon certain conditions and subject to a review procedure. The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

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 Exchange 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 Phlx has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Phlx Rules 119 and 120, generally, and Phlx Rule 1014(g), specifically, direct members in the establishment of priority and parity of orders on the options floor. These rules provide that when bids/offers are made simultaneously, or when it is impossible to determine clearly the order of time in which they were made, all such bids/offers shall be on parity, and as such shall be shared equally. This equal sharing of parity trades among a specialist and Registered Options Traders ("ROTs") has served the Exchange well in a market structure where certain options classes are listed exclusively on the Phlx. Because all newly listed options classes are subject to multiple listing and all currently listed ones are or will become so eligible, the current parity participation rule has come under review.

The Exchange represents that while ROTs provide critical liquidity to the market making process at the Phlx, under the Phlx's specialist system, the role of the specialist is to provide leadership, liquidity, and continuity, and satisfy market making obligations in multiply listed options classes, particularly at the incipiency of competition for a multiply traded issue. For the options classes that will be eligible for multiple listing, the Exchange represents that specialists have also taken on a larger market making obligation in order to accommodate customers in the hope of garnering critical loyalty that will lead to sustained order flow whether the class is or is not ever actually multiply traded.

Furthermore, the Exchange has identified the need to attract new specialist units and retain and encourage current specialists units to vigorously trade existing options classes as well as to aggressively seek and apply for newly allocated classes. The Phlx understands that many if not most specialist units, are seeking, or at least have the capability to seek, specialist privileges or the equivalent lead market making status for any particular multiply listed options class on any national securities exchange. Therefore, the Phlx is sensitive to the need to afford its specialist units parity split treatment at least comparable to the programs existing on other national securities exchanges which list options and compete for specialist capital and market making talent. Specifically, in order to address these factors, the Exchange has determined to implement this one-year pilot program to increase the specialist's participation in certain trades where the specialist is on parity with ROTs.

As a point of clarification, the Exchange states that this proposed rule change will operate in tandem with another proposal submitted by the Exchange that is pending Commission approval.[1] The Exchange represents that the proposal contained in File No. SR–Phlx–93–29 would provide a different variant of enhanced specialist parity participation applicable only to new specialist units in newly allocated equity options classes for a six-month period (subject to one six-month extension). If File No. SR–Phlx–93–29 is approved (in addition to the present filing), new specialists in new issues could opt for the enhanced parity split treatment proposed in this filing at the point in time that the enhanced treatment granted under File No. SR–Phlx–93–29 terminates. As long as a specialist is a "New Unit" (as defined in File No. SR–Phlx–93–29), the specialist is not eligible for the enhanced parity split proposed herein for any new issue of options traded by that specialist.[2]

If approved, Rule 1014(g)(i) will entitle the specialist to an enhanced participation on parity trades by being counted as two crowd participants in certain circumstances ("enhanced parity

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[6] 17 CFR 200.30–3(a)(12) (1993).

[1] *See* Securities Exchange Act Release No. 32891 (September 14, 1993), 58 FR 48921 (September 20, 1993) (Notice of filing of SR–Phlx–93–29).

[2] Telephone conversation between Michele Weisbaum, Associate General Counsel, Phlx, and Brad Ritter, Attorney, Office of Derivatives and Equity Oversight, Division of Market Regulation, Commission, on April 18, 1994.

split participation"). First, the contra side order must be for more than five contracts. Secondly, the enhanced participation may not disadvantage a customer order that is also on parity.

Third, the enhanced specialist participation will not be applicable to all option classes. It will be applicable for all option classes that are listed after the rule becomes effective and for 50% of each specialist unit's listed issues at the time the rule becomes effective. In this regard, each specialist's registered issues will be divided into quartiles based on the most recent quarterly customer contract volume. The specialist will be able to choose half of his issues in each volume quartile rounded so that the aggregate number chosen does not exceed 50% of the total number of issues in all four quartiles. The specialist will be required to submit this list to the Allocation, Evaluation and Securities Committee ("AES Committee") for its review and approval. This list, once submitted and approved by the AES Committee, will be in effect for the entire one-year period of the pilot program.

The Phlx also proposes to adopt Phlx Rule 509 to empower the AES Committee to oversee each specialist's performance with respect to the enhanced participation privilege. A standing subcommittee of the AES Committee entitled the "Quality of Markets Subcommittee" ("Subcommittee") will be created to review each specialist's performance on a quarterly basis to assure that four conditions are being satisfied by a specialist who receives the benefit of the enhanced parity splits in his trading crowd. First, the specialist must demonstrate that he is the lead market maker in the trading crowd measured by his transacting more contracts in an option class than any ROT in that issue over the review period.

The second criterion authorizes the Subcommittee to review whether the specialist has provided the Phlx with adequate market share in options which are multiply traded. In this respect, the Subcommittee will determine whether the Phlx has transacted at least 10% of the aggregate customer volume in an issue that is traded by all five options exchange, at least 15% where four exchanges trade the issue, at least 20% where three exchanges trade the issue, and at least 25% where only one other exchange trades the issue. Although this is a measure of the total customer volume executed on the Exchange rather than solely by the specialist, in the competition for multiply traded issues, the Exchange believes the specialist is a key party responsible for marketing the issue to upstairs firms, updating markets, and maintaining the limit order book. A specialist who performs these functions will, the Exchange believes, assist the Exchange in increasing order flow.

The third criterion is one that is already in place. Rule 515 specifies that an option specialist unit must attain at least a score of five on its quarterly specialist evaluation. A specialist who does not receive a five on his evaluation may be considered to have performed adequately enough to maintain his specialist privileges under Rule 515, but may lose his enhanced participation privileges under proposed Rule 509 until he increases his score.

The final criterion authorizes the Subcommittee to consider whether a pattern of weakness has been demonstrated by such things as frequent floor official rulings with respect to any particular options class or crowd and/or by written customer complaints being received by the Exchange or Subcommittee regarding the specialist in any particular options class.

If the Subcommittee determines that a specialist has failed to adhere to one or more of the four standards or any issue receiving enhanced parity split participation, the Subcommittee must make a preliminary finding that the specialist should lose the enhanced participation privilege in that issue. The specialist will be notified of this finding and will be required to appear before the Subcommittee within five business days. At such meeting, the specialist bears the burden of overcoming the presumption of substandard performance. For example, a specialist might be able to overcome this presumption in the case where he has transacted less contracts than one ROT in his trading crowd during the review period. In this case, if the specialist can demonstrate that one large block trade occurred during the review period but for which that specialist would have been the lead market maker, the Subcommittee may determine that the specialist does not deserve to lose the enhanced participation privilege.

Any decision of the Subcommittee must be in writing and must be delivered to the specialist on the next business day following the Subcommittee meeting at which the decision was made. A decision to revoke the privilege will be effective on the next business day after receipt of the decision by the specialist. A specialist who has lost the privilege may reapply for it at the Subcommittee's next scheduled review and the specialist may be granted reinstatement if the Subcommittee finds that the condition which initially caused the revocation of the enhanced participation privilege has been cured and that no other problems exist.

The Exchange believes that the proposed rule change is consistent with section 6 of the Act in general, and with section 6(b)(5),[3] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, promote just and equitable principles of trade, and protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange represents that two comment letters were received from Exchange members[4] and considered at the September 8, 1993 Exchange Board of Governors ("Board") meeting. Generally, the Phlx states that the authors of the comment letters asserted that the proposed rule may be a disincentive to market makers to compete and add liquidity to the marketplace. According to the Exchange, the letters expressed a concern that there was no evidence that this enhanced participation would benefit the Exchange and the public. One commenter recommended a yearly review procedure and an on-going performance standard (both of which have been included in the proposal approved by the Board). Another argument raised related to the procedure for choosing which 50% of a specialist's options would be eligible for the enhanced participation. There was a concern that if the top 50% of the most active issues were subject to the rule, over 90% of the total Exchange volume would be subject to the enhanced specialist participation. The Exchange believes this concern has been addressed by adopting the quartile approach.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal

[3] 15 U.S.C. 78f(b)(5) (1988).

[4] *See* Letter from Robert H. Miller, II, M & G Investments, to Board of Governors, Phlx, dated September 7, 1993; and Letter from Jay Mizrahi, PJ Shoreline Securities, to Board of Governors, Phlx, dated September 8, 1993.

Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–94–12 and should be submitted by May 19, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–10089 Filed 4–26–94; 8:45 am]

BILLING CODE 8016–01–M

[Release No. 34–33934; File No. SR–NYSE–94–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Restructuring Companies Portfolio Market Index Target-Term Securities

April 20, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] Notice is hereby given that on April 12, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. 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 proposes to list for trading Market Index Target-Term Securities ("MITTS"),[3] the return on which is based upon a portfolio of securities of U.S. companies that have restructured or are in the process of restructuring ("Restructuring Companies Portfolio"). Initially, the Restructuring Companies Portfolio will contain the securities of 17 restructuring companies that are traded in the United States on the NYSE or are National Market System securities traded through the facilities of the National Association of Securities Dealers Automated Quotation System ("NASDAQ").[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 Exchange 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 NYSE 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

Pursuant to the listing criteria set forth in Section 703.19 of the Exchange's Listed Company Manual ("Manual"), the Exchange proposes to list and trade MITTS. MITTS are securities that entitle the holder to receive from the issuer upon maturity an amount based upon the change in the market value of a stock index or portfolio, provided that a minimum amount (90% of the principal amount) will be repaid. The Exchange is submitting the proposed rule change specifically to enable the Exchange to list for trading MITTS on the Restructuring Companies Portfolio ("Restructuring Companies Portfolio MITTS") issued by Merrill Lynch.

Restructuring Companies Portfolio MITTS will allow investors to combine protection of a substantial portion of the principal amount of the MITTS with potential additional payments based on a portfolio of securities of selected restructuring companies. The Restructuring Companies Portfolio MITTS will provide that at least 90% of the principal amount thereof will be repaid at maturity.

The Security

Restructuring Companies Portfolio MITTS will entitle the owner at maturity to receive an amount based upon the percentage change between the "Original Portfolio Value" and the "Ending Average Portfolio Value," subject to a minimum repayment amount. The "Original Portfolio Value" is the value of the Restructuring Companies Portfolio on the date on which the issuer prices the Restructuring Companies Portfolio MITTS issue for the initial offering to the public. The "Ending Average Portfolio Value" is the average of the values of the Restructuring Companies Portfolio at the end of the five calendar quarters preceding the expiration of the Restructuring Companies Portfolio MITTS on December 31, 1999.[5] The Ending Average Portfolio Value will be used in calculating the amount owners will receive upon maturity.[6]

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[5] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] "MITTS" and "Market Index Target-Term Securities" are service marks of Merrill Lynch & Co., Inc. ("Merrill Lynch").

[4] The companies represented in the Restructuring Companies Portfolio are: Allied-Signal Inc.; American Express Company; Arkla, Inc.; Ceridian Corporation; Citicorp; The Columbia Gas System, Inc.; Eastman Kodak Company; General Motors Corporation; Harnischfeger Industries, Inc.; International Business Machines Corporation; ITT Corporation; Midlantic Corporation; Sears, Roebuck and Co.; Texas Instruments Inc.; UAL Corporation; Unisys Corporation; and Westinghouse Electric Corporation.

[5] Specifically, the Ending Average Portfolio Value will equal the average of the quarterly values of the Restructuring Companies Portfolio beginning in the calendar quarter ending December 31, 1998. The quarterly value for each of the first four of the final five calendar quarters shall be the Restructuring Companies Portfolio value on the last scheduled Exchange trading day on which there is no market disruption event. The quarterly value for the final calendar quarter shall be the Restructuring Companies Portfolio Value on the seventh scheduled Exchange trading day preceding maturity of the Restructuring Companies Portfolio MITTS unless there is a market disruption event in which case the sixth trading day preceding maturity shall be used.

[6] The Restructuring Companies Portfolio MITTS will entitle a holder at maturity to receive for each $10 principal amount of MITTS an amount equal to the Ending Average Portfolio Value of the Restructuring Companies Portfolio divided by 10,

If the market value of the portfolio has declined, the owner will receive not less than a specified percentage of the principal amount of the security. (For instance, if the market value of the portfolio used to calculate the amount payable at maturity has declined more than 10%, the owners of the Restructuring Companies Portfolio MITTS will receive 90% of the principal amount of the securities.) The payment at maturity is based on changes in the value of the portfolio, but does not reflect the payment of dividends on the securities that comprise the portfolio.

As with other MITTS, Restructuring Companies Portfolio MITTS may not be redeemed prior to maturity and are not callable by the issuer. Owners may sell the security on the Exchange. The Exchange anticipates that the trading value of the security in the secondary market will depend in large part on the value of the Restructuring Companies Portfolio and also on other factors, including the level of interest rates, the volatility of the value of the Restructuring Companies Portfolio, the time remaining to maturity, dividend rates, and the creditworthiness of the issuer.

The Exchange will only list for trading Restructuring Companies Portfolio MITTS issues that have at least one million outstanding securities, at least 400 owners, a minimum life of one year and at least a $4 million market value, and that otherwise comply with the Exchange's initial listing criteria. In addition, the Exchange will monitor each issue to verify that it complies with the Exchange's continued listing criteria.[7]

Merrill Lynch will deposit registered securities representing Restructuring Companies Portfolio MITTS with its depository, the Depository Trust Company ("DTC"), so as to permit book-entry settlement of transactions by participants in DTC.

The Portfolio

The Restructuring Companies Portfolio consists of the common stock of 17 highly capitalized "restructuring companies." Restructuring companies are companies that are generally perceived to have recently experienced declines in earnings as compared to historical levels and/or other adverse developments which have required some form of restructuring by such companies. Such restructuring may include reducing the company's work force, writing off obsolete or unused plant and equipment, retiring debt, and investing in more efficient means of production.

Among the companies whose shares compose the Restructuring Companies Portfolio are companies at various stages of the restructuring process; some have completed their intended restructuring, others are currently in the process of restructuring, and others are perceived to be beginning such a process. The term "restructuring" does not refer to any particular legal definition. The companies in the Restructuring Companies Portfolio are not specific to any industry segment and include a wide array of industry sectors such as retailing, computer manufacturing, transportation, the manufacture of consumer goods, and financial services.

The common stock of the 17 companies initially will be equally weighted within the portfolio on the pricing date. The public float (*i.e.*, the market price multiplied by the number of shares outstanding) of the 17 companies differ significantly (from a high of $44 billion (General Motors Corp.) to a low of $328 million (Arkla, Inc.)), as do the market prices of their common stock (from a high $128.375 (UAL Corporation) to a low of $7.625 (Arkla, Inc.)).[8]

The common stock of 16 and 17 component companies is listed on the Exchange. The common stock of the other component company is traded through NASDAQ. At the outset, the common stock of each of the companies represented in the Restructuring Companies Portfolio will have equal representation. That is, the common stock of each company included in the portfolio shall be assigned a multiplier on the pricing date such that all component companies represent an equal percentage of the value of the entire portfolio on such date. The multiplier indicates the number of shares of common stock (or fraction of one share) included in the calculation of the portfolio. Thus, each of the 17 companies represented shall represent 5.88% of the total portfolio on the pricing date.

The multiplier assigned to the component companies will be adjusted for certain events such as stock splits, reverse stock splits, or stock dividends, and the value of the component securities will also be adjusted for certain events including a liquidation, bankruptcy, insolvency, merger, or consolidation involving the issuer of the underlying shares. For example, if the issuer of the shares underlying a component company has been subject to a merger or a consolidation and is not the surviving entity, then a value for such common stock will be determined at the time issuer is merged or consolidated and will equal the last available market price for such common stock and that value will be constant for the remaining term of the Restructuring Companies Portfolio MITTS.[9]

Based the reported prices of the common stock, a Merrill Lynch affiliate or an independent third party will calculate the value of the Restructuring Companies Portfolio on at least a daily basis and make those values available to investors.

The Issuer

The Exchange has determined that the issuer of the Restructuring Companies Portfolio MITTS, Merrill Lynch, meets the listing criteria set forth in Section 703.19 of the Manual. The Exchange states that Merrill Lynch is an Exchange-listed company in good standing and has sufficient assets to justify the issuance of MITTS offerings of the size contemplated by the proposed rule change.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any inappropriate 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 proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i)

but in any event no less than $9 per each $10 principal amount of Restructuring Companies Portfolio MITTS.

[7] See Section 703.19 of the Manual.

[8] Prices specified in this paragraph, and prices and exchange rates used to calculate public float specified in this paragraph, are as of March 7, 1994.

[9] Merrill Lynch will not attempt to find a replacement stock or to compensate for the extinction of a security due to bankruptcy or a similar event.

as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–15 and should be submitted by May 19, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

[FR Doc. 94–10088 Filed 4–26–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974 DOT/ALL 9 Identification Media Record Systems

The Department of Transportation (DOT) herewith publishes a notice of proposal to amend and redesignate a system of records.

Any person or agency may submit written comments on the proposed amended and redesignated system to the Office of Secretary, M–70, ATTN: Ms. Evie Burch, 400 7th Street SW., Washington, DC 20590. Comments to be considered must be received by June 22, 1994.

If no comments are received, the proposed changes will become effective 30 days from the date of issuance. If comments are received, the comments will be considered and, where adopted, the document will be republished with the changes.

Issued in Washington, DC, April 18, 1994.

Paul T. Weiss,

Deputy Assistant Secretary for Administration.

DOT/ALL 009

SYSTEM NAME:

Identification Media Record Systems.

SYSTEM LOCATION:

Department of Transportation (DOT).

a. Office of the Secretary (OST), Office of Security, M–70, 400 7th Street SW., Washington, DC 20590; for OST and all DOT Operating Administrations except those below.

b. Commandant, G–CAS, U.S. Coast Guard Headquarters, G–0, Washington, DC 20591 and District and Area Offices.

c. Federal Aviation Administration, Office of Civil Aviation Security, 800 Independence Avenue SW., Washington, DC 20591; and each FAA Regional and Center Civil Aviation Security Divisions/Staff.

d. Federal Highway Administration, Operations and Services Divisions, 400 7th Street SW., Washington, DC 20590, and all FHWA Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former employees and contractor employees in the Office of the Secretary, U.S. Coast Guard, Federal Aviation Administration, Federal Highway Administration, Federal Transit Administration, Federal Railroad Administration, National Highway Traffic Safety Administration, St. Lawrence Seaway Development Corporation, Research and Special Programs Administration, Bureau of Transportation Statistics, and Maritime Administration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications, photographs, receipts for DOT identification cards and official credentials, temporary building passes, security badges, and applications for other identification needed for official duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are maintained for control and accountability of DOT identification cards, credentials, and security badges issued to DOT employees, former employees, and contractors for identification purposes and admittance to the DOT facilities or for other official duties.

See Preparatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The storage is on computer disks, magnetic tape, and paper forms in file folders.

RETRIEVABILITY:

Retrieval from the system is by name, social security number, date of birth, or identification card number and can be accessed by cleared individuals.

SAFEGUARDS:

Computers provide privacy and access limitations by requiring a user name and password match. Access to decentralized segments are similarly controlled. Only those personnel with a need to have access to the system are given user names and passwords. Data are manually and/or electronically stored in a locked room with limited access.

RETENTION AND DISPOSAL:

Information including applications, photographs and identification media, will be destroyed within one year of termination of employment.

SYSTEM MANAGER(S) AND ADDRESS:

For OST and all DOT operating administrations except those below:

a. Director, Office of Security, M–70, Department of Transportation, Office of Security, SW., Washington, DC 20590.

b. For USCG: Commandant, G–0, U.S. Coast Guard, Washington, DC 20593.

c. For FAA: Director, Civil Aviation Security, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

d. For FHWA: Chief, Operations and Services Division, Federal Highway Administration, 400 7th Street SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as "System Manager", except that for USCG, notification should be given to Commandant, G–TIS.

RECORD ACCESS PROCEDURES:

Same as Notification Procedure.

CONTESTING RECORDS PROCEDURES:

Same as Notification Procedure. Correspondence contesting records must include the full name and social security number of the individual

[10] 17 CFR 200.30–3(a)(12) (1993).

concerned and documentation justifying the claim.

RECORDS SOURCE CATEGORIES:

Individuals on whom the record is maintained.

Narrative Statement for the Department of Transportation, Office of the Secretary

The Office of the Secretary of Transportation proposes to amend and redesignate the record system, DOT/OST 018, Identification Media Record System, as DOT/ALL 9, Identification Media Record System, to reflect the inclusion of all identification media systems and records maintained for control and accountability of identification media issued to Department of Transportation (DOT) employees, former employees, and contractors for agencies within the DOT. The purpose of this Notice is to revise the system to include security badges utilized within DOT and also update storage systems to include computer and/or electronically stored information.

The changes include amendments to: System number; system location; categories or records in the system; routine uses of records maintained in the system, including categories of users and the purposes of such uses; and system managers. Since this proposal amends an existing record system in a way that does not increase the total scope of the original system, the probable effects of this proposal on the privacy interests of the general public is minimal.

A description of the steps taken to safeguard these records is given under the appropriate heading of the **Federal Register** system of records notice.

The purpose of this report is to comply with the Office of Management and Budget Circular, A–130, Appendix I, dated June 25, 1993.

[FR Doc. 94–10128 Filed 4–26–94; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD 94–031]

Unified Command and Incident Command System

AGENCY: Coast Guard, DOT.

ACTION: Notice of workshop.

SUMMARY: The Coast Guard and the Environmental Protection Agency (EPA) will be cosponsoring a workshop on the unified command and Incident Command System on May 20, 1994, in Alexandria, Virginia. The workshop will address issues relating to the unified command and Incident Command System and their use in oil and hazardous substance spill response. This notice announces the date, time and location of the workshop.

DATES: The public workshop will be held on May 20, 1994, from 9 a.m. to 4 p.m.

ADDRESSES: The public workshop will be held at the Best Western Old Colony Inn, 625 1st Street, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: LCDR Rhae Giacoma, Office of Marine Safety, Security and Environmental Protection (G–MEP–4), (202) 267–2616.

SUPPLEMENTARY INFORMATION:

Background Information

The National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300), required to be prepared and published by the President under 33 U.S.C. 1321(d), designated the U.S. Coast Guard and EPA as On-Scene Coordinators (OSCs) for response to oil and hazardous substance spills. The Coast Guard is the designated OSC for coastal zone response; EPA is the designated OSC for the inland zone. Regulations issued by several agencies, including the Coast Guard, EPA and the Occupational Safety and Health Administration (OSHA), govern response efforts to oil and hazardous substance spills.

OSHA regulations, "Rules for Hazardous Waste Operations" (29 CFR 1910.120), require the implementation of an Incident Command System to effectively control and manage operations at an emergency site. The coverage of these regulations includes cleanup operations involving oil and hazardous substances. Revisions to the National Oil and Hazardous Substances Pollution Contingency Plan currently being considered include language describing the national response management structure as a "unified command triangle", where the OSC, a state-designated representative and a responsible party representative work together to achieve an effective and efficient response. This unified command response management structure is intended to meet OSHA requirements for an Incident Command System.

There are several firefighting-based Incident Command Systems currently in use by local fire fighters around the country that are providing conflicting information as to the correct way to plan for spill response. This has caused confusion for oil and hazardous substance spill response planners attempting to develop an effective response structure.

A number of On-Scene Coordinators, in guiding the Area Committees in the development of their Area Contingency Plans for pollution response, are attempting to develop a detailed response structure. Many are looking at the possibility of incorporating one of the firefighting-based Incident Command Systems into the response structure outlined in their Area Contingency Plans. Area Committees have raised questions regarding the best system for oil and hazardous substance spill response, or even whether use of these systems is appropriate. With increasing questions being raised, the Coast Guard and EPA decided to hold a public workshop to discuss the various issues relating to the unified command and Incident Command System and how they relate to oil and hazardous substance spill response.

Workshop Format and Schedule

The workshop format will consist of a presentation by the Coast Guard and EPA on the national response management structure as outlined in the National Oil and Hazardous Substances Pollution Contingency Plan. This will be followed by a question and answer period and open discussion of the various issues relating to the unified command and Incident Command System as they relate to oil and hazardous substance spill response.

Dated: April 19, 1994.

J.F. McGowan,

Captain, U.S. Coast Guard Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–10178 Filed 4–26–94; 8:45 am]

BILLING CODE 4910–14–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Proposed Import Prohibitions on Wildlife Specimens and Products of Taiwan Pursuant to the Pelly Amendment; Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Presidential determination to prohibit the importation of wildlife specimens and products of Taiwan pursuant to section 8 of the Fisherman's Protective Act of 1967 (22 U.S.C. 1978) (the "Pelly Amendment"); request for public comment.

SUMMARY: The President has determined to apply import prohibitions against

Taiwan pursuant to section 8 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978)(the "Pelly Amendment") in response to Taiwan's failure to undertake sufficient actions to stop illegal trade in internationally recognized endangered species. The President has proposed to apply the import prohibitions against wildlife specimens and products of Taiwan. The Trade Policy Staff Committee (TPSC) seeks public comment concerning the proposed action, in particular the specific product coverage of the import prohibitions.

DATES: Written comments from interested persons are requested by May 31, 1994.

ADDRESSES: Office of the U.S. Trade Representative, 600 17th Street NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: For general information, Diane Wildman, Director for Press Relations (202) 395–3350, or Jane Earley, Director for Natural Resources (202) 395–7320. For technical information concerning product coverage, and wildlife enforcement and import clearance procedures, contact Jerome Smith or Frank Shoemaker, Division of Law Enforcement, United States Fish and Wildlife Service, at (703) 358–1949. For information on the reasons for the Pelly Amendment certification of Taiwan contact Mr. Marshall Jones, or Dr. Susan Lieberman, Office of Management Authority, United States Fish and Wildlife Service, at (703) 358–2093.

SUPPLEMENTARY INFORMATION: On November 8, 1993, the President reported to the Congress pursuant to section 8(b) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978)b)) (the "Pelly Amendment") on the issue of trade by the People's Republic of China (PRC) and Taiwan in rhinoceros and tiger parts and products. The report followed the certification by the Secretary of the Interior that this trade was diminishing the effectiveness of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Five rhinoceros species and the tiger are listed in Appendix I of CITES, which means that the species are threatened with extinction and no trade for primarily commercial purposes is allowed.

The President reported that although "recent actions by the PRC and Taiwan show that some progress has been made in addressing their rhinoceros and tiger trade, the record demonstrates that they still fall far short of the international conservation standards of CITES." The President suggested actions that the PRC and Taiwan could take that would demonstrate their commitment to the elimination of the trade and stated that the United States is prepared, through close dialogue and technical aid, to assist them in their efforts. However, the report concluded that, if measurable, verifiable and substantial progress were not made by March 1994, import prohibitions will be necessary, as recommended by the CIGES Standing Committee at its September 1993 meeting.

The suggested actions in the November 8 report, based on criteria established by CITES for adequate legislative measures and enforcement that effectively eliminates the trade, were further amplified in letters dated December 21, 1993, to the Chairman of the Council of Agriculture and the Minister of Economic Affairs in Taipei from the Secretary of the Interior, and by CITES and U.S. delegation visits to the PRC and Taiwan in January, February and March 1994. However, at its March 1994 meeting, the CITES Standing Committee noted the progress made by the PRC while pointing out that further actions are still needed. With respect to Taiwan, CITES expressed "concern that the actions agreed by the authorities in Taiwan, * * * towards meeting the minimum requirements have not yet been implemented."

Although Taiwan has made efforts to address the problem, as a result of the lack of sufficient progress in the key areas identified in the November 8 report, the President decided to direct the Secretary of the Treasury, working with the Secretary of the Interior, to prohibit the bringing or the importation into the United States of wildlife specimens and products of Taiwan, and that the precise products subject to the import prohibition will be determined after viewing public comments received.

While the Pelly Amendment provides the authority to impose a greater level of import prohibitions, this level was deemed appropriate at this time. The situation in Taiwan will continue to be reviewed and U.S. authorities will continue to try to assist Taiwan in effecting meaningful results in the effort to eliminate the illegal trade. The import prohibitions, once imposed, will remain in effect until the President determines that sufficient progress has been made by Taiwan in securing significant reductions in the illegal commerce in the species, taking into account relevant findings of the CITES Standing Committee.

The products eligible for the import prohibitions were chosen based on the CITES Standing Committee recommendation, and cover wildlife specimens, parts and products thereof, that are products of Taiwan and are defined below. All imports from Taiwan which are eligible products will be prohibited unless otherwise indicated upon completion of the review of public comments. In making the determination of final product coverage, public comments submitted in accordance with the requirements set forth below will be considered.

It is expected that a final notice of the wildlife and wildlife products subject to the import prohibitions will be published in the **Federal Register** within approximately two weeks of the close of the public comment period, and that the import prohibitions will apply to wildlife and their parts and products exported from Taiwan beginning ten days after the date of publication of the final notice.

Public Comment Requirements for Submission

The TPSC invites all interested persons to provide written comments concerning the proposed action, specifically regarding economic and environmental effects of the proposed import prohibitions, including:

(1) The appropriateness of prohibiting the importation of any particular product;

(2) The degree to which prohibiting the importation of any particular product might have an adverse effect upon U.S. consumers of the product; and

(3) Additional actions, not limited to trade restrictions, that would help bring about an end to illegal trade in these endangered species.

Comments must be filed in English and provided in ten copies to: Carolyn Frank, Secretary, Trade Policy Staff committee, Office of the United States Trade Representative, 600 17th Street, NW., room 414, Washington, DC 20506.

Submissions will be available for public inspection by appointment with the staff of the USTR Public Reading Room, except for confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information must be clearly marked "Business Confidential" at the top of the cover letter or page and each succeeding page in each of the 10 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the file that is open to public inspection.

Product Coverage

Import prohibitions will apply to "wildlife specimens and parts and products" of Taiwan. For purposes of this action, the term "wildlife specimens and parts and products" includes "fish or wildlife" or products of "fish or wildlife" as defined in the "Lacey Act" (16 U.S.C. 3371);

The term "fish or wildlife" means any wild animal, whether alive or dead, including without limitation any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod, coelenterate, or other invertebrate, whether or not bred, hatched, or born in captivity, and includes any part, product, egg, or offspring thereof.

The wildlife and wildlife parts and products covered by this definition are those whose importation, exportation and transportation is governed by regulations administered by the Fish and Wildlife Service at 50 CFR part 14. These items are those for which a Fish and Wildlife Declaration is required (Form 3–177, "Declaration for Importation or Exportation of Fish or Wildlife").

For purposes of this action, "plants, alive or dead, and their products" will not be covered, nor will "shellfish and fishery products imported for human or animal consumption," as they are exempted from the wildlife importation and declaration requirements by 50 CFR 14.21.

An analysis of wildlife and its parts and products of Taiwan falling within the above definition, using import records compiled by the U.S. Fish and Wildlife Service from completed Forms 3–177 indicate the total declared value of wildlife imports from Taiwan was approximately $22 million in 1992, the most recent year for which these data are available. The major categories of wildlife and wildlife parts and products imported from Taiwan include:

(1) Reptile leather shoes, handbags, etc.

(2) Jewelry made from coral, mussel shells and bone:

(3) Edible frogs' legs;

(4) Live goldfish and tropical fish for the aquarium trade; and

(5) Bird feathers, down, and specimens.

Although an exhaustive listing of the tariff headings of the Harmonized Tariff Schedule of the United States (HTS) corresponding to the Lacey Act definition is not available, the Department of Interior (Fish and Wildlife Service) is able to provide indicative information to interested parties. Since the HTS and Lacey Act definitions do not correspond, even indicative listings of HTS item numbers must be examined carefully in light of the Lacey Act definition to obtain an accurate assessment of product coverage.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 94–10166 Filed 4–26–94; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 81
Thursday, April 28, 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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:30 a.m., Monday, May 2, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 22, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–10243 Filed 4–25–94; 11:17 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 19277, April 22, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, April 27, 1994.

CHANGES IN THE MEETING: The Open Meeting Has Been Cancelled Due to a National Day of Mourning. The Meeting has Been Re-Scheduled for 10:00 A.M., Thursday, April 28, 1994.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: April 25, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–10292 Filed 4–25–94; 2:12 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Thursday, April 28, 1994.

The business of the Board requires that this meeting be held with less than one week's advance notice to the public and no earlier announcement of the meeting was practicable.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed amendments to Regulation J (Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers through Fedwire) to conform the warranties and other provisions to Regulation CC (Availability of Funds and Collection of Checks) and the Uniform Commercial Code. (Proposed earlier for public comment; Docket No. R–0821)
2. Proposals regarding investments by state member banks in the West Virginia Bankers Association Community Development Corporation.

Discussion Agenda

3. Proposals regarding amendments to Regulation DD (Truth in Savings) concerning calculation of the annual percentage yield for certain time accounts. (Proposed earlier for public comment; Docket No. R–0812)
4. Proposed interpretation of the System's Policy Statement on Payments System Risk regarding the treatment of Government-sponsored enterprises.
5. Any items carried forward from a previously announced meeting.

Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: April 25, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–10293 Filed 4–25–94; 2:12 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:30 a.m., Thursday, April 28, 1994, following a recess at the conclusion of the open meeting.

The business of the Board requires that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 25, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–10294 Filed 4–25–94; 2:12 pm]

BILLING CODE 6210–01–P

federal register

Thursday
April 28, 1994

Part II

Environmental Protection Agency

Final NPDES General Permits for Non-Contact Cooling Water Discharges; ME, MA, NH; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FR L–4877–9]

Final NPDES General Permits for Non-Contact Cooling Water Discharges in the States of Maine, Massachusetts, and New Hampshire

AGENCY: Environmental Protection Agency.

ACTION: Notices of final NPDES general permits—MAG250000, MEG250000, and NHG250000.

SUMMARY: The Regional Administrator of Region I is issuing final National Pollutant Discharge Elimination System (NPDES) general permits for non-contact cooling water discharges to certain waters of the States of Maine, Massachusetts, and New Hampshire. These general NPDES permits establish notice of intent (NOI) requirements, effluent limitations, standards, prohibitions and management practices for facilities with discharges authorized by the permit.

Owners and/or operators of facilities discharging non-contact cooling water will be required to submit to EPA, Region I, a notice of intent to be covered by the appropriate general permit *within 180 days of the effective date* of this permit and will receive a written notification from EPA of permit coverage and authorization to discharge under one of the general permits.

DATES: This general permit shall be effective on May 31, 1994 and will expire five years from the effective date. The authorization to discharge shall become effective upon notification by EPA that the operator is covered by this permit.

ADDRESSES: Notices of intent to be authorized to discharge under these permits should be sent to: U.S. Environmental Protection Agency, NPDES Program Operations Section, P.O. Box 8127, Boston, Massachusetts 02114.

The submittal of other information required under these permits or individual permit applications should be sent to the above address.

FOR FURTHER INFORMATION CONTACT: Sharon Leitch, U.S. EPA Region I, Wastewater Management Branch, Water Management Division-WMN, John F. Kennedy Federal Building, Boston, MA 02203, telephone: 617–565–3566.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Regional Administrator of Region I is issuing final general permits for non-contact cooling water discharges to certain waters of the States of Maine, Massachusetts, and New Hampshire.

This notice contains *two* sets of appendices. Appendix A summarizes EPA's response to major comments received on the draft general permits published on September 15, 1992 (57 FR 42572). Appendix B contains the final general NPDES permits including Part II, Standard Conditions.

II. Coverage of General Permits

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit unless such a discharge is otherwise authorized by the Act. Although such permits to date have generally been issued to individual discharges in Region I, EPA's regulations authorize the issuance of "general permits" to categories of discharges (See 40 CFR 122.28 (48 FR 14146, April 1, 1983)). EPA may issue a single, general permit to a category of point sources located within the same geographic area whose permits warrant similar pollution control measures.

The Director of an NPDES permit program is authorized to issue a general permit if there are a number of point sources operating in a geographic area that:

1. Involve the same or substantially similar types of operations;
2. Discharge the same types of wastes;
3. Require the same effluent limitations or operating conditions;
4. Require the same or similar monitoring requirements; and
5. In the opinion of the Regional Administrator, are more appropriately controlled under a general permit than under individual permits.

Violations of a condition of a general permit constitutes a violation of the Clean Water Act and subjects the discharger to the penalties in Section 309 of the Act.

Any owner or operator authorized by a general permit may be excluded from coverage of a general permit by applying for an individual permit. This request may be made by submitting a NPDES permit application together with reasons supporting the request no later than 90 days after publication by EPA of the final general permit in the **Federal Register.** The Director may require any person authorized by a general permit to apply for and obtain an individual permit. Any interested person may petition the Director to take this action. However, individual permits will not be issued for sources discharging non-contact cooling water covered by these general permits unless it can be clearly demonstrated that inclusion under the general permit is inappropriate.

The Director may consider the issuance of individual permits when:

1. The discharger is not in compliance with the terms and conditions of the general permit;
2. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
3. Effluent limitations guidelines are subsequently promulgated for the point sources covered by the general NPDES permit;
4. A Water Quality Management plan containing requirements applicable to such point sources is approved; or
5. Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
6. The discharge(s) is a significant contributor of pollution.

In accordance with 40 CFR 122.28(b)(3)(iv), the applicability of the general permit is automatically terminated on the effective date of the individual permit.

III. Description of Non-Contact Cooling Water Discharges

The proposed general permits are for: (1) Massachusetts operators of any facilities with non-contact cooling water discharges; (2) Maine operators of facilities with non-contact cooling water discharges; (3) New Hampshire operators of any facilities with non-contact cooling water discharges.

Non-contact cooling water is water used to reduce temperature which does not come into direct contact with any raw material, intermediate product, waste product (other than heat) or finished product. Non-contact cooling water discharges are similar in composition even though they are not generated by a single industrial category or point source.

The similarity of the discharges has prompted EPA to prepare this general permit. When issued, this permit will enable facilities to maintain compliance with the Act and will extend environmental and regulatory controls to a large number of discharges and reduce some permit backlog. The issuance of this general permit for the geographic areas described below is warranted by the similarity of (a) environmental conditions, (b) State regulatory requirements applicable to the discharges and receiving waters, and (c) technology employed.

In the State of Maine there are 271 industrial applicants or permittees. It is estimated that 12 of the industries that have direct discharges to the waters of the State are strictly non-contact cooling water. In the State of New Hampshire there are 178 industrial applications or permittees. It is estimated that over 30 of the industries that have direct discharges to the waters of the State are strictly non-contact cooling water. In the Commonwealth of Massachusetts there are 651 industrial applicants or permittees. It is estimated that over 200 of the industries that have direct discharges to the waters of the State are strictly non-contact cooling water.

IV. Conditions of the General NPDES Permit

A. Geographic Areas

Maine (Permit No. MEG250000). All of the discharges to be authorized by the general NPDES permit for dischargers located in the State of Maine are into all waters of the State unless otherwise restricted by Title 38, Article 4–A, Water Classification Program (or as revised).

Massachusetts (Permit No. MAG250000). All of the discharges to be authorized by the general NPDES permit for dischargers in the Commonwealth of Massachusetts are into all waters of the Commonwealth unless otherwise restricted by the Massachusetts Surface Water Quality Standards, 314 CMR 4.00 (or as revised), including 314 CMR 4.04(3) Protection of Outstanding Resource Waters.

New Hampshire (Permit No. NHG250000). All of the discharges to be authorized by the general NPDES permit for dischargers in the State of New Hampshire are into all waters of the State of New Hampshire unless otherwise restricted by the State Water Quality Standards, New Hampshire RSA 485–A:8 (or as revised).

B. Notification by Permittees

Operators of facilities whose discharge, or discharges, are non-contact cooling water and whose facilities are located in the geographic areas described in Part IV.A. above may submit to the Regional Administrator, Region I, a notice of intent to be covered by the appropriate general permit within 180 days of the effective date of the general permit. This written notification must include the owner's or operator's legal name and address; the facility name and address; the number and type of facilities to be covered; the facility location(s); a topographic map (or other map if a topographic map is not available) indicating the facility location(s); the name(s) of the receiving waters into which discharge will occur; a determination as to whether or not the facility discharge will adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat (See Part E.); and in the State of Maine, only, a special list of water treatment chemicals used by the facility.

Facilities located in Massachusetts or New Hampshire that intend to be covered under this general permit must also submit a formal certification with the notice of intent that no chemical additives are used in their non-contact cooling water systems.

Each facility must also certify that the discharge consists solely of non-contact cooling water, no other waste stream discharges will be permitted under this general permit.

Each facility must also submit a copy of the notice of intent to each State authority as appropriate (see individual state permits for appropriate authority and address).

The facilities authorized to discharge under the final general permit will receive written notification from EPA, Region I, with State concurrence. Failure to submit to EPA, Region I, a notice of intent to be covered and/or failure to receive from EPA written notification of permit coverage means that the facility is not authorized to discharge under this general permit.

c. Effluent Limitations

1. Statutory Requirements

The Clean Water Act (the Act) prohibits the discharge of pollutants to waters of the United States without a National Pollutant Discharge Elimination System (NPDES) permit unless such a discharge is otherwise authorized by the Act. The NPDES Permit is the mechanism used to implement technology and water quality based effluent limitations and other requirements including monitoring and reporting. The NPDES permit was developed in accordance with various statutory and regulatory authorities estabilised pursuant to the Act. The regulations governing the EPA NPDES Permit program are generally found at 40 CFR parts 122, 124, 125 and 136.

EPA is required to consider technology and water quality requirements when developing permit limits. 40 CFR part 125 Subpart A sets the criteria and standards that EPA must use to determine which technology-based requirements, requirements under Section 301(b) of the Act and/or requirements established on a case-by-case basis under section 402(a)(1) of the Act, should be included in the permit.

The Clean Water Act requires that all discharges, at a minimum, must meet effluent limitations based on the technological capability of dischargers to control pollutants in their discharge. Section 301(b)(1)(A) of the Act requires the application of Best Practicable Control Technology Currently Available (BPT) with the statutory deadline for compliance being July 1, 1977, unless otherwise authorized by the Act. Section 301(b)(2) of the Act requires the application of Best Conventional Control Technology (BCT) for conventional pollutants, and Best Available Technology Economically Achievable (BAT) for non-conventional and toxic pollutants. The compliance deadline for BCT and BAT is as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated and in no case later than March 31, 1989.

2. Technology-Based Effluent Limitations

EPA has not promulgated National Effluent Guidelines for non-contact cooling water discharges. For a category where Guidelines have been promulgated, such as steam electric generating stations (see 40 CFR part 423), the issuance of an individual permit for the discharges would be more appropriate (See 40 CFR 122.28(b)(3)(i)(C)). Therefore, as provided in section 402(a)(1) of the Act, EPA has determined to issue this general permit utilizing best professional judgement (BPJ) to meet the above stated criteria for BAT/BCT described in section 304(b) of the Act.

The pH has been defined as a conventional pollutant. A review of the BCT regulations reveals the test cost is inappropriate because: (1) The pH is not adjusted as nothing but heat is added to the discharge and no chemical addition, unless approved by the State of Maine, or treatment is provided, and (2) pH, even though it is a conventional pollutant, is not measured in pounds as the other conventional pollutants.

3. Water Quality Based Effluent Limitations

Under Section 301(b)(1)(C) of the Act discharges are subject to effluent limitations based on water quality standards and to the conditions of State certification under section 401 of the Act. Receiving stream requirements are established according to numerical and narrative standards adopted under state and/or federal law for each stream use classification. The CWA requires that EPA obtain State certification which

states that all water quality standards will be satisfied. Regulations governing State certification are set forth in 40 CFR § 124.53 and 124.55.

Section 101(a)(3) of the Act specifically prohibits the discharge of toxic pollutants in toxic amounts. The States of Maine, Massachusetts, and New Hampshire have similar narrative criteria in their water quality regulations (See Maine Title 38, Article 4–A, section 420 and section 464.4.A.(4); Massachusetts 314 CMR 4.05(5)(e); and New Hampshire Part Env-Ws 432.02(c)(4)) that prohibits such discharges. The permit does not allow for the addition of materials or chemicals in amounts which would produce a toxic effect to any aquatic life. Nevertheless, toxic effects may still occur as a result of toxic source water or due to dissolution of the piping in the cooling water systems.

Non-contact cooling water discharges do not contain or come in contact with raw materials, intermediate products, finished products, or process wastes. Therefore, it could be assumed that the discharges do not contain toxic or hazardous pollutants or oil and grease. However, based on the previous statement regarding potential source water toxicity, these discharges may violate water quality criteria established for toxic or hazardous pollutants in which case an individual permit would be required.

Water quality standards applicable to non-contact cooling water discharges covered by this general permit include pH and temperature. EPA has reviewed the water quality standards for pH and temperature of each of the States and has incorporated the appropriate effluent limitations into each permit.

4. Antidegradation Provisions

The conditions of the permit reflect the goal of the CWA and EPA to achieve and maintain water quality standards. The environmental regulations pertaining to the State Antidegradation Policies which protect the State's surface waters from falling below State standards for water quality are found in the following provisions: Maine Title 38, Article 4–A, Section 464.4.F.; Massachusetts Water Quality Standards 314 CMR 4.04 Antidegradation Provisions; and New Hampshire policy RSA 485–A:8, VI Part Env-Ws 437.01 and Env-Ws 437.02.

This general permit will not apply to any new or increased discharge unless it can be determined that such discharges will result in insignificant effects to the receiving waters. This determination shall be made in accordance with the appropriate State Antidegradation Policies.

D. Monitoring and Reporting Requirements

Effluent limitations and monitoring requirements which are included in the general permit describe the requirements to be imposed on the facilities to be covered.

Facilities covered by the final general permits will be required to submit to EPA, Region I, and the appropriate State authority, a Discharge Monitoring Report (DMR) containing effluent data. The frequency of reporting is determined in accordance with each State's provisions (see the individual State permits).

The monitoring requirements have been established to yield data representative of the discharge under authority of Section 308(a) of the Act and 40 CFR § 122.41(j), 122.44(i) and 122.48, and as certified by the State.

E. Endangered Species

Non-contact cooling water discharges that may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat are not authorized under this general permit without the written approval of the Fish and Wildlife Service and/or the National Marine Fisheries Service.

The Fish and Wildlife Service has indicated that the dwarf wedge mussel *(Alasmidonta heterodon),* a Federally listed endangered species, occurs in a stretch of the Connecticut River from Lebanon, New Hampshire to Weathersfield Bow, Vermont, in the Ashuelot River in Keene, New Hampshire, and historically from a number of rivers in Massachusetts. Any facility whose discharge may adversely effect the mussel or any other threatened or endangered species or its habitat is required to contact the Fish and Wildlife Service at the following address in order to make a formal determination: United States Department of the Interior, Fish and Wildlife Service, 400 Ralph Pill Marketplace, 22 Bridge Street, Concord, New Hampshire 03301–4901.

The National Marine Fisheries Service has indicated that the endangered shortnose sturgeon *(Acipenser brevirostrum)* inhabits certain sections of the Penobscot, Kennebec and Androscoggin Rivers in Maine, and the Merrimack and Connecticut Rivers in Massachusetts. Any facility whose discharge may adversely effect the sturgeon or any other threatened or endangered species or its habitat is required to contact the National Marine Fisheries Service at the following address: United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Habitat and Protected Resources Division, One Blackburn Drive, Gloucester, Massachusetts 01930–2298.

F. Other Requirements

The remaining conditions of the permit are based on the NPDES regulations 40 CFR parts 122 through 125 and consist primarily of management requirements common to all permits.

V. State (401) Certification

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the State in which the discharge originates certifies that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA. The section 401 certification process has been completed for all States covered by today's general permit. The following summary indicates where additional permit requirements have been added as a result of the certification process.

The following changes apply to all States. Part III (Part I.B.1. in the draft permit) *Description of Non-Contact Cooling Water Discharges* has been changed to include non-contact cooling water instead of just cooling water in the description. Part IV.A. (Part II.A. in the draft) *Geographic Areas* has been changed to include specific reference to all state water quality standards which would apply to the discharges covered under the permit. Part IV.B. (Part II.B. in the draft) *Notification by Permittees* has been modified to include specific State requirements (see final permit).

Massachusetts: see Appendix B, Massachusetts General Permit. Under Part I.A.1. (Appendix A., Number 1, Part I.A.1. in the draft) the State has included a provision for the flow requirements in the final permit. The provision allows for a discharge flow of greater than 1 MGD to be covered under the general permit on a case by case basis as determined by the State (see footnote in final permit). The discharge limitations for pH have been modified to include the requirements specific to each water classification type (see Part I.A.i. or j. in the final permit). LC_{50} & C-NOEC, the testing requirements for whole effluent toxicity (WET), have been changed. WET testing will only be required upon request by EPA and/or the State (see Part I.A.1.k. of the final permit). Parts I.A.1.b, c, d & e have been

added to the final permit, these provisions are specific to the temperature exceedence allowances in accordance with the State water quality standards. Any requirements referring to Class C or SC water bodies found in the draft general permit have been deleted since there are no Class C or SC segments in the State.

New Hampshire: see Appendix B, New Hampshire General Permit. Under Part I.A.1. (Appendix A., Section c., Part I.A.1. in the draft) the temperature limit and designation for a warm water fishery have been added under Part I.A.1.a. The reference for pH has been changed to include specific State permit conditions (see Part I.B. of the final permit). LC_{50} & C-NOEC, the testing requirements for whole effluent toxicity (WET), have been changed. WET testing will only be required upon request by EPA and/or the State (see Part I.A.1.f. of the final permit).

VI. Administrative Aspects

A. Request To Be Covered

A facility is not covered by any of these general permits until it meets the following requirements. First, it must send a notice of intent to EPA and the appropriate State indicating it meets the requirements of the permit and wants to be covered. And second, it must be notified in writing by EPA that it is covered by this general permit.

Any facility operating under an effective individual NPDES permit may request that the individual permit be revoked and that coverage under the general permit granted, as outlined in 40 CFR 122.28(b)(3)(v). If EPA grants coverage under the general permit, EPA will so notify the facility and revoke the individual permit.

Facilities with expired individual permits that have been administratively continued in accordance with § 122.6 may apply for coverage under this general permit. When coverage is granted the expired individual permit automatically will cease being in effect.

B. The Coastal Zone Management Act

The Coastal Zone Management Act (CZMA), 16 U.S.C. §§ 1451 *et seq.*, and its implementing regulations [15 CFR Part 930] require that any federally licensed activity affecting the coastal zone with an approved Coastal Zone Management Program (CZMP) be determined to be consistent with the CZMP. EPA, Region I, has determined that these general NPDES permits are consistent with the CZMP. EPA has received consistency from the Massachusetts, Maine, and New Hampshire coastal zone agencies for a determination that these three permits are consistent with their respective State policies.

C. The Endangered Species Act

EPA Region I has concluded that the existing discharges that obtain coverage under this general NPDES permit will not affect or jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat. EPA has submitted a "no-effect" determination to the U.S. Fish and Wildlife Service and the National Marine Fisheries Service to confirm this conclusion.

D. Environmental Impact Statement Requirements

The general permits do not authorize the construction of any water resources project or the impoundment of any water body or have any effect on historical property, and are not major Federal activities needing preparation of any Environmental Impact Statement. Therefore, the Wild and Scenic Rivers Act, 16 U.S.C. §§ 1273 *et seq.*, the National Historic Preservation Act of 1966, 16 U.S.C §§ 470 *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661 *et seq.*, and the National Environmental Policy Act, 33 U.S.C. §§ 4321 *et seq.*, do not apply to the issuance of these general NPDES permits.

VII. Other Legal Requirements

A. Economic Impact (Executive Order 12291)

EPA has reviewed the effect of Executive Order 12291 on this draft general permit and has determined that it is not a major rule under that order. This regulation was submitted previously to the Office of Management and Budget for review as required by Executive Order 12291. The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

B. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities by these draft general NPDES permits under the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501 *et seq.* The information collection requirements of these draft permits have already been approved by the Office of Management and Budget under submissions made for the NPDES permit program under the provisions of the Clean Water Act. No comments from the Office of Management and Budget or the public were received on the information collection requirements in these permits.

C. The Regulatory Flexibility Act

After review of the facts presented in the notice printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. § 605(b), that these permits do not have a significant impact on a substantial number of small entities. Moreover, the draft permits will reduce a significant administrative burden on regulated sources.

Dated: April 6, 1994.

John P. DeVillars,

Regional Administrator.

Appendix A—Summary of Responses to Public Comments on the September 15, 1992, Draft General Permits

One commenter expressed concern that the general permits eliminate all effective water treatment programs for non-contact cooling systems and that the permits surmised that additives used to control biological growth (biocides) are inherently toxic to aquatic life. The commenter suggested that EPA more fully review all the technical aspects of operating and maintaining cooling tower systems before issuing the permit.

As stated in the permit, the purpose of general permits is to extend environmental and regulatory controls to a large number of discharges and reduce some permit backlog. It is a mechanism through which the Region can properly regulate many of the minor non-contact cooling water discharges, it can provide quick coverage to a large number facilities. Time and resources do not allow for individual review of each of the facilities cooling water systems and the types of additives used. If a facility wishes it may apply for an individual permit which can address this issue separately.

One commenter from New Hampshire expressed concern regarding the pH requirements for the permit, the commenter was concerned that excursions of pH caused by precipitation or intake water are not allowed.

The final permit requirements for New Hampshire do allow for pH excursions due to natural causes as part of the State Surface Water Quality Regulations (see the New Hampshire general permit, Part B, State Permit Conditions).

Appendix B—Final General Permits Under the National Pollutant Discharge Elimination System (NPDES).

Note: The following three general NPDES permits have been combined for purposes of this **Federal Register**. Parts I.A. and I.B. of the permits are specific for each state. Parts I.C. and I.D. are common to all three permits.

Massachusetts General Permit, Permit No. MAG250000

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. §§ 1251 et seq.; the "CWA"), and the Massachusetts Clean Waters in Massachusetts, which discharge solely non-contact cooling water, as previously defined in Part III, to the classes of waters as designated in the Massachusetts Water

Quality Standards, 314 CMR 4.00 et seq.; are authorized to discharge to all waters, unless otherwise restricted, in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective when issued.

This permit and the authorization to discharge expire at midnight, five years from the effective date of the **Federal Register** publication.

Operators of facilities within the general permit area who fail to notify the Director of their intent to be covered by this general permit and receive written notification of permit coverage, or those who are denied by the Director are not authorized under this general permit to discharge from those facilities to the receiving waters or areas named.

Signed this 6th day of April, 1994.

David A. Fierra,

Director, Water Management Division, Environmental Protection Agency, Boston, MA.

Andrew Gottlieb,

Director, Office of Watershed Management, Bureau of Resource Protection, Commonwealth of Massachusetts, Boston, MA.

Part I

A. Effluent Limitations and Monitoring Requirements

1. During the period beginning effective date and lasting through expiration, the permittee is authorized to discharge from each outfall of non-contact cooling water to a drainage basin classified as a warm or cold water fishery as designated below.

a. Such discharges shall be limited and monitored by the permittee as specified below:

Effluent characteristic	Discharge limitations other units (specify)		Monitoring requirements	
	Avg. Monthly	Max. Daily	Measurement frequency	Sample type
Flow	.....	1.0 MGD*	Quarterly	Totalized daily.
Temperature:				
Warm water fishery**	.....	83°F(28.3°C)	Quarterly	4 grabs, reporting maximum and average.
Cold water fishery**	.....	68°F (20°C)	.....	.....
pH	(1)	(1)	Quarterly	4 grabs reporting maximum and minimum values.
LC_{50} & C–NOEC, %	(1)	(2)	.....	24-hour composite.

*The State may allow coverage under the general permit for discharges greater than 1.0 MGD on a case by case basis.

**The definition of a cold or warm water fishery can be found in the Massachusetts Surface Water Quality Standards, 314 CMR 4.06(1)(d)6. and 4.06 (1)(d)7., respectively. The designation of a cold or warm water fishery shall be that which is provided in the Water Quality Standards 314 CMR 4.06(3).

1 See part I.A.1.i or j.

2 See part I.A.1.K.

b. The rise in temperature due to a discharge to Class A waters shall not exceed 1.5°F (0.8°C); and natural seasonal and daily variations shall be maintained (314 CMR 4.05(3)(a)2).

c. The rise in temperature due to a discharge to Class B waters shall not exceed 3°F (1.7°C) in rivers and streams designated as cold water fisheries non 5°F (2.8°C) in rivers and streams designated as warm water fisheries (based on the minimum expected flow for the month); in lakes and ponds the rise shall not exceed 3°F (1.7°C) in the epilimnion (based on the monthly average of maximum daily temperature); and natural seasonal and daily variations shall be maintained (314 CMR 4.05(3)(b)2).

d. The rise in temperature due to a discharge to Class SA waters shall not exceed 1.5°F (0.8°C); and natural seasonal and daily variations shall be maintained (314 CMR 4.05(4)(a)2).

e. The rise in temperature due to a discharge to Class SB waters shall not exceed 1.5°F (0.8°C) during the summer months (July through September) nor 4°F (2.2°C) during the winter months (October through June); and natural seasonal and daily variations shall be maintained 314 CMR 4.05(4)(b)2.

f. This permit prohibits the addition of any water treatment chemical for any purpose to the non-contact cooling water system.

g. There shall be no discharge of floating solids or visible foam in other than trace amounts.

h. Samples taken in compliance with the monitoring requirements specified above shall be taken at the point of discharge.

i. The pH of the effluent for discharges to Class A and Class B waters shall be in the range of 6.5–8.3 standard units and not more than 0.5 units outside of the background range. There shall be no change from background conditions that would impair any uses assigned to the receiving water Class.

j. The pH of the effluent for discharges to Class SA and Class SB waters shall be in the range of 6.5–8.5 standard units and not more than 0.2 units outside of the normally occurring range. There shall be no change from background conditions that would impair any uses assigned to the receiving water Class.

k. One chronic (and modified acute) toxicity test shall be performed on the non-contact cooling water discharge by the permittee upon request by EPA and/or MADEP. Testing shall be performed in accordance with EPA toxicity protocol to be provided at the time of the request. The test shall be performed on a 24-hour composite sample to be taken during normal facility operation. The results of the test (C–NOEC and LC_{50}) shall be forwarded to State and EPA within 30 days after completion.

The test methods to follow are those recommended by EPA for the particular discharge in:

Weber, C. I. et al., 1989. *Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms*, Second Edition. Office of Research and Development, Cincinnati, OH, EPA–600/4–89–001.

Peltier, W., and Weber, C.I., 1985. *Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms*, Third Edition. Office of Research and Development, Cincinnati, OH. EPA/600/4–85/013.

Weber, C. I. et al., 1988. *Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms*, Office of Research and Development, Cincinnati, OH. EPA–600/4–87/028.

B. State Permit Conditions

1. This Discharge Permit is issued jointly by the U. S. Environmental Protection Agency (EPA) and the Department of Environmental Protection under Federal and State law, respectively. As such, all the terms and conditions of this permit are hereby incorporated into and constitute a discharge permit issued by the Director of the Massachusetts Office of Watershed Management pursuant to M.G.L. Chap. 21, § 43.

2. Each Agency shall have the independent right to enforce the terms and conditions of this Permit. Any modification, suspension or revocation of this Permit shall be effective only with respect to the Agency taking such action, and shall not affect the validity or status of this Permit as issued by the other Agency, unless and until each Agency has concurred in writing with such modification, suspension or revocation. In the event any

portion of this Permit is declared invalid, illegal or otherwise issued in violation of State law such permit shall remain in full force and effect under Federal law as an NPDES Permit issued by the U.S. Environmental Protection Agency. In the event this Permit is declared invalid, illegal or otherwise issued in violation of Federal law, this Permit shall remain in full force and effect under State law as a Permit issued by the Commonwealth of Massachusetts.

Maine General Permit, Permit No. MEG250000

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. §§ 1251 et seq.; the "CWA"), operators of industrial facilities discharging solely non-contact cooling water, as previously defined in Part III, located in Maine are authorized to discharge to all waters of the State unless otherwise restricted by Title 38, Article 4–A, Water Classification Program, in accordance with effluent limitations, monitoring requirements and other conditions set forth herein. No discharge into lakes is authorized by this permit.

This permit shall become effective when issued.

This permit and the authorization to discharge expire at midnight, five years from the effective date of the **Federal Register** publication.

Operators of facilities within the general permit area who fail to notify the Director of their intent to be covered by this general permit and receive written notification of permit coverage, or those who are denied coverage by the Director are not authorized under this general permit to discharge from those facilities to the receiving waters or areas named.

Signed this 6th day of April 1994.

David A. Fierra,

Director, Water Management Division, Environmental Protection Agency, Boston, MA.

Part I

A. Effluent Limitations and Monitoring Requirements

1. During the period beginning on the effective date and lasting through expiration, the permittee is authorized to discharge from each outfall of non-contact cooling water (as defined in Paragraph I.A.1.f. below) into fresh and marine water.

a. Such discharges shall be limited and monitored by the permittee as specified below:

Effluent characteristic	Discharge limitations other units (specify)		Monitoring requirements	
	Avg. monthly	Max. daily	Measurement frequency	Sample type
Flow (see I.A.1.g.)*	.....	See Figure 1	Monthly	Daily average.
Temperature (see I.A.1.g.)*	.....	See Figure 1	Monthly	4 grabs, reporting maximum, and averages.
Total Residual Chlorine (see I.A.1.j.)	.....	Report	Quarterly	Grab.

Non-contact cooling water may be discharged only into Class B, C, SB, and SC waters that have a drainage area larger than ten (10) square miles in accordance with Maine State Law. See Paragraph I.A.1.g. for details for determining if the specific discharge(s) have acceptable dilution and can be covered by the General Permit Program.

b. The pH shall not be less than 6.0 standard units nor greater than 8.5 standard units and shall be monitored monthly with 4 grabs, reporting maximum values (see I.A.1.i. below).

c. There shall be no discharge of floating solids or visible foam in other than trace amounts.

d. The effluent limitations are based on the State water quality standards and certified by the State.

e. Samples taken in compliance with the monitoring requirements specified above shall be taken at the point of discharge.

f. Definitions:

Non-contact cooling water is water used to reduce temperature which does not come into direct contact with any raw material, intermediate product, waste product or finished product.

Non-toxic water treatment additives are chemicals used in cooling water system primarily to control corrosion or prevent deposition of scale forming materials which do not exhibit any residual toxic effect on the receiving waters.

g. Discharge Temperature and Volume

The temperature and volume of the discharge shall not exceed 120 °F and 3.0 millions gallons per day (MGD). The acceptability of the total or combined non-contact cooling waters from each facility must be determined using the graph on Figure 1. The intersection of the maximum effluent temperature and the dilution ratio shall be in the "acceptable" range shown on Figure 1, titled "Effluent Temperature/ Dilution Graph" for coverage by the General Permit Program. If the intersection falls within the "non-acceptable" area, the facility must be covered by the individual NPDES Permit, not the General Permit Program.

The effluent temperature is the maximum daily temperature. The dilution factor is the sum of the 7Q10 low stream flow at the facility site and the daily maximum effluent flow divided by the daily maximum effluent flow. For facilities with multiple outfalls, the daily maximum effluent flow shall be the sum of the flow from all outfalls.

h. Water Treatment Additives

Non-toxic water treatment additives are allowed in non-contact cooling water systems. The State of Maine will review each identified chemical to determine its acceptability. Additives used to control biological growth in such cooling systems are prohibited due to their inherent toxicity to aquatic life.

Residual chlorine discharges resulting from the use of potable water supplies will be exempt from this provision.

The following water treatment additive biological and chemical data must be supplied in the letter of intent to be covered by this general permit:

(1) Name and manufacture of each additive used,

(2) Maximum and average daily quantity of each additive used on a monthly basis, and

(3) The vendor's reported aquatic toxicity of additive (NOAEL and/or LC_{50} in % for typically acceptable aquatic test organisms)

All substitutions to the accepted water treatment chemicals must be approved by the State prior to their usage.

i. pH Control

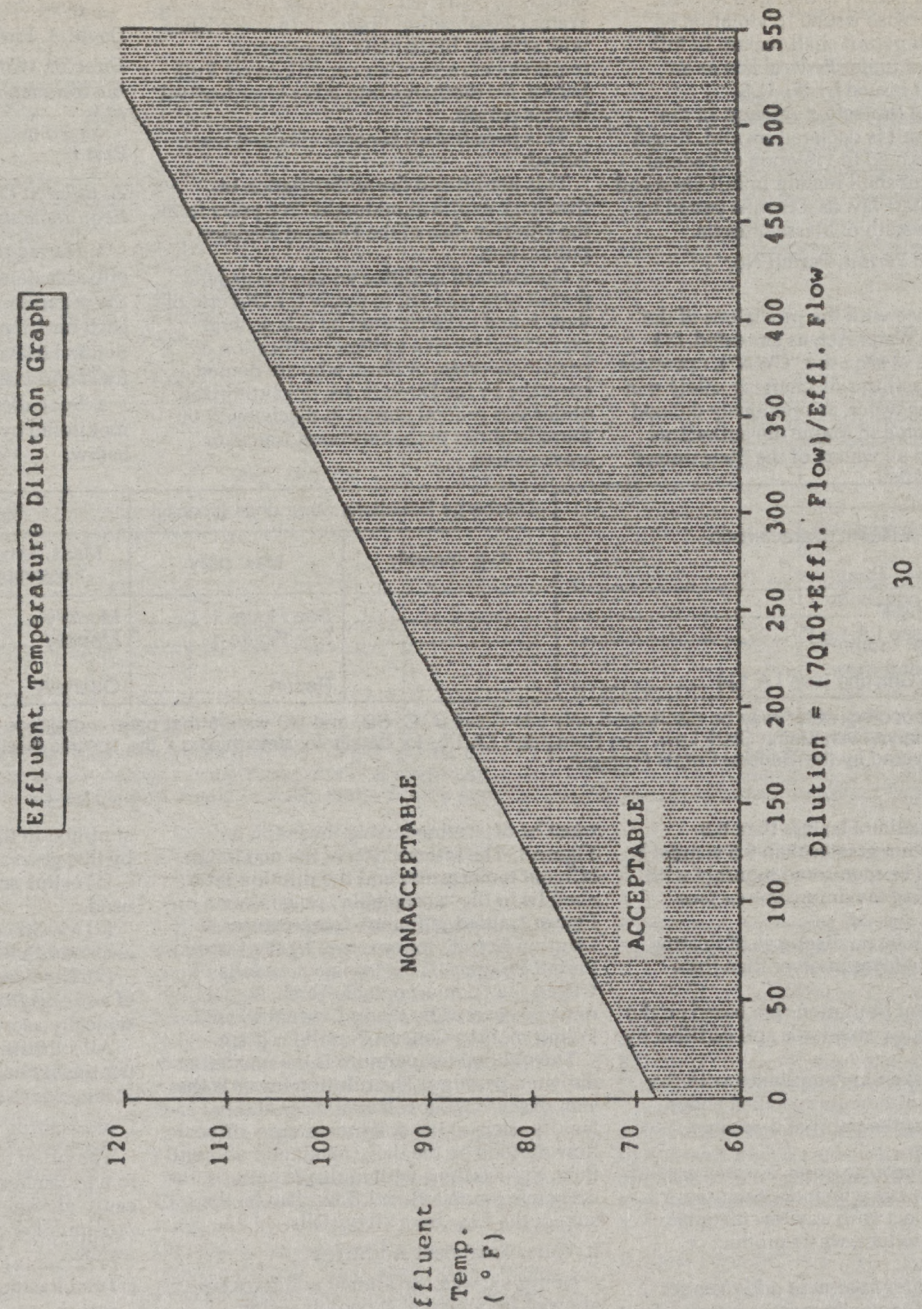
The pH of the effluent shall be between 6.0 to 8.5 standard units (s.u.) unless the sole cause of excursion below 6.0 s.u. is due to precipitation or the low pH of the influent water.

j. Total Residual Chlorine

Potable water supply sources used for cooling water supply shall not contain Total Residual Chlorine (TRC) at concentration levels that induce a toxic impact upon aquatic life within the receiving waters. The instream waste concentration of TRC based on the ratio of the effluent flow stream flow to the 7Q10 low flow of the stream shall be less than the appropriate water quality criteria for the receiving waterway.

BILLING CODE 6560–50–P

FIGURE I



BILLING CODE 6560-50-C

New Hampshire General Permit, Permit No. NHG250000

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. §§ 1251 *et seq.*; the "CWA"), operators of industrial facilities discharging solely non-contact cooling water, as previously defined in Part III, located in New Hampshire are authorized to discharge to all waters, unless otherwise restricted by State Water Quality Standards, New Hampshire RSA 485–A:8, in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective when issued.

This permit and the authorization to discharge expire at midnight, five years from the effective date of the **Federal Register** publication.

Operators of facilities within the general permit area who fail to notify the Director of their intent to be covered by this general permit and receive written notification of permit coverage, or those who are denied by the Director are not authorized under this general permit to discharge from those facilities to the receiving waters or areas named.

Signed this 6th day of April, 1994.

David A. Fierra,

Director, Water Management Division, Environmental Protection Agency, Boston, MA.

Part I

A. Effluent Limitations and Monitoring Requirements

1. During the period beginning on the effective date and lasting through expiration, the permittee is authorized to discharge from each outfall on non-contact cooling water into all rivers of the State, unless restricted by the New Hampshire Fish and Game

Department and New Hampshire Department of Environmental Services, Water Supply and Pollution Control Division.

a. The discharge shall be limited and monitored as specified below:

Effluent characteristic	Discharge limitations other units (specify)		Monitoring requirements	
	Avg. monthly	Max. daily	Measurement frequency	Sample type
Flow, gpd	.....	Report	Monthly	Total daily.
Temperature:				
Cold water fishery*	.....	68 °F(20 °C	Monthly	4 grabs, reporting maximum and average.
Warm water fishery*	.....	83 °F (28.3 °C	.....	
pH	(1)	(1)	Monthly	4 grabs, reporting maximum and minimum.
LC_{50} & C–NOEC, %	(2)	(2)	.....	24-hour composite.

*As determined by the New Hampshire Fish and Game Department.
1 See Part I.B.1.a.
2 See Part I.A.1.f.

b. This permit does not allow for the addition of any biocide or chemical for any purpose to the water.

c. There shall be no discharge of oil, floating solids, visible foam, debris or other visible pollutants.

d. The effluent limitations for temperature and pH are based on the state water quality standards and are certified by the State.

e. Samples taken in compliance with the monitoring requirements specified above shall be taken at the point of discharge.

f. One chronic (and modified acute) toxicity text shall be performed on the non-contact cooling water discharge by the permittee upon request by EPA and/or the NHDES. Testing shall be performed in accordance with EPA toxicity protocol to be provided at the time of the request. The test shall be performed on a 24-hour composite sample to be taken during normal facility operation. The results of the test (C–NOEC and LC_{50}) shall be forwarded to the State and EPA within 30 days after completion.

The test methods to follow are those recommended by EPA for the particular discharge in:

Weber, C.I. et al., 1989, *Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Water to Freshwater Organisms*, Second Edition. Office of Research and Development, Cincinnati, OH, EPA–600/4–89/001;

Peltier, W., and Weber, C.I., 1985. *Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms*, Third Edition. Office of Research and Development, Cincinnati, OH. EPA/600/4–85/013;

Weber, C.I. et al., 1988. *Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms*, Office of Research and Development, Cincinnati, OH. EPA–600/4–87/028.

B. State Permit Conditions

1. The Permittee shall comply with the following conditions which are included as State Certification requirements:

a. The pH for class B waters shall be 6.5–8.0 S.U. or as naturally occurs in the receiving water. The 6.5–8.0 S.U. range must be achieved in the final effluent unless the permittee can demonstrate to the Division that: (1) The range should be widened due to naturally occurring conditions in the receiving water or (2) the naturally occurring source water pH is unaltered by the permittees operations. The scope of any demonstration project must receive prior approval from the Division. In no case shall the above procedure result in pH limits less restrictive than any applicable federal effluent limitation guidelines.

2. This NPDES Discharge Permit is issued by the U.S. Environmental Protection Agency under Federal and State law. Upon final issuance by the EPA, the New Hampshire Department of Environmental Services, Water Supply and Pollution Control Division may adopt this Permit, including all terms and conditions, as a state permit pursuant to RSA 485–A:13. Each Agency shall have the independent right to enforce the terms and conditions of this Permit. Any modification, suspension or revocation of this Permit shall be effective only with respect to the Agency taking such action, and shall not affect the validity or status of the Permit as issued by the other Agency, unless and until each Agency has concurred in writing with such modification, suspension or revocation. In the event any portion of this Permit is declared invalid, illegal or otherwise in violation of State law, such permit shall remain in full force and effect under Federal law as an NPDES Permit issued by the U.S. Environmental Protection Agency. In the event this Permit is declared invalid, illegal or otherwise issued in violation of Federal law, this Permit, if adopted as a state permit, shall remain in full force and effect under State law as a Permit issued by the State of New Hampshire.

C. Common Elements for All Permits: Monitoring and Reporting Requirements

Maine and Massachusetts: Monitoring results obtained during the previous 6 months shall be summarized for each quarter and reported on separate Discharge Monitoring Report Form(s) postmarked no later than the 15th day of the month following the completed reporting period. The reports are due on the 15th day of January and July. The first report may include less than 6 months information.

New Hampshire: Monitoring results obtained during the previous month shall be summarized for each month and reported on separate Discharge Monitoring Report Form(s) postmarked no later than the 15th day of the month following the completed reporting period. The reports are due on the 15th day of the month following the reporting period.

Signed copies of these, and all other reports required herein, shall be submitted to the Director and the appropriate State at the following addresses:

1. EPA Shall Receive a Copy of All Reports Required Herein

U.S. Environmental Protection Agency, NPDES Program Operations Section, Post Office Box 8127, Boston, MA 02114

2. Massachusetts Department of Environmental Protection

a. The Regional offices wherein the discharge occurs, shall receive a copy of all reports required herein:

Massachusetts Department of Environmental Protection, Division of Water Pollution Control, Western Regional Office, Post Office Box 2410, Springfield, MA 01101

Massachusetts Department of Environmental Protection, Division of Water Pollution Control, Southeastern Regional Office, 20 Riverside Drive, Lakeville, MA 02347

Massachusetts Department of Environmental Protection, Division of Water Pollution Control, Northeastern Regional Office, 10 Commerce Way, Woburn, MA 01801

Massachusetts Department of Environmental Protection, Division of Water Pollution Control, Central Regional Office, 75 Grove Street, Worcester, MA 01605

b. All notifications and reports required by this permit shall also be submitted to the State at:

Massachusetts Department of Environmental Protection, Office of Watershed Management, P.O. Box 116, North Grafton, MA 01536

3. Maine Department of Environmental Protection

Signed copies of all reports required by this permit shall be sent to the State at:

Maine Department of Environmental Protection, Operation and Maintenance Division, State House, Station 17, Augusta, ME 04333

4. New Hampshire Department of Environmental Services

Signed copies of all reports required by this permit shall be sent to the State at:

New Hampshire Department of Environmental Services, Permits and Compliance Section, P.O. Box 95, 6 Hazen Drive, Concord, New Hampshire 03302–0095

D. Additional General Permit Conditions

1. Notification Requirements

a. Written notification of commencement of operations, including the legal name and address of the owner and operator and the locations, number and type of facilities and/or operations covered shall be submitted:

(1) For existing discharges *within 180 days after the effective date* of this permit, by operators whose facilities and/or operations are discharging into the general permit area on the effective date of the permit; or

(2) For new discharges 30 days prior to commencement of the discharge by operators whose facilities and/or operations commence discharge subsequent to the effective date of this permit.

b. Operators of facilities and/or operations within the general permit area who fail to notify the Director of their intent to be covered by this general permit and obtain written authorization of coverage are not authorized under this general permit to discharge from those facilities into the named receiving waters.

2. Termination of Operations

Operators of facilities and/or operations authorized under this permit shall notify the Director upon the termination of discharges. The notice must contain the name, mailing address, and location of the facility for which the notification is submitted, the NPDES permit number for the non-contact cooling water discharge identified by the notice, and an indication of whether the non-contact cooling water discharge has been eliminated or the operator of the discharge has changed. The notice must be signed in accordance with the signatory requirements of 40 CFR § 122.22.

3. Renotification

Upon reissuance of a new general permit, the permittee is required to notify the Director of his intent to be covered by the new general permit.

4. When the Director May Require Application for an Individual NPDES Permit

a. The Director may require any person authorized by this permit to apply for and obtain an individual NPDES permit. Any interested person may petition the Director to take such action. Instances where an individual permit may be required include the following:

(1) The discharge(s) is a significant contributor of pollution;

(2) The discharger is not in compliance with the conditions of this permit;

(3) A change has occurred in the availability of the demonstrated technology of practices for the control or abatement of pollutants applicable to the point source;

(4) Effluent limitation guidelines are promulgated for point sources covered by this permit;

(5) A Water Quality Management Plan containing requirements applicable to such point source is approved; or

(6) The point source(s) covered by this permit no longer:

(a) Involves the same or substantially similar types of operations;

(b) Discharges the same types of wastes;

(c) Requires the same effluent limitations or operating conditions;

(d) Requires the same or similar monitoring; and

(e) In the opinion of the Director, is more appropriately controlled under a general permit than under an individual NPDES permit.

b. The Director may require an individual permit only if the permittee authorized by the general permit has been notified in writing that an individual permit is required, and has been given a brief explanation of the reasons for this decision.

5. When an Individual NPDES Permit May Be Requested

a. Any operator may request to be excluded from the coverage of this general permit by applying for an individual permit.

b. When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to that owner or operator is automatically terminated on the effective date of the individual permit.

Part II. Standard Conditions

Section A. General Requirements

1. Duty To Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

a. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

b. The CWA provides that any person who violates Sections 301, 302, 306, 307, 308, 318, or 405 of the CWA or any permit condition or limitation implementing any of such sections in a permit issued under Section 402, or any requirement imposed in a pretreatment program approved under Sections 402(a)(3) or 402(b)(8) of the CWA is subject to a civil penalty not to exceed $25,000 per day for each violation. Any person who *negligently* violates such requirements is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both. Any person who *knowingly* violates such requirements is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both. Note: See 40 CFR § 122.41(a)(2) for additional enforcement criteria.

c. Any person may be assessed an administrative penalty by the Administrator for violating Sections 301, 302, 306, 307, 308, 318, or 405 of the CWA, or any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of the CWA. Administrative penalties for Class I violations are not to exceed $10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed $25,000. Penalties for Class II violations are not to exceed $10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $125,000.

2. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

3. Duty To Provide Information

The permittee shall furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Regional Administrator, upon request, copies of records required to be kept by this permit.

4. Reopener Clause

The Regional Administrator reserves the right to make appropriate revisions to this permit in order to establish any appropriate effluent limitations, schedules of compliance, or other provisions which may be authorized under the CWA in order to bring all discharges into compliance with the CWA.

5. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the CWA, or Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

6. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges.

7. Confidentiality of Information

a. In accordance with 40 CFR Part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission,

EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR Part 2 (Public Information).

b. Claims of confidentiality for the following information *will* be denied:

(i) The name and address of any permit applicant or permittee;

(ii) Permit applications, permits, and effluent data as defined in 40 CFR § 2.302(a)(2).

c. Information required by NPDES application forms provided by the Regional Administrator under § 122.21 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

8. Duty To Reapply

If the permittee wishes to continue an activity regulated by this permit after its expiration date, the permittee must apply for and obtain a new permit. The permittee shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Regional Administrator. (The Regional Administrator shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

9. State Authorities

Nothing in Part 122, 123, or 124 precludes more stringent State regulation of any activity covered by these regulations, whether or not under an approved State program.

10. Other Laws

The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, nor does it relieve the permittee of its obligation to comply with any other applicable Federal, State, and local laws and regulations.

Section B. Operation and Maintenance of Pollution Controls

1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Need To Halt or Reduce Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. Duty To Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

4. Bypass

a. *Definitions.*

(1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. *Bypass not exceeding limitations.* The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Paragraphs B.4.c and 4.d of this section.

c. *Notice.*

(1) *Anticipated bypass.*

If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) *Unanticipated bypass.*

The permittee shall submit notice of an unanticipated bypass as required in Paragraph D.1.e (24-hour notice).

d. *Prohibition of bypass.*

(1) Bypass is prohibited, and the Regional Administrator may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c)(i) The permittee submitted notices as required under Paragraph 4.c of this section.

(ii) The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator determines that it will meet the three conditions listed above in Paragraph 4.d of this section.

5. Upset

a. *Definition.* "Upset" means an exceptional incident in which there is unintentional and temporary non-compliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

b. *Effect of an upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Paragraph B.5.c of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c. *Conditions necessary for a demonstration of upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required in Paragraphs D.1.a and 1.e (24-hour notice); and

(4) The permittee complied with any remedial measures required under B.3. above.

d. *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

Section C. Monitoring and Records

1. Monitoring and Records

a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application *except for the information concerning storm water discharges which must be retained for a total of 6 years.* This retention period may be extended by request of the Regional Administrator at any time.

c. Records of monitoring information shall include:

(1) The date, exact place, and time of sampling or measurements;

(2) The individual(s) who performed the sampling or measurements;

(3) The date(s) analyses were performed;

(4) The individual(s) who performed the analyses;

(5) The analytical techniques or methods used; and

(6) The results of such analyses.

d. Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part

503, unless other test procedures have been specified in the permit.

e. The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

2. Inspection and Entry

The permittee shall allow the Regional Administrator, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

Section D. Reporting Requirements

1. Reporting Requirements

a. *Planned changes.* The permittee shall give notice to the Regional Administrator as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject to the effluent limitations in the permit, nor to the notification requirements under 40 CFR 122.42(a)(1).

(3) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition or change may justify the application of permit conditions different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

b. *Anticipated noncompliance.* The permittee shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

c. *Transfers.* This permit is not transferable to any person except after notice to the Regional Administrator. The Regional Administrator may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act. (See § 122.61; in some cases, modification or revocation and reissuance is mandatory.)

d. *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(1) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Regional Administrator for reporting results of monitoring of sludge use or disposal practices.

(2) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Regional Administrator.

(3) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Regional Administrator in the permit.

e. *Twenty-four hour reporting.*

(1) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances.

A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(2) The following shall be included as information which must be reported within 24 hours under this paragraph.

(a) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See § 122.41(g).)

(b) Any upset which exceeds any effluent limitation in the permit.

(c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Regional Administrator in the permit to be reported within 24 hours. (See § 122.44(g).)

(3) The Regional Administrator may waive the written report on a case-by-case basis for reports under Paragraph D.1.e if the oral report has been received within 24 hours.

f. *Compliance Schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

g. *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under Paragraphs D.1.d, D.1.e and D.1.f of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in Paragraph D.1.e of this section.

h. *Other information.* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Regional Administrator, it shall promptly submit such facts or information.

2. Signatory Requirement

a. All applications, reports, or information submitted to the Regional Administrator shall be signed and certified. (See § 122.22)

b. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

3. Availability of Reports

Except for data determined to be confidential under Paragraph A.8. above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Regional Administrator. As required by the CWA, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the CWA.

Section E. Other Conditions

1. *Definitions* for purposes of this permit are as follows:

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Applicable standards and limitations means all State, interstate, and Federal standards and limitations to which a "discharge" or a related activity is subject to, including water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in "approved States," including any approved modifications or revisions.

Average The arithmetic mean of values taken at the frequency required for each parameter over the specified period. For total and/or fecal coliforms, the average shall be the geometric mean.

Average monthly discharge limitation means the highest allowable average of

"daily discharges" over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

Average weekly discharge limitation means the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Best Professional Judgement (BPJ) means a case-by-case determination of Best Practicable Treatment (BPT), Best Available Treatment (BAT) or other appropriate standard based on an evaluation of the available technology to achieve a particular pollutant reduction.

Composite Sample—A sample consisting of a minimum of eight grab samples collected at equal intervals during a 24-hour period (or lesser period as specified in the section on Monitoring and Reporting) and combined proportional to flow, or a sample continuously collected proportionally to flow over that same time period.

Continuous Discharge means a "discharge" which occurs without interruption throughout the operating hours of the facility except for infrequent shutdowns for maintenance, process changes, or similar activities.

CWA or "The Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92–500, as amended by Pub. L. 95–217, Pub. L. 95–576, Pub. L. 96–483 and Pub. L. 97–117; 33 U.S.C. §§ 1251 et seq.

Daily Discharge means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurements, the daily discharge is calculated as the average measurement of the pollutant over the day.

Director means the person authorized to sign NPDES permits by EPA and/or the State.

Discharge Monitoring Report Form (DMR) means the EPA standard national form, including any subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by permittees. DMRs must be used by "approved States" as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's.

Discharge of a pollutant means:

(a) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or

(b) Any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works.

This term does not include an addition of pollutants by any "indirect discharger."

Effluent limitation means any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States," the waters of the "contiguous zone," or the ocean.

Effluent limitations guidelines means a regulation published by the Administrator under Section 304(b) of CWA to adopt or revise "effluent limitations."

EPA means the United States "Environmental Protection Agency."

Grab Sample—An individual sample collected in a period of less than 15 minutes.

Hazardous Substance means any substance designated under 40 CFR Part 116 pursuant to Section 311 of CWA.

Maximum daily discharge limitation means the highest allowable "daily discharge."

Municipality means a city, town, borough, county, parish, district, association, or other public body created by of under State law and having jurisdiction over disposal or sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribe organization, or a designated and approved management agency under section 208 of CWA.

National Pollutant Discharge Elimination System means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA. The term includes an "approved program."

New discharger means any building, structure, facility, or installation:

(a) From which there is or may be a "discharge of pollutants";

(b) That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979;

(c) Which is not a "new source"; and

(d) Which has never received a finally effective NPDES permit for discharges at that "site".

This definition includes an "indirect discharger" which commences discharging into "waters of the United States" after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a "site" for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a "site" under EPA's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Regional Administrator in the issuance of a final permit to be an area of biological concern. In determining whether an area is an area of biological concern, the Regional Administrator shall consider the factors specified in 40 CFR Sections §§ 125.122.(a)(1) through (10).

An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a "new discharger" only for the duration of its discharge in an area of biological concern.

New source means any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced:

(a) After promulgation of standards of performance under Section 306 of CWA which are applicable to such.

(b) After proposal of standards of performance in accordance with Section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with Section 306 within 120 days of their proposal.

NPDES means "National Pollutant Discharge Elimination System."

Non-Contact Cooling Water is water used to reduce temperature which does not come in direct contact with any raw material, intermediate product, a waste product or finished product.

Owner or operator means the owner or operator of any "facility or activity" subject to regulation under the NPDES programs.

Permit means an authorization, license, or equivalent control document issued by EPA or an "approved State."

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Point source means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. §§ 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) Sewage from vessels; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

Primary industry category means any industry category listed in the NRDC settlement agreement (*Natural Resources Defense Council et al.* v. *Train*, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in Appendix A of 40 CFR Part 122.

Process wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Regional Administrator means the Regional Administrator, EPA, Region I, Boston, Massachusetts.

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands.

Secondary Industry Category means any industry category which is not a "primary industry category."

Toxic pollutant means any pollutant listed as toxic in Appendix D of 40 CFR Part 122, under Section 307(a)(1) of CWA.

Uncontaminated storm water is precipitation to which no pollutants have been added and has not come into direct contact with any raw material, intermediate product, waste product or finished product.

Waters of the United States means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands."

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce, including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a)–(d) of this definition;

(f) The territorial sea; and

(g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)–(f) of this definition.

Whole Effluent Toxicity (WET) means the aggregate toxic effect of an effluent measured directly by a toxicity test.

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.

2. Abbreviations when used in this permit are defined below:

cu. M/day or M^3/day—cubic meters per day
mg/l—milligrams per liter
ug/l—micrograms per liter
lbs/day—pounds per day
kg/day—kilograms per day
Temp. °C—temperature in degrees Centigrade
Temp. °F—temperature in degrees Fahrenheit
Turb.—turbidity measured by the Nephelometric Method (NTU)
pH—a measure of the hydrogen ion concentration
CFS—cubic feet per second
MGD—million gallons per day
Oil & Grease—Freon extractable material
ml/l—milliliter(s) per liter
Cl_2—total residual chlorine

[FR Doc. 94–9938 Filed 4–26–94; 8:45 am]
BILLING CODE 6560–50–P

federal register

Thursday
April 28, 1994

Part III

Department of Education

34 CFR Parts 600 and 601

Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Eligibility of Foreign Medical Schools Under the Guaranteed Student Loan Program; Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 600 and 601

RIN 1840–AB88

Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Eligibility of Foreign Medical Schools Under the Guaranteed Student Loan Program (GSLP)

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended (HEA), and the regulations for Eligibility of Foreign Medical Schools under the Guaranteed Student Loan Program (GSLP) to reflect changes made to the HEA by the Higher Education Amendments of 1992. The Secretary removes the latter regulations from Title 34 of the Code of Federal Regulations, revises them, and adds them to the former regulations as a new subpart E.

The regulations revise the procedures and criteria under which a foreign institution establishes eligibility to apply to participate in the Federal Family Education Loan (FFEL) programs if the institution is comparable to an eligible institution of higher education located in the United States.

EFFECTIVE DATE: These regulations take effect on July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Joyce R. Coates, U.S. Department of Education, 400 Maryland Avenue, SW., room 4318, Regional Office Building 3, Washington, DC 20202–5346. Telephone: (202) 708–7888. 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 Institutional Eligibility regulations contain requirements that apply to all postsecondary educational institutions that seek initial or continued eligibility to apply to participate in the programs authorized by the HEA.

On January 18, 1994, the Secretary published a notice of proposed rulemaking (NPRM) for parts 600 and 601 in the **Federal Register** (59 FR 2714). The NPRM included a discussion of major issues surrounding the proposed changes that will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those issues can be found:

Purpose and scope in § 600.51 (page 2714).

Definitions contained in § 600.52 (page 2714).

Provisions for requesting an eligibility determination contained in § 600.53 (pages 2714–2715).

Criteria for determining the eligibility of a foreign institution contained in § 600.54 (page 2715).

Additional criteria for determining the eligibility of a foreign graduate medical school contained in § 600.55 (pages 2715–2716).

Provisions governing the duration of eligibility determinations in § 600.56 (page 2716).

These final regulations contain one significant difference from the NPRM. In § 600.54, the Secretary has added a requirement for a foreign institution to be a public or private nonprofit institution.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 415 parties submitted comments on the proposed regulations. Most comments were from persons connected with two foreign graduate medical schools and were nearly identical. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. Substantive issues are discussed under the section of the regulations to which they pertain.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

Section 600.54 Criteria for Determining Whether a Foreign Institution is Eligible To Apply To Participate in the FFEL Programs

Comments: A commenter pointed out that section 481(a)(1) of the HEA requires a foreign institution to be comparable to an institution of higher education as defined in section 1201(a) of the HEA, and that the definition in section 1201(a) requires an institution to be a public or private nonprofit institution. The commenter suggested that this requirement be added to the regulations.

Discussion: The Secretary agrees with the commenter that a change is necessary to make clear that a for-profit institution is not eligible under these regulations.

Changes: Section 600.54 has been revised to require a foreign institution to be a public or private nonprofit educational institution.

Section 600.55 Additional Criteria for Determining Whether a Foreign Graduate Medical School is Eligible To Apply To Participate in the FFEL Programs.

Comments: Most commenters opposed the requirement that a training program for foreign medical students be approved by all medical licensing boards and evaluating bodies whose views are considered relevant by the Secretary on the grounds that the Secretary might rely on the judgments of inappropriate bodies. Some commenters were concerned that the Secretary might seek the judgment of a State body over a program located in a different State, if the second State had no such approving body. One commenter suggested that the Secretary require the views of boards and evaluating bodies only in those States where such bodies exist.

Discussion: One purpose of these regulations is to make certain that facilities, curriculum, equipment, and faculty are comparable in quality to those of medical schools in the United States. The Secretary requires the assurance of that comparability through appropriate impartial and qualified third parties. The Secretary does not consider it unreasonable for an educational program or portion of a program located in a State to obtain the approval of an appropriate medical licensing board or other evaluating body. Which licensing boards and evaluating bodies the Secretary considers relevant will depend on the State in which the program is located, and the time that the application is filed among other relevant factors.

Changes: None.

Comments: Most commenters opposed the requirement for an institution, rather than the Educational Commission for Foreign Medical Graduates (ECFMG), to provide pass rate data on its students and graduates to the Secretary. One commenter believed that the ECFMG would refuse to release data to institutions, thus effectively denying their eligibility.

Discussion: It is the responsibility of an institution seeking to participate in the FFEL programs to establish that it complies with the requirements for eligibility for that participation. Accordingly, the institution must furnish the Secretary with the necessary information for the Secretary to make a determination on the institution's compliance. Institutions are urged to work with the ECFMG and their graduates to obtain the relevant data.

Changes: None.

Comment: A few commenters opposed the requirement that a school's

clinical training program be approved by a State as of January 1, 1992, and remain currently approved by that State. One commenter claimed that because few States approve clinical training programs for foreign medical schools, Congress would not have intended to require that approval.

Discussion: States can and do approve clinical training programs for foreign medical schools; thus, Congress specifically referred to that approval in section 481(a)(2) of the HEA for programs approved as of January 1, 1992. The Congress made clear throughout the Higher Education Amendments of 1992 the need for strict accountability of educational institutions to States, accrediting agencies, and the Federal government. The Secretary would be remiss in his duty to exercise responsible oversight of the administration of the FFEL programs if participating institutions were to be permitted to obtain or maintain eligibility for clinical training programs that, although once approved by a State, lost such approval. Further, approval of the clinical training program is among the criteria in the HEA used to demonstrate comparability to institutions in the United States. A school that lost its State approval after January 1, 1992 fails this criterion.

Changes: None.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 600

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

Dated: April 11, 1994.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply.)

The Secretary amends title 34 of the Code of Federal Regulations by amending part 600 and by removing part 601 as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1082, 1085, 1088, 1094, and 1141, unless otherwise noted.

2. A new subpart E is added to part 600 to read as follows:

* * * * *

Subpart E—Eligibility of Foreign Institutions To Apply To Participate in the Federal Family Education Loan (FFEL) Programs

Sec.

600.51 Purpose and scope.
600.52 Definitions.
600.53 Requesting an eligibility determination.
600.54 Criteria for determining whether a foreign institution is eligible to apply to participate in the FFEL programs.
600.55 Additional criteria for determining whether a foreign graduate medical school is eligible to apply to participate in the FFEL programs.
600.56 Duration of eligibility determination.

* * * * *

Subpart E—Eligibility of Foreign Institutions To Apply To Participate in the Federal Family Education Loan (FFEL) Programs

§ 600.51 Purpose and scope.

(a) A foreign institution is eligible to apply to participate in the Federal Family Education Loan (FFEL) programs if it is comparable to an eligible institution of higher education located in the United States and has been approved by the Secretary in accordance with the provisions of this subpart.

(b) This subpart E contains the procedures and criteria under which a foreign institution may be deemed eligible to apply to participate in the FFEL programs.

(c) This subpart E does not include the procedures and criteria by which a foreign institution that is deemed eligible to apply to participate in the FFEL programs actually applies for that participation. Those procedures and criteria are contained in the regulations for the FFEL programs, 34 CFR part 682, subpart F.

(Authority: 20 U.S.C. 1082, 1088)

§ 600.52 Definitions.

The following definitions apply to this subpart E:

Foreign graduate medical school: A foreign institution that qualifies to be listed in, and is listed as a medical school in, the most current edition of the *World Directory of Medical Schools* published by the World Health Organization (WHO).

Foreign institution: An institution that is not located in a State.

Passing score: The minimum passing score as defined by the Educational Commission for Foreign Medical Graduates (ECFMG).

Secondary school: A school that provides secondary education as determined under the laws of the country in which the school is located.

(Authority: 20 U.S.C. 1082, 1088)

§ 600.53 Requesting an eligibility determination.

(a) To be designated as eligible to apply to participate in the FFEL programs or to continue to be eligible beyond the scheduled expiration of the institution's current period of eligibility, a foreign institution must—

(1) Apply on the form prescribed by the Secretary; and

(2) Provide all the information and documentation requested by the Secretary to make a determination of that eligibility.

(b) If a foreign institution fails to provide, release, or authorize release to the Secretary of information that is required in this subpart E, the institution is ineligible to apply to participate in the FFEL programs.

(Approved by the Office of Management and Budget under control number 1840–0673)

(Authority: 20 U.S.C. 1082, 1088)

§ 600.54 Criteria for determining whether a foreign institution is eligible to apply to participate in the FFEL programs.

The Secretary considers a foreign institution to be comparable to an eligible institution of higher education in the United States and eligible to apply to participate in the FFEL programs if the foreign institution is a public or private nonprofit educational institution that—

(a) Admits as regular students only persons who—

(1) Have a secondary school completion credential; or

(2) Have the recognized equivalent of a secondary school completion credential;

(b) Is legally authorized by an appropriate authority to provide an eligible educational program beyond the secondary school level in the country in which the institution is located; and

(c) Provides an eligible education program—

(1) For which the institution is legally authorized to award a degree that is equivalent to an associate,

baccalaureate, graduate, or professional degree awarded in the United States;

(2) That is at least a two-academic-year program acceptable for full credit toward the equivalent of a baccalaureate degree awarded in the United States; or

(3) That is equivalent to at least a one-academic-year training program in the United States that leads to a certificate, degree, or other recognized educational credential and prepares students for gainful employment in a recognized occupation.

(Authority: 20 U.S.C. 1082, 1088)

§ 600.55 Additional criteria for determining whether a foreign graduate medical school is eligible to apply to participate in the FFEL programs.

(a) The Secretary considers a foreign graduate medical school to be eligible to apply to participate in the FFEL programs if, in addition to satisfying the criteria in § 600.54, the school satisfies all of the following criteria:

(1) The school provides, and in the normal course requires its students to complete, a program of clinical and classroom medical instruction of not less that 32 months in length, that is supervised closely by members of the school's faculty and that is provided either—

(i) Outside the United States, in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom medical instruction; or

(ii) In the United States, through a training program for foreign medical students that has been approved by all medical licensing boards and evaluating bodies whose views are considered relevant by the Secretary.

(2) The school has graduated classes during each of the two twelve-month periods immediately preceding the date the Secretary receives the school's request for an eligibility determination.

(3) The school employs for the program described in paragraph (a)(1) of this section only those faculty members whose academic credentials are the equivalent of credentials required of faculty members teaching the same or similar courses at medical schools in the United States.

(4)(i) The school has been approved by an accrediting body—

(A) That is legally authorized to evaluate the quality of graduate medical school educational programs and facilities in the country where the school is located; and

(B) Whose standards of accreditation of graduate medical schools—

(*1*) Have been evaluated by the advisory panel of medical experts established by the Secretary; and

(*2*) Have been determined to be comparable to standards of accreditation applied to medical schools in the United States; or

(ii) The school is a public or private nonprofit educational institution that satisfies the requirements in § 600.4(a)(5)(i).

(5)(i)(A) During the academic year preceding the year for which any of the school's students seeks an FFEL program loan, at least 60 percent of those enrolled as full-time regular students in the school and at least 60 percent of the school's most recent graduating class were persons who did not meet the citizenship and residency criteria contained in 34 CFR 668.7(a)(4)(i) through (iii); and

(B) At least 60 percent of the school's students and graduates who took any step of the examinations administered by the Educational Commission for Foreign Medical Graduates (ECFMG) (including the ECFMG English test) in the year preceding the year for which any of the school's students seeks an FFEL program loan received passing scores on the exams; or

(ii) The school's clinical training program was approved by a State as of January 1, 1992, and is currently approved by that State.

(b) In performing the calculation required in paragraph (a)(5)(i)(B) of this section, a foreign graduate medical school shall count as a graduate each person who graduated from the school during the three years preceding the year for which the calculation is performed.

(Authority: 20 U.S.C. 1082, 1088)

§ 600.56 Duration of eligibility determination.

(a) The eligibility of a foreign institution under this subpart expires four years after the date of the Secretary's determination that the institution is eligible to apply for participation, except that the Secretary may specify a shorter period of eligibility. In the case of a foreign graduate medical school, continued eligibility is dependent upon annual submission of the data and information required under § 600.55(a)(5)(i), subject to the terms described in § 600.53(b).

(b) A foreign institution that has been determined eligible loses its eligibility on the date that the institution no longer meets any of the criteria in this subpart E.

(c) Notwithstanding the provisions of 34 CFR 668.25(c)(2), if a foreign institution loses its eligibility under this subpart E, an otherwise eligible student, continuously enrolled at the institution before the loss of eligibility, may receive an FFEL program loan for attendance at that institution for the academic year succeeding the academic year in which that institution lost its eligibility, if the student actually received an FFEL program loan for attendance at the institution for a period during which the institution was eligible under this subpart E.

(Authority: 20 U.S.C. 1082, 1088, 1099c)

PART 601—ELIGIBILITY OF FOREIGN MEDICAL SCHOOLS UNDER THE GUARANTEED STUDENT LOAN PROGRAM (GSLP)

3. Part 601 of Title 34 of the Code of Federal Regulations is removed and reserved.

[FR Doc. 94–10036 Filed 4–26–94; 8:45 am]
BILLING CODE 4000–01–P

federal register

Thursday
April 28, 1994

Part IV

Department of Education

34 CFR Part 668
Student Assistance General Provisions; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AC08

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends subpart E of the Student Assistance General Provisions regulations, 34 CFR part 668, Verification of Student Aid Application Information, to implement technical revisions resulting from the Higher Education Amendments of 1992 (Pub. L. 102–325) and the Higher Education Technical Amendments of 1993 (Pub. L. 103–208) and to reduce the administrative burden associated with verification requirements on applicants and institutions. These regulations require institutions to have a system for verifying student aid application information reported by applicants for use in calculating expected family contributions (EFCs) for the Federal Pell Grant, campus-based (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG)), Federal Stafford Loan, Federal Direct Student Loan (FDSL), and Presidential Access Scholarship (PAS) programs.

EFFECTIVE DATE: These regulations take effect on July 1, 1994. When these regulations become effective, they will govern verification of student aid application information for any Title IV, Higher Education Amendments (HEA) program assistance that may be awarded to any student for award years beginning with 1994–95.

FOR FURTHER INFORMATION CONTACT: Lorraine Kennedy, U.S. Department of Education, 400 Maryland Avenue, SW., Regional Office Building 3, room 4318, Washington, DC 20202–5451. Telephone (202) 708–4601. 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: Subpart E of the Student Assistance General Provisions regulations (34 CFR part 668) governs the verification of the information that is used to calculate an applicant's expected family contribution (EFC) as part of the determination of an applicant's need for student financial assistance. Based on the need analysis formula established in statute, the EFC is the amount that an applicant and the applicant's family can reasonably be expected to contribute towards the applicant's cost of attendance at an institution of higher education.

The changes in these regulations result from a review of current policies and procedures and from recently enacted legislation that renders certain provisions in the current regulations obsolete.

Summary of Changes

Sections 668.51 through 668.61 are amended to delete all references to the Income Contingent Loan (ICL) Program and Quality Control Pilot Project. Program references throughout Subpart E have been changed to reflect the new names of the Title IV, HEA programs.

Sections 668.52(b) and 668.54(a) are amended to delete the definition of Need Analysis Servicer, to delete references to the certification of need analysis servicers, and to delete references to the 30 percent verification limitation.

Sections 668.54 through 668.56 are amended to include the use of an output document and institutional student information reports (ISIRs) in conjunction with the reference to the Student Aid Report (SAR). Output documents and ISIRs will also be used in conjunction with the reference to an SAR for applicants selected for verification under § 668.54(a)(2).

Sections 668.56(a)(5)(i) (A) and (B) and 668.57(d)(2)(i) are deleted since the Department no longer participates in a match with the Social Security Administration for these benefits.

The Secretary also amends § 668.57(a)(2) and (3) to remove the quotation marks before and after "IRS Listing of Tax Account Information" and to make the phrase lower case. This clarifies that the reference is to information that is being requested from IRS that would be used to verify specific data elements, not a specific IRS form. Also, this would accommodate new IRS forms that are continuously being developed through electronic technology to assist tax filers.

Section 668.59 is amended to remove all references to the Pell Grant Index (PGI) and replace the reference with EFC, and to add the new terms output document or ISIRs as they apply. This section is also being amended to delete the Zero PGI Charts.

The regulations also delete the use of the Zero PGI Charts as a tolerance option for applicants who have undergone verification. In the past, the charts have not been widely used and institutions can easily use another tolerance option such as the recalculation of an applicant's EFC. The Department of Education provides the Electronic Needs Analysis System (ENAS) to institutions at no cost. ENAS may be used for recalculating an applicant's EFC.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the technical changes in these final regulations are a direct result of the Higher Education Amendments of 1992, are purely technical, and do not establish substantive policy. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B) that proposed rulemaking is unnecessary and contrary to the public interest.

Assessment of Educational Impact

The Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

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

Dated: April 19, 1994.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: Federal Supplemental Educational Opportunity Grant Program, 84.007; Federal Stafford Loan Program, 84.032; Federal PLUS Loan Program, 84.032; Federal Work-Study Program, 84.033; Federal Perkins Loan Program, 84.038; Federal Pell Grant Program, 84.063; Presidential Access Scholarship and Partnership Program, No number assigned; Federal Direct Student Loan Program, 84.268)

The Secretary amends Part 668 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

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

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

2. Section 668.51 is amended by removing paragraph (c), redesignating paragraph (d) as paragraph (c), and revising paragraph (a) and redesignated paragraph (c) to read as follows:

§ 668.51 General.

(a) *Scope and purpose.* The regulations in this subpart govern the verification by institutions of information submitted by applicants for student financial assistance in connection with the calculation of their expected family contributions (EFC) for the Federal Pell Grant, campus-based, Federal Stafford Loan, Federal Direct Student Loan (FDSL), and Presidential Access Scholarship (PAS) programs.

* * * * *

(c) *Foreign schools.* The Secretary exempts from the provisions of this subpart institutions participating in the Federal Stafford Loan Program that are not located in a State.

3. Section 668.52 is amended by deleting the definition of "Need analysis servicer," by adding, in alphabetical order, the definition of "Institutional student information report," and by revising the definition of "Student aid application" to read as follows:

§ 668.52 Definitions.

* * * * *

Institutional student information report as defined in 34 CFR 690.2 for purposes of the Federal Pell Grant, campus-based, Federal Stafford Loan and PAS programs.

* * * * *

Student aid application means an application approved by the Secretary and submitted by a person to have his or her EFC determined under the Federal Pell Grant, campus-based, Federal Stafford Loan, Federal Direct Loan or PAS programs.

4. Section 668.54 is amended by revising paragraph (a)(2), removing paragraph (a)(3), by redesignating paragraphs (a)(4) through (a)(6) as paragraphs (a)(3) through (a)(5) respectively, and by revising paragraph (b)(2)(vii)(B) to read as follows:

§ 668.54 Selection of applications for verification.

(a) * * *

(2) An institution shall require each applicant whose application is selected for verification, on the basis of edits specified by the Secretary, to verify all of the applicable items specified in § 668.56.

* * * * *

(b) * * *

(2) * * *

(vii) * * *

(B) A copy of the verified application and, if the applicant applied for a Federal Pell Grant, pages 1 and 3 of the applicant's SAR or a copy of the applicant's electronic SAR or ISIR.

* * * * *

5. Section 668.55 is amended by revising paragraphs (b)(2) and (c) to read as follows:

§ 668.55 Updating information.

* * * * *

(b) * * *

(2) An applicant for a Federal Pell Grant who is not selected for verification shall update the information contained in his or her application regarding those factors and shall certify that the information is correct as of the day that the applicant submits his or her first SAR to the institution or signs his or her ISIR at the institution.

(c) If an applicant has received Federal Pell Grant, campus-based, Federal Stafford Loan, FDSL, or PAS program assistance for an award year, and the applicant subsequently submits another application for assistance under any of those programs for that award year, and the applicant is required to update household size and number attending postsecondary educational institutions on the subsequent application, the institution—

(1) Is required to take that newly updated information into account when awarding for that award year further Federal Pell Grant, campus-based, FDSL or PAS program assistance or certifying a Federal Stafford Loan application; and

(2) Is not required to adjust the Federal Pell Grant, campus-based, FDSL, or PAS program assistance previously awarded to the applicant for that award year, or any previously certified Federal Stafford Loan application for that award year, to reflect the newly updated information unless the applicant would otherwise receive an overaward.

* * * * *

6. Section 668.56 is amended by revising paragraphs (a)(5)(i) and (b) introductory text to read as follows:

§ 668.56 Items to be verified.

(a) * * *

(5) * * *

(i) Social security benefits if the institution has reason to believe that those benefits were received;

* * * * *

(b) If an applicant selected for verification submits an SAR or output document to the institution or the institution receives the applicant's ISIR, within 90 days of the date the applicant signed his or her application, or if an applicant is selected for verification under § 668.54(a)(2), the institution need not require the applicant to verify—

* * * * *

7. Section 668.57 is amended by revising paragraphs (a)(2) and (d)(2) to read as follows:

§ 668.57 Acceptable documentation.

(a) * * *

(2) If an individual who filed a U.S. tax return and who is required by paragraph (a)(1) of this section to provide a copy of his or her tax return does not have a copy of that return, the institution may require that individual to submit, in lieu of a copy of the tax return, a copy of an IRS form which lists tax account information.

* * * * *

(d) * * *

(2) Social security benefits if the institution has reason to believe that the applicant has incorrectly reported Social Security benefits received by the applicant, applicant's parents, and any other children of the applicant's parents who are members of the applicant's household, in the case of a dependent student, or by the applicant, the applicant's spouse, and the applicant's children in the case of an independent student. The applicant shall verify Social Security benefits by submitting a document from the Social Security Administration showing the amount of benefits received in the appropriate calendar year for the appropriate individuals listed above or, at the institution's option, a statement signed by both the applicant and the applicant's parent, in the case of a dependent student, or by the applicant, in the case of an independent student, certifying that the amount listed on the applicant's aid application is correct; and

* * * * *

§ 668.58 [Amended]

8. In 668.58, paragraphs (a)(1)(ii) and (a)(2)(ii)(B) are amended by removing the term "CWS" and adding in its place the words "Federal Work-Study."

9. Section 668.59 is amended by revising paragraphs (a) introductory text, (a)(1) introductory text, (a)(1)(i), (a)(2), (b)(2)(i) (B) and (C), (b)(2)(ii) (A) and (B) to read as follows:

§ 668.59 Consequences of a change in application information.

(a) For the Federal Pell Grant Program—

(1) Except as provided in paragraphs (a) (2) and (3) of this section, if the information on an application changes as a result of the verification process, the institution shall require the applicant to resubmit his or her application information to the Secretary for corrections if—

(i) The institution recalculates the applicant's EFC, determines that the applicant's EFC changes, and determines that the change in the EFC changes the applicant's Federal Pell Grant award; or

* * * * *

(2) An institution need not require an applicant with a reported EFC of zero on his or her SAR or ISIR to resubmit that SAR to the Secretary or correct the ISIR at the institution, if the institution determines that the applicant's EFC remains at zero on the basis of the verified information.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) Recalculate the applicant's Federal Pell Grant award on the basis of the EFC on the corrected SAR or ISIR; and

(C) Disburse any additional funds under that award only if the applicant provides the institution with the corrected SAR or ISIR and only to the extent that additional funds are payable based on the recalculation.

(ii) * * *

(A) May disburse the applicant's Federal Pell Grant award on the basis of the original EFC without requiring the applicant to resubmit his or her application information to the Secretary; and

(B) Except as provided in § 668.60(b), shall disburse any additional funds under the increased award reflecting the new EFC if the institution receives the corrected SAR or ISIR.

* * * * *

10. Section 668.60 is amended by revising paragraphs (b) introductory text, (b)(1)(i)(A), (b)(1)(iii), (c)(1) and (2) introductory text, and (d) to read as follows:

§ 668.60 Deadlines for submitting documentation and the consequences of failing to provide documentation.

* * * * *

(b) For purposes of the campus-based, Federal Stafford Loan, FDSL and PAS programs—

(1) * * *

(i) * * *

(A) Disburse any additional Federal Perkins Loan, FDSL, FSEOG or PAS funds to the applicant;

* * * * *

(iii) The applicant shall repay to the institution any Federal Perkins Loan, FDSL, FSEOG, or PAS payments received for that award year;

* * * * *

(c) * * *

(1) An applicant may submit a verified SAR to the institution or the institution may receive a verified ISIR after the applicable deadline specified in 34 CFR 690.61 but within an established additional time period set by the Secretary through publication of a notice in the **Federal Register**. If the institution receives a verified SAR or ISIR during the established additional time period, and the EFC on the two SARs or ISIRs are different, payment must be based on the higher of the two EFCs.

(2) If the applicant does not provide the requested documentation, and if necessary, a verified SAR or ISIR, within the additional time period referenced in paragraph (c)(1) of this section the applicant—

* * * * *

(d) The Secretary may determine not to process any subsequent application for Federal Pell Grant, and an institution, if directed by the Secretary, may not process any subsequent application for campus-based, PAS, FDSL, or Federal Stafford Loan program assistance of an applicant who has been requested to provide documentation until the applicant provides the documentation or the Secretary decides that there is no longer a need for the documentation.

* * * * *

11. Section 668.61 is amended by revising paragraph (a)(2)(ii)(B) and adding an OMB control number to read as follows:

§ 668.61 Recovery of funds.

(a) * * *

(2) * * *

(ii) * * *

(B) The last day of the award year in which the institution disbursed Federal Pell Grant, Federal Perkins Loan, FDSL, FSEOG or PAS funds to the applicant.

* * * * *

§§ 668.58, 668.59 [Amended]

12. In 34 CFR part 668 remove the terms "need-based Income Contingent Loan (ICL)," "and need-based ICL," and "or need-based ICL" in the following places:

a. Section 668.58(a)(2)(i) and (a)(2)(ii); and

b. Section 668.59(c) introductory text and (c)(1)(ii).

§§ 668.55, 668.58, 668.59, 668.60, 668.61 [Amended]

13. In 34 CFR Part 668 add the word "Federal" before the words "Pell Grant", "Stafford Loan", "Perkins Loan", or "Supplemental Educational Opportunity Grant" in the following places each time they appear:

a. Section 668.55(d)(2)(twice); and

b. Section 668.58(a)(1)(i), (a)(1)(iii)(three times), (a)(2)(i), (a)(2)(iii)(A), (a)(2)(iii)(B)(twice), (c), (d)(1), and (d)(2); and

c. Section 668.59(b) introductory text, (b)(1), (c) introductory text, (c)(1)(ii), and (d); and

d. Section 668.60(b)(1)(i)(C), (b)(1)(i)(D), (b)(1)(ii), (b)(3)(twice), (c) introductory text, (c)(2)(i), (c)(2)(ii), and (e)(2)(twice); and

e. Section 668.61(a)(2)(ii)(B).

[FR Doc. 94–9747 Filed 4–26–94; 8:45 am]

BILLING CODE 4000–01–U

federal register

Thursday
April 28, 1994

Part V

Department of Education

34 CFR Part 668

Student Assistance General Provisions; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AC10

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend Subpart E of the Student Assistance General Provisions regulations, 34 CFR Part 668, Verification of Student Aid Application Information, to implement revisions resulting from the Higher Education Amendments of 1992 (Pub. L. 102–325) and the Higher Education Technical Amendments of 1993 (Pub. L. 103–208). In this issue of the **Federal Register** the Secretary is publishing final regulations revising the existing Student Assistance General Provisions regulations to conform to statutory changes and clarify existing requirements associated with the verification of student aid application information. The Secretary requests comments on proposed changes in the percentage of Title IV applicants an institution is required to verify annually in an award year and the dollar tolerance amount.

DATES: Comments must be received on or before May 31, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Lorraine Kennedy, U.S. Department of Education, 400 Maryland Avenue SW., Regional Office Building 3, room 4318, Washington, DC 20202–5451.

FOR FURTHER INFORMATION CONTACT: Lorraine Kennedy, U.S. Department of Education, 400 Maryland Avenue SW., Regional Office Building 3, room 4318, Washington, DC 20202–5451. Telephone (202) 708–4601. 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: Subpart E of the Student Assistance General Provisions regulations (34 CFR part 668) governs the verification of the information that is used to calculate an applicant's expected family contribution (EFC) as part of the determination of an applicant's need for student financial assistance. Based on the need analysis formula established in the statute, the EFC is the amount that an applicant and the applicant's family can reasonably be expected to contribute towards the applicant's cost of attendance at an institution of higher education.

Summary of Proposed Changes

The Secretary proposes to change the requirement in § 668.54 that determines the percentage of selected applicants required to be verified annually by an institution in any award year. The Secretary also proposes to change the amount of the dollar tolerance option in § 668.59 for the Federal Pell Grant, Federal Stafford Loan, Federal Direct Student Loan, campus-based, and Presidential Access Scholarship programs.

The Secretary has amended § 668.54 to remove the 30 percent verification limitation and require institutions to verify all selected applicants. This change is required by the deletion of section 484(f) of the Higher Education Act of 1965, as amended, by the enactment of the Higher Education Technical Amendments of 1993. The Secretary is extending an invitation to comment to determine if there should be an option available to institutions to not verify more than a certain percentage of applicants and if so, what would be an appropriate percentage and evidence for that threshold. The new percentage would be published in the **Federal Register**, after all comments from the aid community have been reviewed and analyzed by the Secretary.

The Secretary also proposes a $400 tolerance option to be used for all Title IV programs in place of the prior $200 Pell and $800 Stafford Loan and campus-based tolerance options. The Higher Education Amendments of 1992 provided a single formula for establishing need for all Title IV student financial assistance programs. Under one of the former need analysis formulas, Congressional Methodology, a larger tolerance for calculating the EFC was allowed because it did not result in a change in the applicant's award. In determining the single $400 tolerance figure for all Title IV programs, the Secretary analyzed the data to determine the appropriate tolerance amount that would not result in a change in the applicant's award.

Under the change proposed, one tolerance for all applicants would be used and that would not differ depending on the specific programs to which the student is applying for assistance. The Secretary considers the value of this simplification of the regulations to outweigh any potential loss in flexibility.

Establishment of a new tolerance amount to be used in the calculation of an applicant's EFC would not establish a new policy. Institutions are currently using tolerance amounts in the calculation of an applicant's EFC. However, since the Secretary would be implementing a new single tolerance amount and deleting the zero PGI charts to simplify the processing of Title IV assistance, the Secretary requests public comment on the establishment of the $400 tolerance.

The Secretary will issue final changes to §§ 668.54 and 668.59 of these regulations following an opportunity for public comment in response to the proposed changes listed above.

Executive Order 12866

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the programs.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Small entities affected by these regulations are small institutions of higher education. However, the regulations would not have a significant economic impact on the small institutions affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements necessary to ensure the proper expenditure of program funds.

Invitation To Comment

All comments concerning these proposed changes should be sent to the contact person given above. All comments submitted in response to the proposed changes to §§ 668.54 and 668.59 will be available for public inspection during and after the comment period in room 4613, Regional Office Building No. 3 (ROB–3), 7th and D Streets SW., Washington, DC between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and Universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance Numbers: Federal Supplemental Educational Opportunity Grant Program, 84.007; Federal Stafford Loan Program, 84.032; Federal PLUS Loan Program, 84.032; Federal Work-Study Program, 84.033; Federal Perkins Loan Program, 84.038; Federal Pell Grant Program, 84.063; Presidential Access Scholarship and Partnership Program, No number assigned; Federal Direct Student Loan Program, 84.268)

Dated: April 21, 1994.

Richard W. Riley,

Secretary of Education.

[FR Doc. 94–10133 Filed 4–26–94; 8:45 am]

BILLING CODE 4000–01–P

federal register

Thursday
April 28, 1994

Part VI

Department of Agriculture

Forest Service

36 CFR Part 222

Management of Grazing Use Within Rangeland Ecosystems; Proposed Rules

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 222

RIN 0596–AA35

Management of Grazing Use Within Rangeland Ecosystems

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture proposes to revise the National Forest System rangeland management regulations to update direction for management of domestic livestock, to place grater emphasis on stewardship of the rangeland resource, to clarify the link between the livestock grazing permit and forest plans, and to clarify the range management planning and decisionmaking process. In addition, the Department proposes to improve administration of livestock grazing permits, and to achieve greater consistency between the grazing management regulations of the Forest Service and the Bureau of Land Management, U.S. Department of the Interior. The intended effect of this proposed rule is to provide for healthy, diverse, sustainable rangeland ecosystems on National Forest System lands.

By separate rule published elsewhere in this separate part of the **Federal Register**, the Forest Service is proposing a revised system for determining livestock grazing fees on National Forest System lands and other lands under Forest Service control.

DATES: Comments must be received in writing by July 28, 1994.

ADDRESSES: Send written comments to Rangeland Reform '94, P.O. Box 66300, Washington, DC 20035–6300.

Comments on the proposed rule will be made available for public inspection during the regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday. Viewing of the comments can be arranged by contacting the Forest Service.

FOR FURTHER INFORMATION CONTACT: David M. Stewart, Range Management Staff, (202) 205–1746.

SUPPLEMENTARY INFORMATION:

Background

The existing rule governing rangeland management and livestock use on National Forest System lands and other lands under Forest Service control (36 CFR part 222, subpart A) provides guidance for management of the range environment and addresses the issuance and modification of grazing and livestock use permits, compensation for permittees' interest in authorized permanent improvements, cooperation in management, rangeland improvements, the use of the range betterment fund, and grazing advisory boards. The current rule was adopted October 28, 1977 (42 FR 56732).

As required by Departmental Regulation 1512–1, Forest Service personnel involved with rangeland management participated in a review of the existing grazing regulations in 1987. This review identified some parts of the existing regulations that required revision and clarification, and other parts that were outdated and required removal. In addition, several issues not covered by the regulations were identified that need to be addressed in the rules. The Forest Service published a proposed rule responding to the findings of the review on August 16, 1988 (53 FR 30954). That proposed rule was not finalized, but principal features of and comments received on that proposed rule have been considered in the current effort to identify needed changes to the rangeland management and grazing regulations.

The 1990 RPA Program, entitled "The Forest Service Program for Forest and Rangeland Resource," states the following: "The condition of public rangeland is better today than it has been at any other time this century. However, the Forest Service is deeply concerned about those rangelands in unsatisfactory condition, which, in 1989, consisted of 27 percent of all suitable National Forest System rangeland acres." The 1990 RPA Program further discussed the role of rangelands in providing forage, habitat, water, recreational opportunities, and open space and signaled the agency's commitment to improve rangeland conditions and management.

More recently, the Secretary of Agriculture and the Secretary of the Interior sponsored a series of public meetings on livestock grazing on federal lands. Issues and concerns raised at those meetings have provided additional momentum to develop grazing regulations that are more responsive to the current need for improved management of rangeland resources.

Accordingly, on Friday, August 13, 1993, an advance notice of proposed rulemaking (ANPR) was published in the **Federal Register**, (58 FR 43202), in which the Department of Agriculture gave notice of its intent to revise its grazing and livestock use and grazing fee (36 CFR 222 subpart A and subpart C) rules to respond to the Administration's commitment to implement federal rangeland management reform. The Department of the Interior issued an ANPR concurrent (58 FR 43208) with the Department of Agriculture's in which it announced its proposed grazing regulation changes for BLM lands, including the grazing fee system.

A total of about 12,600 letters were received on the ANPR's published by the Department of the Interior and the Department of Agriculture. These letters included over 56,000 separate comments on various aspects of grazing administration and fees. The greatest number of comments addressed possible changes in the grazing fee. Comments also identified a need for protection of rangeland ecosystems through an ecosystem approach to management and the use of locally developed standards and guidelines. Other concerns included the suitability of land for grazing and the need for balance between livestock grazing and other forest uses with the ability to implement and enforce the necessary management. A healthy and productive human environment with opportunities for public participation in planning decisions also received support from many respondents. Also, frequently noted in the comments was the longstanding role of land steward played by grazing permittees. A large number of comments highlighted the need for consistency between regulations of the Bureau of Land Management and the Forest Service.

Based on the comment received on the ANPR, the Secretary of Agriculture has decided to separate the rulemaking for grazing fees from the rulemaking for other grazing and livestock use proposals identified in the ANPR. Comments on the grazing fee portion of the ANPR will be considered in the development of the final grazing fee rule. Reviewers need not resubmit comments they filed on the Department of Agriculture's ANPR in order for them to be considered by the agency in the preparation of the final rule. All comments received on the Department of Agriculture's ANPR and this proposed rule will be considered in the preparation of a final rule.

Also, by separate rule, the Bureau of Land Management (BLM) is proposing a revision of their grazing management regulations and a revised system for determining livestock grazing fees on the public lands they administer. The fee system proposed by the BLM is similar to that proposed by the Forest Service.

Proposed Revisions to 36 CFR Part 222, Subpart A

The rules of Subpart A currently focus exclusively on issuance and administration of livestock grazing permits. Under the proposed rule, this Subpart would be retitled "Management of Grazing Use Within Rangeland Ecosystems" signaling the Department's intent to plan for rangeland activities and to regulate grazing use within an ecosystem management framework. In addition, the structure of the Subpart would be extensively revised to improve the flow and order of the text. To assist readers, a redesignation table which shows the disposition of provisions of the current rule is set out at the end of this preamble. Finally, extensive editorial revisions have been made to existing provisions to improve clarity of the rule, to remove gender specific pronoun references, to remove passive voice, and to correct spelling and punctuation.

A discussion of the proposal, keyed to the section numbers of the proposed rule, follows.

Proposed Section 222.1—Purpose and Scope

This section sets forth the purpose of the rule as governing domestic livestock grazing on National Forest System lands and other lands under Forest Service control. The scope of the rule, as described in this proposed section, is to specifically address decision points related to NEPA procedures for determining suitability for and authorization of grazing use and to address specific and general requirements and standards related to the issuance and administration of grazing permits.

Proposed Section 222.2—Definitions

In the current rule, definitions are set out in § 222.1 entitled "Authority and definitions." Because existing paragraph (a) of § 222.1 is a restatement of the authority delegated to the Chief of the Forest Service by the Assistant Secretary at 7 CFR 2.60, this paragraph would be removed and § 222.2 would be limited solely to definitions.

Under this proposed rule, a number of terms would be added, revised, or removed.

Terms Proposed To Be Added

The following terms and their definitions would be added:

1. The term *affiliates* is used to denote entities that have a business relationship with permit applicants or holders. The term is used in proposed § 222.7 in relation to determinations that the applicants have satisfactory records of performance. The definition is derived from the definition of affiliation used by the Small Business Administration and found at 13 CFR 121.3.

2. The term *authorized officer* needs to be defined because it is used throughout the subpart. The term and the definition is consistent with the use of this term under 36 CFR part 251, which governs administration of special use authorizations.

3. The term *escrow waiver* is used within the subpart and needs to be defined. The term has been used by permittees and the Forest Service since 1938. The definition in the proposed rule is derived from the definition currently found in the Forest Service Grazing Permit Administration Handbook 2209.13, Chapter 10 (36 CFR part 200).

4. The term *National Forest System lands in the Eastern States* would be added for ease of reference and to distinguish certain livestock management provisions that apply solely in the Western United States.

5. Where grazing permit requirements apply only to lands in the Western United States, the term *National Forest System lands in the Western States* would be added.

6. The term *NEPA procedures* is used throughout the subpart to refer to the requirements of the National Environmental Policy Act of 1969.

7. A definition of *rangelands* would be added to reflect that rangelands are a category of land, not a type of use. This proposed definition of rangelands is derived from the definition provided by the Society for Range Management following consultations with the Soil Conservation Service and the Bureau of Land Management. This definition is qualified to note that rangelands may include other lands that do not fall within the technical definition of rangelands if there is grazing activity by wild and domestic herbivores on these lands.

8. The term *rangeland improvement* is used to denote any structural or nonstructural improvements which occur on or benefit rangelands.

9. The term *unauthorized use* would be added to define all livestock use except for certain temporary livestock uses explicitly provided for in the rule that is not authorized by a grazing permit.

Proposed Revisions of Existing Terms

The following terms in the current rule are proposed to be revised:

1. The definition of *allotment management plan* would be limited to defining allotment management plans and removes regulatory text that is inappropriately included as part of the definition in the current rule. While under proposed § 222.3 the agency is proposing to eliminate allotment management plans, the term is needed to address authorization of grazing within the transitional procedures established in this section of the proposed rule.

2. The definition of *base property* would be slightly reworded for clarity with no change in meaning.

3. The definition of *grazing permit* would be revised for clarity.

4. The term *16 contiguous Western States* would be reworded for clarity and brevity.

5. The definition of *livestock* would be clarified by specifying that the term means foraging animals and by adding that the animals are raised for livestock production.

6. The definition of *National Forest System lands* would be revised to conform to the statutory definition found in 16 U.S.C. 1609.

7. The definition of *other lands under Forest Service control* would be shortened and clarified by substituting the words "other means" for "otherwise."

8. The definition of *permitted livestock* would be expanded to include those livestock grazed under a permit during the preceding season, including offspring retained for herd replacement. This change reflects the current practice of recognizing these animals as permitted livestock when approving waivers of permits based on the sale of permitted livestock.

9. The definition of *range betterment fund* is shortened and makes clear that the funds are available for range rehabilitation, protection, and improvement.

10. The definition of *transportation livestock* would be expanded to include other lands under Forest Service control.

Terms Proposed To Be Removed

The following terms found in the current rule are not included in the proposed rule:

1. The term *livestock use permit* would be removed since this type of use would be covered through a temporary permit as described in § 222.6.

2. The definitions of the terms *temporary grazing permit, term permits, on-and-off grazing permits,* and *private land grazing permits* would be removed since they can be defined and better understood in the context of the rule.

3. The definitions of *cancel, modify, on-the-ground expenditure, suspend,* and *term period* would be removed

since the meanings of these terms are easily understood from common usage and in the context of the regulation.

4. The definitions of *person, land subject to commercial livestock grazing,* and *range betterment* would be removed as these terms would no longer be used in the regulatory text with special meanings.

Proposed Section 222.3—Framework for Rangeland Planning and Decisions

This section of the proposed rule provides the context in which plans and decisions regarding rangeland management on National Forest System lands are made. This includes the decision to authorize grazing. This section would adopt the two-tiered planning and decisionmaking framework established by the Chief of the Forest Service through two key administrative appeal decisions (Panhandle LRMP Appeal #2130, August 15, 1988, p. 7 and Flathead LRMP Appeals #1467 and #1513, August 31, 1988, p. 8) and subsequently endorsed by the United States Court of Appeals for the Ninth Circuit in *Idaho Conservation League* vs. *Mumma*, 956 F.2d 1508 (9th Cir. 1992).

Specifically, proposed paragraph (a) would recognize that rangeland planning and decisions occur through the land and resource management planning process set out in 36 CFR part 219 and that forest plans, establish the programmatic direction for rangeland management on the forest which includes goals, objectives, standards, guidelines, and an identification of lands suitable for livestock grazing. Finally, proposed paragraph (a) makes clear that a determination in the forest plan that lands are suitable for grazing is not a decision to authorize grazing. This latter declaration is included in the rule to eliminate recurring permittee and public confusion over the distinction between a grazing suitability determination and a grazing authorization decision. The first determination—the suitability of lands for grazing—must be made before a decision to authorize grazing can be made, but a grazing suitability determination does not necessarily lead to a decision to graze those lands. Even though lands may be suitable for grazing, other resource objectives may take precedence over grazing livestock; for example, protection needs of wildlife habitat might have a higher priority in a given area and thus grazing use would be incompatible with that objective.

While programmatic rangeland management direction is made in forest plans, proposed paragraph (b) makes clear that, except as otherwise provided in this section, a rangeland project decision would be required when site-specific activities that implement management direction in the forest plan are proposed. Examples of rangeland project decisions given in the proposed rule include, but are not limited to, maintenance or modification of specific plant communities or riparian, aquatic, soil, or other resource conditions needed to promote the achievement of goals and objectives of the forest plan; rangeland improvements needed to promote the achievement of goals and objectives of the forest plan; and authorization of livestock grazing, where it is suitable and appropriate.

A significant aspect of the framework for planning and decisionmaking as proposed in this rule is the streamlining and simplification of rangeland planning. Under this proposed rule, allotment management plans, currently prepared on an allotment-by-allotment basis, would be eliminated. There has been considerable permittee and internal agency confusion over how allotment management plans fit into the agency's decisionmaking and environmental analysis framework. These allotment management plans appear to create a middle tier of planning and decisionmaking related to rangeland management that does not conform to the two-tier planning and decisionmaking process used in planning for all other forest resources. By eliminating allotment management plans, the proposed rule would conform rangeland management planning to the process applicable to all other uses and thus, clarify when and where livestock grazing and livestock use decisions are made. While the agency proposes to eliminate the use of allotment management plans, the Forest Service still intends to fully consult with and involve grazing permittees and other affected parties in rangeland planning and decisionmaking as required in both NEPA and the National Forest Management Act.

It is generally at the site-specific project level that authorization of livestock grazing is made and the site-specific environmental effects of alternatives are fully analyzed and disclosed. For this reason, proposed paragraph (b)(l)(iii) specifies that, where a rangeland project decision authorizes livestock grazing, the decision must also specify the maximum permissible amount of grazing use, the timing and duration of such use, and other appropriate livestock management requirements or measures needed to promote the achievement of goals and objectives of the forest plan. Further, paragraph (b)(3) clarifies that where a rangeland project decision has been made that authorizes livestock grazing, the timely issuance of the grazing permit is an administrative act and not a separate decision subject to additional NEPA analysis and disclosure. Inclusion of this provision is intended to avoid any confusion about administrative appeal points and to make clear that issuance of a grazing permit is not the decision point, provided the grazing permit is issued within a reasonable timeframe of the authorization decision and the environmental effects disclosed in the rangeland project decision are still current.

Although a decision to authorize grazing use may be made in a forest plan as long as there is adequate analysis and documentation of the environmental effects, it is generally more practicable to make a livestock grazing use decision and disclose the environmental effects of grazing at the project decision level.

While the agency intends to move toward rangeland project decisionmaking at broader ecological scales, these project level decisions cannot be undertaken and completed immediately upon adoption of the final rule. In light of the approximately 4500 Forest Service grazing permits subject to renewal in 1995, transitional procedures are thus needed to guide the agency over the short term. Under proposed paragraph (c), the agency would utilize a screening approach that permits a smooth transition for the reauthorization of grazing permits and completion of rangeland project decisions. This approach balances the interests of permittees with the need for compliance with environmental law.

Proposed paragraphs (c)(1), (2), (3), and (4) address the situations where a rangeland project decision to authorize grazing use does not exist. Specifically, proposed paragraph (c)(1) would permit the authorized officer to issue a term grazing permit for up to ten years on allotments where there is a current allotment management plan and where the NEPA documentation associated with that management plan is also current. This provision is necessary since in many cases there are current allotment plans that are consistent with forest plan standards and guidelines and are sufficient to guide rangeland management in the foreseeable future. This provision would allow for the smooth transition from allotment management plans to rangeland project decisions.

Proposed paragraph (c)(2) would permit the authorized officer to issue a term grazing permit for up to ten years based on an approved forest plan for

allotments that are meeting, or moving toward achievement of forest plan goals and objectives. In this situation, the forest plan must contain applicable standards and guidelines that can be incorporated as terms and conditions of the grazing permit and the environmental effects of applying the standards and guidelines on the land must be analyzed and disclosed pursuant to NEPA procedures.

However, if the allotment is meeting or moving toward achievement of forest plan goals and objectives but the forest plan does not contain applicable standards and guidelines that can be incorporated as terms and conditions of the permit, the authorized officer would be prohibited, pursuant to proposed paragraph (c)(3), from renewing or issuing a new term permit of more than three years duration. In those situations where allotments are meeting or moving toward achievement of forest plan goals and objectives, paragraph (c)(3) would allow the authorized officer to issue a term permit of up to three years duration while the agency gathers information and conducts the necessary analysis to determine if grazing should be authorized or a different term should be established. Issuance of 1-3 year term permits in this situation would require disclosure of the short term environmental effects of grazing under the permit pursuant to NEPA procedures. This term permit provision is needed to prevent undue impact on operators who are in compliance with the terms and conditions of their permit.

Paragraph (c)(4) addresses those situations where allotments are not meeting or moving toward forest plan goals and objectives. In this situation, the authorized officer cannot issue a new ten year term permit until a rangeland project decision and disclosure of environmental effects are accomplished. However, the authorized officer may issue a term permit for a period of up to three years until a rangeland project decision is completed. The term permit to be issued during this transition period must include applicable forest plan standards and guidelines and/or any other measures necessary to move management of the allotment toward forest plan goals and objectives. Prior to issuance of the 1–3 year term permit, the environmental effects of continuing grazing under the permit must be disclosed pursuant to NEPA procedures. This term permit provision provides for resource protection and prevents undue impact on operators while rangeland project decisions are being prepared.

Fundamental to proposed paragraphs (c)2, 3, and 4, is the necessity for the agency to make a determination as to whether management of a given allotment is or is not meeting or moving toward forest plan goals and objectives. The programmatic direction in forest plans establishes goals, objectives, standards, and guidelines for management of the resources on the National Forests, including management of rangelands. Forest plan goals and objectives are designed to promote achievement of desired resource conditions on the land. Site specific projects implementing the forest plan must be consistent with forest plan standards and guidelines, which provide for resource protection in the achievement of forest plan goals and objectives. Under the transitional procedures proposed in this section, agency employees would determine whether management of an allotment is meeting or moving toward achievement of forest plan goals and objectives through forest plan and allotment monitoring and evaluation, allotment field inspections, other existing resource information, and professional judgment.

The exhibit at the end of this document outlines the tiered screening approach proposed in paragraphs (c)(1)–(4) to guide issuance of grazing permits in compliance with NEPA procedures.

Additionally, the Klamath, Mendocino, Shasta-Trinity, and Six Rivers National Forests in the state of California are without approved forest plans. Under the provisions of the planning regulations (36 CFR 219.29) these national forests continue to be managed under existing land use and resource plans. In such cases, provisions of proposed paragraph (c)(1), (3), and (4) would provide a reasonable mechanism for the continuation of livestock operations which are in compliance with the terms and conditions of their permits.

The agency is committed to the long term improvement of rangeland condition. Therefore, proposed paragraph (c)(5) would require the authorized officer to develop and maintain a schedule for rangeland project decisions and site specific disclosure of environmental effects on affected allotments pursuant to NEPA procedures. These schedules will be developed in consultation with grazing permittees and other interested parties. Priority for scheduling the completion of rangeland project decisions will be given to those areas with significant resource concerns such as protection of threatened and endangered species, riparian and aquatic habitat, and water quality. These schedules are necessary to ensure an orderly transition for completion of rangeland project decisions through both the short term (1–3 years) and long term (10–13 years). It it not the intent of the transitional procedures proposed in this section to avoid or delay the completion of rangeland project decisions, but rather to complete rangeland project decisions on all allotments within 13 years from the effective date of the final rule.

Paragraph (c)(6) of this section clarifies that where grazing permits are issued under the transitional procedures of paragraphs (c) (1), (2), (3), and (4), the timely issuance of a grazing permit is an administrative act and not a separate decision subject to additional NEPA analysis and disclosure.

Paragraph (c)(7) of this section states that adoption of these rules would not compel the agency to immediately initiate rangeland project planning and decisionmaking. This provision is necessary to prevent any claim or assertion that, upon the effective date of this rule, the agency would intend to immediately initiate rangeland project decisions for issuance or renewal of all grazing permits. This provision also provides the necessary transitions from the current allotment-by-allotment decisionmaking process to a more streamlined process for future decisionmaking in an orderly and planned manner.

Paragraph (d) of § 222.3 of the proposed rule requires the authorized officer to delineate lands suitable and authorized for grazing use into allotments. The introductory text retains the current policy of including nonfederal lands in an allotment where doing so would form logical management units. Proposed paragraph (d)(1) would require that maps delineating allotments must be on file at the office of the District Ranger. Proposed paragraph (d)(2) would make clear that the delineation of allotments is merely an administrative act and not a decision subject to further NEPA analysis for disclosure of environmental effects. The intent is to eliminate confusion and future disputes over the decision point, the requisite environmental disclosure requirements, and administrative appeal opportunities.

In summary, proposed § 222.3 would make clear that planning and decisionmaking for National Forest System rangeland management, including authorization of livestock grazing use, is a two-level process, just as is the case for all other National Forest resources. As a consequence, the agency would discontinue the use of the allotment management plan. Additionally, this section signals the agency's intent and provides the

foundation for moving toward an ecological approach to rangeland management decisions. Under an ecological approach, the agency will seek to focus on appropriate larger geographic scales for ecological analysis purposes, while incorporating and building on the best science available to ensure the sustainability of the land to continue to produce goods and services to meet public demand.

In the ANPR, the Department specifically asked the public for input on appropriate scales of rangeland ecosystem analysis. Public comments received support a broader scope of analysis and planning with consideration of the human element of the ecosystem. However, mandating a particular hierarchical level of analysis for planning is inappropriate in this proposed rule on rangeland management. The framework for overall agency land management planning and planning for all resources must be set out in a cohesive and integrated way in the agency's land management planning regulations in Part 219. Accordingly, the comments received on the scales of rangeland ecosystem analysis and planning in response to the ANPR on rangeland management will be considered in the agency's development of a proposed revision of the land management planning regulations, which is now underway.

Proposed Section 222.4—General Provisions Applicable to All Grazing Permits.

This section of the proposed rule establishes some of the fundamental ground rules governing grazing on National Forest System land and other lands under Forest Service control.

Section 222.4(a) of the proposed rule is essentially the same as § 222.3(a) of the current rule and provides that grazing activities require written authorization in the form of a grazing permit. Similar to current practice, certain minor exceptions for temporary grazing are allowed under proposed § 222.6(c).

At § 222.4(b), the proposed rules describes the permit as a privilege subject to the terms and conditions contained therein. As in the current rule, § 222.3(b), proposed § 222.4(b) states that the grazing permit does not convey any right, title, or interest in United States lands, resources, or permanent range improvements to the permittee. This is entirely consistent with statutory and case law which, for nearly a century has recognized grazing permits as a license or privilege to use federal lands for grazing activities which can be revoked at anytime without requiring the payment of compensation.

Proposed § 222.4(c) states that the issuance of the grazing permit implements an existing decision to authorize grazing and that issuance of the permit is an administrative act that is not a decision point subject to NEPA procedures as provided in § 222.3(b)(3) of this subpart. This provision is intended to eliminate the confusion of permittees and the public regarding the role of the grazing permit in management of National Forest System rangelands.

Proposed paragraph (d) would require the authorized officer to prescribe the terms and conditions of each grazing permit in accordance with applicable law and administrative direction. Paragraph (d)(1) of § 222.4 of the proposed rule parallels the intent of the current rule at § 222.2(c). However, in contrast to the current rule, proposed paragraph (d)(1) makes clear that terms and conditions of the permit include applicable standards and guidelines from the forest plan and/or from applicable rangeland project decisions. This provision of the proposed rule replaces the allotment management plan as the basis of the terms and conditions of the permit and ties the permit terms and conditions to the two-tiered planning and decisionmaking process, as discussed earlier.

The current regulations recognize an allotment management plan (AMP) as the mechanism for carrying out forest plan direction on a grazing allotment. The proposed rule would phase out the AMP as a source of direction for rangeland management and grazing use and, instead, make applicable standards and guidelines from forest plans and/or from applicable rangeland project decisions a part of the terms and conditions of the grazing permit. This provision is significant in that it would provide the means for ensuring that those current grazing operations authorized without benefit of rangeland project decisions would comply with the direction of forest plans. As previously noted, many of those who submitted comments on the ANPR recommended adoption of local standards and guidelines because they would be relevant to the land being affected by the action. On National Forest System lands, the forest plan and project decisions fulfill this role.

Under paragraph (d)(2) of § 222.4 of the proposed rule, the permittee may be required to collect and submit monitoring, inventory, or other resource information related to the permitted livestock grazing activity. Information of this nature is essential for identifying progress toward forest plan goals and objectives and changes in operational practices which may be necessary. This information is vital to proper rangeland management and in some instances the permittee is in a better position to gather the information than the agency.

Paragraph (e) of § 222.4 of the proposed rule allows the authorized officer to issue written annual operating instructions that document temporary stocking adjustments and/or provide additional direction necessary for proper management of the range resource. While not explicitly covered in the current rule, this is a long-standing agency practice provided for in the agency's internal directive system and in part 2 of the term grazing permit (Form FS–2222–10). Until now, most written instructions have been contained in annual operating plans provided to the permittees. These annual operating plans have been the subject of increasing controversy over whether decisions made therein are subject to NEPA procedures. Proposed paragraph (e) would make clear that where operating instructions fall within the scope of the decision authorizing the grazing use and NEPA documentation associated with that decision, a new decision and additional analysis is not required. If, however, they fall outside the scope of the decision authorizing grazing use, additional environmental analysis would be required before those annual operating instructions can be issued.

Annual adjustments documented in operating instructions would be prepared with the involvement of the permittee. This approach conforms to current practices and helps insure permittee involvement and mutual understanding of rangeland management and operational objectives. The agency believes the elimination of annual operating plans and the adoption of operating instructions will reduce current confusion over how grazing use decisions are made and lead to more uniform understanding of grazing permit administration by both agency employees and external groups who are interested in national forest rangeland resources.

Proposed Section 222.5—Term Grazing Permits; Types and Duration

This section of the proposed rule describes the types of term grazing permits which may be issued. This includes term permits, term private land permits, term permits with on-and-off provisions, and grazing agreements. These four types of permits are necessary because of the various grazing

use and land ownership patterns which occur on National Forest System lands.

Proposed § 222.5(a) contains descriptions of the various types of term permits authorized. This same information is covered at § 223.3(c)(1) in the current rule and in the Forest Service directives system. The types of term permits listed in the proposed rule are the same as those provided in the current rule. This section of the proposed rule contains no change in current practice and, therefore, would have no effect on permittees.

Proposed paragraph (a)(1) covers the circumstances where a term permit is appropriate. In addition, a provision for a term grazing association permit, which is presently provided for in Forest Service Manual (FSM) Chapter 2230, would be incorporated into the proposed rule. Proposed paragraph (a)(2) describes a term private land permit which is issued to a qualified applicant who owns or controls land within an allotment. The permit waives exclusive grazing use of the private land to the United States and in return the applicant is authorized to graze livestock on the allotment. The amount of livestock grazing use authorized in a term private land grazing permit is determined by the authorized officer. A term permit with on-and-off provisions described in proposed paragraph (a)(3) is issued when the grazing area includes grazing lands other than the lands under Forest System control. Under this type of permit, the livestock graze concurrently on National Forest Service lands and other lands controlled by the applicant. Proposed paragraph (a)(4) describes the circumstances when a grazing agreement is appropriate.

Proposed § 222.5(b) establishes the duration of term grazing permits which, normally, is for a 10 year period. Proposed paragraph (b)(1) contains direction presently found in § 222.3(c)(1) of the current rule which describes those instances when a term grazing permit on National Forest land in the 16 contiguous Western States may be issued for a period less than the maximum ten year time period as provided for in FLPMA. Under proposed paragraph (b)(2) of this section, the authorized officer may issue permits on all other National Forest System lands or other lands under Forest Service control for up to a ten year period as determined to be in the best interest of sound land management.

Propsed Section 222.6—Authorization of Temporary Grazing

The proposed rule provides that, when term permits are not appropriate for administration of livestock grazing, a paid or free temporary permit can be issued or free grazing without a permit can be allowed. Issuance of these permits or allowance of free use is dependent upon the availability of forage.

Current regulations found in § 222.3(c)(2) provide for either a temporary or a livestock use permit depending on the particular situation. Section 222.3(c)(2)(i) provides for temporary grazing permits to be issued for a period of up to one year for a variety of purposes. Section 222.3(c)(2)(ii) provides for the issuance of livestock use permits for periods up to one year for a variety of purposes.

Using two types of permits to cover temporary livestock grazing uses is often confusing and requires maintenance and use of two policies and procedures, applications, and permits. Thus, the Department proposes to eliminate livestock use permits, combine them with temporary permits, and extend the term period for temporary permits for up to three years. These changes will streamline and simplify the issuance of temporary permits.

The proposed rule eliminates the provision in the current rule at § 222.3(c)(2)(ii)(D) for free livestock grazing use for persons who reside on ranch or agricultural lands within or contiguous to National Forest System lands for not to exceed 10 head of owned or kept livestock whose products are consumed or whose services are used directly by the family of the resident who distinctly needs National Forest System lands to support such animals. The proposed rule does not retain this provision since a review of permit administration revealed no use of or need for this authority.

Paragraphs (a)(1)–(4) of § 222.6 of the proposed rule provide the same requirements as found in the current rule at § 222.3(c)(2)(i)(A)–(D) for the issuance of temporary permits for a variety of purposes. The proposed rule makes not substantive change from the current rule; however, the text of these paragraphs is revised and reduced for clarification.

The current rule specifies that temporary permits may be issued in times of national or regional drought or emergency where such use would not result in permanent resource damage. This provision is retained in this proposed rule at § 222.6(a)(5), but is revised. Limiting this provision to drought or emergency that is "national or regional scope" is excessive to the qualifications established for temporary grazing use of other lands by permitted livestock from an affected allotment. Additionally, the qualifying phrase "* * * where such use would not result in permanent resource damage," would be removed since this qualification is unnecessary. Part of a determination that the capacity exists to graze animals is that any such grazing use permitted will be done in accordance with appropriate standards and guidelines in a forest plan or rangeland project decision to prevent resource damage.

Paragraphs (a)(6) and (a)(7) of § 222.6 of the proposed rule provide the same requirements as found in the current rule at § 222.3(c)(2)(ii) (A) and (H), concerning temporary permits for transportation livestock an animals used for breeding purposes. The proposed rule makes no substantive changes from the current rule; however, the text of these paragraphs is revised and reduced for clarification.

The current rule at § 222.3(c)(2)(ii)(C) allows free or paid permits for trailing livestock that graze along the way as they cross National Forest System lands. Issuing free permits for such use is not in the public interest and must be closely administered to prevent excessive use and potential resource damage. As a result, the proposed rule at § 222.6(a)(8) would allow authorized officers to issue only paid temporary permits for trailing livestock across National Forest System lands and other lands under Forest Service control. This should not result in a substantial increase in the cost of business since, in many instances, there may be alternatives to trailing that do not require the payment of a grazing fee.

Paragraph (b) of this proposed section would allow an authorized officer the discretion to issue free or paid temporary permits where the primary documented objective is managing vegetation to meet a resource objective other than livestock forage utilization. Where the primary land management objective is to "manipulate vegetation" (as opposed to livestock production), the current regulations at § 222.3(c)(2)(ii)(I) require that a fee be charged for this use. The agency believes this fee requirement is an impediment to effective vegetative management. In some areas, vegetation, such as chaparral, is best managed by grazing livestock. Permitting free use could be a cost-effective way to manage fuelbreaks, tree plantations, or other areas where it is desirable to remove vegetation periodically. In these situations, grazing can be used instead of more costly methods involving herbicides, fire, or mowing. The temporary permits for vegetation management issued under this authority would not replace existing grazing permits where the primary purpose if

livestock production and the permittee pays a fee.

The current rule at § 222.3(c)(2)(ii)(E) provides for free permits to campers and travelers for the livestock used during the period of occupancy. This same provision is carried forth into the proposed rule at paragraph (c)(1) of proposed § 222.6. Livestock use under this provision does not included livestock being used by campers and travelers permitted under the provisions of paragraph (a)(6) of this section which covers use by transportation livestock for commercial purposes.

The current rule at § 222.3(c)(2)(ii)(B) allows for free or paid grazing for research purposes and administrative studies but requires the issuance of a permit. Under the proposed rule at § 222.6(c)(2), authorized offices may provide for this type of grazing use free of charge without a written permit. Experience shows that the amount of grazing permitted under this authority is insignificant. Most of the livestock involved in such studies are owned by permitted and are authorized and paid for under a term grazing permit. Where a university or other research entity owns or borrows the livestock used in a study, it is in the interest of the United States to allow such use free of charge and without a written permit, since the public will benefit from the information gained from the research.

Paragraph (c)(3) of proposed § 222.6 would allow authorized officers to grant free grazing with no permit to permittees for horses, mules, or burros that are used to support the management of permitted livestock. This type of free grazing use is appropriate when the animal is not grazed full time on the allotment but is used occasionally as a work animal during the grazing season. This is a revision of the provision of the current rule at § 222.3(c)(2)(ii)(F), which allows for this type of permitted use on either a free or paid basis.

Proposed Section 222.7—Requirements Applicable to Grazing Permits

This section of the proposed rule contains the requirements which must be met in order to hold a term or temporary grazing permit. Proposed paragraph (a) lists the requirements for term and temporary grazing permits while paragraph (b) covers all additional requirements applicable specifically to term permits. The proposed rule is similar in content to the current rule at § 222.3(c)(1) and existing agency direction with two primary differences. First, the proposed requirements would enable foreign corporations to hold grazing permits, and second, this proposed rule would establish a satisfactory record of performance under previous or currently held federal grazing permits as a requirement for the issuance or renewal of a grazing permit.

Proposed § 222.7(a)(1) would limit issuing term and temporary grazing permits to private individuals, grazing associations and districts, business concerns, or tribal governments, making it clear that government agencies are not eligible to receive term or temporary grazing permits. This is consistent with § 222.3(c)(1) of the current rule.

Paragraph (a)(2) of § 222.7 of the proposed rule requires eligible individuals or entities seeking a grazing permit to make written application, using one of the forms listed in § 222.12. Currently this requirement is established in the Forest Service Grazing Permit Administration Handbook, FSH 2209.13, section 14, which provides that applicants must submit an application and any other information requested by the authorized officer in order for the officer to determine that all permit requirements have been satisfied. This requirement belongs with other requirements in the rules rather in agency directives.

Paragraph (a)(3) of § 222.7 of the proposed rule requires that applicants, permittee(s), and affiliates(s), have a satisfactory record of performance under previous or currently held federal grazing permits to be eligible for a permit. An applicant, permittee, or affiliate, if any, with a history of prior grazing use on federal lands that has had a Forest Service grazing permit canceled, in whole, pursuant to § 222.10(b) (2), (3), (4), or (5), or other federal grazing permits cancelled for similar reasons within 36 months prior to application, would be presumed to have an unsatisfactory performance record. This provision is a substantive change from the existing rule and would conform with the intent of FLPMA which requires that, in order to be given first priority for receipt of a new grazing permit, existing permittees must be in compliance with the terms and conditions in the permit and any applicable rules and regulations. Under the current rule, permittees who have their permits cancelled because they have violated their permit terms and conditions may, be reorganizing as a new entity, remain eligible to hold a permit provided that they are otherwise qualified. This situation is contrary to the public interest and to the intent of FLPMA and would be remedied by this proposed § 222.7(a)(3) which would protect the public interest by allowing only those who have satisfactory performance records to hold a grazing permit. In determining eligibility for a new permit or for reissuance of a permit, under the proposed rule an authorized officer would consider current performance under federal grazing permits held at the time of application as well as performance under other federal grazing permits held within the past 36 months. A 36-month period is believed to be a reasonable period of time to consider in establishing a record of performance under grazing permits. This consideration would extend to any affiliates of the applicant or permittee and would include review of all federal grazing permits or leases held by those parties.

Section 222.7(b) of the proposed rule establishes additional requirements that are applicable only to term grazing permits. Specifically, § 222.7(b)(1) would establish that term permits may only be issued to the following:

(1) A citizen of the United States.

(2) An alien who has filed a petition for naturalization with the proper authorities.

(3) A corporation or other business concern that is authorized to do business in the state where the graving activity is sought or is otherwise licensed to do business in that state.

(4) Tribal governments.

Currently, the Forest Service Manual (FSM 2231.21) identifies who is eligible for a grazing permit. These eligibility standards belong with the other requirements in regulation, not in an internal agency directive, and, therefore, and being incorporated in the proposed rule at § 222.7(b). The current Forest Service eligibility requirements do not allow corporations or other business concerns to hold a grazing permit unless 80% of the capital stock is held by American citizens (FSM 2231.21). This policy would be eliminated by adoption of the proposed rule, which at § 222.7(b)(1)(iii) would allow foreign corporations or other business concerns to hold a grazing permit if they are licensed to do business in the state in which the grazing permit is sought. This change will make eligibility requirements for graving permits consistent with requirements for all other Forest Service permits and with those of the Bureau of Land Management.

Section 222.7(b)(2) of the proposed rule would establish that an applicant or permit holder must own the livestock to be graved under permit and such base property as required by the Forest Service. This requirement is the same as that in § 222.3(c)(1)(i) of the current rule. However, in contrast to the current rule, the proposed rule would allow for

five exceptions to the livestock ownership requirements.

The first exception is at proposed § 222.7(b)(2)(i) and would allow livestock owned by children of permittees to be run under the parents' term grazing permit for up to 50 percent of the permitted numbers. The inclusion of this section makes an existing Forest Service practice currently authorized in the Forest Service Grazing Permit Administration Handbook (FSH 2209.13, sec. 12.22) a part of the grazing regulations. The intent of this exception is to allow children who own livestock for 4–H, Future Farmers of America, or similar projects, or those who want to build up their own livestock herd and ultimately take over the family ranch operation, to run livestock under the parents' permit and to encourage family operations.

The second exception, § 222.7(b)(2)(ii) of the proposed rule, recognizes that where the permit or agreement is issued to a grazing association or district, the members of the association or district must own the requisite base property and livestock as specified in the term permit or grazing agreement. This is consistent with the intent of the current rule (§ 222.7) and agency practice as provided in the Forest Service Grazing Permit Administration Handbook (FSH 2209.13, Chapter 20). Thus, the agency has concluded this provision belongs in the rule.

Under the third exception, § 222.7(b)(2)(iii) of the proposed rule, holders of term private land permits would not be required to own the livestock or base property under Forest Service permit. This is current agency practice as provided in the Forest Service Manual (FSM 2231.22c). However, it belongs in the rules and, accordingly, is incorporated.

The fourth exception, at G222.7(b)(2)(iv) of the proposed rule, provides that term permit holders for developing ranges on National Forest System lands in the Eastern States would not be required to own livestock or base property for the initial permit, but must meet the livestock and base property ownership requirements for permit renewal. This provision, which is not in the current rule, would allow new livestock operators to get into the livestock business incrementally. This flexibility is desirable in the Eastern States where the Forest Service administers areas where vegetation can be better and more economically managed through livestock grazing rather than by spraying, mowing, or burning.

The fifth exception is found at proposed § 222.7(b)(2)(v) and would allow a permittee who disposes or loses control of all or part of the base property but retains the permit up to one year, to meet base property requirements. The proposed rule is very similar to the current rule at § 222.3(c)(1)(v) but is reworded to clarify its intent and to recognize that the loss of control of the base property can result from actions other than disposal through sale.

Proposed § 222.7(b)(3) would grant authorized officers authority to impose additional requirements for term permits including, but not limited to, nonuse of permits and upper limits on the total number of permitted livestock. This is a continuation of existing authority currently located in § 222.3(c)(1)(vi).

Proposed Section 222.8—Waivers and Escrow Waivers

This section sets out the circumstances where term grazing permits may be waived in favor of another entity, where escrow waivers may be executed, and the Forest Service role in each. Although escrow waivers have long been allowed through Forest Service Manual direction, they have not been addressed in the grazing regulations.

Proposed § 222.8(a) would include provisions for the waiver of term grazing permits to the United States in favor of another entity. The current rule at § 222.3(c)(1)(vi)(F) provides for the establishment of conditions where waived grazing privileges may be confirmed in favor of a new applicant. The proposed rule at § 222.8(a)(1) would include the current conditions established in the Forest Service Manual (FSM 2230) for waiver of term grazing permits for National Forest System lands in the Western States.

In addition, the proposed rule at § 222.8(a)(2) would provide that an existing term grazing permit for National Forest System lands in the Eastern States, issued under the noncompetitive procedures of 36 CFR 222.53, may be waived to the United States in favor of the permittee's spouse or child who acquires title to base property or permitted livestock. If such a permittee dies and the permit was not waived in favor of the spouse or child, the permit reverts to the United States and would be competitively offered to other applicants pursuant to § 222.5(a)(1). This proposed provision merely placed into the rule what is the current practice in the Eastern States and clarifies the status of the permit in event of a permittee's death.

Under proposed § 222.8(a)(3), the holder of a permit for National Forest System Lands in the Eastern States, issued as a result of the competitive bidding process authorized in the current rule at 36 CFR 222.54, could not waive a permit. This provision reflects current Forest Service practice in the Eastern States and is necessary to ensure continuation of the competitive bidding process at 36 CFR 222.54.

Proposed paragraph (b) addresses escrow waivers. The Forest Service has been allowing permittees to execute escrow waivers in favor of lenders since 1938 under a memorandum of understanding between the Farm Credit Administration and the Department of Agriculture. That agreement is no longer in effect; however, a new memorandum of understanding was agreed to by the Forest Service and six western Farm Credit Banks on December 21, 1990.

The current procedures governing escrow waivers are set forth in FSM Chapter 2230, section 2231.82. Under these procedures, a permittee who mortgages base property or permitted livestock waives all grazing permit privileges (except the privilege of continuing to graze livestock) to the United States to be held in escrow for a named lender. If the lender forecloses on the mortgaged property, the lender or a subsequent purchaser who acquires the foreclosed property has first priority for receipt of a new term grazing permit. This policy would be incorporated in the rules at § 222.8(b).

Proposed Section 222.9—Renewal of Term Grazing permits

This section of the proposed rule specifies the qualifications and priority for reissuance of a term permit. The current rule at § 222.3(c)(1)(vi) merely authorizes the Chief of the Forest Service to prescribe the provisions and requirements under which term permits will be reissued, but does not set out those provisions in the rule. In the proposed rule, renewal of term permits is addressed in a separate section to ensure that all provisions related to renewal can be easily found in one place in the rule.

Paragraph (a) of proposed § 222.9 states that current permit holders must meet the requirements of § 222.7 to qualify for renewal of a term permit, and paragraph (b) provides that current permit holders on National Forest System lands in the Western States have priority for receiving new term permits when the current permit expires. Under paragraph (c) of proposed § 222.9, a new permit would be issued to the current permit holder if the agency must cancel an exiting permit to respond to changing law, executive order, regulation, or resource condition. This commitment to issue a new permit is necessary to

protect permittees' interest when events beyond their control result in the need to establish new terms and conditions of the grazing permit.

Proposed paragraph (d) provides a needed cross reference that notes that holders of expired term permits on the National Forest System lands in the Eastern States, issued under the competitive bidding process, are subject to the renewal procedures in 36 CFR part § 222, Subpart C.

Proposed paragraph (e) makes clear that term permits that are renewed are subject to the same duration provisions as set out in § 222.5(b).

Proposed Section 222.10—Cancellation Suspension, and Modification of Grazing Permits

This section of the proposed rule contains the provisions found in the current rule at § 222.4. In addition to editorial changes and reorganization of the text for clarity, the proposed rule makes several changes from the current rule that take into account important rangeland resource management needs.

Areas of emphasis that were not specifically stated in the current rule include cancellation, suspension, or modification of a permit to correct documented resource damage [§ 222.10(b)] and for unauthorized use [§ 222.10(b)(3)]. Documented resource damage refers to damage occurring as a result of the livestock grazing. If permittee-owned livestock exceed the permitted numbers or are on the allotment at times or in locations not authorized under the permit, they are considered unauthorized livestock. This change replaces the current excess livestock designation and is consistent with the current Bureau of Land Management regulations.

Proposed § 222.10(b)(1) strengthens direction in the current rule at § 222.4(a)(3) by explicitly providing for a permit to be canceled, suspended, or modified, in whole or in part for failure to pay grazing fees. The proposed rule includes failure to pay unauthorized use and service charges in the same category.

Cancellation of permits for the purpose of reissuance of a new ten year term permit is provided for in both the current and proposed rules. The current rule § 222.3(c)(1)(iii) states that a permit may be cancelled at the end of the midyear of the decade for reissuance of a new permit. The term grazing permit also currently contains a clause which states that an authorized officer may cancel the permit at the end of the midyear of the decade so that it may be updated. The clause provides that, in such a case, a new permit will be reissued to the existing permit holder. This permit clause causes authorized officers to cancel all the term permits needing updating at the same time and reissue them. This practice results in inefficiency and delays in reissuing permits. Therefore, paragraph (a)(4) of this section of the proposed rule retains the authority to cancel permits to update their terms and conditions but does not limit the point at which this could be done. This charge would allow authorized officers to update permits over a period of time in an efficient and timely manner. Paragraph (a)(4) also stipulates that when a permit is cancelled under this provision, issuance of a new permit is preceded by a rangeland project decision and NEPA documentation.

The current rule at § 222.4(a)(6) authorizes the Forest Service to cancel or suspend a permit if the permit holder is convicted of failing to comply with certain Federal laws or regulations or state laws when exercising the grazing use authorized by the permit. The proposed rule at § 222.10(b)(5) would change the words "when exercising" to "related to." This proposed change would clarify that the Forest Service is authorized to cancel or suspend a grazing permit when a permittee is convicted of violating the listed laws even though the violation may have taken place outside the grazing season or the specific allotment, but there is a connection between the violation and the grazing use authorized by the permit. The current rule focuses on the permitted grazing allotment and on the permitted season of use. This clarification is needed so permittees, agency personnel, and the public understand the agency's intent, to broaden this provision of the rule beyond the grazing allotment and season of use specified in the grazing permit.

The proposed rule would incorporate an existing procedure outlined in the Forest Service Grazing Permit Administration Handbook, FSH 2209.13, section 16.2, that requires an authorized officer to notify a permittee in writing of an alleged permit violation and that the officer is considering taking action against the permit. Under § 222.10(d) of the proposed rule, the permittee would be allowed up to 30 days to respond to allegations.

Proposed Section 222.11—Grazing Permit Fees and Other Charges

This is a new section of the proposed rule that would direct authorized officers to establish grazing fees and charges for livestock grazing use in accordance with this section of the proposed rule and the rules in subpart C—Grazing fees of part 222. Additionally, this section would set out the charges to be assessed for unauthorized use and provide for the assessment of a service charge for recovery of administrative costs for processing actions related to grazing permits.

Proposed § 222.11(a) would permit recovery of administrative costs associated with issuance of grazing permits. Under the current regulations, the Forest Service does not assess a service charge to recover the costs of processing permit actions initiated by an existing or prospective permittee or processing of actions related to permit violations. Pursuant to 31 U.S.C. 9701, the Forest Service believes it should recover the cost of providing services to users who seek a special privilege or use, especially when costs of responding to permittees or applicants exceed those normally incurred by the agency. Paragraph (a) would make clear that the Forest Service is authorized to assess a service change to recover the administrative and clerical costs for processing those permit actions initiated by an existing permittee or applicant. Examples of these types of actions are the modification of an existing permit solely at the request and benefit of the permittee and issuance of a new permit to a qualified applicant. It is estimated that out of the approximately 9,100 permittees on the National Forest System, 2,000 may initiate a permit action in any one year. The average service charge is estimated to be about $100 per action. It is the agency's intent to issue guidelines to its employees through the agency directive system establishing the service charge, which would include the processing costs and be adjusted periodically to reflect any changes in these costs.

Proposed § 222.11(b) makes clear that unauthorized use is a violation of the terms and conditions of the permit and establishes that authorized officers shall charge permittees and other livestock owners for any unauthorized use. Charges for unauthorized use are in addition to grazing fees assessed for authorized grazing use as prescribed in subpart C.

Proposed § 222.11(c) provides for determining if unauthorized use is willful or nonwillful. If unauthorized use is determined to be willful, the authorized officer is directed to determine if the offender has been responsible for other incidents of willful unauthorized use within a period of 36 months preceding the subject incident, and therefore is subject to the higher

rate charge of paragraph (d)(3) of this section.

Proposed § 222.11(d) establishes that the charge for unauthorized use will be the average monthly animal unit month (AUM) grazing fee rate for the 17 Western States published annually by the National Agricultural Statistical Service, U.S. Department of Agriculture. Direction for determining charges for unauthorized use is covered in the current rule in subpart C—§ 222.50(h). Since charges for unauthorized use are penalties rather than fees, this direction is more appropriately covered under Subpart A of the proposed rule rather than Subpart C where it is currently located.

Proposed § 222.11(d)(1) provides that livestock owners responsible for nonwillful unauthorized use would be charged the unauthorized use rate. This section also provides for the charge to be waived if certain criteria outlined in the proposed rule are met. In the case of a waiver there would be no unauthorized use or service charges to the permittee when the situation has been resolved to the satisfaction of the authorized officer. Paragraphs (2) and (3) of proposed § 222.11(d) provide for charging two times the unauthorized use rate for willful unauthorized use and three times the unauthorized use rate for repeated willful unauthorized use. When unauthorized use is found to be willful, or repeatedly willful, charges will be assessed for the full cost of all resource and property damage resulting from the unauthorized use and all reasonable expenses incurred by the United States in detecting, investigating, and resolving such unauthorized use. In recognition that Forest Service financial penalties have not been effective as a deterrent in preventing unauthorized use in the past, this section of the proposed rule represents a significant increase in penalties for unauthorized use. Strong support for this section of the proposed rule was contained in the public comments on the ANPR. This support was based on the need for Forest Service enforcement of the terms and conditions of grazing permits and for strong penalties for willful unauthorized use; also, for the recognition that some situations of unauthorized use are unintentional and the appropriate resolution does not entail a financial penalty.

Proposed Section 222.12—Information Collection Requirements

While this is a new section in the proposed rule describing information requirements associated with the application and administration of grazing permits, the type of information requested has been routinely collected by the agency in its grazing permit administration activities for many years. For a description of the information requirements associated with this rule, see the discussion of "Information Requirements" at the end of this "Supplementary Information" section.

Proposed Section 222.13—Improvements

The current regulation at § 222.9 authorizes the Forest Service to grant permission to individuals, organizations, or other agencies to perform range improvement work on National Forest System lands and other lands under Forest Service control. Additionally, the current rule allows authorized officers to require permittees to maintain range improvements to specified standards. The proposed rule at § 222.13 includes the provisions of the current rule but would be reorganized for ease of use. The only substantive changes embodied in this section is to incorporate provisions related to the Range Betterment Fund into this section of the proposed rule (currently at § 222.10) and to conform the rules prohibiting adjustment of fees or charges for range improvement work to the new rules governing grazing fees in the East adopted in 1990.

The current rule at § 222.10 details background and direction for range development through the Range Betterment Fund. Direction presently contained in the current rule at § 222.10 has now more appropriately been incorporated into the Forest Service Manual (FSM 2240). Therefore, direction for use of the Range Betterment Fund in the proposed rule is greatly reduced from that in the current rule and is incorporated in paragraph (c) of proposed § 222.13.

The current rule at § 222.9(d) prohibits adjusting grazing fees or charges for number of head months to compensate permittees for range improvement work performed on National Forest System lands with the exception of National Grasslands and land utilization projects. On January 26, 1990, FR 2646, Vol. 55, No. 18, Subpart C of part 222 was amended to allow grazing fee credits for range improvements on National Forest System lands in the Eastern States to facilitate the development of ranges. Therefore, the proposed rule at § 222.13(d) makes clear where the use of grazing fee credits or adjustments for rangeland improvement work is authorized within the National Forest System. Proposed paragraph (d)(1) references the specific sections of Subpart C of part 222 authorizing grazing fee credits for rangeland improvements on National Forest System lands in the Eastern States. Proposed paragraph (d)(2) continues the provision of the current rule at § 222.9(d) authorizing the adjustment of annual grazing fees on National Grasslands or Land Utilization Projects to reflect the cost to a grazing permittee of complying with required conservation practices. Proposed paragraph (d)(3) then specifically states that adjustment in grazing fees charged in exchange for rangeland improvement work is not authorized on all other National Forest System lands except as provided in proposed paragraphs (d)(2) and (d)(3).

Proposed Section 222.14—Compensation for Permittees' Interest in Range Improvements

This section of the proposed rule provides for and sets the conditions under which permittees may be compensated for investments in existing rangeland improvements in the event of grazing permit cancellation.

The proposed rule at § 222.14(a) would incorporate the provisions of the current rule § 222.6(a) which directs that whenever a term permit for grazing livestock on National Forest lands in the 16 contiguous Western States is cancelled, that the current permittee shall be compensated for the current value of any authorized permanent range improvements they placed or constructed on the lands. This situation applies when the permit is cancelled, in whole or in part, to devote the land to another public purpose, including disposal. This provision is applicable only when lands are actually permanently excluded from grazing and does not apply in the situation when a grazing permit is partially reduced due to resource conditions but grazing use continues at a reduced level. The value of these range improvements may not exceed the fair market value of the terminated portion of the permittee(s) interest in the improvement.

Questions have arisen concerning the status of former permittees and any interest they might have had in a range improvement. To address these questions, the proposed rule at § 222.14 (b) and (c) would state that those permittees who had waived permits or allowed permits to expire prior to receiving notice of cancellation of grazing in an area would not be entitled to compensation under this section. This is intended to clarify the direction in the current rule at § 222.6(b) concerning permittees who have waived their permit in connection with the sale of permitted livestock or base property.

Proposed Section 222.15—Recognition and Cooperation With Local Livestock or Grazing Associations and Districts

This section of the proposed rule deals with the recognition of and subsequent issuance of term permits to local livestock or grazing associations and the requirements that must be met and adhered to in order to maintain that recognition.

Section 222.7(a) of the current rule authorizes and sets out procedures for Forest Officers to recognize and cooperate with local livestock associations. Section 222.15 of the proposed rule covers the same information in the current rule at § 222.7(a); however, the text has been edited for clarity and contains two modifications of existing practice.

Historically, a clause has been included in term permits which specified that grazing association or district members must address their grievances to the association or district in accordance with the term permit and the governing constitution and bylaws of the organization. This requirement should be in the rule. Accordingly, the proposed rule would include this longstanding grievance process at § 222.15(a)(2).

The current rule at § 222.7(a)(4) allows an authorized officer to withdraw recognition of an association if it does not hold an annual or special meeting during a 24-month period. However, if an association does not meet at least once a year, the organization cannot effectively assist in the management of allotment(s), which is the purpose of the Forest Service cooperating with the association. Therefore, the proposed rule at § 222.15(c) would require an association or district to meet at least once every 12 months. Failure to meet at least annually would be grounds for withdrawal of recognition. The proposed rule further clarifies that the loss of recognition would result in cancellation of the grazing permit to the association or district.

Proposed Section 222.16—Cooperation with National, State, and County Livestock Organizations and Others

This section of the proposed rule encourages Forest Service officials to cooperate with national, state, and county livestock organizations, other agencies, institutions, organizations, and individuals having an interest in the protection and management of the rangeland resources on National Forest system and private lands. The proposed rule is very similar to information in the current rule found in § 222.7(b), (c), and (d), and § 222.8. The text of these sections of the current rule has been edited for clarity and consolidated into a revised section of the proposed rule at § 222.16. Additionally, § 222.11 of the current regulation, providing direction for the establishment and operation of grazing advisory boards would be removed, as the statutory authority mandating such boards has expired.

In addition to editorial changes for clarity, proposed § 222.16(b) would make clear that cooperation with other agencies and units of government is subject to the availability of appropriated funds. Also, the word "farm" would be eliminated from the term "noxious farm weeds" in proposed § 222.16(b) (1) and (2) to broaden the term to include undesirable plant species which may occur on rangelands or farm (cultivated) lands. Animal damage management is added to paragraph (b)(3) as a specific activity in addition to surveillance of pesticide programs for which the Forest Service cooperates with the Animal and Plant Health Inspection Service.

The authority for Grazing Advisory Boards, established under the Federal Land Policy and Management Act of 1976, expired December 31, 1985. Thus, the current regulations at § 222.11 concerning Grazing Advisory Boards are obsolete and need to be removed. However, the proposed rule at § 222.16(d) would note that the Secretary has the authority, under the Federal Advisory Committee Act (5 U.S.C. app. 1), and the implementing regulation at 41 CFR part 101–6.10, and the Food and Agriculture Act of 1977 (7 U.S.C. 2281, et seq.), to establish advisory boards reflecting a variety of points of view and resource interests to advise the Forest Service on management of the resources of the National Forest System including forage production.

Other Considerations

In addition to the changes noted in the preceding section-by-section discussion of the proposed rule, gender specific references have been identified throughout the current rule and eliminated. Also, wherever possible, the language—but not the intended meaning—of the existing rule has been revised for clarity and ease of reading; for example, text written in passive voice has been rewritten in active voice whenever possible. In addition, the organization and arrangement of the sections of the rule have been revised for easier use by permit holders, agency personnel, and other readers. Publication of the final rule will require concurrent modifications in the standard conditions and clauses of grazing permit forms.

Public comment on this proposed rule, is invited and will be considered in adoption of the final rule. Due to the great volume of comments anticipated on this proposed rule the Department requests that reviewers identify the specific section and paragraph label for the regulatory text on which they are commenting. Specific statements of what regulatory text the reviewer feels should be modified, and the reasons for the recommended changes, are encouraged. By separate rulemaking, the Department also will propose a revision in the system used to determine the fees for grazing livestock on National Forest System lands in the Western States.

Redesignation of Existing Rule

The following redesignation table systematically lists the old CFR numbers with the new CFR numbers.

REDESIGNATION TABLE

Old section	New section
	222.1.
222.1	222.2.
222.2	222.3.
	222.4 (Partial).
222.3	222.3 (Partial).
	222.4.
	222.5.
	222.6.
	222.7.
	222.8.
	222.9.
	222.10 (Partial).
222.4	222.10.
	222.11.
	222.12.
(Note: no §222.5 in the current rule.).	
222.6	222.14.
222.7	222.15.
	222.16 (Partial).
222.8	222.16.
222.9	222.13.
222.10	222.13.
222.11	

Because the current rule is so comprehensively revised and reorganized in the proposed rule, it is not practical to provide a full derivation and distribution table for this subchapter. However, as an aid to readers the agency has prepared a very simplified chart showing where old sections can be found in the proposed rule and whether that section has been edited in the proposed rule.

Old section	New section
222.1(a) First half of paragraph.	222.3 Addresses and expands.
222.1(a) Second half of paragraph.	222.4 Addresses and expands.

Old section	New section
222.1(b)	222.2 (Edited).
222.2(a)	222.3(d) Addresses and expands.
222.2(b)	222.3 Addresses and expands.
222.2(c) First half of paragraph.	222.3(b)(1)(iii) Addresses and expands.
222.2(c) Second half of paragraph.	222.3(b),(c) and 222.4(b) Addresses and expands.
222.3(a)	222.4(a) (Edited).
222.3(b)	222.4(b) (Edited).
222.3(c)	222.3 (b) and (c) Addresses and expands.
222.3(c)(1) "Grazing permits . . . or less."	222.5(b) Addresses and expands.
222.3(c)(1) "Term grazing . . . policies."	222.5(a)(4) (Edited).
222.3(c)(1) "Term permits . . . requires."	222.5(a) (2) and (3) Addresses and expands.
222.3(c)(1)(i) First half of paragraph.	222.7(b)(2).
222.3(c)(1)(i) Second half of paragraph.	222.3(a) and 222.3(b)(1)(iii) Addresses and expands.
222.3(c)(1)(ii)	222.9(a), (b), and (d) Addresses and expands.
222.3(c)(1)(iii)	222.10(a)(4) (Edited)
222.3(a)(1)(iv)	222.8(a)(1), (2) and (3) (Edited).
222.3(c)(1)(v)	222.7(b)(2)(v) (Edited).
222.3(c)(1)(vi)	222.7 (Edited).
222.3(c)(1)(vi)(A)	222.7(b)(2) (Edited).
222.3(c)(1)(vi)(B)	Unnecessary.
222.3(c)(1)(vi)(C)	222.8 Addresses and expands.
222.3(c)(1)(vi)(D)	222.7(b)(3)(i) (Edited).
222.3(c)(1)(vi)(E)	222.7(b)(3)(ii) (Edited).
222.3(c)(1)(vi)(F)	222.8(a) (Edited).
222.3(c)(2) Entire section.	222.6 (Edited).
222.4(a)(1) and (2)(i) through (iv).	222.10(a)(1) and (a)(2) (Edited).
222.4(a)(2)(v) and (3) through (6).	222.10(b) addresses and expands.
222.4(a) (7) and (8)	222.10(c) (Edited).
222.4(b) (There is no 222.5 in the current rule.)	222.10(a)(3) (Edited).
222.6	222.14 (Edited).
222.7(a)(1)	222.15(a) (Edited).
222.7(a)(2)	222.15(b) (Edited).
222.7(a)(3)	222.15(a) (1) through (4) (Edited).
222.7(a)(4)	222.15(c) (Edited).
222.7(b)	222.16(a) (Edited).
222.7(c) and (d)	222.16(c) (Edited).
222.8(a)	222.16(b) (Edited).
222.8(a) (1) through (3).	222.16(b)(1)(3) and (4) (Edited).
222.8(b)	222.16(b)(2) (Edited).
222.9	222.13 (Edited).
222.10	222.13(c) (edited).
222.10(a)	Unnecessary.
222.10(b)	Unnecessary.
222.11	Obsolete.

Regulatory Impact

This proposed rule has been reviewed under Executive Order 12866 on Regulatory Planning and Review, The agency has determined that in combination with a separate proposed rule to revise grazing fees this proposed rule is a significant regulatory action subject to Office of Management and Budget review. The proposed increase in grazing fees may result in increased operational costs for small ranching businesses that have permits on National Forest System land in Western States.

The Department of Interior has prepared an initial Small Entities Flexibility Assessment analyzing the economic impact of this rulemaking on small entities under the Regulatory Flexibility Act (5 U.S.C. 605 *et seq*). The public may obtain copies of the draft Small Entities Flexibility Assessment by writing the address listed under **ADDRESSES** earlier in the document.

Environmental Impact

The Bureau of Land Management and the Forest Service, as a cooperating agency, are preparing a draft environmental impact statement (DEIS) on rangeland reform as announced in the **Federal Register** on August 13, 1993. Upon completion of the draft EIS, a notice of availability will be published in the **Federal Register** with an opportunity for public comment. Following the comment period on the draft EIS, a final EIS will be developed.

Constitutionally Protected Property Rights

This rule has been reviewed for its effects on private property rights (Executive Order 12630 of March 15, 1988, "Government Actions and Interference with Constitutionally Protected Property Rights" as implemented by the U.S. Attorneys General's Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings). Under the Guidelines, benefits and privileges bestowed by the Government are expressly excluded from the definition of private property rights protected by the Fifth Amendment.

The Congress established that a grazing permit is a privilege through the Granger-Thye Act of April 24, 1950 (Section 19) and the Federal Land Policy and Management Act of October 21, 1976 (Section 402h)). Both of these acts state that the issuance of grazing permits in no way grants any right, title, interest, or estate in or to lands or resources held by the United States.

A long line of court cases has established that a grazing permit is a noncompensable interest since it is a privilege to use federally owned land for livestock grazing purposes. Accordingly, it is a privilege—not a right—which can be withdrawn or canceled by the United States without compensation. Since this rule deals with granting a privilege, Executive Order 12630, which involves the taking of private property for public use, does not apply.

Notwithstanding the above, the Office of General Counsel has prepared a Taking Implication Assessment on grazing activities undertaken by the Forest Service. It was the conclusion of that assessment that regulatory activities associated with Forest Service administration of grazing on National Forest System lands do not present the risk of a taking of private property.

Information Requirements

This proposed rule governing grazing and livestock use on National Forest System lands specifies the information that applicants or permittees must provide in order for an authorized officer to act on a request. This proposed rule would not require permittees to provide any additional information from that already required under the existing rule. As such, this rule contains information requirements as defined in 5 CFR part 1320.

The following Forest Service grazing-related forms: FS 2200–1, Refund, Credit, or Transfer Application; FS 2200–2, Application for Temporary Grazing Permit)—Part 1; FS 2200–12, Waiver of Term Grazing Permit; FS 2200–13, Escrow Waiver of Term Grazing Permit Privileges; FS 2200–16, Application for Term Grazing Permit; and FS 2200–17, Application for Term Private Land Grazing Permit are already cleared for the use that would be required by this proposed rule and have been assigned OMB control No. 0596–0003, with an expiration date of August 31, 1995.

Public reporting burdens for the collection of information by these forms is estimated to average from 9 to 18 minutes per response depending on the form. Extremely complex situations may require up to 2 hours to prepare. The information needed to complete the forms should be readily available from existing livestock and landownership records. Reviewers should send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reduction this burden to:

Chief (2200) Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090; and Forest Service Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

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 may file suit in court challenging its provisions.

List of Subjects in 36 CFR Part 222

Grazing Lands, Livestock, National forests, National grasslands, Range Management, Wildlife, and Wild horses and burros.

Therefore, for the reasons set forth in the preamble, it is proposed to revise subpart A of part 222 of title 36 of the Code of Federal Regulations to read as follows:

PART 222—RANGE MANAGEMENT

Subpart A—Management of Grazing Use Within Rangeland Ecosystems

Sec.

222.1 Purpose and scope.
222.2 Definitions.
222.3 Framework for rangeland planning and decisions.

Grazing Permits

222.4 General provisions applicable to all grazing permits.
222.5 Term grazing permits; types and duration.
222.6 Authorization of temporary grazing.
222.7 Requirements applicable to grazing permits.
222.8 Waivers and escrow waivers.
222.9 Renewal of term grazing permits.
222.10 Cancellation, suspension, and modification of grazing permits.
222.11 Grazing permit fees and other charges.
222.12 Information collection requirements.

Rangeland Improvements

222.13 Improvements.
222.14 Compensation for permittees' interest in rangeland improvements.

Cooperation

222.15 Recognition and cooperation with local livestock or grazing associations and districts.
222.16 Cooperation with national, state, and county livestock organizations and others.

Subpart A—Management of Grazing Use Within Rangeland Ecosystems

Authority: 7 U.S.C. 1011; 16 U.S.C. 472, 551, 572, 580g, 580h, 580l, 1600 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1901–1903, 1751–1752.

§ 222.1 Purpose and scope.

(a) The purpose of this subpart is to set forth the rules by which domestic livestock operations are managed on National Forest System lands and other lands under Forest Service control.

(b) This subpart addresses the following:

(1) The points in the planning and decisionmaking process at which decisions are made on the suitability of rangelands for grazing, on the authorization of livestock grazing, and when compliance with NEPA procedures is required;

(2) General provisions applicable to all grazing permits;

(3) Specific requirements related to issuance and administration of grazing permits;

(4) Standards for the cancellation, suspension, and modification of grazing permits;

(5) Requirements related to structural and nonstructural range improvements; and

(6) Standards for cooperative management.

§ 222.2 Definitions.

The special terms used in this subpart are defined as follows:

Affiliate(s) means a business concern(s) or individual(s) that is sufficiently closely related to a permittee through personal, professional, or other ties that it either controls, has the power to control, or can influence business decisions made by the permittee concerning authorized grazing use on National Forest System lands or other lands under Forest Service control.

Allotment is a delineated area of land available for livestock grazing.

Allotment management plan is a document that specifies the actions to be taken to manage and protect the rangeland resources and reach a given set of objectives.

Authorized officer is a Forest Service line officer who has been delegated the authority to take certain actions related to rangeland management on National Forest System lands and other lands under Forest Service control.

Base property is land and improvements owned and used by a grazing permittee for a farm or ranch operation and specifically identified by a permittee, in order to qualify for a term grazing permit.

Escrow waiver is a document by which a permittee, who has mortgaged permitted livestock or base property, waives all privileges associated with a grazing permit, except the privilege of continuing to graze livestock, to the United States to be held in escrow for the lender.

Grazing permit is a document authorizing livestock use of National Forest System lands or other lands under Forest Service control.

Livestock means foraging animals kept or raised for livestock production, pleasure, or other use.

National Forest System lands means the National Forests, National Grasslands, Land Utilization Projects, and other lands, waters, or interests therein administered by the Forest Service or designated for administration through the Forest Service as a part of the System (16 U.S.C. 1609).

National Forest System lands in the Eastern States refers to all National Forest System Lands in the Eastern and Southern administrative regions of the Forest Service (36 CFR 200.2), except the National Grasslands in Texas and Oklahoma.

National Forest System lands in the Western States refers to all National Forest System lands in the states of Arizona, California, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming but only to the National Grasslands in the states of Kansas, Oklahoma, and Texas. This term does not include national forests in the states of Oklahoma and Texas.

NEPA procedures are the requirements of the National Environmental Policy Act of 1969, (42 U.S.C. 4321 et. seq.) regulations at 40 CFR parts 1500 through 1508, and Forest Service policies and procedures in the Forest Service Manual Chapter 1950 and Forest Service Handbook 1909.15.

Other lands under Forest Service control are non-federal lands over which the Forest Service has been given control through lease, agreement, or other means.

Permittee is any individual or entity who has been issued a grazing permit.

Permitted livestock means livestock being grazed under a permit or those that were grazed under a permit during the preceding season, including offspring retained for herd replacement.

Range Betterment Fund is the fund established by section 401(b)(1) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1751) which is used for on-the-ground range

rehabilitation, protection, and improvement projects.

Rangeland improvement is any permanent or temporary structure or any nonstructural land treatment designed to protect, improve or make use of rangeland ecosystems.

Rangelands are a kind of land on which the native vegetation, climax or natural potential, is predominantly grasses, grass-like plants, forbs or shrubs. Rangelands include lands revegetated naturally or artificially to provide a plant cover which is managed like native vegetation. Rangelands include natural grasslands, savannas, shrublands, most deserts, tundra, alpine communities, coastal marshes, and wet meadows. When used in this rule, the term also includes other National Forest System lands (including forested lands, woodlands, and riparian areas) on which grazing by wild and domestic herbivores may occur.

16 Contiguous Western States refers to the states of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming.

Transportation livestock means livestock used as pack and saddle stock for travel on National Forest System lands and other lands under Forest Service control.

Unauthorized use means livestock use on National Forest System lands or other lands under Forest Service control that is not authorized by a grazing permit, or an amendment or modification thereto.

§ 222.3 Framework for rangeland planning and decisions.

(a) *Forest plan direction.* Planning for management of rangelands is accomplished through the land and resource management planning process set out in 36 CFR part 219. Forest plans establish programmatic direction including goals, objectives, standards, and guidelines for rangeland management and identify National Forest System lands suitable for livestock grazing. A suitability determination is not a decision to authorize grazing.

(b) *Rangeland project decisions.* Except as otherwise provided in this section, a rangeland project decision is required when site-specific activities designed to accomplish a specific, on-the-ground purpose or result are proposed which implements the programmatic management direction in the forest plan.

(1) Examples of rangeland project decisions include, but are not limited to, the following:

(i) Maintenance or modification of specific plant communities or riparian, aquatic, soil, or other resource conditions needed to promote the achievement of goals and objectives of the forest plan.

(ii) Rangeland improvements needed to promote the achievement of goals and objectives of the forest plan.

(iii) Authorization of livestock grazing where grazing is suitable and appropriate. A rangeland project decision authorizing livestock grazing must specify the maximum permissible amount of grazing use, the timing and duration of such use, and other appropriate livestock management requirements or measures needed to promote the achievement of goals and objectives of the forest plan.

(2) Rangeland project decisions must be consistent with applicable forest plan standards and guidelines.

(3) Rangeland project decisions are decision points subject to NEPA procedures. Where a rangeland project decision authorizes livestock grazing, timely issuance of the grazing permit based on the rangeland project decision is an administrative act and not a separate decision.

(c) *Transitional procedures for authorizing grazing use.* In the absence of a rangeland project decision that addresses livestock grazing use, the authorized officer may issue a grazing permit in accordance with the following transitional procedures:

(1) The authorized officer may issue a new term permit for up to ten years where there is a current allotment management plan adopted prior to [180 days from date of publication of the final rule] and the analysis and disclosure of environmental effects are still current.

(2) On those allotments for which there is no current allotment management plan but which are meeting, or moving toward achievement of, forest plan goals and objectives, the authorized officer may issue a new term permit for up to ten years based on the forest plan, provided that the plan contains applicable standards and guidelines that can be incorporated as terms and conditions of the permit and that the environmental effects of applying the standards and guidelines on the land are analyzed and disclosed pursuant to NEPA procedures.

(3) On those allotments for which there is no allotment management plan or current NEPA disclosure and the allotments are meeting, or moving toward achievement of, forest plan goals and objectives, but the forest plan does not contain applicable standards and guidelines that can be incorporated into the permit, the authorized officer shall issue a term permit not exceeding three years in duration to authorize the continuation of grazing. This interim period will permit the agency to gather information and conduct necessary analysis to determine if grazing should be authorized or a different permit term should be established. In such cases, the environmental effects of continuing grazing under a 1–3 year term permit must be analyzed and disclosed pursuant to NEPA procedures prior to issuance of the permit.

(4) On those allotments for which there is no allotment management plan or current NEPA disclosure, and the allotments are not meeting or moving toward achievement of forest plan goals and objectives, the authorized officer may not issue a term permit of more than three years in duration until a rangeland project decision and disclosure of environmental effects is accomplished. In the interim, the authorized officer may issue a term permit of up to three years in duration provided that the terms and conditions of the permit include existing or amended forest plan standards and guidelines or other measures necessary to move management of the allotment toward achievement of forest plan goals and objectives. In such case, the environmental effects of continuing grazing under the 1–3 year term permit must be analyzed and disclosed pursuant to NEPA procedures prior to issuance of the permit.

(5) Where authorization of livestock grazing is made pursuant to paragraphs (c) (1), (2), (3), and (4) of this section, the authorized officer shall develop and maintain a schedule for completing rangeland project decisions and site specific disclosure of environmental effects on affected allotments pursuant to NEPA procedures. The authorized officer shall develop this schedule in consultation with the grazing permittees and other interested parties. Priority for scheduling the completion of rangeland project decisions shall be given to those areas with significant resource concerns such as protection of threatened and endangered species, riparian and aquatic habitats, and water quality.

(6) Where grazing permits are issued under the transitional procedures of paragraphs (c) (1), (2), (3), and (4) of this section, the timely issuance of a grazing permit is an administrative act and not a separate decision.

(7) This subpart does not compel immediate initiation of rangeland

project decisions to issue or renew grazing permits.

(d) *Delineation of allotments.* Where lands are suitable for grazing and livestock grazing is to be authorized, the authorized officer shall delineate allotments consistent with the forest plan and applicable rangeland project decisions. When approved by the affected landowner, lessee, or cooperating agency, allotments may include associated private and other public lands in order to form logical range management units for effective coordinated resource management.

(1) Maps delineating allotments shall be on file at the office of the District Ranger.

(2) The delineation of allotments is an administrative act and not a decision subject to further NEPA analysis or disclosure of environmental effects.

Grazing Permits

§ 222.4 General provisions applicable to all grazing permits.

(a) *Grazing authorization required.* All livestock grazing use of National Forest System lands and other lands under Forest Service control requires prior written authorization through a grazing permit issued by an authorized officer, except for certain temporary grazing as provided for in § 222.6(c).

(b) *Nature of grazing permit.* A grazing permit is a privilege authorizing the holder to use National Forest System lands or other lands under Forest Service control subject to the terms and conditions contained therein. Grazing permits do not convey any right, title, or interest in United States lands, resources, or permanent range improvements to the permittee.

(c) *NEPA compliance.* Issuance of a permit implements a previous decision to authorize grazing and is not a decision point subject to NEPA procedures as provided for in § 222.3(b)(3).

(d) *Terms and conditions.* The authorized officer shall prescribe the terms and conditions of each grazing permit in accordance with applicable statutes, regulations, and direction issued through the Forest Service Directive System (36 CFR 200.4).

(1) The authorized officer shall include as terms and conditions of the grazing permit those applicable standards and guidelines in the forest plan and rangeland project decision.

(2) A permittee may be required, as a condition of permit issuance, to collect and submit to the Forest Service monitoring, inventory, or other resource information related to the permitted livestock grazing activity.

(e) *Operating instructions.* In addition to the terms and conditions of a permit, the authorized officer may issue written operating instructions to the permittee(s) to make annual, seasonal, or other temporary adjustments in the amount or duration of livestock grazing use authorized by a grazing permit. The authorized officer may also issue written instructions that temporarily adjust or tailor terms and conditions as necessary for proper management of the rangelands. As long as the operating instructions fall within the scope of the decision authorizing the grazing use and the NEPA documentation associated with that decision, this does not require a new decision and additional environmental analysis.

§ 222.5 Term grazing permits; types and duration.

(a) *Types of term permits.* The following types of grazing permits may be issued to applicants that meet the relevant requirements of § 222.7 for a term of up to 10 years with priority for renewal, as described in § 222.9.

(1) A term grazing permit may be issued to qualified applicants, including grazing associations and districts, to graze livestock on National Forest System lands or other lands under Forest Service control. On all National Forest System lands in the Eastern States, except the National Grasslands in Texas and Oklahoma, permits for new allotments or permits that are vacated or terminated are issued under the competitive provision of § 222.54.

(2) A term private land grazing permit may be issued to a qualified applicant who owns or controls land in an allotment under Forest Service control. To receive this permit, the applicant must waive exclusive grazing use of the private land involved to the United States for the full period the permit is to be issued. In return, the applicant is authorized to graze livestock within the allotment associated with the waived private land.

(3) A term grazing permit with provisions for grazing on and off National Forest System lands and other lands under Forest Service control may be issued to a qualified applicant when a logical grazing area contains both lands under Forest Service administration and lands controlled by the applicant.

(4) A grazing agreement may be issued to eligible grazing associations or districts, to graze livestock on National Forest System lands and other lands under Forest Service control. Under such grazing agreements, grazing associations or districts may be authorized to issue and administer grazing permits subject to rules, policies, and procedures agreed to by the authorized officer.

(b) *Duration of term grazing permits.* The maximum length of a term grazing permit is 10 years.

(1) On National Forest lands in the 16 contiguous Western States, the authorized officer shall issue permits for the full 10-year period, unless one of the following situations exist:

(i) The land is pending disposal;

(ii) The land will be devoted to non-grazing uses prior to the end of 10 years; or

(iii) It will be in the best interest of sound land management to specify a shorter term.

(2) On all other National Forest System lands or other lands under Forest Service control, the authorized officer may issue permits for up to a ten year period, as determined to be in the best interest of sound land management.

§ 222.6 Authorization of temporary grazing.

Provided that the necessary forage is available, applicants meeting the relevant requirements of § 222.7 may receive authorization to graze livestock for a term of up to three years, with no priority for renewal. Grazing fees for authorized temporary livestock grazing shall be assessed in accordance with § 222.11 and Subpart C—Grazing Fees of this part, unless free permits as expressly provided for in this section.

(a) *Paid temporary permits.* Temporary permits for a fee are appropriate in the following circumstances:

(1) Where a new permittee assumes previously authorized grazing use which has been suspended or cancelled.

(2) Where there has been unusually favorable climatic conditions.

(3) Where a permittee has exercised the nonuse provision of a term permit.

(4) Where the base property has been sold; the term permit waived; a new term permit issued; the new permittee does not want to graze livestock that season; and the most recent former permittee desires to graze livestock for the remainder of the permitted grazing season.

(5) Where fire, drought, pestilence or other natural phenomenon has reduced livestock grazing capacity on other National Forest System lands or other lands under Forest Service control.

(6) Where transportation livestock are engaged in commercial packing, dude ranching, or other commercial enterprises, such as mining, ranching, and logging activities.

(7) Where animals are being used to breed permitted livestock.

(8) Where livestock are trailing across National Forest System lands and other lands under Forest Service control.

(b) *Free or paid temporary permits:* The authorized officer has discretion to issue temporary permits for a fee or free of charge where the primary objective for grazing use is managing vegetation, rather than utilizing forage.

(c) *Free grazing with no written permit.* Grazing may be authorized free of charge and without a written permit in the following circumstances:

(1) Where livestock are being used by campers and travelers during the period of occupancy.

(2) Where horses, mules, or burros are being used in support of research, administration, or other approved work being conducted on National Forest System lands and other lands under Forest Service control.

(3) Where horses, mules, or burros are being used occasionally to assist a permittee in managing the permitted livestock during the grazing season.

§ 222.7 Requirements applicable to grazing permits.

(a) *Requirements applicable to all Forest Service livestock grazing permits.* (1) Grazing permits may be issued only to private individuals, grazing associations and districts, business concerns, or tribal governments. Federal, State, and local governments, or units thereof, are not eligible to receive or hold grazing permits.

(2) Applicants for a grazing permit must file a written application to the District Ranger responsible for the administration of the lands to be grazed.

(3) An applicant or permittee(s), and affiliate(s), if any, with a history of prior grazing use on federal lands, must show a satisfactory record of performance under previous or currently held federal grazing permits. Applicants, permittees, or affiliates, who have had Forest Service grazing permits cancelled, in whole, pursuant to § 222.10(b) (2), (3), (4), or (5), or other federal grazing permits or leases cancelled within 36 months prior to application are presumed to have an unsatisfactory performance record.

(b) *Additional requirements applicable to term permits:*

(1) Term permits may be issued to the following:

(i) A citizen of the United States;

(ii) An alien who has filed a petition for naturalization;

(iii) A corporation or other business concern, including but not limited to grazing associations and districts, that is authorized to do business in the State where the grazing activity is to be conducted regardless of the ownership of the company or the company's stock; or

(iv) Tribal governments.

(2) An applicant or permittee must own the livestock to be grazed under permit and such base property as required by the Forest Service, except that:

(i) Livestock owned by children of permittees may be run under their parent's term grazing permit for up to 50 percent of the permitted numbers when the children are establishing a livestock herd with the intent of acquiring the family ranch operation or when children own livestock as part of a youth agricultural program or project.

(ii) Members of a grazing association or a grazing district, as opposed to the association or district itself, must meet base property and livestock ownership requirements as specified in the term permit issued to that association or district.

(iii) Applicants for or holders of term private land grazing permits are not required to own base property or the livestock authorized by the grazing permit.

(iv) Applicants for or holders of term permits for developing ranges on National Forest System lands in the Eastern States are not required to own livestock or base property to obtain the initial grazing permit. However, when applying for permit renewal, the permittee must meet the livestock and base property ownership requirements.

(v) If a term grazing permittee disposes or loses control of all or part of the base property but does not waive the permit to the United States in favor of the new owner, the permittee has one year from the date of sale or loss of control to meet base property requirements. If the permittee does not meet base property requirements within that time period, the permittee is no longer qualified to hold a term grazing permit, and the authorized officer shall promptly cancel the permit.

(3) An authorized officer may prescribe other requirements for term grazing permits including, but not limited to, the following:

(i) Conditions for and length of time that non-use may be allowed; and

(ii) Upper limits on the total number of permitted livestock and any exceptions to upper limits.

§ 222.8 Waivers and escrow waivers.

(a) *Waiver of term permits.* Holders of term grazing permits may waive their permits to the United States in favor of another entity and the waiver may be confirmed by an authorized officer as follows:

(1) A holder of a term grazing permit for National Forest System lands in the Western States may waive a permit to the United States in favor of an applicant who has purchased the permitted livestock or base property if there is no escrow waiver in effect for that portion of the permit. An authorized officer may confirm the waiver and issue a new term grazing permit if the purchaser meets the requirements of § 222.7.

(2) On National Forest System lands in the Eastern States, a holder of a term grazing permit issued under the noncompetitive procedures of § 222.53 may waive the permit to the United States in favor of a spouse or child who acquires title to base property or permitted livestock. An authorized officer may confirm the waiver and issue a new term grazing permit if the spouse or child meets the applicable requirements of § 222.7.

(3) A holder of a term grazing permit issued under the competitive bidding procedure in Subpart C-Grazing Fees of this part, may not waive the permit to the United States in favor of another entity.

(b) *Escrow waivers.* Authorized officers may accept an escrow waiver executed by the holder of a term grazing permit for National Forest System lands in the Western States. The lender in whose name the United States holds the grazing privileges in escrow shall receive copies of all correspondence by the Forest Service related to actions under § 222.10 of this subpart to cancel, suspend, or modify the grazing permit that is the subject of the escrow waiver. The authorized officer may release an escrow waiver only upon the satisfaction of the mortgage or upon the lender's written notification to the Forest Service that it does not require such an arrangement to adequately protect its interest. Authorized officers may issue term grazing permits to the lender named on the escrow waiver, if the lender has acquired the mortgaged base property or livestock and otherwise meets the requirements of § 222.7.

§ 222.9 Renewal of term grazing permits.

(a) To qualify for renewal of a term permit, current permit holders must meet the requirements of § 222.7.

(b) Current permit holders on National Forest System lands in the Western States have priority for receiving a new term grazing permit when the current term grazing permit expires.

(c) If the agency must cancel an existing permit and issue a new permit to respond to changing law, executive order, regulation, or resource condition,

the new permit shall be issued to the current permit holder.

(d) Procedures for renewal of term grazing permits for National Forest System Lands in the Eastern States are set forth in subpart C of this part.

(e) The duration of a term grazing permit renewed under this section is determined in accordance with § 222.5(b).

§ 222.10 Cancellation, suspension, and modification of grazing permits.

(a) An authorized officer may cancel grazing permits, in whole or in part, under the following circumstances:

(1) If the lands grazed under the permit are to be disposed of or devoted to another public purpose. In these cases, except in an emergency, the authorized officer must give the permittee two-years advance notice of the intent to cancel.

(2) If a permittee does one or more of the following:

(i) Fails to meet the requirements in § 222.7.

(ii) Waives the permit to the United States.

(iii) Fails to resume livestock grazing after exhausting the maximum permitted time for nonuse.

(3) If a grazing association or district fails to comply with Title VI of the Civil Rights Act of 1964 and regulations promulgated thereunder (7 CFR part 15).

(4) If it is necessary to update the grazing permit terms and conditions. In this case, issuance of a new permit is preceded by a rangeland project decision and NEPA disclosure and the duration of the permit is determined in accordance with § 222.5(b).

(b) An authorized officer may cancel, suspend, or modify a permit, in whole or in part, to correct documented resource damage, or if a permittee:

(1) Fails to pay grazing fees, service charges or unauthorized use charges within the established time limit;

(2) Fails to comply with terms and conditions in the grazing permit;

(3) Is responsible for unauthorized livestock use;

(4) Intentionally misrepresents a material fact to an authorized officer on an application for a grazing permit or during the permit term by making a false statement or by failing to disclose relevant information; or

(5) Is convicted for violation of Federal laws or regulations or State laws concerning animal control, protection of air, water, soil, vegetation, fish, wildlife, or other environmental values related to the grazing use authorized by the permit.

(c) An authorized officer may suspend or modify a permit, in whole or in part, for the following purposes:

(1) To conform with changes in statute, court order, regulation, Executive order, forest plans, rangeland project decisions, or other management needs.

(2) To respond to a permittee(s) request, provided that the requested modification is consistent with the forest plan and applicable rangeland project decisions.

(3) To alter the amount of grazing permitted, the time or duration of grazing use, or the allotment(s) to be used because of resource condition(s). The authorized officer shall give a permittee one year's notice, expect in an emergency or when agreed to by the permittee.

(d) When an authorized officer believes that cancellation, suspension, or modification of a permit may be warranted, the officer shall notify the permittee in writing that such action is being considered. The permittee shall be accorded a reasonable opportunity to respond, not to exceed 30 days. The officer shall consider any response submitted by or on behalf of the permittee. If the authorized officer decides that the permit action is appropriate, the decision becomes effective on the date the decision is issued, unless specified otherwise in the written decision.

§ 222.11 Grazing permit fees and other charges.

Authorized officers shall establish grazing fees and charges for livestock grazing use in accordance with this section and the rules in subpart C—Grazing Fees of this part.

(a) An authorized officer may assess a service charge for processing the following actions related to a grazing permit:

(1) Actions initiated by a permittee or applicant;

(2) Actions arising under § 222.10; or

(3) Actions related to willful unauthorized use.

(b) Unauthorized use is a violation of the terms and conditions of the grazing permit. Except as otherwise provided in this section, the authorized officer shall charge permittees and other livestock owners for any unauthorized use. Charges for unauthorized use are in addition to grazing fees assessed for authorized grazing use as prescribed in subpart C of this part.

(c) The authorized officer shall determine whether unauthorized use is willful or nonwillful. If willful, the authorized officer shall check agency records and check with other federal agencies to determine whether the permittee, applicant, or affiliate (if any) has been responsible for other incidents of willful unauthorized grazing use in the 36 months preceding the subject incident and, therefore, is subject to the higher rate charge of paragraph (d)(3) of this section.

(d) The basic charge for unauthorized use will be the average monthly animal unit month (AUM) grazing fee rate for the 17 Western States published annually by the National Agricultural Statistical Service, U.S. Department of Agriculture. Charges for unauthorized use are as follows:

(1) *Nonwillful unauthorized use.* Livestock owners responsible for nonwillful unauthorized use shall be charged the unauthorized use rate unless the authorized officer waives the charge. The charge for nonwillful unauthorized use may be waived if the authorized officer finds that all of the following apply;

(i) The unauthorized use was not due to the negligence of the livestock operator;

(ii) Forage consumed by the unauthorized livestock was insignificant;

(iii) There has been no damage to the land, resources or improvements resulting from the unauthorized use; and

(iv) The waiver is in the best interest of the United States.

(2) *Willful unauthorized use.* Except as provided in paragraph (d)(3) of this section, livestock owners responsible for willful unauthorized use shall be charged two times the unauthorized use rate, and they also shall be charged for all resource and property damage resulting from the unauthorized use and for all reasonable expenses incurred by the United States in detecting, investigating, and resolving such unauthorized use.

(3) *Repeated willful unauthorized use.* Livestock owners responsible for repeated willful unauthorized use shall be charged three times the unauthorized use rate, and they also shall be charged for all resource and property damage resulting from the unauthorized use and all reasonable expenses incurred by the United States in detecting, investigating, and resolving such unauthorized use.

§ 222.12 Information collection requirements.

(a) This subpart contains information requirements as defined by the Paperwork Reduction Act and implementing regulations at 5 CFR part 1320, which, along with the forms listed in this section, have been assigned OMB Control Number 0596–0003.

(b) Applicants or permittees must submit such information as may be reasonably necessary for the authorized

officer to determine whether all applicable requirements under this subpart are satisfied.

(1) A person or entity desiring a grazing permit must submit an application (§ 222.7), using one of the following forms:

(i) FS–2200–2, Application for Temporary Grazing Permit-Part 1.

(ii) FS–2200–16, Application for Term Grazing Permit.

(iii) FS–2200–17, Application for Term Private Land Grazing Permit.

(2) A permittee desiring a refund, credit, or transfer of grazing fees (§ 222.11) must complete Form FS–2200–1, Refund, Credit, or Transfer Application.

(3) A permittee desiring to waive a term permit to the Forest Service (§ 222.8) should complete Form FS–2200–12, Waiver of Term Grazing Permit.

(4) A permittee desiring to have the Forest Service hold a term grazing permit in escrow in favor of a lender (§ 222.8) must complete Form FS–2200–13, Escrow Waiver of Term Grazing Permit Privileges.

Rangeland Improvements

§ 222.13 Improvements.

(a) An authorized officer may authorize permittees, individuals, organizations, or other federal, State, and local agencies to perform rangeland improvement work (§ 222.2) consistent with the forest plan and with applicable rangeland project decisions.

(1) An authorized officer may require as a term or condition of the permit that the permittee maintain rangeland improvements to specified standards.

(2) The cost of rangeland improvement work may be borne in whole or in part by the Forest Service.

(b) The installation, construction, and/or maintenance of rangeland improvements are subject to the following conditions:

(1) All new or replacement rangeland improvements to be constructed or accomplished by permittees must be expressly authorized by the grazing permit.

(2) Subject to valid existing rights, title to permanent structural rangeland improvements is held by the United States. Title to temporary structural rangeland improvements may be held by the party which performs the rangeland improvement work, if no part of the cost of that work is borne by the United States.

(3) When rangeland improvement work is performed by a party other than the Forest Service, that party does not obtain an exclusive right to use the improvement or the land influenced by the improvement.

(c) Rangeland improvements on National Forest land in the 16 contiguous Western States may be funded by the Range Betterment Fund.

(d) Grazing fee credits or adjustments for rangeland improvement work are subject to the following:

(1) Grazing fee credits for rangeland improvements may be granted to permittees on National Forest System lands in the Eastern States pursuant to §§ 222.53 and 222.54.

(2) The annual grazing fee on National Grasslands or Land Utilization Projects may be adjusted to reflect the cost to a grazing permittee of complying with conservation practices required by a term grazing permit, provided that such cost has not already been used in establishing the grazing base value.

(3) Except as provided in paragraphs (d)(1) and (d)(2) of this section, authorized officers shall not adjust grazing fees charged in exchange for rangeland improvement work performed on all other National Forest System lands.

§ 222.14 Compensation for permittees' interest in rangeland improvements.

(a) Except as otherwise provided in this section, whenever a term grazing permit in the 16 contiguous Western States is cancelled, in whole or in part, to dispose of the land or to devote it to another public purpose, the current permittee shall receive reasonable compensation for investments in authorized permanent structural rangeland improvements on the land affected by the permit concellation. Compensation may not exceed the fair market value of the terminated portion of the permittee's interest in the improvement.

(b) A permittee who waived a grazing permit to the United States prior to the notice of cancellation, in accordance with § 222.8(a)(1), shall not receive any compensation under this section.

(c) If a term grazing permit expires and the permittee fails to renew it in accordance with § 222.9, no compensation will be granted for rangeland improvements to the former holder of the expired permit.

Cooperation

§ 222.15 Recognition and cooperation with local livestock or grazing associations and districts.

(a) An authorized officer may recognize a local livestock or grazing association or district for the purpose of issuing a term permit if the following requirements are met:

(1) A majority of the grazing permittees on the allotments designated in the term permit to be issued are members of the association or district.

(2) The activities of the association or district are governed by a constitution and bylaws which include a provision for members to address their grievances to the association or district in accordance with the term permit and the governing constitution and bylaws of the organization and which are approved by the authorized officer.

(3) The officers of the association or district are elected by a majority of the association or district members or by a quorum as specified in the organization's constitution and bylaws.

(4) The officers, other than secretary and treasurer, are grazing permittees on the allotments involved.

(b) Once an association or district is recognized and a term permit issued, the Forest Service may cooperate with the association or district under the terms and conditions of the permit in the management of rangeland resources and livestock on the land covered by the term permit issued to the association, provided that the association provides the means for their members to:

(1) Manage their permitted livestock and the range resources cooperatively;

(2) Share costs for handling of livestock, construction, and maintenance of range improvements or other projects deemed necessary for proper management of the permitted livestock and range resources;

(3) Meet with Forest officers to discuss and formulate programs for management of their livestock and the rangeland resources;

(4) Communicate proposals, issues, or concerns to Forest Service officials; and

(5) Formulate special association rules as needed to ensure proper resource management.

(c) An authorized officer may withdraw recognition and subsequently cancel the grazing permit of a grazing association or district at the request of the majority of the members, when the association or district is inactive and does not hold an annual or a special meeting during a 12-month period, or when the association or district fails to comply with the provisions of paragraphs (a)(1) through (4) of this section.

§ 222.16 Cooperation with national, state, and county livestock organizations and others.

(a) Forest Service officials shall endeavor to establish and maintain cooperative working relationships with national livestock organizations who have an interest in the administration of

National Forest System lands and other lands under Forest Service control and to work cooperatively with state and county livestock organizations having similar interests.

(b) Insofar as the programs and responsibilities of other agencies and units of government involve grazing upon National Forest System lands and other lands under Forest Service control or the livestock which graze thereupon, the Forest Service may, subject to the availability of appropriated funds, cooperate with:

(1) State, county, and federal agencies in the application and enforcement of all laws and regulations relating to livestock diseases, sanitation, and noxious weeds;

(2) County or other local weed control districts in analyzing noxious weed problems and developing integrated weed management strategies for areas which may include National Forest System lands and other lands under Forest Service control;

(3) The Animal and Plant Health Inspection Service and other Federal or State agencies and institutions in surveillance of pesticide application programs and animal damage management; and

(4) State cattle and sheep sanitary or brand boards in control of estray and unbranded livestock, to the extent such cooperation does not conflict with the Wild Free-Roaming Horse and Burro Act of December 15, 1971.

(c) Forest Service officials also shall endeavor to cooperate with other agencies, institutions, organizations, and individuals having an interest in the protection and management of the range resource on public or private lands.

(d) Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), and the implementing regulation at 41 CFR part 101–6, subpart 101–6.10, and the Food and Agriculture Act of 1977 (7 U.S.C. 2281, et seq.), the Secretary may establish advisory boards to advise the Forest Service on range resource management concerns. The membership of such boards shall be appointed to reflect a variety of points of view about resource management and a range of resource interests.

Dated: April 20, 1994.

James R. Lyons,

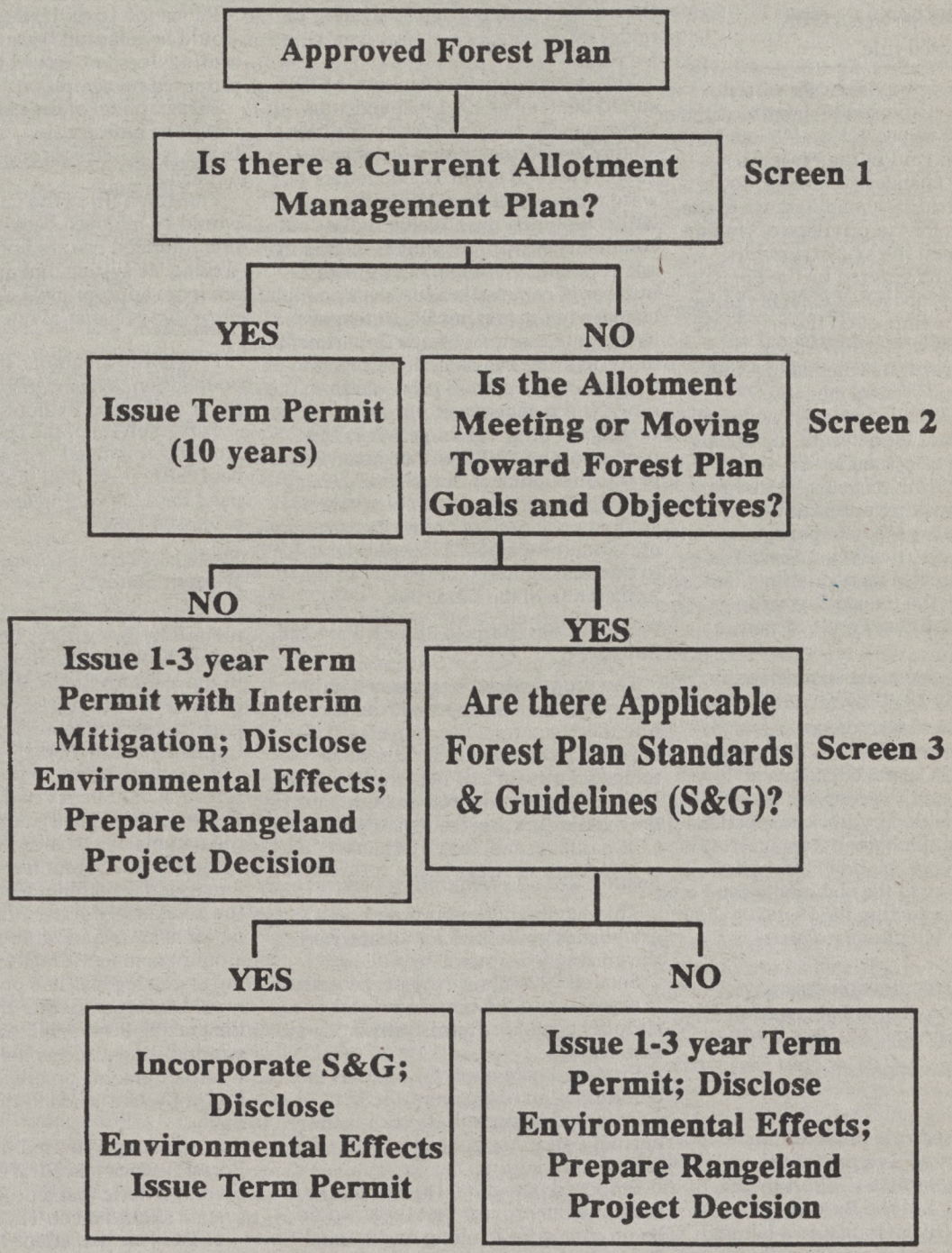
Assistant Secretary, Natural Resources and Environment.

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

BILLING CODE 3410–11–M

Appendix to Preamble of Proposed Rule

Transitional Procedures for Authorizing Grazing Use



[FR Doc. 94–10031 Filed 4–26–94; 8:45 am]
BILLING CODE 3410–11–C

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 222

Range Management; Grazing Fees

RIN 0596–AB42

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the system used to determine the fees for grazing livestock on National Forest System land in the Western States. These changes are needed to obtain a fair and reasonable return to the United States for the privilege of grazing privately owned livestock on public rangelands administered by the Forest Service. The proposed change in the fee considered the impact on the economic viability of the western livestock industry. By separate rulemaking, the Bureau of Land Management, U.S. Department of the Interior, is proposing a similar system for determining the fee for grazing livestock on lands administered by that agency. Also by separate rulemaking published elsewhere in this separate part of the **Federal Register**, the Forest Service is proposing to revise its regulations for administering the livestock grazing program on National Forest System lands.

DATES: Comments must be received in writing by July 28, 1994.

ADDRESSES: Send written comments to Rangeland Reform '94, P.O. Box 66300, Washington, DC 20035–6300.

Comments on the proposed rule will be made available for public inspection during the regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday. Viewing of the comments can be arranged by contacting the Forest Service at the telephone number provided below.

FOR FURTHER INFORMATION CONTACT: Peter G. Ashton, Range Management Staff, Forest Service, 202–205–1746.

SUPPLEMENTARY INFORMATION:

Background

This proposed rule to revise the grazing fee system is a part of the "Rangeland Reform '94" effort by the Forest Service and the Bureau of Land Management (BLM) to insure a fair and reasonable return for grazing privately owned livestock on public rangelands. The impact of a higher fee on the livestock industry was considered. The two agencies are proposing to use the same grazing fee system; however, each agency must prepare a separate proposed rule that reflects the differences in statutory authority that apply to each agency. On August 13, 1993, the Departments of Agriculture and the Interior published Advance Notices of Proposed Rulemaking (ANPRs) in the **Federal Register** (58 FR 43202; 43208), in which each Department gave notice of its intent to revise its livestock grazing and grazing fee rules.

The comment period on both ANPRs ended September 13, 1993, and was subsequently reopened for an additional 30-day period that ended October 20, 1993. A total of about 12,600 letters were received on the ANPRs. These letters included over 56,000 individual comments on various aspects of grazing administration and fees. The greatest number of comments addressed possible changes in the grazing fee. In response to the public comment, the Department of Agriculture has decided to separate the grazing fee system proposal from the rangeland management proposal. Comments on the grazing fee system portion of the ANPR will be considered in the development of the final grazing fee rule. Reviewers need not resubmit comments they filed on the Department of Agriculture's ANPR in order for them to be considered by the agency in the preparation of the final rule.

Proposed Revisions to 36 CFR Part 222, Subpart C

The proposed grazing fee system embodied in this proposed rule is intended to correct the disparity between rates charged for livestock forage on private and Federal lands. An explanation of proposed amendments to the existing grazing fee regulations at 36 CFR part 222, subpart C, follows:

Section 222.50—General Procedures

This section of the proposed rule establishes guidelines for administering the grazing fee system.

Section 222.50(a) of the proposed rule is a revision of the current rule to simplify general administrative instructions.

Proposed paragraph (b) clarifies the determination of grazing fees.

Proposed paragraph (c) retains the current definition of head month with some minor editing.

Proposed paragraph (d) would continue the proviso that there would be no charge for lambing on National Forest System land for sheep already authorized under a grazing permit; however, the text is edited for clarity.

Proposed paragraph (e) consolidates under a single provision of the rule, the fees charged for livestock use under temporary grazing permits. This change would simplify the administration of grazing fees and would specify that the authorized officer may adjust, up or down, the fees for temporary grazing permits to meet management objectives of the forest land and resource management plan and grazing permit terms and conditions.

Paragraph (f) of the current rule would be removed because fees for trailing livestock would be included in proposed paragraph (e).

Paragraph (g) of the current rule would be redesignated as paragraph (f) in the proposed rule and remain unchanged.

Paragraph (h) of the current rule would be removed because charges for unauthorized use are not part of the grazing fee system, but are penalties that are more appropriately addressed in the proposed revision of the rules in subpart A.

Proposed paragraphs (i) and (j) would be redesignated as paragraphs (g) and (h) and retained without change.

Paragraph (k) of the current rule would be removed because it describes beef cattle price data that would not be used for determining fees under the proposed rule.

Section 222.51—Grazing Fees in the Western States

Current Section 222.51 would be revised in its entirety. The heading would be revised to read: Grazing fees in the Western States. This revision proposes a new system for determining grazing fees which would be implemented in 1995.

The areas subject to the new fee system would be revised to include all of the national grasslands. Historically, the national grasslands have been subject to a different fee system than the one used for national forests. In 1992, the Secretary of Agriculture reduced the national grasslands grazing fee to an amount commensurate with the national forest grazing fee. The proposed rule would incorporate this change so that the grazing fee on national grasslands would be the same as the fee charged for livestock grazing on other National Forest System lands in the Western States.

In selecting a revised fee system, the Forest Service and BLM established several criteria that a proposed fee system should meet. Those criteria are:

1. The fee charged for livestock grazing should approximate market value. Using the market value helps assure that the public receives a fair return for the private use of publicly owned resources.

2. The fee charged should not cause unreasonable impacts on livestock

operations that are heavily dependent on public forage.

3. The fee charged should recover a reasonable amount of the government's cost involved in administering grazing permits.

4. The fee charged should provide increased funds to improve rangeland resource conditions.

5. The fee system should be understandable and relatively inexpensive to administer.

The present fee system, in effect since 1978, has been criticized for contributing to the wide disparity between charges for livestock grazing on private lands compared to charges for livestock grazing on Federal lands. While the forage value in the private market has increased substantially over time, the Federal grazing fee has decreased during some seasons or had relatively small increases. The proposed grazing fee system would address the failure of the existing grazing fee system to adequately reflect private grazing land market conditions. The proposed fee system would include a base value which considers the cost differences of operating on public lands as compared to private lands, as well as appraisal data, annually adjusting the fee in proportion to changes in private grazing land lease rates (PGLLR). After an initial phase-in period, the fee would be adjusted annually by multiplying the base value by the forage value index (FVI), which reflects the change in PGLLR for the 17 Western States, using the weighted average AUM price in each State. The PGLLR estimate is prepared annually by the USDA, National Agricultural Statistical Service.

As a result of the public input gained following the ANPR and through the scoping process for the environmental analysis of "Rangeland Reform '94", the Departments of Agriculture and Interior determined that the grazing fee system proposed initially represents a reasonable and equitable method for calculating the fee. However, change in FVI is proposed and a provision for incentive-based fee adjustment has been added.

The proposed fee would be phased in over the years 1995 through 1997. Thereafter, annual increases or decreases in the grazing fee resulting from changes in the FVI would be limited to 25 percent of the amount charged the previous year to minimize impact of fee increases on ranch operations.

A base value of $3.96 per animal unit month (AUM) is proposed in this rule. This value represents the average of the results obtained through the use of two methods discussed below for estimating a fair base value.

The first method is the 1966 Western Livestock Grazing Survey (WLGS), where over 10,000 individuals were interviewed to determine the costs of operating on federal lands and the relationship of public land grazing use to the PGLLR. The WLGS determined the 1966 11-State value for grazing federal lands to be $1.23 per AUM. This value is updated to a 1991 AUM base value of $3.25, which is determined by multiplying $1.23 by 265, the percentage change in the PGLLR from the base years 1964–1968, and dividing by 100.

The second method for estimating a fair base value comes from the 1983 Grazing Market Rental Appraisal (GMRA) on BLM and Forest Service lands. The GMRA involved interviews with approximately 100,000 people and generated 7,246 records for researching livestock grazing operation costs and fees. The GMRA divided the 16 Western States into 6 pricing regions and concluded that the value of public land grazing use ranged from $4.68 per head month in the southwest pricing region to $8.55 per head month in the northern plains pricing region. In 1992, the GMRA was updated. The update identified values ranging from $4.68 per head month in the southwest pricing region to $10.26 per head month in the northern plains pricing region. The $4.68 value was selected for the second base value. It was considered to have the least impact on the permittee's livestock grazing operations.

The FVI will be used to make adjustments each year to the base value. Production costs, and the value of the livestock produced, influence the prices paid for grazing livestock on private lands and, thus, are implicit in the FVI.

This proposed rule would establish 1996 as the base year for the FVI. The FVI would not be used to annually adjust the fee in response to market conditions until the year 1997. This proposed rule would establish the 1995 grazing fee at $2.75, and the 1996 grazing fee at $3.50. Thereafter, the fee would be calculated using the base value of $3.96 multiplied by the revised FVI. By definition, the FVI in the year 1997 would equal one; yielding a 1997 grazing fee of $3.96. In subsequent years, the calculated fee would depend on changes in the FVI.

Under the proposed fee system presented in the ANPR, the fee would have been adjusted annually by a FVI based on the average price paid for private grazing in the years 1990 through 1992. Assuming that the FVI would have remained constant until the end of the phase-in period provided in the ANPR, the grazing fee system would have yielded a fee of $4.28 as compared to a 1997 fee of $3.96 using the revised FVI. This change in the derivation of the FVI is proposed in order to reduce the uncertainty in fee changes in the immediate future that might result from using a FVI based on less current PGLLR data.

After the 3-year phase-in, the grazing fee would be allowed to change by no more than 25 percent annually, plus or minus, from the amount charged the previous year. The 3-year phase-in and the 25 percent per year limit are designed to minimize impact of fee increases on ranch operations. By comparison, the 1994 grazing fee established under the existing regulations is $1.98.

It is the intent of the two Departments to develop a system for earning incentives that may be used to promote rangeland reform. New provisions have been added to the proposed rule that would provide for an incentive-based grazing fee and would prohibit implementation of the $3.96 base value until such time as a separate regulation is issued which sets forth the qualification criteria for the incentive-based grazing fee. These criteria would focus primarily upon those permittees and lessees who agree to participate in special rangeland improvement programs characterized by best management practices, the furtherance of resource condition objectives, and comprehensive monitoring. However, the proposed rule does explain that, upon issuance of the separate rule establishing qualification criteria and upon demonstrating compliance with said criteria, a permittee would be eligible for a 30 percent reduction of his or her grazing fee. The Departments intend to use its best efforts to issue a final rule establishing qualification criteria in time to provide an opportunity for the reduced fee in grazing year 1996. A 30 percent discount would result in a grazing fee of $2.77 in 1996 and 1997 for qualifying permittees and lessees. To ensure timely development of the rule establishing criteria for the incentive-based grazing fee, this proposed rule would provide that the base value shall remain at $3.50 and would not increase until that rule is adopted. Reviewers are asked to provide suggested criteria for qualifying for the reduced fee that address the improvement and maintenance of rangeland health.

Section 222.52—National Grassland Fee Adjustments for Conservation Practices.

Section 222.52 of the current rule would be revised in its entirety. The heading would be revised to read as follows: *National Grasslands Fee Adjustments for Conservation Practices.* This new section would place into regulation a program based on the accumulation of conservation practice credits for sound conservation practice used by a permittee on national grasslands. Since the 1950's, the Forest Service has allowed credit, applied to grazing fee billings, for required conservation practices and administrative activities performed by grazing associations on the national grasslands. Allowing credit for required conservation practices is authorized by section 32(c), title III, Bankhead-Jones Farm Tenant Act of 1937. This policy has previously been issued as agency directives to Title 2200 of the Forest Service Manual. The agency believes these provisions are more appropriate in regulation than in directive form.

The use of credit for required conservation practices on the national grasslands is similar to the use of range betterment funds used on National Forest System in the 16 contiguous Western States for implementing rangeland improvement activities. The range betterment fund is not authorized for national grasslands. In the case of the national grasslands, the costs to the permit holders of performing conservation practices required by the Forest Service would be subtracted before the Forest Service collects the grazing fee from the permittee. In addition, provision is made for giving credit for administrative costs that would otherwise be a cost to the Forest Service. For example, the cost to a grazing association of issuing individual permits and monitoring the number of grazing livestock could be credited against the fees charged.

Sections 222.53 and 222.54—Grazing Fees in the Eastern States

Currently the grazing fees in the Eastern States do not apply to National Forest System land in Oklahoma or national grassland in Texas. As previously noted, under the grazing fee system proposed by this rulemaking, all national grasslands would be subject to the same grazing fee as that applicable to western national forests. Therefore, it is necessary to make a conforming amendment to paragraph (a) in both § 222.53 and § 222.54 to clarify that the grazing fee system applicable in the East would not apply to grazing on the national grasslands in Oklahoma and Texas but would apply to grazing on national forest land in Oklahoma and Texas, which are administered as part of the Southern Region of the Forest Service.

Under the proposed rule, terms referring to the process of allotment management planning have been replaced by terms specifying grazing permit terms and conditions. These changes in terminology would coincide with proposed changes in rangeland management plans. Several other editorial changes are proposed in this section to clarify permit procedures.

Conclusion

The grazing fee system that would be implemented if this proposed rule is adopted would result in an increase in fees charged for grazing livestock on public rangelands. This proposed rule would establish the 1995 grazing fee at $2.75, and the 1996 grazing fee at $3.50. Thereafter, the fee would be calculated using the base value of $3.96, multiplied by the revised forage value index yielding a 1997 grazing fee of $3.96. In subsequent years, the calculated fee would depend on the changes in the market rate for private grazing land leases. After the 3-year phase-in, the grazing fee would change no more than 25 percent annually, plus or minus, from the amount charged the previous year. Preparation of a separate rule establishing an incentive-based grazing fee is underway. As currently contemplated, permittees could be entitled to a 30 percent reduction in their grazing fees using the $3.96 base value if they meet certain qualification criteria, the identification of which will be the focus of this separate rulemaking. Pending adoption of this separate rule, the base value shall remain at $3.50 for the purposes of calculating the fee. The proposed fee system would apply to all National Forest System lands in the Western States. Public comment is invited and will be considered in adoption of the final rule.

Regulatory Impact

This proposed rule has been reviewed under Executive Order 12866 on Regulatory Planning and Review. The agency has determined that this proposed rule is a significant regulatory action subject to Office of Management and Budget review. This rule may result in increased operational costs for ranch operations that have permits on National Forest System land in the Western States.

The Department of Interior has prepared an initial Small Entities Flexibility Assessment analyzing the economic impact of this rulemaking on small entities under the Regulatory Flexibility Act (5 U.S.C. 605 *et seq*). The public may obtain copies of the draft Small Entities Flexibility Assessment by writing to the address listed under Addresses earlier in this document.

Environmental Impact

The Bureau of Land Management and the Forest Service, as a cooperating agency, are preparing a draft environmental impact statement (DEIS) on "Rangeland Reform '94" as announced in the **Federal Register** on August 13, 1993. Upon completion of the draft EIS, a notice of availability will be published in the **Federal Register** with an opportunity for public comment. Following the comment period on the draft EIS, a final EIS will be developed and a Record of Decision published in the **Federal Register.**

Constitutionally Protected Property Rights

This rule has been reviewed for its effects on private property rights (Executive Order 12630 of March 15, 1988, "Government Actions and Interference with Constitutionally Protected Property Rights" as implemented by the U.S. Attorneys General's Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings). Under the Guidelines, benefits, and privileges bestowed by the Government are expressly excluded from the definition of private property rights protected by the Fifth Amendment.

The Congress established that a grazing permit is a privilege through the Granger-Thye Act of April 24, 1950 (Section 19), and the Federal Land Policy and Management Act of October 21, 1976 (Section 402(h)). Both of these acts state that the issuance of grazing permits in no way grants any right, title, interest, or estate in or to lands or resources held by the United States.

A long line of court cases has established that a grazing permit is a noncompensable interest since it is a privilege to use federally owned land for livestock grazing purposes. Accordingly, it is a privilege—not a right-which can be withdrawn or canceled by the United States without compensation. Since this rule deals with granting a privilege, Executive Order 12630, which involves the taking of private property for public use, does not apply.

Notwithstanding the above, the Office of General Counsel has prepared a Takings Implication Assessment (TIA) on grazing activities undertaken by the Forest Service. The TIA concluded that regulatory activities associated with Forest Service administration of grazing on National Forest System lands do not

present the risk of a taking of private property.

Information Collection Requirements

This proposed rule governing grazing and livestock use on National Forest System land does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320.

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 may file suit in court challenging its provisions.

List of Subjects in 36 CFR Part 222

Grazing lands, Livestock, National forests, National grasslands, Range management.

For the reasons set forth in the preamble, 36 CFR part 222, subpart C, is proposed to be amended as follows:

PART 222—RANGE MANAGEMENT

Subpart C—Grazing Fees

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

Authority: 16 U.S.C. 551; 31 U.S.C. 483A; 43 U.S.C. 1901.

2. Revise §§ 222.50, 222.51, and 222.52 to read as follows:

§ 222.50 General procedures.

(a) Fees shall be charged for all livestock grazing of National Forest System land or other land under Forest Service control, unless otherwise expressly provided in the grazing permit terms and conditions.

(b) In calculating fees, the agency shall not consider any value associated with a grazing permit that may be capitalized into the permit holder's private ranching operation.

(c) For billing purposes, the grazing fee charged is for each head month of livestock grazing. The fee is prorated on a daily basis and is multiplied by the number of head months of use and the number of days. For purposes of calculating grazing fees, a head month is a month's use and occupancy of rangeland by one adult cow, bull, steer, heifer, horse or mule, five sheep, or five goats. An animal is an adult if it is weaned, is at least 6 months old at the beginning of the permitted period of use, or will be 12 months old during the permitted period of use.

(d) When sheep grazing is already authorized by a grazing permit, no additional charge shall be made for lambing upon National Forest System land or other lands under Forest Service management.

(e) The grazing fee established in §§ 222.51, 222.53, and 222.54 may be charged for all livestock grazing of National Forest System land authorized by a temporary grazing permit. However, the authorized officer may waive or otherwise adjust the fee when the Forest Service imposes limitations or requirements on grazing use for the purpose of implementing management objectives in the forest land resource management plan and the terms and conditions of the grazing permit.

(f) All fees charged for livestock grazing of National Forest System land are payable in advance of the opening date of the grazing period, or entry, unless otherwise authorized by the Chief of the Forest Service and provided for in the grazing permit.

(g) Refunds or credits may be allowed under justifiable conditions and circumstances as the Chief of the Forest Service may specify.

(h) The fee year for charging grazing fees is March 1 through the following February.

§ 222.51 Grazing fees in the West.

(a) A grazing fee shall be established annually under paragraph (b) of this section for livestock grazing on National Forest Systems lands in the Western States.

(b) Except as provided in paragraphs (e) and (i) of this section, the annual fee for livestock grazing under paragraph (a) above is determined by a base value of $3.96 which is multiplied by the forage value index (FVI) or grazing fee = base value × FVI. The FVI is the change in private grazing land lease rate (PGLLR) of the 17 Western States weighted average AUM price in each state. The PGLLR estimate is prepared annually by USDA, National Agricultural Statistics Service.

(c) The base value shall be $3.96.

(d) The base year used for computing the FVI shall be 1996.

(e) The grazing fee shall be phased in over a three-year period, computed as follows:

(1) The fee for 1995 will be ($2.75).

(2) The fee for 1996 will be ($3.50).

(f) Starting with the year 1997 and, thereafter, the annual fee shall be computed, as specified in paragraph (b) of this section, using $3.96 times the FVI.

(g) Any annual increase or decrease in the grazing fee occurring in the year after 1997, and thereafter, shall be limited to not more than 25 percent from the fee charged the previous year.

(h) Starting with the year 1996, permittees will be eligible for an incentive-based grazing fee that would reduce fees by 30 percent of the value specified in paragraph (c) of this section based on a demonstrated compliance with certain qualification criteria. The incentive-based grazing fee for 1996 = $3.96 × 0.70. The incentive-based grazing fee for 1997 and thereafter = $3.96 × FVI × 0.70.

(i) Notwithstanding paragraph (b) of this section, the base value in 1997 and, thereafter, will be $3.50 until such time as qualification criteria for the incentive-based grazing fee are established.

(j) *Qualification criteria.* [Reserved]

§ 222.52 National Grasslands fee adjustments for conservation practices.

Grazing fees for National Grasslands may be credited up to 50 percent for conservation practices and administrative costs as provided in paragraphs (a) and (b) of this section.

(a) *Credit for Conservation Practices.* In order to receive credit, requirements for permittee construction or development of conservation practices must be incorporated into term grazing permits, including grazing agreements, with a provision that credits for such improvements shall be applied toward the annual grazing fee. Fee credits are allowed only for the following conservation practices:

(1) Where the Forest Service requires the permittee to construct or develop the conservation practices to meet management direction contained in relevant forest land and resource management plans, related projects decisions, and the term grazing permit or grazing agreement.

(2) Where the conservation practices are necessary to achieve or maintain desired vegetation conditions for resource protection, soil productivity, riparian, watershed and wetland values, wildlife and fisheries habitat, and other related values.

(b) *Credit for Administrative Costs.* Where a grazing association carries out administrative duties as defined in a grazing permit, credits for specified reasonable administrative costs borne by the grazing association may be applied toward the grazing fee. Allowable costs are limited to those costs which the Forest Service would otherwise incur if the grazing association did not perform these tasks. Qualifying costs and activities must be identified in each grazing permit terms and conditions.

3. In § 222.53, revise paragraphs (a) and (c)(3)(ii) to read as follows:

§ 222.53 Grazing fees in the East—non-competitive procedures.

(a) *Scope.* Except as provided in § 222.54, on National Forest System lands in the Eastern States, the fee charged for livestock grazing shall be determined through non-competitive, fair market value procedures.

* * * * *

(c) * * *

(3) * * *

(ii) *Grazing Fee Credits for Range Improvements.* Any requirements for permittee construction or development of range improvements shall be identified through an agreement and incorporated into the grazing permit, with credit for such improvements to be applied toward the annual grazing fee. Fee credits shall be allowed only for range improvements which the Forest Service requires an individual permittee, through the terms and conditions of the grazing permit, to construct or develop on a specific allotment to meet the management direction and prescriptions in the relevant forest land and resource management plan. Improvements eligible for fee credits involve only costs which the permittee would not ordinarily incur under the grazing permit, are of tangible public benefit, and enhance management of vegetation for resource protection, soil productivity, riparian, watershed, and wetland values, wildlife and fishery habitat, or outdoor recreation values. The cost of maintaining range improvements specified in the terms and conditions of the grazing permit and other costs incurred by the permittee in the ordinary course of permitted livestock grazing, do not qualify for grazing fee credits.

* * * * *

4. In § 222.54, revise paragraphs (a)(1), (c)(3), and (g)(2) to read as follows:

§ 222.54 Grazing fees in the East—competitive bidding.

(a) * * *

(1) *Applicability.* The rules of this section apply to grazing fees for any allotment established or vacated on, or after, February 26, 1990, on National Forest System lands in the Eastern States as well as to grazing fees for existing allotments of such lands that have already been established under competitive procedures as of [the effective date of the final rule]. The rules of this section do not apply to temporary grazing permits or permits with on-and-off grazing provisions as authorized in subpart A of this part.

* * * * *

(c) * * *

(3) Copies of the applicable grazing permit, terms and conditions, and the latest annual operating instructions shall be made available to all prospective bidders upon request.

* * * * *

(g) * * *

(2) *Grazing Fee Credits for Range Improvements.* Any requirements for permittee construction or development of range improvements shall be identified through an agreement and incorporated into the grazing permit, with credits for such improvements to be allowed toward the annual grazing fee. Fee credits shall be allowed only for range improvements which the Forest Service requires an individual permittee to construct or develop on a specific allotment to meet the management direction and prescriptions in the relevant forest land and resource management plan through the terms and conditions of the grazing permit. These improvements must involve costs which the permittee would not ordinarily incur under the grazing permit, must be of tangible public benefit, and must enhance management of vegetation for resource protection, soil productivity, riparian, watershed, and wetland values, wildlife and fishery habit, or outdoor recreation values. Maintenance of range improvements specified in the terms and conditions of the grazing permit, and other costs incurred by the permittee in the ordinary course of permitted livestock grazing, do not qualify for grazing fee credits.

* * * * *

Dated: April 20, 1994.

James R. Lyons,

Assistant Secretary, Natural Resources and Environment.

[FR Doc. 94–10082 Filed 4–26–94; 8:45 am]

BILLING CODE 3410–11–M

federal register

Thursday
April 28, 1994

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 25
Design Standards for Airplane Jacking and Tie-Down Provision; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 26129; Amdt. No. 25–81]

RIN 2120–AD38

Design Standards for Airplane Jacking and Tie-Down Provisions

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment to the airworthiness standards for transport category airplanes adds a new design standard for airplane jacking and tie-down provisions. This amendment is needed to provide manufacturers with design standards for jacking conditions and is intended to protect primary airplane structure during jacking operations and from gusty wind conditions while tied down.

EFFECTIVE DATE: May 31, 1994.

FOR FURTHER INFORMATION CONTACT: Iven Connally, FAA, Airframe and Propulsion Branch (ANM–112), Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, WA 98055–4056; telephone (206) 227–2120.

SUPPLEMENTARY INFORMATION:

Background

This amendment is based on Notice of Proposed Rulemaking (NPRM) 90–3, which was published in the **Federal Register** on February 9, 1990 (55 FR 4790). The notice was predicated on a need to protect primary airplane structure from damage during jacking operations and during gusty wind conditions.

Airplane jacking is achieved by either lifting on the airframe or on the landing gear. In some instances, the airplane has either slipped off the jacks or been blown off during gusty wind conditions. Also, some transport category airplanes have tie-down provisions to restrain the airplane during high wind conditions. Damage to primary structure could result if the tie-down provisions were not designed to withstand likely wind gusts.

Most manufacturers of transport category airplanes provide information and instructions concerning jacking operations in addition to providing appropriate jacking points on the airplane. However, currently there is no requirement in the airworthiness standards for transport category airplane designs to account for jacking or tie-down loads. In the absence of specific standards, some manufacturers have used jacking and tie-down criteria contained in military specifications to design the airframe and landing gear of commercial transport category airplanes. Others, primarily the manufacturers of smaller transport category airplanes, have requested design criteria for jacking and tie-down loads.

While the FAA is not aware of any existing airplanes that are inadequately designed with respect to jacking and tie-down provisions, it is conceivable that an airplane with inadequately designed jacking and tie-down provisions may be certificated in the absence of specific regulatory requirements. Structural damage at the jacking or tie-down points could pose an immediate hazard while the airplane is on the ground. Even if an airplane does not fall off the jacks, there is the possibility that damage to primary structure could occur from the static loads applied at inadequately designed jacking points. In addition, there is a danger that the damage could remain undetected and lead to a catastrophic structural failure during a subsequent flight. Undetected damage from inadequately designed tie-down provisions poses a similar hazard.

These concerns resulted in Notice 90–3 in which the FAA proposed to require transport category airplanes to have suitable provisions for jacking. In essence, standards consistent with current industry practice were proposed to provide protection of primary airplane structure from loads imposed during probable jacking conditions. As there is no requirement for tie-down provisions, the FAA also proposed to adopt standards to provide protection of primary airplane structure in the event such provisions are provided. This standard is also consistent with current industry practice.

Interested persons have been given an opportunity to participate in this rulemaking and due consideration has been given to all matters presented. Comments received in response to Notice 90–3 are discussed below.

Discussion of Comments

The proposed standards are based on established military and commercial airplane standards and on current industry practice and therefore received general support from all commenters.

The European Joint Aviation Authorities (JAA) suggest the requirements of JAR 25.519 (Joint Airworthiness Requirements) be adopted as § 25.519 of the Federal Aviation Regulations (FAR), offering as justification the favorable service history associated with the JAR.

The JAR standards differ from the proposals in Notice 90–3 in that the load factors used in establishing the vertical and horizontal jacking forces are slightly less. The wind force used to establish the tie-down loads is also slightly less. Although the JAR standard is less conservative than the proposed FAR standard, there is sufficient satisfactory service experience based on the requirements of JAR 25.519 to justify its adoption as the basis for the FAR standard. Additionally, some clarifying changes from the current JAR standard are made in order to define clearly the structures to which the jacking load factors apply. The word "surrounding" is changed to "local" to differentiate between local structure and the entire airplane structure. Also, since the maximum design weight, in this case, is the maximum ramp weight, the rule is revised to avoid any confusion over the weight to use in analyzing the support structure. These minor changes in the final rule will more fully harmonize the FAR and JAR requirements. The JAA also suggests that the introduction of jacking requirements in § 25.513 of the FAR, which corresponds with requirements in JAR 25.519, could cause confusion. The FAA agrees, and for consistency with the JAR, the jacking requirement has been moved from proposed § 25.513 of the FAR to § 25.519.

One commenter recommends that consideration be given to incorporating a design requirement to improve the airplane's ability to maintain contact with the jack head. The FAA has determined that the high side load requirements for the jack fittings achieves this objective and should provide ample protection against an airplane slipping off the jacks.

One commenter recommends the development of standards requiring the use of jacks when working on aircraft with known landing gear problems. The commenter cites an instance in which an airplane that had made a gear up landing was parked with the gear down in an unrepaired condition. Two pilots, while inspecting the airplane for damage, were crushed when the gear collapsed. The FAA considers the concern expressed by the commenter to relate to maintenance or salvage procedures. Since such procedures are not the subject of certification requirements, they are beyond the scope of the notice.

One operator suggests that the regulation include a requirement for the manufacturer to provide specific jacking requirements in the Structural Repair Manual and the Maintenance Manual, and that these requirements include

specific loads at each jack pad for various empty weights and center of gravity locations. The manufacturers generally do provide jacking instructions, including jack pad load limits, in the maintenance and structural repair manuals which are approved as part of the overall maintenance program. While the FAA does not consider it necessary to mandate where the manufacturer places this information, the final rule has been revised to require that load limit information must be provided.

Regulatory Evaluation

This section summarizes the full regulatory evaluation prepared by the FAA that provides more detailed estimates of the economic consequences of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) Will generate benefits that justify its costs and is not a "significant regulatory action" as defined in the Executive Order, (2) is not significant as defined in Department of Transportation Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; and (4) will not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

Benefits

The FAA is unaware of any existing airplanes that are inadequately designed with respect to jacking or tie-down provisions. In the absence of specific regulatory standards, it is possible that an airplane with inadequate design standards for jacking and tie-down could be certificated. Structural damage at the jacking or tie-down points of an inadequately designed airplane could pose a hazard while the airplane is on the ground. More importantly, structural damage at jacking or tie-down points could remain undetected and lead to catastrophic structural failure during a subsequent flight. Transport category airplanes particularly larger airplanes, seldom need to be tied down for protection from high winds. Nevertheless, reliance on inadequately designed tie-down provisions could also damage primary structure.

The FAA is unable to document specific instances where the standards of this rule would have prevented damage to the primary structure of transport category airplanes, primarily because it is assumed that existing airplanes are properly designed with respect to jacking and tie-down provisions. However, the FAA considers that the potential risk of jacking and tie-down accidents will be reduced for future airplane designs that might otherwise be built in the absence of the consistent standards of this amendment. Significant but unquantified benefits could result from reducing the risk of such incidents.

Costs

Essentially all manufacturers of transport category airplanes currently provide appropriate jacking points and jacking instructions for their airplanes. In the absence of regulatory standards for jacking and tie-down provisions on transport category airplanes, some manufacturers have used the jacking and tie-down criteria of military specifications for designing the airframes and landing gears of commercial transport category airplanes. Others, primarily the manufacturers of smaller transport category airplanes, have requested design criteria for jacking and tie-down loads.

The FAA is not aware of any manufacturers who have not used either military specifications or other comparable criteria for designing the airframe and landing gear. Since all large airplanes must be jacked periodically, reasonable and prudent manufacturers have had little choice but to follow this course. Because this rule adopts standards that are consistent with both current and expected industry practice, it is not expected to result in any significant compliance costs.

Comparison of Costs and Benefits

The FAA is unaware of any existing airplanes that are inadequately designed with respect to jacking or tie-down provisions. Since this rule adopts the standards that industry has largely followed, and would most likely continue to follow, in the absence of this rule, no significant costs or benefits are expected.

In the absence of specific regulatory standards, it is possible that an inadequately designed airplane could be certificated. In such a case, the benefits of reducing the potential risk of jacking and tie-down accidents would significantly exceed any incremental costs of compliance. As such, the FAA considers this rule to be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires government agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, establishes threshold cost values and small entity size standards for complying with RFA review requirements in FAA rulemaking actions. This rule will directly affect transport category airplane manufacturers that certify their airplanes under part 25. The size standard for manufacturers of airplanes is 75 employees of fewer. Since no transport category airplane manufacturer meets the standard, this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

This rule is not expected to have an adverse impact either on the trade opportunities of U.S. manufacturers of transport category airplanes doing business abroad or on foreign airplane manufacturers doing business in the United States. Since the certification rules are applicable to both foreign and domestic manufacturers selling airplanes in the United States, there will be no competitive trade advantage to either.

Federalism Implications

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

Conclusion

Because the regulation adopted herein is not expected to result in significant costs, the FAA has determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. For the same reason and because this is an issue that has not prompted a great deal of public concern, this final rule is not considered to be significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). In addition, since there are no small entities affected by this rulemaking, it is certified, under the criteria of the Regulatory Flexibility Act, that this final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. A copy of the regulatory evaluation prepared for this final rule may be examined in the public docket or obtained from the person identified under the caption, **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

Adoption of the Amendment

Accordingly, 14 CFR part 25 of the Federal Aviation Regulations (FAR) is amended as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. app. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g); and 49 CFR 1.47(a).

2. A new § 25.519 is added under the undesignated center heading "Ground Loads" to read as follows:

§ 25.519 Jacking and tie-down provisions.

(a) General. The airplane must be designed to withstand the limit load conditions resulting from the static ground load conditions of paragraph (b) of this section and, if applicable, paragraph (c) of this section at the most critical combinations of airplane weight and center of gravity. The maximum allowable load at each jack pad must be specified.

(b) Jacking. The airplane must have provisions for jacking and must withstand the following limit loads when the airplane is supported on jacks—

(1) For jacking by the landing gear at the maximum ramp weight of the airplane, the airplane structure must be designed for a vertical load of 1.33 times the vertical static reaction at each jacking point acting singly and in combination with a horizontal load of 0.33 times the vertical static reaction applied in any direction

(2) For jacking by other airplane structure at maximum approved jacking weight:

(i) The airplane structure must be designed for a vertical load of 1.33 times the vertical reaction at each jacking point acting singly and in combination with a horizontal load of 0.33 times the vertical static reaction applied in any direction.

(ii) The jacking pads and local structure must be designed for a vertical load of 2.0 times the vertical static reaction at each jacking point, acting singly and in combination with a horizontal load of 0.33 times the vertical static reaction applied in any direction.

(c) Tie-down. If tie-down points are provided, the main tie-down points and local structure must withstand the limit loads resulting from a 65-knot horizontal wind from any direction.

Issued in Washington, DC, on April 13, 1994.

David R. Hinson,

Administrator.

[FR Doc. 94–10168 Filed 4–26–94; 8:45 am]

BILLING CODE 4910–13–M

federal register

Thursday
April 28, 1994

Part VIII

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 226

Leasing of Osage Reservation Lands for Oil and Gas Mining; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 226

RIN 1076–AC09

Leasing of Osage Reservation Lands for Oil and Gas Mining

April 8, 1994.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) amends the regulations contained in the Code of Federal Regulations to eliminate premium, bonus, or other like payments from consideration in the calculation of the royalty price for crude oil in Osage County, Oklahoma.

EFFECTIVE DATE: May 31, 1994.

FOR FURTHER INFORMATION CONTACT: Gordon Jackson, Superintendent, Osage Agency, Bureau of Indian Affairs, Pawhuska, Oklahoma 74056, telephone (918) 287–1032.

SUPPLEMENTARY INFORMATION: The purpose of this final rule is to amend 25 CFR 226.11(a)(2) to eliminate premium, bonus, or other like payments from consideration in the calculation of the royalty price for crude oil in Osage County.

Prior to amendment the regulations were the subject of administrative appeals by numerous oil producers over the meaning of: "and settlement shall be based on the highest of the bona fide selling price, posted or offered price by a major purchaser (as defined in Sec. 226.1(h) of this Part) in Osage County, who purchases production from Osage oil leases." The Bureau of Indian Affairs has interpreted that language to mean that when a higher price is offered and paid for crude oil in Osage County, that price shall be used for royalty computation for all oil of the same quality sold in the county. However, there is reason to believe that this interpretation has discouraged purchasers from offering bonus prices.

The Interior Board of Indian Appeals (IBIA) issued its decision in favor of the producers on February 5, 1993, in *Okie Crude Co., et al.* v. *Muskogee Area Director, Bureau of Indian Affairs*, IBIA 92–18–A, et al. The IBIA concluded that the then existent regulations required a producer to pay royalty on the highest price available to that producer, whether or not that producer actually received that price. Prices not available to a producer would not be used to calculate royalties due from that producer. This final rule eliminates the language that caused the differences in interpretation that led to the appeals to the IBIA.

This rule was published as a proposed rule on November 5, 1993 (58 FR 59142). The last day for public comment was January 4, 1994. No comments were received.

It is the consensus of the BIA and the Osage Tribal Council that this amendment to 25 CFR 226.11(a)(2) will create a positive economic benefit in the form of increased royalty income to the Osage headright holders. This rule change removes the existing disincentive to purchasers to remain in Osage County resulting from bonus payments paid to some producers but not all. The producers in Osage County will now have incentive to receive bonus payments, which will increase mineral activity in the Osage mineral estate.

The Department of the Interior has determined that this rule is not a significant regulatory action under Executive Order 12866, and therefore will not be reviewed by the Office of Management and Budget. In addition, the Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). The amendment may cause small producers to pool their oil production in an effort to secure bonus or premium pay. However, under the amended rule they will not be penalized for premium pay to other lessee/producers.

In accordance with the Executive Order 12630, the Department has determined that this rule does not have significant takings implications.

In accordance with Executive Order No. 12612, the Department has determined that this rule does not have significant federalism effects.

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

The Department of the Interior has determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

The information collections contained in 25 CFR Part 226 are required by the Secretary , Department of the Interior, and are necessary to comply with the requirements of Office of Management and Budget (OMB) Circular No. A–102. The Standard Form 424 and attachments prescribed by such circular are approved by OMB under 44 U.S.C. 3501, et seq. (1982) and assigned approval number 0348–0006. These sections describe the types of information that would satisfy the requirements of Circular A–102. The information will be utilized in leasing of Osage lands for oil and gas mining. Response is mandatory.

William Haney, Field Solicitor, was the primary author of this document. For further information contact Gordon Jackson, Superintendent, Osage Agency, at (918) 287–1032.

List of Subjects in 25 CFR Part 226

Indian-lands, Mineral resources, Mines, Oil and gas exploration.

Words of Issuance:

For the reasons set out in the preamble, part 226 of chapter I, title 25 of the Code of Federal regulations is amended as set forth below.

PART 226—LEASING OF OSAGE RESERVATION LANDS FOR OIL AND GAS MINING

1. The authority citation for 25 CFR Part 226 continues to read as follows:

Authority: Sec. 3, 34 Stat. 543; secs. 1, 2, 45 Stat. 1478; sec. 3, 52 Stat. 1034, 1035; sec. 2(a), 92 Stat. 1660.

2. Section 226.11(a)(2) is revised to read as follows:

§ 226.11 Royalty payments.

(a) * * * * *

(2) Unless the Osage Tribal Council, with approval of the Secretary, shall elect to take the royalty in kind, payment is owing at the time of sale or removal of the oil, except where payments are made on division orders, and settlement shall be based on the actual selling price, but at not less than the highest posted price by a major purchaser (as defined in § 226.1(h)) in Osage County, Oklahoma, who purchases production from Osage oil leases.

* * * * *

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–10120 Filed 4–26–94; 8:45 am]

BILLING CODE 4310–02–P

federal register

Thursday
April 28, 1994

Part IX

Environmental Protection Agency

Hearing Concerning Application To Modify the Final Cancellation Order for Pesticide Products Containing EBDCs; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30000/18E; FRL–4773–3]

Hearing Concerning Application To Modify the Final Cancellation Order for Pesticide Products Containing EBDCs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Hearing.

SUMMARY: On December 1, 1993 the Agency received a request from Elf Atochem and Griffin Corporations to amend labels of certain pesticide products which contain the active ingredients of mancozeb or maneb and which were affected by the final EBDC Cancellation Order and to modify the final EBDC Cancellation Order to allow all EBDC registrants to modify their end use product label(s) in the same manner that Atochem and Griffin have proposed to amend theirs. The proposed amendment seeks to allow the use of more than one EBDC active ingredient per crop per season. It also seeks to allow for a single application per crop per season for seed treatment in addition to any foliar uses for products which have a registered seed treatment use for the particular crop. The proposed amendments would not change the current maximum allowable amount of EBDCs.

Under subpart D of 40 CFR Part 164, this submission constitutes a petition to modify the final cancellation order concerning EBDC products. Such a petition may not be granted without a formal adjudicatory hearing. EPA has concluded that the submissions by Atochem and Griffin, if substantiated in a hearing, may provide a basis for modification of the order canceling EBDC products. This Notice (1) announces that EPA has decided to hold a hearing regarding the petition to modify that order as it applies to the use of more than one EBDC active ingredient per crop per season and the allowance of a single application for seed treatment per crop per season (in addition to foliar applications) on crops which have registered seed treatment uses, (2) specifies the issues of fact and law to be considered at that hearing, and (3) establishes a schedule for the hearing.

DATES: Requests to participate in the hearing announced by this notice must be received by the Office of the Hearing Clerk at the address given below by [insert date 30 days after date of publication in the **Federal Register**]. A pre-hearing conference will be held and the evidentiary hearing will commence as soon thereafter as practicable, according to the schedule outlined herein.

ADDRESSES: Requests for a hearing must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Information supporting the Administrator's decision to hold a hearing will be available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays in: Information Services Section, Management and Program Support Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Room 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Amy Farrell, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Station, 2800 Jefferson Davis Highway, Arlington, VA (703) 308–8054.

SUPPLEMENTARY INFORMATION: On March 2, 1992, the Administrator issued a Notice of Intent to Cancel (NOITC) and Conclusion of the EBDC Special Review which announced EPA's intent to cancel registrations and to deny applications for registration for all pesticide products containing EBDCs as an active ingredient unless the registrations/applications complied with the terms and conditions of that Notice. As a result of the Notice, 11 uses were canceled and use restrictions were placed on the remaining 45 uses. One requirement was that, to avoid cancellation, all EBDC labels and product registrations bearing agricultural uses must be amended to include the following label statement: "If this product is used on a crop, no other product containing a different EBDC active ingredient may be used on the same crop during the same growing season." This requirement prohibits the use of more than one EBDC active ingredient per crop per season.

I. The Submissions

On December 1, 1993 the Agency received evidentiary submissions from Elf Atochem and Griffin Corporations in support of their requests: (1) To amend labels of seven EBDC pesticide products which were subject to the Cancellation Order and which contain the active ingredients of mancozeb or maneb (Manex™, Maneb 75DF, Maneb 80, Maneb Plus Zinc F4, Penncozeb, Penncozeb DF and Pro-Tex) and (2) that the Agency modify the final EBDC Cancellation Order to allow all other EBDC registrants to modify their EBDC end use product label(s) in the same manner that Atochem and Griffin have proposed to amend theirs. Subsequently, additional related correspondence was submitted by Atochem and Griffin on December 30, 1993 and January 12, 1994 to supplement the original proposal.

The current label language required by the Cancellation Order prohibits the use of more than one EBDC (maneb, mancozeb, or metiram) on a given crop during a growing season. The petitioners request that more than one EBDC active ingredient be allowed to be used per crop per season. Under their proposal, when all products being used have the same maximum poundage (maximum application rate times the maximum number of allowed applications) the total amount used must not exceed the maximum label poundage, or when the products being used have different maximum poundages, the total amount used must not exceed the lowest maximum poundage. Additionally, allowance for a single seed treatment in addition to foliar applications where there is a registered use for seed treatment is requested.

In their request, Atochem and Griffin are asking that EPA modify the Cancellation Notice and Order as noted below so that any EBDC registrant may amend their labels accordingly. The request also includes applications to amend labels of seven mancozeb and maneb products.

One of the elements of the Cancellation Notice and Order was a label requirement which reads "If this product is used on a crop, no other product containing a different EBDC active ingredient may be used on the same crop during the same growing season." This current language prevents the use of more than one EBDC active ingredient per crop per season. The registrants are proposing to replace that language with the following language:

Foliar applications. Where EBDC products used allow the same maximum poundage of active ingredient per acre per season:

If more than one product containing an EBDC active ingredient (maneb, mancozeb, or metiram) is used on a crop during the same growing season and the EBDC products used allow the same maximum poundage of active ingredient per acre per season, then the total poundage of all such EBDC products used must not exceed any of the specified individual EBDC product maximum seasonal poundage of active ingredient allowed per acre.

Where EBDC products used allow different maximum poundage of active ingredient per acre per season:

If more than one product containing an EBDC active ingredient is used on a crop during the same growing season and the EBDC products used allow different maximum poundage of active ingredient per acre per season, then the total poundage of all such EBDC products used must not exceed the lowest specified individual EBDC product maximum seasonal poundage of active ingredient allowed per acre.

Seed Treatment

In addition to the maximum number of foliar applications permitted by the formula stated above, a single application for seed treatment may be made on crops which have registered seed treatment uses.

The language proposed by the registrants allows the use of more than one EBDC active ingredient per crop per season, specifies formulas to follow for maximum poundage allowed when different EBDCs are used, and allows for a single seed treatment per crop per season in addition to the foliar applications where the crop has a registered seed treatment use.

II. Regulatory History

On March 2, 1992, the Administrator issued a Notice of Intent to Cancel (NOITC) and Conclusion of the EBDC Special Review which announced EPA's intent to cancel registrations and to deny applications for registration for all pesticide products containing EBDCs as an active ingredient unless the registrations/applications complied with the terms and conditions of that Notice. The decision to issue that order was based on the determination that use of EBDCs without such modified terms and conditions would result in unreasonable adverse effects to humans or the environment. More specifically, 11 uses were canceled and use restrictions placed on the remaining 45 uses. The information and analysis upon which that determination was based is set forth in detail in the text of the March 2, 1992 NOITC (57 FR 7484).

The NOITC contained a requirement that, to avoid cancellation, all EBDC labels and product registrations bearing agricultural uses must be amended to include the following label statement: "If this product is used on a crop, no other product containing a different EBDC active ingredient may be used on the same crop during the same growing season." This requirement prohibits the use of more than one EBDC active ingredient per crop per season. Although the reason for this requirement was not stated in the Notice, the Agency's decision to limit EBDC application as such was to avoid the potential overuse of EBDC's through active ingredient switching. The decision was not based on specific risk concerns or on the risk calculations underlying the Agency's EBDC regulatory decision.

Subsequent to the NOITC becoming an effective order of cancellation, the Agency received a request for a subpart D hearing, the evidentiary submissions and associated correspondence from Elf Atochem and Griffin Corporations, the details of which are delineated above. The Agency received supporting letters from the Florida Fruit and Vegetable Association and the National Potato Council. The language proposed would replace a label requirement specified in the Cancellation Notice and Order which allows the use of only one EBDC per crop per season and prohibits certain seed treatment applications.

III. Statutory and Regulatory Background

A. Standards for Maintaining a Registration

Before a pesticide product may be lawfully sold or distributed in either intrastate or interstate commerce, the product must be registered by the Environmental Protection Agency. FIFRA section 3(a) and 12(a)(1)(A). A registration is a license allowing a pesticide product to be sold and distributed for specified uses in accordance with specified use instructions, precautions, and other terms and conditions. A pesticide product may be registered or remain registered only if it performs its intended pesticidal function without causing "unreasonable adverse effects on the environment" FIFRA section 3(c)(5). "Unreasonable adverse effects on the environment" is defined as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide." FIFRA section 2(b). The burden to demonstrate that a pesticide product satisfies the criteria for registration is on the proponents of initial or continued registration. *Industrial Union Dept. v. American Petroleum Institute*, 448 U.S. 607, 653 n.61 (1980); *Environmental Defense Fund v. Environmental Protection Agency*, 510 F.2d 1292, 1297, 1302 (D.C. Cir. 1975).

Under FIFRA section 6, the Agency may issue a notice of intent to cancel the registration of a pesticide product whenever it is determined that the product no longer satisfies the statutory criteria for registration. The Agency may specify particular modifications in the terms and conditions of registration, such as deletion of particular uses or revisions of labeling, as an alternative to cancellation. If a hearing is requested by an adversely affected person, the final order concerning cancellation of the product is not issued until after a formal administrative hearing.

B. Subpart D Proceedings

When the Agency receives an application to permit use of a pesticide in a manner inconsistent with a prior cancellation decision, that application constitutes a petition to the Administrator to modify the final cancellation order. Because of the opportunity for a notice and a formal adjudicatory hearing which precedes entry of a final cancellation order concerning a pesticide product, EPA has determined that such an order should not be modified or rescinded without affording interested parties a similar notice and opportunity for hearing concerning such modification or rescission. The procedures governing all applications to modify or reverse a previous final cancellation order are set forth in subpart D of 40 CFR part 164, 40 CFR 164.130 through 164.133.

When all opportunities for hearing and review with respect to an Agency decision to cancel a pesticide product have either been exercised or waived, and a final cancellation order has been entered, the Agency is entitled to rely on the finality of the order and the validity of the evidentiary rationale supporting it. Applicants seeking modification of a final order should not be afforded a new adjudicatory hearing concerning the same matters which were considered or could have been considered during a prior hearing. Thus, 40 CFR 164.131(a) provides that the Administrator will grant a hearing to modify a prior final cancellation order when she finds that:

(1) The applicant has presented substantial new evidence which may materially affect the prior cancellation order and which was not available to the Administrator at the time he/she made his/her final cancellation determination and, (2) such evidence could not, through the exercise of due diligence, have been discovered by the parties to the cancellation proceeding prior to the issuance of the final order.

In deciding whether or not to initiate a hearing, the Administrator does not need to determine that the evidence submitted by the petitioner would in fact justify modification of the prior order. Rather, a decision to initiate a hearing means only that the

Administrator has determined that the evidence submitted, if substantiated on the record in the hearing, may "materially affect" the evidentiary rationale upon which the prior order was based. On the other hand, if the evidence submitted, even if substantiated on the record, would be unlikely to provide a basis for modification of the prior order, then a hearing would serve no purpose.

If the Administrator determines that a petitioner has met the criteria for a subpart D hearing, the Administrator then publishes a notice in the **Federal Register** setting forth the determination, the rationale for that determination, a description of the issues of fact and law to be adjudicated in the hearing, and a schedule for the hearing. The purpose of the hearing is to determine whether: (1) Substantial new evidence exists and (2) such substantial new evidence requires reversal or modification of the existing cancellation order. For purposes of any decision in the hearing, those portions of the substantive rationale for the existing order concerning which the petitioner did not submit substantial new evidence are assumed to be correct. Thus, the scope of any subpart D hearing is intrinsically narrower than the proceeding which was held or could have been held concerning the order to be modified.

In a subpart D hearing, as in a cancellation hearing, the Administrative Law Judge transmits a recommended decision to the Administrator, who then issues a final decision retaining, modifying, or reversing the existing order.

IV. Analysis of the EBDC Request for Subpart D Hearing

A. Risk Issues

Atochem and Griffin have not submitted any new information which would affect the validity of the Agency's analysis of the toxicity of EBDCs or the methodology used by the Agency to estimate exposure to EBDCs. The petitioners assert that the proposed language does not increase the individual or seasonal application limits and provides equivalent protection in terms of limiting exposure while addressing the Agency's concerns about multiple EBDC use and having the added advantage of being more easily understood. The petitioners further assert that the decision to restrict EBDC use as per the restrictive language of the NOITC was not based on specific risk concerns but on concerns of exceeding maximum amount of product allowed per crop per season.

As mentioned in unit II above, the March 2, 1992 NOITC, which contained the requirement which would prevent the use of more than one EBDC active ingredient per crop per season, did not provide a risk/benefit rationale for the specific application prohibitions at issue here. The Agency's thinking at that time was that such a provision would help assure that growers would not exceed EBDC usage limits per crop. The language was designed to address this need. There are other disincentives to growers that should dissuade them from engaging in that type of practice, such as the risk of having crops with over-tolerance residues which could make crops subject to seizure.

The Agency recognizes that there might be different and better ways to address this concern which do not increase risks and would allow EBDC use in situations where multiple EBDC use is warranted.

B. Benefits Issues

The Atochem and Griffin submission includes information and evidence on the benefits of using more than one EBDC active ingredient per crop per season which was not available to or considered by the Agency prior to the final Cancellation Order. The submission asserts that the current label restriction "has had a substantial impact on the industry, including negative effects on competition, industry-wide confusion, and hardship for suppliers and growers alike" and includes information which is summarized below in support of their assertion:

The current label specification precludes growers from switching among EBDCs for any reason. This is true even if a particular product is high priced due to limited availability or unavailable altogether.

The petitioners assert that the potato industry has faced a unique problem. According to petitioners, many potato growers are required by contract with food processors or packers to make pre-storage applications of Ridomil® (metalaxyl) which contains mancozeb, because consultants and researchers have strongly recommended this as a way to prevent root rot, or late blight. This, coupled with the current prohibition on switching among EBDC active ingredients, precludes any potato grower under such a contract from using any EBDC but mancozeb on that crop for the remainder of the season--even though it may not be the most effective treatment for the pest. Petitioners further assert that there is an increased risk of resistance when the range of products used is limited.

Fungal problems associated with potatoes include root rot, or late blight which is commonly treated with a metalaxyl product which is considered most effective when it is a metalaxyl/EBDC mix. Product mixes (as opposed to tank mixes) are preferred because of their convenience, ease in handling, reduced potential exposure, and reduced costs. Current labeling precludes growers from using metalaxyl/EBDC mixes such as Ridomil Mz® (metalaxyl and mancozeb) if they had used maneb earlier in the season. This would limit them to using metalaxyl without an EBDC which may be a less effective treatment and may limit the potatoes' marketability.

Reliability of supply is another issue that growers consider. All EBDC active ingredients are manufactured abroad and domestic suppliers have little control over ensuring their steady supply. The failure of a foreign supplier or manufacturer to deliver the active ingredients as scheduled can result in the shortage of a particular formulation. This could create problems for growers who are bound by current label specifications to the use of a specific active ingredient.

The submission provides some evidence of the registrant/marketplace/grower confusion that resulted from implementation of this provision that was not available at the time of the NOITC. The submission asserts that there has been significant confusion in the marketplace and among growers and includes two examples: the Wisconsin Potato and Vegetable Growers Association, according to their February 8, 1993 newsletter, interpreted the current label language to restrict growers to one brand all season and *Sugar Producer Magazine* interpreted the statement the same way, saying that no product switching would be allowed.

These interpretations of the language differ substantially from the EPA's post-cancellation order interpretation (EPA response to questions posed by the EBDC/ETU Task Force after the NOITC had become a final cancellation order) which clearly limited only switching among active ingredients and did not restrict switching among different brands of the same EBDC active ingredient. Petitioners assert that this confusion could influence purchasing decisions and create unfair advantages for certain products while undermining integrated pest control practices.

As noted above, the Agency has attempted to clarify this issue, but even with clarification, the unintended impacts have continued. The Agency recognizes that the label language required by the NOITC has created

confusion and implementation problems in the marketplace and at the grower level. It is obvious from the information provided by the Petitioners that this confusion has continued even after the Agency attempted to clarify the requirement and its intent. Obviously, the Agency does not want this confusing situation to continue. In light of the unfortunate situation that has evolved since the NOITC requirement became final and began to be implemented, the Agency now believes that its goal of limiting the potential exceeding of EBDC usage limits by growers can be addressed in a better way with different label language.

Atochem and Griffin further assert that the current label restriction is inconsistent with the nature of Integrated Pest Management (IPM) programs which are "based on selective use of different classes of fungicides..."

The Agency has received copies of correspondence from the Florida Fruit and Vegetable Association and the National Potato Council discussing certain problems faced by growers who are bound by the current label restrictions. Both letters expressed strong support for the Atochem and Griffin request to replace the current restriction with the proposed language.

The Atochem and Griffin submission asserts that "the proposed language serves EPA's objective which was to ensure that seasonal limits on the quantities of EBDCs that can be applied to a particular crop not be exceeded without any negative effects on competition or any hardship to the industry or to growers."

C. Subpart D Determination

Under 40 CFR 164.131(a), the Administrator is to provide a hearing to modify a prior final cancellation decision only if it is determined that certain criteria have been met. Having concluded that Atochem and Griffin have presented substantial new evidence concerning the impact of new restrictions on the use of more than one EBDC active ingredient per crop per season which was not available to the Agency when the final cancellation order went into effect, the Administrator must now determine whether that evidence "may materially affect" that order. The Administrator has concluded that because risk will not be increased by adoption of the proposed language, she might consider modifying the cancellation decision to alter this restriction if the evidentiary record in a hearing substantiates the Atochem and Griffin assertions concerning the impacts of the restrictions and the benefits of using more than one EBDC active ingredient per crop per season and in certain cases allowing a single seed treatment application per crop per season in addition to foliar applications. Thus, the first criterion in 40 CFR 164.131(a) has been met.

Certain information provided by Petitioners on the post-cancellation order implementation confusion, and problems created by this label provision in the marketplace and among users, could not have reasonably been obtained before the restriction was in place. Having also concluded that either these petitioners or the parties in the cancellation proceeding could not have discovered earlier some of this new evidence on the impact of this restriction "through the exercise of due diligence" the second criterion in 40 CFR 164.131(a) has also been met.

Based on the above analysis, the Administrator has decided to hold a hearing under subpart D to consider whether to modify the final cancellation order for pesticide products containing EBDCs as it applies to the restriction on the use of more than one EBDC active ingredient per crop per season and the allowance in certain cases of a single seed treatment application per crop per season in addition to foliar applications.

V. Hearing Procedures

A. Issues To Be Adjudicated

Pursuant to 40 CFR 164.131(c), the Administrator is specifying those issues of fact and law to be adjudicated in the hearing convened pursuant to this notice. Because the purpose of such a hearing is only to consider whether to modify certain aspects of the Administrator's prior cancellation decision and because a prompt conclusion to the hearing is a requisite of meaningful relief for the petitioners, the evidentiary presentation in the hearing shall be strictly confined to the issues of fact and law which the Administrator has determined are presented by the Atochem and Griffin submission.

The issues of fact to be adjudicated are:

1. What will the economic impacts on growers, processors, and consumers be if the lack of a provision for a seed treatment application and the present restriction on using multiple EBDC active ingredients on the same crop during the same growing season continue?

2. What have been the use practices regarding the use of more than one EBDC active ingredient per crop per season prior to the current restriction?

3. What will be the effect of the present restriction on using multiple EBDC active ingredients on the same crop during the same growing season if this restriction is maintained? Likewise, what would be the effect on efficacy of EBDC use and other pest control practices if the lack of a provision for a seed treatment application continues?

4. Assuming the validity of the analysis of the toxicity of EBDCs and the methodology for analysis of exposure to EBDCs upon which the cancellation order was based, what quantitative effect would adoption of the proposed language have on the total risk associated with EBDC use?

The issues of law to be adjudicated are:

1. Has substantial new evidence been presented pertaining to the use of more than one EBDC active ingredient per crop per season and allowance in certain cases for a single seed treatment application per crop per season in addition to foliar applications and the impact of the current restriction?

2. Assuming the validity of the analysis of the toxicity of EBDCs and the methodology for analysis of exposure to EBDCs upon which the cancellation order was based, does the evidence presented demonstrate that the benefits of allowing use of more than one EBDC active ingredient per crop per season and allowing in certain cases a single seed treatment application per crop per season in addition to foliar applications are likely to outweigh the risks of such use? [i.e. Based on the evidence presented, should the Agency revise its prior determination that allowed use to be limited to one active ingredient per crop per season and that a single seed treatment should not be allowed in certain cases in addition to the foliar application?]

The sole objective of this hearing is to determine whether or not the order canceling all sale, distribution, and use of pesticide products containing EBDCs which do not comply with the current label restriction on multiple EBDC use should be modified to permit the use of more than one EBDC active ingredient per crop per season and allow a single seed treatment in addition to foliar uses where there is a registered seed treatment use.

B. Burden of Proof

As provided by 40 CFR 164.132, the burden of proof in this proceeding shall be on the proponent(s) of modification of the final cancellation order and the petitioners shall proceed first. As in all formal adjudication, all testimony must be presented and documents sponsored by a witness competent to be cross-examined on the material. It is the petitioners rather than the Agency who

must make an evidentiary record substantiating the assertions in the submission. Of course, Agency counsel may also present testimony and cross-examine Petitioners' witnesses concerning the issues of fact to be adjudicated.

C. Hearing Requests

The petitioners and the Agency shall automatically be parties in the hearing. Any other person or party who seeks to participate in the hearing must submit a written hearing request describing the interest of that person or party in the proceeding and the nature and purpose of the participation sought. All requests for a hearing must be received by the Office of the Hearing Clerk within 30 calendar days from the date of publication of this Notice in the **Federal Register**. Any request received after that time will be denied. Requests for a hearing must be submitted to: Hearing Clerk (1900). Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

D. Scheduling

As required by 40 CFR 164.131(c), the Administrator is specifying a schedule for this hearing. In recognition of the narrow scope of the proceeding, the Administrator is establishing the following schedule.

The Chief Administrative Law Judge shall appoint an Administrative Law Judge to preside at this proceeding within 35 calendar days from date of publication of this Notice in the **Federal Register**. The hearing shall commence in Washington, DC as soon thereafter as practicable but in no event later than 40 calendar days from the date of publication of this Notice in the **Federal Register**. The presiding Administrative Law Judge shall transmit recommended findings of fact and conclusions of law and the hearing record to the Administrator within 70 calendar days from the date of publication of this Notice in the **Federal Register**. The parties shall submit any objections to the recommended findings of fact and conclusions of law to the Administrator within 10 business days after issuance, and the Administrator will enter a final order as soon thereafter as practicable.

E. Separation of Functions

EPA's Rules of Practice forbid anyone who may take part in deciding this case at any stage of the proceeding, from discussing the merits of the proceeding ex parte with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of his/her representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are designated as the judicial staff of EPA in any administrative hearing on this issue: the Office of Administrative Law Judges, the Environmental Appeals Board, the Deputy Administrator, and the members of the staff in the immediate office of the Deputy Administrator, and the Administrator and the members of staff in the immediate office of the Administrator. The following offices are designated as the trial staff in any proceeding which may arise under this Notice: The Office of General Counsel, the Assistant Administrator for the Office of Prevention, Pesticides, and Toxic Substances and immediate staff, the Office of Pesticide Programs, and the Office of Compliance Monitoring. None of the persons designated as the judicial staff may have any ex parte communications with the trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceedings, without fully complying with the applicable regulations.

Dated: April 18, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 94–10138 Filed 4–26–94; 8:45 am]

BILLING CODE 6560–50–F

federal register

Thursday
April 28, 1994

Part X

Department of Transportation

Federal Aviation Administration

14 CFR Part 25
Electrical and Electronic Systems
Lightning Protection; Final Rule

14 CFR Part 25

[Docket No. 25912; Amdt No. 25–80]

RIN 2120–AC81

Electrical and Electronic Systems Lightning Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new standard for electrical and electronic systems installed in transport category airplanes. It is the result of increasing concern for the vulnerability of these systems to the indirect effects of lightning, and is intended to enhance safety by providing specific lightning protection requirements for electrical and electronic systems that perform essential or critical functions.

EFFECTIVE DATE: May 31, 1994.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, FAA, Flight Test & Systems Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2135.

SUPPLEMENTARY INFORMATION:

Background

This amendment is based on Notice of Proposed Rulemaking (NPRM) No. 89–15, which was published in the **Federal Register** on May 30, 1989 (54 FR 23164).

As discussed in the notice, concern for the vulnerability of airplane electronic systems to the effects of lightning has increased substantially over the past few years. The use of solid-state components in the design of electronic control systems in airplanes has made such systems potentially susceptible to transient effects of induced electrical current and voltage caused by a direct lightning strike to the airplane. These induced transient currents and voltages can degrade electronic system performance by damaging components or upsetting system functions. Component damage means a permanently altered electrical characteristic that can include dielectric breakdowns and effects from heat in semiconductor junctions, resistors, and component interconnections. Function upset refers to an impairment of system operation, either permanent or momentary (e.g., a change of digital or analog state), that includes logic changes in computer and processing systems, electronic engine and flight controls, and power generating and distribution systems.

Another factor that has contributed to this increased concern is the reduced electromagnetic shielding afforded airplane electronic systems by advanced technology airframe materials. Some of these materials have no electrical conductivity and lightning strikes often puncture them, resulting in extensive damage and allowing lightning to attach to vulnerable electronic systems or components located within the airframe. Other materials, such as graphite-reinforced composites, have some electrical conductivity. Voltages induced by lightning current that flows in airframe components made of these composite materials are much higher than those in aluminum materials because the electrical resistance of composites is higher; therefore, such composites provide much less protection to the circuits and electronic systems in the airplane.

There are two sections in 14 CFR part 25 that specifically pertain to lightning protection: one for the airframe in general (§ 25.581), and the other for the fuel system (§ 25.954). There are no regulations dealing specifically with lightning protection of electrical and electronic systems. The advent of advanced electronic systems in airplane designs submitted for FAA approval requires that additional consideration be given to protecting these systems from the effects of lighting strikes. Although § 25.581(a) (structures subpart) requires that an airplane be protected against catastrophic effects of lighting, and § 25.1309(a) states that required systems must operate properly in all environmental conditions, it has been determined that the existing lightning protection requirements are not adequate for advanced electronic systems.

In recent type certification programs involving advanced electronic systems, such as those used in the Airbus A320, Boeing 747–400, and Douglas MD–11 airplanes, the FAA has adopted special conditions to provide an adequate level of safety.

Since trends indicate that future airplane designs will incorporate similar systems, the FAA has determined that a change in the design standards of part 25 is necessary.

Discussion of Comments

The following discussion summarizes the comments received from the public, industry, foreign authorities, and manufacturers in response to Notice 89–15.

Several commenters request clarification as to what constitutes critical and essential functions.

The terms "critical" and "essential" originated when attempts were made to classify failure conditions in accordance with § 25.1309. This regulation requires that systems be designed so that the occurrence of any failure condition that would prevent the continued safe flight and landing of the airplane is extremely improbable. The function affected by such a failure condition is deemed "critical." Additionally, § 25.1309 requires that systems be designed so that the occurrence of any other failure condition that would reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions is improbable. The function affected by such a failure condition is deemed "essential." The combination of systems or system redundancy required to meet these reliability requirements is determined by conducting a preliminary hazard analysis or criticality assessment. Examples of systems that perform critical functions are full authority electronic engine controls, electronic primary flight controls, primary flight displays, and electronic stability augmentation. Examples of systems that perform essential functions are communications systems, navigation systems, and flight management systems.

One commenter considers the lightning protection requirements to be unclear when applied to individual subsystems prior to installation in the airplane, and recommends that the relationship between the airframe manufacturer and the subsystem supplier to clarified. The commenter contends that the proposed rule appears to suggest that all systems that perform critical functions would be required to withstand the full direct strike currents, without taking into account any reduction in these currents due to the shielding provided by the airframe.

As discussed in the NPRM, the purpose of the proposed regulation is to require lightning protection for electrical and electronic systems that perform critical and essential functions when installed in an airplane. Protection may be provided by the airplane structure, shielding of the wiring, and enclosures of the individual subsystems. The level of protection needed for subsystems is generally specified by the airframe manufacturer. In the past, when the airframe manufacturer did not specify the level of protection needed, Radio Technical Commission for Aeronautics (RTCA) Document DO–160, Section 22, "Lightning Induced Transient Susceptibility," was used to provide guidance. While Section 22 of DO–160 is incomplete, it is currently being revised to include the effects of multiple burst and multiple stroke test

waveforms so as to be in agreement with FAA Advisory Circular 20–136, "Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning," dated March 5, 1990, and Society of Automotive Engineers (SAE Committee Report AE4L–87–3, Revision B, dated January 1989. Until the DO–160 revision has been completed, the test and analyses described in the advisory circular should be used to qualify subsystems. The test waveforms presented in Appendix III of the advisory circular represent a severe natural lightning environment, including the multiple stroke and multiple burst criteria, that is external to the airplane and that may be used by certification purposes in accessing the induced effects of lightning. The equipment should be protected to the appropriate test level, as specified in Appendix IV of the advisory circular, for the proposed airplane installations so that the subsystems are able to continue to perform their intended functions after the tests are conducted.

Two commenters suggest that the definitions of the terms "critical" and "essential" functions be removed from the proposed rule and placed in 14 CFR part 1 of the FAR, Definitions and abbreviations.

The FAA does not concur with this suggestion. The terms "critical" and "essential," as used in the proposed rule, have a unique definition based on §§ 25.1309 (b)(1) and (b)(2) that may be inappropriate when used in other rules. Commenters have expressed confusion over the use of these terms; therefore, the definitions of "critical" and "essential" functions have been integrated into the wording of the rule so as not to require separate definitions.

One commenter suggests that the words "contribute to or" be removed from the definitions for critical and essential functions given in proposed §§ 25.1315 (c)(1) and (c)(2) because this terminology is undefined and can be subject to broad interpretation.

The FAA does not concur. This terminology is consistent with that used in existing regulations and is generally understood by the aviation industry. It is used in this rule to convey that although a failure by itself may not be catastrophic or major, it may be a contributing factor when combinations of failures are considered. For example, a latent or undetected failure could contribute to a hazardous failure condition when combined with one or more specific failures or events. Also, systems that perform only non-essential functions could contribute to a failure condition involving an non-essential or critical function.

The same commenter also suggests that the words "significantly impact the safety," in proposed § 25.1315(c)(2), be changed to "reduce the capability" for consistency with § 25.1309(b)(2).

The FAA concurs with this recommendation, and § 25.1315(c)(2), now designated as § 25.1315(b), has been revised accordingly.

Several commenters request clarification as to exactly what is meant by the statement that critical functions are "not affected" by the lightning encounter.

The FAA concurs that clarification of "not affected" is needed; therefore, the final rule has been revised to read, "not adversely affected" in an attempt to convey this intent. Although the words "not affected" were used in the proposed rule, the FAA did not intend that the requirement be rigidly applied. The intent of the regulation is to require lightning protection for systems that perform critical functions to the extent that the critical functions are not *adversely* affected by the lightning event. Determination of when functions are adversely affected would be made by the cognizant FAA Aircraft Certification Office based on rational engineering judgment on a case-by-case evaluation of the specified function and the "effect" presented. Literally applying a standard of "no effect" would not be reasonable. In determining compliance with special conditions in past certification programs, the FAA has accepted upsets of a minor nature that do not result in significant fluctuations of control surface position or engine thrust. Any effect perceived by the flightcrew would need to be evaluated to ensure that it would not lead to a hazardous condition. For example, some full authority digital engine control (FADEC) systems are designed with two fully redundant channels, either of which can control the engine independently. In addition, the logic within the FADEC will monitor each channel and, by design, switch channels if an anomaly appears on the selected channel. This does not necessarily mean that the channel is no longer functional or has degraded, because if the backup channel were not functional, the selected channel would continue in control. Therefore, it would not be considered an adverse effect if a channel transfer in such a system occurred in accordance with its accepted design when the airplane is exposed to the lightning test waveforms. However, additional tests may be required to demonstrate that neither channel would be adversely affected when tested individually. For example, a mode change within a given channel that could result in the loss of a primary thrust setting parameter, resulting in the possibility of a change in thrust level, would not be acceptable. Internal monitors that indicate normal operation of critical systems must not be damaged by the effects of lightning.

Other examples of adversely affected critical functions are hazardously misleading primary flight information, uncommanded flap motion and, of course, loss of primary flight controls in a fly-by-wire airplane.

Determination of adverse effects will be handled on a case-by-case basis subject to the explanation given above. Perturbations or deviations that exceed tolerances agreed upon in the test plan must be reported to the FAA for evaluation.

The same commenters also suggest that adequate lightning protection is provided if the airplane is still capable of continued safe flight and landing after the lightning encounter.

The FAA does not agree that the concept of continued safe flight and landing is sufficient. The FAA has concluded that a higher level of safety is required for systems that perform critical functions when exposed to adverse environmental conditions. This concept would be violated, for example, if engine failure from an expected environmental condition, such as a lightning strike, were allowed because any environmental condition that may adversely affect an engine design must be assumed to affect all the engines on the airplane. For this reason, engines, as installed, must be able to tolerate these conditions without damage or serious loss of thrust. This same line of reasoning applies to other systems that perform critical functions. Lightning strikes to airplanes are unpredictable as to their strength, duration, and number. Therefore, continued safe flight and landing of the airplane after multiple lightning strikes could not be assured unless systems that perform critical functions have a high degree of tolerance to the expected lightning strike environment. This basic environmental requirement also applies to other environmental conditions, such as icing, hail, heavy rain, bird flocks, etc.

One commenter proposes new wording for § 25.1315(a) that would allow crew action to restore critical systems that have been disrupted by lightning induced transients.

The FAA does not concur. Critical function disruption must be automatically restored after the lightning encounter. Under certain flight

conditions, such as during takeoff or landing in instrument meteorological conditions when the crew workload is high, the crew may not be able to restore the critical function in time to prevent a catastrophic even from occurring. The FAA allows crew action to restore systems that perform essential functions; however, systems that perform critical functions must recover automatically.

The majority of commenters do not agree that the test waveforms should be contained in an appendix to part 25, as proposed in the notice. They contend that this information should be presented in an advisory circular. Several commenters believe that there will be additional adjustments to the description of the lightning environment as knowledge of the phenomena increases, and that an advisory circular would be easier to revise than an appendix to the FAR. In addition, they argue that the FAA should not be legally bound by the criteria in an appendix if a change to the description of the environment is appropriate.

The FAA concurs that the proposed appendix should not be adopted. As noted by several commenters, the information contained in the proposed appendix was taken from SAE Report AE4L–87–3, Revision A, entitled "Protection of Aircraft Electrical/ Electronic Systems Against the Indirect Effects of Lightning," dated October 1988. After the notice was published, the AE4L Committee added clarifications of the environment definition, including some boundaries on pulse spacing in the multiple burst and multiple stroke environments. These have been incorporated in Revision B of the SAE document issued in January 1989. Because of the potential for further adjustments in the environment definition, and because use of the description of the environment set forth in the proposed Appendix J is only one means of showing compliance with this rule, the FAA concurs that it would be more appropriate to present this information in an advisory circular. This is also consistent with the FAA's practice of publishing technical guidance/ procedures for implementing a particular regulation in an advisory circular. As noted earlier, the idealized waveforms are currently covered in AC 20–136. Accordingly, proposed Appendix J to part 25 has been removed from the final rule. However, to provide guidelines as to what is involved in showing compliance with the rule, general criteria are added to § 25.1315 as paragraph (c). A detailed discussion of these criteria is provided in AC 20–136.

Two commenters consider the definition of the environment given in the proposed Appendix to be unrealistic and propose several changes to the idealized test waveforms.

The FAA does not concur that this definition is unrealistic. The FAA has worked closely with SAE Committee AE4L in developing the idealized test waveforms that are presented in Revision B of Report AE4L–87–3. The FAA has adopted these waveforms as acceptable representations of a severe natural lightning environment for certification purposes and has included them in AC 20–136. The proposed changes submitted by the commenters have been forwarded to the AE4L Committee for consideration. The FAA will consider appropriate changes to the definition of the waveforms in the AC if the Committee recommends them.

Two commenters object to statements in the background and discussion of the NPRM that new generation systems and airframes are more vulnerable to the indirect effects of lightning than previous designs.

The FAA agrees that new generation systems are not necessarily more vulnerable to the indirect effects of lightning if proper design, shielding, and grounding techniques are used. However, the use of sensitive electronics that respond to low level voltage commands makes these systems potentially more vulnerable if they are not properly designed and shielded. Reduced electromagnetic shielding provided by nonmetallic airframe materials also raises the potential for system interference from lightning. The intent of these new lightning protection requirements is to maintain the level of safety that is inherent in the older airplane designs.

Two commenters point out that preamble statements are vital to defining logical, usable, and economically feasible rules, and suggest that specific technologies, system architectures, and function susceptibility criteria must be provided instead of generalities if the FAA desires to justify the rule on a sound technical basis.

The FAA does not concur. In order to avoid stifling innovation, the FAA specifies the required safety objective in a regulation rather than dictating specific design details, whenever possible. In accordance with long-standing certification practice, system technologies and architectures are proposed by the applicant, allowable function susceptibility is determined on a case-by-case basis by the local cognizant FAA certification office using published FAA policy and engineering judgment.

One commenter expresses concern that application of the proposed rule to existing airplanes could present problems for supplemental type certification (STC) applicants when new systems are installed. Many airlines, for example, do not have the capability to demonstrate compliance.

The FAA considers lightning to be an environmental condition that must be taken into consideration to assure confidence of safe operation when a new system is installed in an airplane. Equipment manufacturers have historically used the test procedures in RTCA Document DO–160 to qualify their equipment to environmental conditions. The capability of the equipment to meet the tests described in this document establishes a minimum level of protection for system components. Additional protection may be provided by the airframe materials, shielding of wire bundles, proper equipment grounding, etc. In addition to bench tests, a determination should be made that systems that perform critical and essential functions, as installed in a given airplane, are provided with adequate protection, including margins, and that installation level testing and/or verified analysis is adequate. This determination is made by the cognizant FAA Aircraft Certification Office, based on guidance contained in AC 20–136, and sound engineering judgment. In addition, the FAA has issued special conditions for new systems in existing airplanes under the provisions of § 21.101(b)(2). The extent of review required for a system installed in existing airplanes will depend on the type of system, installation considerations such as type of airplane, airframe materials (metallic or composite), service experience in "similar" airplanes, and other factors. These evaluations should be reviewed with the cognizant FAA Aircraft Certification Office so that the FAA and the applicant can agree on a certification plan.

One commenter states that the proposed requirement for lightning protection of essential systems is not justified and should not be adopted.

The FAA disagrees with this comment. Lightning encounters, even though infrequent , do occur. Therefore, a degree of protection is required commensurate with the criticalness of the function that the system performs. Protection requirements are much less stringent for systems that perform essential functions than for those that perform critical functions. System

components may be damaged as long as the function can be recovered after the lightning encounter. The justification for imposing requirements for systems that perform essential functions is that loss of function would unacceptably decrease the inherent level of safety of the airplane.

One commenter questions whether manufacturers would be responsible for testing and recertifying critical electronic control systems now in service.

The new lightning protection requirements apply to systems that perform critical and essential functions of which design approval is sought after the effective date of the rule. Recertificating in-service units is not required. If an in-service problem that affects the safety of the airplane were discovered, an airworthiness directive would be issued requiring corrective action.

One commenter does not consider that the imposition of additional lightning protection requirements on systems of conventional design is justified if service history has shown that they are insensitive to lightning transients.

The FAA does not intend to impose additional lightning protections requirements on systems using standard designs and installation that can be shown to have an inherent history of acceptability. It is FAA policy to accept similarity with previously proven installation designs, simulated lightning tests, or acceptable analysis. Individual designs should be reviewed by the cognizant FAA Aircraft Certification Office.

Several commenters disagree that the incremental cost of implementing the new rule will be zero. These comments and the FAA's response are addressed in the Regulatory Evaluation discussion that follows.

Notice 89–15 proposed that the lightning protection standard be adopted as § 25.1315 of the FAR. The paragraph used for the final rule was changed to § 25.1316 so that a future conflict could be avoided in the event the FAA determines that JAR 25.1315, "Negative Acceleration," should be adopted.

Regulatory Evaluation

This section summarizes the full regulatory evaluation prepared by the FAA that provides detailed estimates of the economic consequences of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs and anticipated benefits to the private sector, consumers, and Federal, state, and local governments.

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Finally, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) will generate benefits that justify its costs and is not a "significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in Department of Transportation Regulatory Policies and Procedures; (3) will not have a significant economic impact on a substantial number of small entities; and (4) will not have a negative impact on international trade. These analyses, available in the docket, are summarized below.

Costs

The costs of the rule will essentially equal the costs that would have been incurred by manufacturers in complying with requirements imposed as special conditions in the absence of this rule. The new standards will be no more stringent than those imposed through recent special conditions, which are consistent with FAA Advisory Circular 20–136, "Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning," dated March 1990, and SAE Committee Report AE4L–87–3, Revision B, dated January 1989. Given the novel design features of advanced electronic systems and their susceptibility to lightning strikes, the FAA would have continued to require adequate lightning protection for all new certifications through imposition of special conditions; consequently, this rule imposes no new incremental costs.

Notwithstanding this cost perspective, the FAA has evaluated the costs of the rule apart from the existence of special conditions, i.e., under the assumption that the reference level of costs prior to this rule is zero.

The relative costs of the final rule are summarized below for two type-certifications—a representative part 25 large transport category airplane (i.e., air carrier), and a representative part 25 small transport category airplane (i.e., a business or commuter jet).

Based on manufacturers' experiences with special condition requirements and other relevant data, nonrecurring testing costs for a representative large transport category airplane are estimated to total $6,300,000, consisting of $2,000,000 for avionics equipment, $200,000 for engine controls, and $4,100,000 for airframes. Recurring modification costs for each airplane produced are estimated to average $50,000 for avionics, $35,000 for engine controls, and $12,600 for the airframes, totalling $97,600 per airplane. Assuming 50 airplanes are produced each year over a 10 year period (1995–2004), recurring modification costs total $48,800,000. Thus, the costs to meet the lightning protection requirements for certification of a representative large transport category airplane total $55.1 million in nondiscounted 1990 dollars, or $27.7 million when discounted to 1991 present value.

For a representative small transport category airplane, nonrecurring testing costs are estimated to total $980,000, consisting of $630,000 for avionics, $150,000 for engine controls, and $200,000 for airframes. Recurring modification costs for each airplane produced are estimated to average $25,000 for avionics, $8,000 for engine controls, and $9,000 for airframes. Assuming production of 50 airplanes per year for 10 years (1995–2004), recurring modification costs total $21.0 million. Thus, the costs to meet the lightning protection requirements for certification of a part 25 small transport category airplane total approximately $22.0 million in nondiscounted 1990 dollars, or $10.5 million when discounted to 1991 present value.

Benefits

The benefits attributable to the rule are the prevented fatalities, injuries, and airplane damage that might otherwise be caused by the adverse indirect effects of lightning strikes on airplane electronic systems. Information from the FAA Accident/Incident Data System indicates that, from 1985 through 1990, there were two incidents involving part 25 airplanes (both were large transport category airplanes) in which the indirect effects of lightning strikes adversely affected electronic systems. In each case, the airplane landed safely with minimum damage. In one incident, the first officer's flight instruments were lost, and in the second a partial electrical failure occurred. Neither of the two airplanes affected were certificated within the last five years, and therefore few sophisticated electronic systems were involved. Lightning protection requirements imposed through special conditions

(since 1986) have substantially reduced the probability that indirect effects of lightning would disrupt electronic systems. Consequently, incidents involving more recent certifications that include advanced electronic systems have not occurred. Given the complexities of the more advanced electronic systems and their increased vulnerability to lightning impacts, inadequate protection of the systems would result in increased risks of operational failure.

As the number of flights increases through normal growth in air traffic, the overall number of potential lightning strikes increases accordingly. Each transport category airplane experiences, on average, 1.25 lightning strikes during each year of operation. Thus, between 15,000 and 16,000 lightning strikes could be expected during the operating lives of the airplanes produced under one typical part 25 certification (i.e., 500 airplanes × 1.25 × 25 years). Since two incidents affecting less advanced systems occurred over a recent five year period, it is not unreasonable to postulate that at least this number could occur during a future five year period. Given the advanced systems' lower tolerance thresholds for disruptions and the criticalness of their effect on safe flight and operation, events that were incidents in the past could be accidents in the future.

The FAA has estimated the minimum levels of averted losses (in terms of avoided fatalities and airplane damage) that would be necessary to offset the expected costs of complying with the rule. For a representative part 25 large transport category airplane certification, the requirements will be cost-beneficial if one averted accident prevents 91 fatalities and the destruction of the airplane. For a representative part 25 small transport category airplane certification, the rule will be cost-beneficial if 2 averted accidents prevent 36 fatalities and 2 destroyed airplanes. For the reasons outlined above, the FAA expects that the new requirements will prevent at least the minimum number of accidents specified and therefore considers the rule to be cost beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

The rule will affect transport category airplane manufacturers. None of these manufacturers is considered to be a small entity in accordance with FAA criteria which states that a small manufacturer is one with 75 employees or less. Therefore, this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The rule will have little or no impact on trade for either American firms doing business in foreign countries or foreign firms doing business in the United States. In the U.S., foreign manufacturers will have to meet U.S. requirements, and thus will gain no competitive advantage. In foreign countries, American manufacturers need not comply with these requirements if the foreign country does not require them and, therefore, will not be placed at a competitive disadvantage relative to foreign manufacturers.

Federalism Implications

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

Conclusion

For the reasons given above, the FAA has determined that this regulation is not significant under Executive Order 12866. In addition, the FAA has determined that this action is not significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since the aircraft involved are not manufactured by small entities, the FAA certifies, under the criteria of the Regulatory Flexibility Act, that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities. A copy of the regulatory evaluation prepared for this regulation may be examined in the public docket or obtained from the person identified under the caption, FOR FURTHER INFORMATION CONTACT.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 25 of the Federal Aviation Regulations (FAR) as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g); and 49 CFR 1.47(a).

2. A new § 25.1316 is added under the undesignated center heading "General" to read as follows:

§ 25.1316 System lightning protection.

(a) For functions whose failure would contribute to or cause a condition that would prevent the continued safe flight and landing of the airplane, each electrical and electronic system that performs these functions must be designed and installed to ensure that the operation and operational capabilities of the systems to perform these functions are not adversely affected when the airplane is exposed to lightning.

(b) For functions whose failure would contribute to or cause a condition that would reduce the capability of the airplane or the ability of the flightcrew to cope with adverse operating conditions, each electrical and electronic system that performs these functions must be designed and installed to ensure that these functions can be recovered in a timely manner after the airplane is exposed to lightning.

(c) Compliance with the lightning protection criteria prescribed in paragraphs (a) and (b) of this section must be shown for exposure to a severe lightning environment. The applicant must design for and verify that aircraft electrical/electronic systems are protected against the effects of lightning by:

(1) Determining the lightning strike zones for the airplane;

(2) Establishing the external lightning environment for the zones;

(3) Establishing the internal environment;

(4) Identifying all the electrical and electronic systems that are subject to the requirements of this section, and their locations on or within the airplane;

(5) Establishing the susceptibility of the systems to the internal and external lightning environment;

(6) Designing protection; and

(7) Verifying that the protection is adequate.

Issued in Washington, DC, on April 20, 1994.

David R. Hinson,

Administrator.

[FR Doc. 94–10169 Filed 4–26–94; 8:45 am]

BILLING CODE 4910–13–M

federal register

Thursday
April 28, 1994

Part XI

The President

Executive Order 12911—Seal for the Office of National Drug Control Policy

Federal Register
Vol. 59, No. 81
Thursday, April 28, 1994

Presidential Documents

Title 3—

The President

Executive Order 12911 of April 25, 1994

Seal for the Office of National Drug Control Policy

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. There is approved for the Office of National Drug Control Policy in the Executive Office of the President an official seal described as follows:

On a blue disc the Arms of the United States proper above a curved gold scroll inscribed "OFFICE OF NATIONAL DRUG CONTROL POLICY" in blue letters, all within a white border edged in gold and inscribed "EXECUTIVE OFFICE OF THE PRESIDENT OF THE UNITED STATES" in blue letters.

This design is appropriate for the Office of National Drug Control Policy. The dark blue in this seal is suggested by the Seal of the President and denotes the direct organizational link of the Office of National Drug Control Policy with the Presidential office. The Arms of the United States refer to the entire Nation and represent the involvement in drug control policies that are necessary to assist the President in his role as Chief Executive of the United States.

Sec. 2. The seal shall be of the design that is attached hereto and made a part of this order.

William J. Clinton

THE WHITE HOUSE,
April 25, 1994.

[FR Doc. 94–13090
Filed 4–26–94; 11:17 am]
Billing code 3195–01–P

Billing code 3195–01–C

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