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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

Agricultural Marketing Service

7 CFR Part 911

[Docket No. FV94-911-1-FIR]

Limes Grown in Florida; Finalize Temporarily Suspended Volume Regulation and Pack-Out Reporting Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes without change an interim final rule which temporarily suspended certain volume regulation and pack-out reporting requirement provisions of the marketing order for fresh limes grown in Florida. These provisions were suspended, because they are temporarily not needed due to reduced lime production in Florida.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone: 202-720-5331; or Aleck J. Jonas, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813-299-4770.

SUPPLEMENTARY INFORMATION: This rule is issued under the provisions of section 8c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act; and of Marketing Agreement and Marketing Order No. 911 (7 CFR part 911) regulating the handling of limes grown in Florida, hereinafter referred to as the order. This order is effective under the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. 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 8c(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 requesting 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 the date of the entry of the ruling.

Pursuant to the 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 about 20 Florida lime handlers subject to regulation under the marketing order covering limes grown in Florida, and about 25 lime producers in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A majority of these handlers and producers may be classified as small entities.

The Florida Lime Administrative Committee (committee) unanimously recommended the temporary suspension of the provisions. The committee meets prior to and during each season to review the rules and regulations effective on a continuous basis for limes regulated under this order. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

This rule finalizes an interim final rule which temporarily suspended §§ 911.53 through 911.59 (7 CFR 911.53-59) of the order containing provisions pertaining to the issuance of volume regulations for fresh limes grown in Florida, and § 911.111 (7 CFR 911.111) containing provisions requiring Florida handlers to file certain reports with the committee on their fresh Florida lime shipments. The interim final rule was issued March 16, 1994, with an effective date of March 22, 1994, and published in the Federal Register (59 FR 13429, March 22, 1994). The interim final rule provided a 30-day comment period ending April 21, 1994, and no comments were received.

Sections 911.53 through 911.59 were used by the committee to collect and maintain information from handlers, so that it could recommend to the Department that lime volume regulations be issued, when and if needed. The committee determined that volume regulations will not be needed during the next two seasons, and, thus, such information will not be needed during such period. Volume regulations will not be needed, because Florida's lime production was considerably reduced by hurricane damage to the lime groves in 1992.

Section 911.111 required Florida lime handlers to file certain reports with the committee on their fresh Florida lime shipments, including information on types and number of containers of limes they pack each day. This section was suspended, because information collected under the section is not needed at a time when lime production

is reduced. The committee reported that sufficient information is currently available from inspection certificates collected on a daily basis by committee staff to meet committee needs for operations, marketing policies, and compliance during the next two seasons.

The committee reported that it expects that Florida lime production will have recovered and volume regulation and reporting requirement provisions may be needed when the suspension ends on March 31, 1996. The committee also reported that it needs to reduce administrative costs and staff, due to the reduced lime production and resulting lower assessment collections, and the suspension will help achieve this objective.

This rule reflects the committee's and the Department's appraisal of the need to finalize the suspended volume regulation and pack-out reporting provisions under the order. Such suspension temporarily removed certain reporting requirements on the part of Florida lime handlers, and lessened the overall reporting and recordkeeping burden under the order. The Department's view is that the suspension has a beneficial impact on Florida lime producers and handlers, since the reporting burden on handlers and committee expenses incurred under the order are reduced.

The information collection requirements have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB Number 0581–0091. The interim final rule temporarily suspended an annual reporting burden currently estimated at 210.4 hours for all Florida lime handlers who: (1) Apply for a prorate base and allotment; (2) report daily the percentages, by size category, of the limes packed by them; and (3) report daily the number of containers of limes sold and delivered by them within the State of Florida.

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

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that the provisions discussed herein, at this time, do not tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 911 is amended as follows:

PART 911—LIMES GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 911 which was published at 59 FR 13429 on March 22, 1994, is adopted as a final rule without change.

Dated: June 2, 1994.

Patricia Jensen,

Acting Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 94–13890 Filed 6–7–94; 8:45 am]

BILLING CODE 3410–02–P

Rural Electrification Administration

7 CFR Part 1735

RIN 0572–AA91

Telephone Program Loan Policies, Types, and Requirements

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends its regulation concerning general policies for telephone loans to make consistent for all telephone borrowers the adjusted net worth to assets requirement set forth in the mortgage between REA and its borrowers. The final rule establishes at 10 percent, the percentage of adjusted assets used in determining both the borrower's allowable distribution of capital and certain reporting requirements. This percentage will be incorporated in new mortgages and will also apply to borrowers with outstanding loans regardless of the percentage stated in their existing mortgages.

EFFECTIVE DATE: This regulation is effective on July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Matthew P. Link, Director, Rural Telephone Bank Management Staff, Rural Electrification Administration, U.S. Department of Agriculture, 14th & Independence Avenue, SW., room 2832–S, Washington, DC 20250–1500, telephone number (202) 720–0530.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) Will not have any retroactive effect; and (3) Will not require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

REA has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The REA program provides loans to REA borrowers at interest rates and terms that are more favorable than those generally available from the private sector. REA borrowers, as a result of obtaining federal financing, receive economic benefits which exceed any direct economic costs associated with complying with REA regulations and requirements. Moreover, this final rule corrects inequities and establishes a more consistent standard.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in this final rule have previously been approved by the OMB in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements are approved under OMB control number 0572–0031. Comments concerning these requirements should be directed to: Department of Agriculture, Clearance Office, Office of Information Resources Management, room 404–W, Washington, DC 20250, and to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, New Executive Office Building, Washington, DC 20503.

National Environmental Policy Act Certification

REA has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et*

seq.). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA and RTB loans and loan guarantees to governmental and nongovernmental entities from coverage under this Order.

Background

On December 29, 1993, REA published a proposed rule at 58 FR 68780 revising the adjusted net worth percent used to specify certain cash distribution and reporting requirements placed on a borrower. REA received comments from the United States Telephone Association (USTA) regarding the proposed rule, which were taken into consideration in preparing the final rule.

Comment Summary: With regard to paragraph (b), USTA commented that the language "an alternative", which is referencing a calculation contained in the REA mortgage, is confusing because this calculation has always been the standard, not "an alternative" calculation. USTA further commented that the "alternative dividend calculation", outlined in the February 13, 1978 supplement to REA Bulletin 402–1, should be codified and that REA explore other possible changes to its dividend policy which will increase borrowers' flexibility.

Response: The mortgage provides an alternative to the borrower for distributing dividends when it cannot meet the 40 percent net worth to total assets ratio test. The proposed rule relates exclusively to a revision made in the dividend policy contained in the mortgage. There are other alternatives available if the borrower cannot distribute under the methods provided in the mortgage. These alternatives were not revised and are contained in REA Bulletin 402–1. While this revision to the mortgage represents a move towards a more flexible but consistent policy, REA is considering other less complicated but financially responsible policies.

Comment Summary: USTA suggested that REA's policy requiring that borrowers retain cash in the corporation in order to secure cash and other assets, be revised. USTA also suggested REA consider excluding cash and other current assets, and other investments, from its dividend calculation.

Response: As a credit agency, REA is rightfully concerned about the extent of a borrower's financial leverage and liquidity. When a borrower is highly debt-leveraged or has a marginal working capital position, the flow of cash away from its operations can be risky and could jeopardize REA's loan security. However, REA is only concerned with this outflow when a borrower cannot meet the 40 percent net worth to total assets ratio. In general, this ratio represents the borrower's ability to finance its assets with an appropriate level of debt and equity. Once a borrower is above the 40 percent comfort level, neither the amount nor flow of cash is subject to retention. In fact, at no time is a borrower required to maintain a specific level of cash.

List of Subjects in 7 CFR Part 1735

Accounting, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

Chapter XVII of Title 7 of the Code of Federal Regulations is amended as follows:

PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELEPHONE PROGRAM

1. The authority citation for part 1735 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

2. In § 1735.46, the existing text is designated as paragraph (a) and new paragraphs (b) through (h) are added to read as follows:

§ 1735.46 Loan security documents.

(a) * * *

(b) The standard form of mortgage or other security document required by REA to secure telephone loans prohibits the borrower from making certain investments or distributions of assets unless, after such action, the borrower's adjusted net worth is at least:

(1) Forty percent of its adjusted assets; or

(2) As an alternative, the sum of ten percent of its adjusted assets plus certain other adjustments specified in the mortgage.

(c) The standard form of telephone mortgage also states that if the borrower's adjusted net worth is at least ten percent of its adjusted assets, the borrower is not required to take or refrain from taking certain actions as set forth in the mortgage.

(d) REA will apply the ten percent requirement to all telephone borrowers regardless of whether the borrower's existing mortgage sets forth a higher percentage of adjusted net worth to assets for purposes of determining whether the borrower can:

(1) Use the alternative calculation described in paragraph (b)(2) of this section to determine if it can make investments or distributions; or

(2) Take advantage of the benefits described in paragraph (c) of this section.

(e) A borrower with an adjusted net worth of less than twenty percent of its adjusted assets shall continue to fulfill the requirements of the mortgage relating to reporting its ownership and transfers of its ownership, including capital stock, membership certificates and equity capital certificates.

(f) Any borrower meeting the standard forty percent limitation described in paragraph (b)(1) of this section shall continue to be able to pay dividends or make investments in accordance with the borrower's mortgage.

(g) References to a borrower's mortgage in this section include deeds of trust and any other loan document applying the same requirements to a borrower.

(h) This section does not limit the rights of any parties to the mortgage other than REA or RTB.

Dated: June 2, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–13888 Filed 6–7–94; 8:45 am]

BILLING CODE 3410–15–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks; Change in Discount Rate

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A on Extensions

of Credit by Federal Reserve Banks to reflect its approval of an increase in the basic discount rate at each Federal Reserve Bank. The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks.

EFFECTIVE DATE: These amendments to part 201 (Regulation A) were effective June 2, 1994. The rate changes for adjustment credit were effective on the dates specified in § 201.51.

FOR FURTHER INFORMATION CONTACT: William W. Wiles, Secretary of the Board (202/452–3257); for the hearing impaired only, Telecommunications Device for the Deaf (TDD) (202/452–3544), Dorothea Thompson, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, et al., of the Federal Reserve Act, the Board has amended its Regulation A (12 CFR part 201) to incorporate changes in discount rates on Federal Reserve Bank extensions of credit. The discount rates are the interest rates charged to depository institutions when they borrow from their district Reserve Banks.

The "basic discount rate" is a fixed rate charged by Reserve Banks for adjustment credit and, at the Reserve Bank's discretion, for extended credit. In increasing the basic discount rate, the Board acted on requests submitted by the Boards of Directors of the twelve Reserve Banks. The new rates were effective on the dates specified below. The increase was made to maintain favorable trends in inflation and thereby sustain the economic expansion. This action, combined with other adjustments by the Federal Open Market Committee, substantially removes the degree of monetary accommodation that prevailed throughout 1993.

The provisions of 5 U.S.C. 553(b) relating to notice and public participation were not followed in connection with the adoption of this amendment because the Board for "good cause" finds that delaying the change in the basic discount rate in order to allow notice and public comment on the change is impracticable, unnecessary, and contrary to the public interest in maintaining favorable trends in inflation and thereby sustaining the economic expansion.[1]

The provisions of 5 U.S.C. 553(d) that prescribe 30 days' prior notice of the effective date of a rule have not been followed because section 553(d) provides that such prior notice is not necessary whenever there is good cause for finding that such notice is contrary to the public interest. As previously stated, the Board determined that delaying the changes in the basic discount rate is contrary to the public interest.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612), the Board certifies that the change in the basic discount rate will not have a significant adverse economic impact on a substantial number of small entities. Although the change increases the rate of interest charged to borrowers from Reserve Banks, the Board believes that the higher cost of funds is outweighed by the salutary effect on the economy.

List of Subjects in 12 CFR Part 201

Banks, banking, Credit, Federal Reserve System.

For the reasons outlined in the preamble, the Board of Governors amends 12 CFR part 201 as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for 12 CFR part 201 is revised to read as follows:

Authority: 12 U.S.C. 343 *et seq.*, 347a, 347b, 347c, 347d, 348 *et seq.*, 357, 374, 374a and 461.

2. Section 201.51 is revised to read as follows:

§ 201.51 Adjustment credit for depository institutions.

The rates for adjustment credit provided to depository institutions under § 201.3(a) are:

Federal Reserve Bank	Rate	Effective
Boston	3.5	May 17, 1994.
New York	3.5	May 17, 1994.
Philadelphia	3.5	May 17, 1994.
Cleveland	3.5	May 18, 1994.
Richmond	3.5	May 17, 1994.
Atlanta	3.5	May 17, 1994.
Chicago	3.5	May 17, 1994.
St. Louis	3.5	May 17, 1994.
Minneapolis	3.5	May 17, 1994.
Kansas City	3.5	May 17, 1994.
Dallas	3.5	May 17, 1994.
San Francisco	3.5	May 17, 1994.

3. Section 201.52 is revised to read as follows:

§ 201.52 Extended credit for depository institutions.

(a) *Seasonal credit.* The rate for seasonal credit extended to depository institutions under § 201.3(b) is a flexible rate that takes into account rates on market sources of funds, but in no case will the rate charged be less than the rate for adjustment credit as set out in § 201.51.

(b) *Extended credit.* For extended credit to depository institutions under § 201.3(c), for credit outstanding for more than 30 days, a flexible rate will be charged that takes into account rates on market sources of funds, but in no case will the rate charged be less than the rate for adjustment credit, as set out in § 201.51, plus one-half percentage point. At the discretion of the Federal Reserve Bank, this time period may be shortened, and the rate may be the discount rate applicable to adjustment credit.

By order of the Board of Governors of the Federal Reserve System, June 2, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–13867 Filed 6–7–94; 8:45 am]

BILLING CODE 6210–01–P

[1] The Board's Rules of Procedure provide that advance notice and deferred effective date will ordinarily be omitted in the public interest for changes in discount rates. 12 CFR 262.2(e).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–97; Special Conditions No. 25–ANM–86]

Special Conditions: Modified Gulfstream G–1159A Series Airplanes, High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions with request for comments.

SUMMARY: These special conditions are issued for the Gulfstream G–1159A series airplanes modified by ElectroSonics, Division of AiRadio Corporation of Columbus, Ohio. These airplanes are equipped with digital electronic flight instrument systems (EFIS) that perform critical functions. The applicable type certification regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions that these systems perform are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is May 31, 1994. Comments must be received on or before July 25, 1994.

ADDRESSES: Comments on these special conditions may be mailed in triplicate to: Federal Aviation Administration, Transport Airplane Directorate (ANM–100), Attn: Docket No. NM–97, 1601 Lind Avenue SW., Renton, WA 98055–4056; or delivered in triplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM–97. Comments may be inspected weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Michael Zielinski, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056, telephone (206) 227–2279.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special conditions number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be a available in the Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the Docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–97." The postcard will be date stamped, and returned to the commenter.

Background

On March 25, 1994, ElectroSonics, Division of AiRadio Corporation of Columbus, Ohio, applied for a supplemental type certificate to modify the Gulfstream G–1159A series airplanes. The Gulfstream G–1159A is a business jet with two aft-mounted turbojet engines. The airplane can carry two pilots and up to 19 passengers, depending on the exit and interior configuration, and is capable of operating to 45,000 feet altitude. The proposed modification incorporates the installation of digital avionics consisting of an electronic flight instrument system (EFIS) that is potentially vulnerable to HIRF external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.101 of the FAR, ElectroSonics, Division of AiRadio Corporation, must show that the modified Gulfstream G–1159A series airplanes continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A12EA, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated by reference in Type Certification No. A12EA include the following: CAR4b of the Civil Aviation Regulations, dated December 31, 1953, including Amendments 4b–1 through 4b–14. In addition the following Federal Aviation Regulations (FAR) apply to the EFIS installation: §§ 25.1303(b) and 25.1322, as amended through Amendment 25–38; §§ 25.1309, 251321 (a), (b), (d), and (e), 25.1331, 25.1333, and 25.1335, as amended by Amendment 25–41. These special conditions will form an additional part of the supplemental type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Gulfstream G–1159A series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.6 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Gulfstream G–1159A series airplanes that would require that new technology electrical and electronic systems, such as EFIS and digital avionics systems be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2 MHz	70	70
2 MHz–30 MHz	200	200
30 MHz–70 MHz	30	30
70 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1 GHz	1,700	170

Frequency	Peak (V/M)	Average (V/M)
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Aviation Authorities.

As discussed above, these special conditions are applicable to the Gulfstream G–1159A series airplanes, modified by ElectroSonics, Division of AiRadio Corporation of Columbus, Ohio. Should ElectroSonics apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A12EA to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well, under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain unusual or novel design features on the Gulfstream G–1159A series airplanes modified by ElectroSonics, Division of AiRadio Corporation of Columbus, Ohio. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the Gulfstream G–1159A series airplanes modified by ElectroSonics, Division of AiRadio Corporation of Columbus, Ohio.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may have not been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for Gulfstream G–1159A series airplanes modified by ElectroSonics, Division of AiRadio Corporation of Columbus, Ohio.

1. *Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

2. The following definitions apply with respect to these special conditions:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on May 31, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–13909 Filed 6–7–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 93–CE–33–AD; Amendment 39–8936; AD 94–12–08]

Airworthiness Directives: Cessna Aircraft Company 210, P210, and T210 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 92–26–04, which applies to certain Cessna Aircraft Company (Cessna) 210, P210, and T210 series airplanes. That AD requires operational checks of the fuel gauges, fuel cap and adapter modifications, and preflight fuel system quantity checks. The Federal Aviation Administration (FAA) received a petition for reconsideration of AD 92–26–04, and subsequently suspended the effectiveness of this AD while the concerns specified in the petition were evaluated. This action retains certain requirements of AD 92–26–04, and incorporates certain items raised by the petition for reconsideration. The actions specified by this AD are intended to prevent loss of engine power caused by inadvertent fuel loss or inadequate fuel servicing.

DATES: Effective July 22, 1994.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of January 22, 1993.

ADDRESSES: Service information that applies to this AD may be obtained from the Cessna Aircraft Company, Customer Services, P.O. Box 1521, Wichita, Kansas 67201. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Wichita, Kansas 67209; telephone (316) 946–4143; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Cessna 210, P210, and T210 series airplanes was published in the **Federal Register** on August 24, 1993 (58 FR 44621). The action proposed to supersede AD 92–26–04, Amendment 39–8431 (57 FR 57658, December 7, 1992), with a new AD that would require the following on Cessna 210, P210, and T210 series airplanes:

- Retain the fuel gauge operational checks, fuel cap and adapter modifications, and preflight fuel system quantity checks currently required by AD 92–26–04;
- Provide the option of utilizing approved alternative procedures for calibrating the fuel systems;
- Provide the option of accomplishing fuel capacity checks after refueling the airplane or installing raised fuel caps; and
- Revise the applicability of the actual AD to more fully clarify which airplanes are affected.

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

Several commenters state that the calibration procedures proposed are ineffective, very expensive, and the equipment necessary to accomplish the calibration is unavailable. Two of these commenters referenced calibration and gauge accuracy procedures that they felt were more realistic (more effective, less expensive, and available) than those specified in the proposal. The FAA (1) reviewed the procedures submitted by the commenters; (2) determined that the referenced procedures are, at least, as realistic as those proposed; and (3) incorporated the procedures into the AD.

One commenter recommends limiting the number of hours of operation before an airplane equipped with uncalibrated fuel gauges must refuel. The commenter states that this would reduce the cost associated with requiring accurate fuel gauge calibration. The FAA concurs and has added this provision to the AD.

Several commenters suggest increasing the pilots' knowledge of the fuel system limitations through training and advisories. The FAA concurs that this step is essential for aviation safety; however, AD's are utilized to correct an unsafe condition that exists or is likely to develop in aircraft of the same type design. Appropriate fuel system placarding (specified in the proposed AD) does provide an advisory to the limitations of the originally certificated fuel system, which could help increase pilot knowledge. Any other action related to increasing the pilot's knowledge of fuel system limitations is outside the scope of AD action. The AD is unchanged as a result of this comment.

One commenter recommends that the FAA not require replacement of the flush fuel caps because the existing fuel caps are acceptable if they are properly maintained. The FAA concurs. The proposal included the option of installing these raised fuel caps or fabricating and installing a fuel capacity check placard on each wing fuel filler opening. The AD is unchanged as a result of this comment.

One commenter recommends requiring replacement of the fuel caps with caps that are not susceptible to fuel leakage or siphoning and where certificated fuel capacity is easily obtainable. This commenter states that service experience indicates that the fuel caps originally certificated on these Cessna 210 series airplanes make fuel servicing difficult and susceptible to water leakage into the tanks and fuel siphoning during flight. The FAA does not concur that mandatory fuel cap replacement is necessary. The FAA has determined that the accomplishment of certain preflight requirements will provide the same level of safety as fuel cap replacement. The FAA encourages fuel cap replacement and the preflight requirements are reduced when replacement is accomplished. The AD is unchanged as a result of this comment.

After careful review of all available information including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the incorporation of the calibration and gauge accuracy procedures referenced above and minor editorial corrections. The FAA has determined that these procedures and minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 5,000 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $150 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,850,000. This figure is based on the assumption that no affected airplane owner/operator has accomplished the required action.

In addition, AD 92–26–04 currently has a cost impact of $2,125,000 (5 workhours × $55 per hour plus $150 for parts × 5,000 airplanes) if the FAA had not suspended the effectiveness of that AD. The cost of this AD is actually a reduction of one workhour per airplane over that specified in AD 92–26–04, or a reduction of $275,000 for the entire U.S. fleet.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 92–26–04, Amendment 39–8431 (57 FR 57658, December 7, 1992), and by adding a new airworthiness directive to read as follows:

94–12–08 Cessna Aircraft Company: Amendment 39–8936; Docket No. 93–CE–33–AD. Supersedes AD 92–26–04, Amendment 39–8431.

Applicability: The following model and serial number airplanes, certificated in any category.

Model	Serial No.
210G through 210R, and.	21058819 through 21065009, and
T210G through T210R.	T210–0198 through T210–0454.
P210N, and P210R	P21000001 through P21000874.

Compliance: Required within the next 12 calendar months after the effective date of this AD, unless already accomplished.

To prevent loss of engine power caused by inadvertent fuel loss or inadequate fuel servicing, accomplish the following:

(a) Incorporate the Pilot Operating Procedures—Preflight Fuel System Quantity Check that is Figure 1 of this AD into the airplane flight manual or airplane records.

Figure 1

Pilot Operating Procedures—Preflight Fuel System Quantity Check

The following procedures are to be used on certain Cessna 210, P210, and T210 Series airplanes whenever more than 75 gallons of fuel are needed for range and reserve.

1. Verify that the airplane is level laterally and is approximately 4.5 degrees nose up (normal nose strut on a level surface).

Note: The airplane turn and bank instrument may be used to check lateral leveling.

2. Visually inspect each fuel tank for fuel level with the upper wing surface when full fuel capacity is intended to be in each tank.

3. Check each fuel cap and seal for security and wing surface for a lack of fuel stains aft of each fuel cap.

Note: It is highly recommended that the wing tips and flap trailing edges are checked during flight for evidence of fuel siphoning.

(b) The incorporation of Figure 1 of this AD into the airplane flight manual or airplane records as required by paragraph (a) of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(c) Calibrate the fuel quantity indicating system at the unusable (empty) fuel gauge indication by accomplishing either (c)(1) or (c)(2) of this AD as follows:

(1) Checking (one-time) the fuel gauge calibration by:

(i) Draining the wing fuel tank sumps (defuel the airplane).

(ii) Turning the master switch on, ensuring that the fuel gauges indicate empty ("E"); and

(iii) Adjusting or replacing the transmitter or gauge, as required to obtain proper "empty" indication with empty wing fuel tanks; or

(2) Fabricate a ⅛-inch wide (¼-inch long minimum) red "Empty" radial line and center on the gauge glass where the gauge pointer indicates when the tank is empty; and fabricate and install adjacent to the fuel gauges a placard (using letters at least ⅛-inch in height) with the following words:

Fuel Gauges Not Calibrated, Base All Fuel Calculations on Visual Inspection, Time and Consumption Figures. With Full Tanks, Maximum Endurance Is 4 Hours for Flight Planning.

(d) Accomplish either (d)(1) or (d)(2) of this AD as follows:

(1) Install raised fuel caps in accordance with the instructions to Cessna Service Kit SK210–136, which is referenced by Cessna Service Bulletin SEB91–10, dated October 25, 1991; or Supplemental Type Certificate SA2456CE (owned by Mr. William J. Barton) for Monarch Air & Development, Inc., Assembly No. WW–100–2 fuel caps (only); or

(2) Fabricate two placards with the following words on each using letters at least ⅛-inch in height and install a placard on each wing fuel filler opening: "To Assure Full Capacity While Filling, Fill Slowly During Last 5 Gallons. Recheck For Full After 2 Minutes."

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

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

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

(g) The replacement required by this AD shall be done in accordance with Cessna Service Kit SK210–136, which is referenced by Cessna Service Bulletin SEB91–10, dated October 25, 1991. This incorporation by reference was previously approved by the Director of the Federal Register as of January 23, 1993, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment (39–8936) supersedes AD 92–26–04, Amendment 39–8431.

(i) This amendment (39–8936) becomes effective on July 22, 1994.

Issued in Kansas City, Missouri, on June 1, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–13850 Filed 6–7–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 94–AWP–11]

Alteration of VOR Federal Airway V–291

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes the exclusionary language from Federal Airway V–291 concerning Restricted Area R–2302. The restricted area's altitude was reduced in another rulemaking action, from 11,000 feet mean sea level (MSL) to 10,000 feet MSL. The minimum en route altitude (MEA) of V–291 between the Flagstaff, AZ, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) and the intersection of Kacee is 11,000 feet MSL; therefore, the exclusionary language is no longer necessary.

EFFECTIVE DATE: 0901 u.t.c., August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) removes the exclusionary language from Federal Airway V–291 concerning Restricted Area R–2302. The FAA, in another rulemaking action, reduced the restricted area's altitude from 11,000 feet MSL to 10,000 feet MSL. The MEA of V–291 between the Flagstaff, AZ, VOR/DME and the intersection of Kacee is 11,000 feet MSL; therefore, the exclusionary language is no longer necessary. Because this action is a minor technical amendment in which the public would not be particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 56298; July 6, 1993). The airway listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–291 [Revised]

From Hobbs, NM, via INT Hobbs 287° and Chisum, NM, 136° radials; Chisum, via INT Chisum 335° and Corona, NM, 124° radials; Corona, via INT Corona 328° and Albuquerque, NM, 103° radials; Albuquerque; Gallup, NM; Winslow, AZ; Flagstaff, AZ; to Peach Springs, AZ.

* * * * *

Issued in Washington, DC, on May 25, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–13911 Filed 6–7–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AB83

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Final regulations; correction.

SUMMARY: This document corrects errors in the final regulations published in the **Federal Register** on April 29, 1994 for the Federal Family Education Loan Program (59 FR 22462). These regulations implement statutory changes in the program authorized by title IV of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992, and certain technical changes made by the Cash Management Improvement Act Amendments of 1992, the Omnibus Budget Reconciliation Act of 1993, and the Higher Education Technical Amendments of 1993.

FOR FURTHER INFORMATION CONTACT: George Harris, Loans Branch, Division of Policy Development, Policy, Training and Analysis Service, U.S. Department of Education, 400 Maryland Avenue SW. (room 4310, ROB–3), Washington, DC 20202. Telephone (202) 708–8242. 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.

Dated: June 2, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The following corrections are made in FR Doc. 94–10250, published on April 29, 1994 (59 FR 22462):

1. On page 22462, under "Dates", in line 5, the reference to "§ 682.202" is removed.

§ 682.402 [Corrected]

2. On page 22485, column 1, in § 682.402(e)(13)(ii), the cross-reference to "(e)(8)(i)" is corrected to read "(e)(13)(i)", and in § 682.402(e)(13)(iii), the cross-reference to "(e)(8) (i) and (ii)" is corrected to read "(e)(13) (i) and (ii)".

3. On page 22487, in column 2, Item 5, in line 6, the reference to paragraph "(B)(6)(vii) introductory text" is corrected to read "(b)(6)(vii) introductory text", in line 8, the reference to paragraph "(B)(6)(vii)(B)" is corrected to read "(b)(6)(vii)(B)", and in line 10, the word "reserving" is corrected to read "revising".

[FR Doc. 94–13906 Filed 6–7–94; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4F4284/R2063; FRL–4865–8]

RIN 2070–AB78

Bacillus Subtilis MBI 600; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement for a tolerance for residues of the biofungicide *Bacillus subtilis* MBI 600 in or on all raw agricultural commodities when applied as a seed treatment for growing agricultural crops in accordance with good agricultural practices. This exemption was requested by Gustafson, Inc.

EFFECTIVE DATE: Effective on May 25, 1994.

ADDRESSES: Written objections, identified by the document control number [PP 4F4284/R2063], may be submitted to the: Hearing Clerk (1900), Environmental Protection Agency, Rm. M-3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Steve Robbins, Acting Product Manager (PM) 21, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)- 305-6900.

SUPPLEMENTARY INFORMATION: EPA received from Gustafson, Inc., P.O. Box 660065, Dallas, TX 75266-0065, pesticide petition (PP) 4F4284 on March 2, 1993, proposing to amend 40 CFR part 180 by establishing a regulation pursuant to the Federal Food, Drug and Cosmetics Act, 21 U.S.C. 346a and 371, to exempt from the requirement of a tolerance the residues of the biofungicide *Bacillus subtilis* MBI 600 in or on all raw agricultural commodities when applied as a seed treatment for growing agricultural crops in accordance with good agricultural practices. The notice of application to register *Bacillus subtilis* MBI 600 as a new active ingredient was published in the **Federal Register** of December 22, 1993 (58 FR 67791). A rule proposing to establish an exemption from the requirement for a tolerance for this organism was published in the **Federal Register** of April 13, 1994 (59 FR 17509). No comments were received in response to the **Federal Register** documents.

Strain MBI 600 of the bacterium *Bacillus subtilis* is a naturally occurring isolate of the spore-forming genus *Bacillus* which was first isolated from faba bean plants growing at Nottingham University School of Agriculture, Sutton Boningham, United Kingdom. *Bacillus subtilis* is a soil saprophyte found world-wide. Strains of this organism are not generally regarded as human or animal pathogens. The product is intended to be used as a seed treatment. When applied to seeds, the bacteria colonize the developing root system, competing with disease organisms which attack roots.

The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the exemption

from the requirement of a tolerance include an acute oral toxicity/pathogenicity study in the rat, an acute dermal toxicity study in the rabbit, an acute pulmonary toxicity/pathogenicity study in the rat, an acute intravenous toxicity/pathogenicity study in the rat, a primary eye irritation study in the rabbit, and a delayed contact hypersensitivity study in the guinea pig. These studies were performed on the active ingredient and the end-use product Gus 376 Concentrate Biological Fungicide. A review of these studies indicated that the biofungicide was not toxic to test animals when administered via the oral, dermal, intravenous, or pulmonary routes. The active ingredient was not infective or pathogenic for test animals when administered via the oral, pulmonary, or intravenous route. The end-use product produced slight ocular irritation which dissipated within 4 days of dosing. An overall moderate skin sensitization reaction was noted in the treated guinea pigs 24 to 72 hours following treatment. No reports of hypersensitivity have been recorded from personnel working with this organism. All of the toxicity studies submitted are considered acceptable. The toxicity data provided are sufficient to show that there are no foreseeable human or domestic health hazards likely to arise from the use of the product as a seed treatment.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition because the data submitted demonstrated that this biological control agent is not toxic to humans. No enforcement actions are expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request. This is the first exemption from the requirement of a tolerance for this biofungicide.

Bacillus subtilis MBI 600 is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought. Based on the information considered, the Agency concludes that establishment of the exemption will protect the public health. Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. 40 CFR 178.20. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed in 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims to the contrary; and resolution of factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

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

List of Subjects in 40 CFR Part 180

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

Dated: May 25, 1994.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. By adding new § 180.1128, to read as follows:

§ 180.1128 Bacillus subtilis MBI 600; exemption from the requirement of a tolerance.

The biofungicide *Bacillus subtilis* MBI 600 is exempted from the requirement of a tolerance in or on all raw agricultural commodities when applied as a seed treatment on seeds used for growing agricultural crops in accordance with good agricultural practices.

[FR Doc. 94–13675 Filed 6–7–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7063

[ID–943–406A–02; IDI–08932 01, IDI–14647 01]

Partial Revocation of Public Land Order No. 2588 and Bureau of Land Management Order Dated January 28, 1952; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order and a Bureau of Land Management order insofar as they affect 2,071.66 acres of public lands withdrawn by the Bureau of Reclamation for the Mountain Home and Snake River Reclamation Projects. The lands are no longer needed for the purpose for which they were withdrawn. This action will open 2,031.66 acres to surface entry and mining, but the remaining 40 acres are overlapped by another withdrawal, and therefore will remain closed to agricultural entry and mining. This revocation will permit the disposal of the lands by exchange. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500, 208–384–3166.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 2588 and Bureau of Land Management Order dated January 28, 1952, for the Bureau of Reclamation's Mountain Home and Snake River Reclamation Projects, are hereby revoked insofar as they affect the following described lands:

Boise Meridian

IDI–08932 01 (Public Land Order No. 2588)

T. 2 S., R. 4 E.,
Sec. 2, S½.
T. 2 S., R. 5 E.,
Sec. 4, lot 1 and SE¼NE¼.
T. 5 S., R. 6 E.,
Sec. 1, lots 3 and 4.

IDI–14647 01 (Bureau of Land Management Order 1/28/52)

T. 1 N., R. 1 E.,
Sec. 15, NW¼NE¼, W½ and W½SE¼.
T. 1 S., R. 4 E.,
Sec. 3, SW¼NW¼;
Sec. 4, lots 3 and 4, S½N½ and SE¼;

Sec. 5, lots 1 and 2, S½N½, W½SW¼ and N½SE¼;
Sec. 34, N½NW¼;
Sec. 35, N½NE¼.
T. 2 S., R. 4 E.,
Sec. 1, N½SE¼.
T. 4 S., R. 6 E.,
Sec. 26, NW¼NW¼.
T. 5 S., R. 6 E.,
Sec. 1, S½NW¼.

The areas described aggregate 2,071.66 acres in Ada and Elmore Counties.

2. The following described land will remain closed to agricultural entry and mining due to an overlapping withdrawal, but will otherwise be opened to the general land laws:

Boise Meridian

T. 4 S., R. 6 E.,
Sec. 26, NW¼NW¼.

The area described contains 40 acres in Elmore County.

3. At 9 a.m. on July 8, 1994, the lands described in paragraphs 1 and 2 will be opened to the operation of the public land laws generally, except for those lands in paragraph 2 which will remain closed to the agricultural laws. The lands will be opened subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on July 8, 1994, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9 a.m. on July 8, 1994, the lands described in paragraph 1, except for the lands described in paragraph 2, will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: May 24, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–13826 Filed 6–7–94; 8:45 am]

BILLING CODE 4310–GG–P

43 CFR Public Land Order 7061

[MT–930–4210–06; MTM 41636]

Partial Revocation of Secretarial Order Dated September 20, 1904; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a Secretarial order insofar as it affects 55.36 acres of public land withdrawn for the Sun River Reclamation Project. The land is no longer needed for the purpose for which it was withdrawn and the revocation is needed to permit disposal of the land through exchange. This action will open the land to surface entry and mining. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2949.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Secretarial Order dated October 17, 1903, which withdrew public land for the Sun River Reclamation Project, is hereby revoked insofar as it affects the following described land:

Principal Meridian

T. 20 N., R. 3 W.,
Sec. 18, lots 1 to 4, inclusive.

The area described contains 55.36 acres in Cascade County.

2. At 9 a.m. on July 8, 1994, the land shall be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on July 8, 1994, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on July 8, 1994, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempting adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: May 24, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–13825 Filed 6–7–94; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 940418–4118; I.D. 031894B]

Sea Turtle Conservation; Restrictions Applicable to Fishery Activities

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

ACTION: Temporary restriction; request for comments.

SUMMARY: NMFS is issuing a temporary restriction that establishes all inshore and offshore waters from Cape Canaveral, FL (28°24.6′ N. lat.), to the North Carolina-Virginia border (36°30.5′ N. lat.) as the leatherback conservation zone and notifies owners and operators of shrimp trawlers operating in that zone that short-term area closures may be required if high abundance levels of leatherback turtles are documented. During the most recent surveys by the State of South Carolina, concentrations of leatherback sea turtles were observed in the conservation zone. Therefore, the potential exists, for the next 30 days, that closure of the conservation zone may be necessary.

NMFS will close these areas to any shrimp trawler required to have a turtle excluder device (TED) installed in each net that is rigged for fishing unless the TED installed is a NMFS-approved Taylor TED, a Morrison TED with either of the two NMFS-approved modifications made in May 1993, or the modified single-grid hard TED described in a final rule, technical amendment, published May 18, 1994 in the **Federal Register** (59 FR 25827). This temporary rule is necessary to reduce mortality of endangered leatherback sea turtles incidentally captured in shrimp trawls.

Specific area closures will be announced in the **Federal Register**, on the NOAA weather channel and in newspapers and other media. Shrimp trawlers in the leatherback conservation zone are responsible for monitoring the NOAA weather channel for closure announcements. Shrimp fishermen may also call (813) 893–3163 for updated closure information.

Owners and operators of shrimp trawlers operating in closed areas with modified TEDs must register with the Director, Southeast Region, NMFS, and may be required to carry an observer and provide information on trawling hours, gear modifications and turtle captures if requested by the Regional Director.

DATES: This restriction is effective from June 3, 1994 through July 5, 1994. Comments on this restriction and consideration of any extension of this restriction must be submitted by June 23, 1994.

ADDRESSES: Requests for a copy of the environmental assessment for this action and comments on this action should be addressed to Dr. William W. Fox, Jr., Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Room 8268, Silver Spring, MD 20910. Comments on the collection-of-information requirement subject to the Paperwork Reduction Act should be directed to the Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, Attention: Margaret Lorenz, and to the Office of Information and Regulatory Affairs, Office of Management and Budget,, Washington, D.C. 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Margaret C. Lorenz, Endangered Species Division (301) 713–2322, or Charles A. Oravetz, Chief, Protected Species Program, NMFS, Southeast Region, (813) 893–3366.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act (ESA) of 1973. The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered. The incidental take and mortality of these species, as a result of fishing activities, have been documented in the Gulf of Mexico and along the Atlantic seaboard.

Under the ESA and its implementing regulations, it is prohibited to take sea turtles. The incidental taking of turtles during fishing in the Atlantic Ocean off the coast of the southeastern United States and in the Gulf of Mexico is excepted from the taking prohibition if specified sea turtle conservation measures are used.

Existing sea turtle conservation regulations (50 CFR part 227) require most shrimp trawlers to have a NMFS-approved TED installed in each net rigged for fishing throughout the year. The use of TEDs significantly reduces mortalities of loggerhead, green, Kemp's ridley, and hawksbill sea turtles. Because leatherback turtles are larger than the escape openings of most NMFS-approved TEDs, use of these TEDs is not an effective means of protecting leatherback turtles.

The existing sea turtle conservation regulations allow the Assistant Administrator for Fisheries, NOAA, (AA) to restrict fishing activities in order to conserve a species listed under the ESA (50 CFR 227.72(e)(6)(ii)). This action may be taken if the AA determines that restrictions are necessary to avoid unauthorized takings that may likely jeopardize the continued existence of a listed species. The provision is particularly applicable to leatherback turtles, where despite the use of TEDs, taking by shrimp trawlers can occur. In accordance with the endangered status of leatherback turtles, NMFS considers preventable take of leatherbacks to be inappropriate. If the leatherbacks are relatively abundant in areas where shrimp trawlers are fishing, restrictions to minimize the take of leatherbacks must be imposed.

Because of their primarily pelagic existence, leatherbacks normally occur outside of areas where they would be subject to take by shrimp trawlers. During most months of the year, leatherbacks are not considered abundant in shrimping areas, and only isolated incidents of take by trawlers are expected. However, the coastal waters of northern Florida, Georgia, South Carolina and North Carolina experience relatively high abundance levels of leatherbacks as a periodic spring phenomenon. When leatherback abundance is high and shrimp trawlers are fishing, leatherback stranding pulses have been documented on adjacent beaches. A NMFS Biological Opinion prepared for a revision to the sea turtle conservation regulations made on December 4, 1992, (52 FR 24244) episodic stranding events from Florida through North Carolina and required NMFS to develop and implement a contingency plan to solve this problem.

A contingency plan for protection of leatherback turtles on the Atlantic seaboard that can be implemented, if necessary, was prepared in cooperation with State officials from Florida, Georgia, and North Carolina. The necessity for implementation of protective measures for leatherback turtles is expected to be short-term and apply to specific areas. The plan considers several options to provide protection, and any or all them may be implemented, if necessary, pursuant to 50 CFR 227.72(e)(6). These options include, closure of areas to all fishing, use of restricted tow-times in lieu of TEDs, mandatory observers, and use of modified TEDs designed to exclude leatherback turtles.

Presence of Leatherback Turtles

During December of 1993 and January and February 1994, NMFS received regular reports of leatherback sightings in northern Florida. During recent surveys by the State of South Carolina, concentrations of leatherback sea turtles were observed in the conservation zone. The turtles normally migrate northward during the months of March through June from Florida waters to those off North Carolina.

Sea Turtle Conservation Measures

Based on the information presented and evidence indicating that shrimp trawlers may incidentally take endangered leatherback sea turtles, the AA has determined that immediate action may be necessary to conserve sea turtles. The AA has determined that incidental takings of leatherback sea turtles during shrimp trawl fishing in the leatherback conservation zone are unauthorized unless these takings are consistent with the applicable biological opinions and associated incidental take statements.

A biological opinion addressing the potential adverse effects of shrimp trawling to endangered and threatened species was conducted in 1992 for final sea turtle conservation regulations. The opinion concluded that, "episodic take of leatherback turtles by shrimp trawlers during periods of high jellyfish abundance must be eliminated." A biological opinion on this action analyzed the impact of shrimp trawl fishing in the leatherback conservation zone on endangered leatherback turtles. The opinion emphasizes the need for additional protective measures such as requiring the use of TEDs with escape openings large enough for leatherback sea turtles to escape in areas where high abundance levels of leatherbacks are

observed. The incidental take statement issued with this opinion allows for the documented take of 20 leatherback turtles and mortality of four leatherback turtles. If observer reports or other information indicate that this incidental is met or exceeded, consultation must be reinitiated, and the AA may require additional or more stringent conservation measures.

Requirements

The definitions in 50 CFR 217.12 are applicable to this action, as are all relevant provisions in 50 CFR parts 217, 222 and 227.

The term "leatherback conservation zone" means all inshore and offshore waters of the Atlantic area from Cape Canaveral, FL (28°24.6' N. lat.) , to the North Carolina-Virginia border (36°30.5' N. lat.).

NMFS hereby notifies owners and operators of shrimp trawlers in the leatherback conservation zone that short-term closures in specific areas may be required to protect endangered leatherback turtles. Weekly aerial surveys will be conducted from northern Florida through the North Carolina-Virginia border. If sightings of leatherback turtles during such surveys exceed 10 animals per 50 nautical miles (nm) of trackline, the survey will be replicated within 12 hours, or as soon as practicable, to ensure that leatherback turtle presence is persistent in the area. If surveys demonstrate the continued presence of large concentrations of leatherbacks, NMFS will temporarily close these specific areas to any shrimp trawler required to have a NMFS-approved TED installed in each net rigged for fishing, unless the TED installed is one of the NMFS-approved TEDs as described below. In addition, owners and operators of vessels operating in closed areas with an allowed TED, described below, must register with the Director, Southeast Region, NMFS, in accordance with 50 CFR 227.72(e)(6)(v)(A) through (F). If requested, they must carry a NMFS-approved observer on board such vessel(s). A shrimp trawler in the leatherback conservation zone must comply with the terms and conditions accompanied by any such request as well as provide information on trawling hours, gear modifications and turtle captures.

Specific area closures will be announced in the **Federal Register**, on the NOAA weather channel, and in newspapers and other media. Shrimp trawlers in the leatherback conservation zone are responsible for monitoring the NOAA weather channel for closure announcements. Shrimp trawlers may also call (813) 893–3163 for updated area closure information. Closure will take effect upon public filing with the **Federal Register**.

NMFS-Approved TEDs With Escape Openings Large Enough for Leatherback Sea Turtles

NMFS previously approved the Taylor TED, two modifications to the Morrison TED, and a modification to the single-grid hard TED that will allow leatherback turtles to escape the trawl. Descriptions of the Taylor TED and the Morrison modifications were published on May 17, 1993 (58 FR 28795), and a description of the modified single-grid hard TED was published on May 18, 1994 (59 FR 25827).

Additional Sea Turtle Conservation Measures

NMFS anticipates that shrimp trawlers may continue to interact with leatherback turtles throughout the summer. As necessary, the AA may extend, for additional 30-day periods, the restrictions described in this temporary rule through notification in the **Federal Register**.

In addition, the AA may modify, at any time, the requirements of this action through notification in the **Federal Register**, to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the AA will impose any necessary additional or more stringent measures if NMFS determines that shrimp trawlers are having a significant adverse effect on sea turtles. For example, if monitoring to assess turtle mortality indicates that the incidental take level is approaching the level established by the biological opinion for this action issued under section 7 of the ESA, the AA may modify or add conservation measures to protect leatherback sea turtles. That level is 20 documented takes, including four by mortality of leatherback turtles. If the incidental take level is met or exceeded, if significant or unanticipated levels of lethal or nonlethal takings or strandings occur that are associated with fishing activities in the leatherback conservation zone, or if there is significant non-compliance with this action, additional measures may be imposed. Additional restrictions may include closing the entire leatherback conservation zone to all shrimping.

Classification

The AA has determined that this action is necessary to respond to an emergency situation to conserve and provide adequate protection for leatherback turtles. This action is consistent with the ESA and other applicable law.

Because neither section 553 of the Administrative Procedures Act (APA) or any other law requires that a general notice of proposed rulemaking be published for this action, under section 503(b) of the Regulatory Flexibility Act, an initial regulatory flexibility analysis is not required.

It has been determined that this rule is not significant for purposes of E.O. 12866.

This action allows the AA to establish a registration program as authorized by the final rule (57 FR 57348, December 4, 1992), codified at 50 CFR 227.72(e)(6)(iv). Such a program contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), namely, registration by vessels fishing in the leatherback conservation zone from Cape Canaveral, FL., to the Virginia-North Carolina border. This collection has been approved by OMB under control number 0648–0267. The public reporting burden for this collection of information is estimated to average 7 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be sent to NMFS and OMB (see **ADDRESSES**).

Pursuant to section 553(b)(B) of the APA, the AA finds that there is good cause to take this action without notice and opportunity for comment. It is impracticable and contrary to the public interest because relatively high levels of leatherback turtle abundance have been reported recently in Florida, and closures and/or restrictions may need to be imposed quickly. The action announced by this notice is needed at this time so that shrimp trawlers will monitor NOAA weather radio and prepare for closures and/or restrictions in specific areas where relatively high leatherback sea turtle concentrations are identified. Comments were solicited and none received on a temporary rule that was effective from April 29, 1994 through May 31, 1994 (59 FR 23169, May 5, 1994). Also, comments were solicited on the temporary rule establishing a leatherback conservation zone last year (58 FR 28790, May 17, 1993). In addition, comments were solicited on potential leatherback conservation measures (57 FR 57348, December 4, 1992), and a summary of the comments received and a response

was published (57 FR 40859, September 8, 1992). NMFS also solicited comments in meetings with fishing groups and state officials concerning this problem.

Pursuant to section 553(d) of the APA, the AA finds there is good cause to waive the required 30-day delay in effective date for this action. Advance preparation is not necessary to monitor the NOAA weather radio. While time may be needed to procure a Taylor TED or make the appropriate modifications to the Morrison TED, restricted ares will be relatively small in size and shrimp trawlers should be able to operate in other areas with existing gear.

The AA prepared an Environmental Assessment (EA) for the final rule (57 FR 57348, December 4, 1992). A supplemental EA prepared specifically for this action concludes that, with specified mitigation measures, this action will have no significant impact on the human environment.

Dated: June 1, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94–13851 Filed 6–3–94; 1:06 pm]

BILLING CODE 3510–22–F

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50 CFR Part 672

[Docket No. 931199–4042; I.D. 060394A]

Groundfish of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 62 (between 154° and 159° W. long.) in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the second quarterly allowance of the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 5, 1994, until 12 noon, A.l.t., July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Michael L. Sloan, 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 GOA (FMP) prepared by the North Pacific Fishery Management Council under the 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.

The second quarterly allowance of pollock TAC in Statistical Area 62 is 5,514 metric tons (mt), as established by the 1994 final specifications (59 FR 7647, February 16, 1994) and modified in accordance with § 672.20(a)(2)(iv).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1994 second quarterly allowance of pollock TAC in Statistical Area 62 soon will be reached. The Regional Director established a directed fishing allowance of 5,000 mt, and has set aside the remaining 514 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed fishing for pollock in Statistical Area 62 is prohibited, effective from 12 noon, A.l.t., June 5, 1994, until 12 noon, A.l.t., July 1, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from OMB review under E.O. 12866.

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

Dated: June 3, 1994.

David S. Crestin,

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

[FR Doc. 94–13893 Filed 6–3–94; 1:06 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 109
Wednesday, June 8, 1994

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children (WIC); Food Funding Formula Rule

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes revisions to funding and funds allocation procedures for the Special Supplemental Food Program for Women, Infants and Children (WIC) in order to simplify and update the funding process in anticipation of a fully funded program. The proposed amendments will provide a greater share of funds to States receiving comparatively less than their fair share of funds based on their WIC income eligible population, simplify and better manage the food funding allocation process by eliminating obsolete features and provide all State agencies with stability funding, adjusted for inflation, to the extent funds are available.

DATES: To be assured of consideration, written comments must be received on or before August 8, 1994. Since comments may be accepted simultaneously on several separate rulemakings, commenters on this proposed rule are asked to label their comments "Food Funding Formula Rule".

ADDRESSES: Comments may be mailed to Stanley C. Garnett, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 540, Alexandria, Virginia 22302, (703) 305–2746. All written submissions will be available for public inspection at this address during regular business hours (8:30 a.m. to 5 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Deborah McIntosh, Chief, Program Analysis and Monitoring Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2710.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866 and has been classified as significant.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, the Administrator of the Food and Nutrition Service (FNS) has certified that this rule will not have a significant impact on a substantial number of small entities. The rule affects how the Department will calculate food grant allocations for WIC State agencies.

Paperwork Reduction Act

No new data collection or recordkeeping requiring Office of Management and Budget (OMB) approval under the Paper Reduction Act of 1980 (44 U.S.C. 3501 through 3502) are included in this proposed rule.

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under 10.557 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the WIC Program, the administrative procedures are as follows: (1) Local agencies and vendors—State agency hearing procedures issued pursuant to 7 CFR 246.18; (2) applicants and participants—State agency hearing procedures issued pursuant to 7 CFR 246.9; (3) sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 246.19—administrative appeal in accordance with 7 CFR 246.22; and (4) procurement by State or local agencies—administrative appeal to the extent required by 7 CFR 3016.36.

Background

Need for Revisions to the Food Funds Allocation Process

The WIC Program has consistently demonstrated its effectiveness in promoting the health and nutritional well-being of low-income women, infants and children at nutritional or medical risk, and has experienced large increases in its appropriation for the last several years. Due to its success, the WIC Program is likely to soon achieve "full funding" whereby it is estimated that all eligible women, infants and children who apply could obtain program benefits. In moving toward the full funding objective, the Department finds that its current food funding formula presents impediments to funding equality and is so complex it is difficult to execute and predict its results.

Historically, WIC has never had enough funds to serve all who are in need of, and eligible for, its benefits. Certain State agencies receive levels of funding that allow them to serve more of their eligible populations than others. The concept of full funding for WIC as set forth by the Administration does not guarantee unlimited funds nor does it establish the WIC Program as a federal entitlement program. As before, WIC must manage within a finite appropriation level. However, a fully funded WIC Program implies that the appropriation level will more adequately provide for all eligible persons who apply for benefits, and that each State agency should have an equal chance to serve their eligible population. Currently, many State agencies are serving lesser proportions of their WIC-eligible population than other State agencies. Therefore, the formula must support growth among

State agencies which are now funded to serve a lesser proportion of their eligible population, as well as allocate funds fairly among all State agencies under a stable, fully funded program.

Therefore, to better prepare the WIC Program for full funding, the proposed revisions to the food funding formula strive for three major objectives: (1) To provide a greater share of funds to State agencies receiving comparatively less than their fair share of funds based on their WIC income eligible population; (2) to simplify the food funding formula and delete obsolete components; and (3) to maintain current services to eligible participants that State agencies are serving to the extent funds are available.

FNS has recognized for some time that constraints of the current funds allocation process necessitated revisions to the food funding formula. Additionally, the National Association of WIC Directors (NAWD) formed a special Funding Formula Committee (Committee) to provide recommendations to FNS for revising the formula and improving methods for allocating WIC food funds. The Committee views are referenced in this preamble on particular issues.

The Committee recommendations focused on how full funding should alter the funding formula for the future. The limited funds provided to the WIC Program in the past were not adequate to fully reach the eligible population. Consequently, the current funding formula sought to preserve participation gains that State agencies achieved. If additional funds were available, funds were allocated to foster program growth, particularly to the pregnant women and infant population at highest risk. Service to this highest risk group is now largely accomplished. A fully funded program must now strive to achieve greater funding equity among all State agencies.

Assumptions Under Full Funding

Cost Control Efforts. The President's goal of fully funding the WIC Program strongly assumes that current policies and procedures affecting cost containment strategies will continue. Cost savings through cost containment initiatives, including infant formula rebates, have been highly effective in the WIC Program in recent years, creating savings that have allowed the program to assist millions of additional participants. State agencies are required to continue infant formula rebates, and are encouraged to explore other cost containment initiatives to manage the WIC Program more efficiently and effectively and to ensure that the President's goal can be realized.

Due to the intense scrutiny and competition for funds that all Government programs now face, it is imperative that in a fully funded program, WIC State agencies continue to monitor and aggressively pursue cost containment strategies. The Department seeks comments and suggestions as to how the policies, rules or procedures could be adjusted to better reward efficient State management and cost containment efforts without putting upward pressure on program costs or undue burdens on the program. State agencies may have valuable insights to share with the Department on cost containment strategies and on strengthening standards for cost containment to insure that existing structural incentives for cost efficiency will be maintained.

WIC Food Costs. WIC Program food costs account for approximately 75 percent of the overall WIC budget. Therefore, it is critical that State agencies use these food dollars wisely so that additional WIC participants can be served. Since funds are allocated based on the national average food package cost, State agencies that have food package costs above the national average will not be able to serve the number of participants estimated to be served with their allocation. This will function as an incentive for these State agencies to manage their food package costs more efficiently in order to serve all eligibles in their respective jurisdictions.

State agencies currently are required to employ various strategies to reduce food costs, such as infant formula rebates and effective vendor management. Additional strategies found effective in controlling costs include, but are not limited to, food container size and name brand management practices, and rebates on foods other than infant formula. Many States are utilizing these additional strategies; however, other State agencies may need to implement additional cost containment initiatives to reduce their per person food package cost to enable them to serve additional participants.

Nutritional Risk Criteria. Another area where State agencies have some discretion in operating the WIC Program which may affect a State agency's ability to realize the President's goal of full funding are the nutritional risk standards used to establish program eligibility. In addition to meeting income eligibility standards, an applicant for program benefits must also be certified by a competent professional authority to be at nutritional risk due to medically-related conditions or dietary deficiencies that impair or endanger health. Currently State agencies have considerable flexibility in establishing and implementing nutritional risk criteria.

The commitment to WIC full funding can only be met if States continue to utilize risk-related eligibility criteria that are based in sound medical, nutritional, and preventive health research. Poverty in and of itself, while strongly associated with many health and nutrition-related problems, is not a sufficient condition for program eligibility.

In order to help advance understanding of the current state of scientific knowledge of nutritional risk as it pertains to the WIC target population, FNS funded a grant to the National Academy of Sciences, Institute of Medicine, Food and Nutrition Board (FNB). The grant will be used for a scientific evaluation of WIC nutrition risk criteria, including an independent review of all nutrition risk factors currently in use by the WIC Program, and a review of the related scientific literature. The FNB will issue a report summarizing its findings regarding determination of nutritional risk for each criterion, and will identify gaps in the scientific knowledge indicating that additional research is needed.

The results of this review will be shared with State agencies to help them better manage program services and to ensure that full funding will meet the nutritional and health-related needs in a well targeted manner.

Funding Formula Objectives

The funding process should assure each State agency a grant that allows it an equal opportunity to serve its fair share of eligible persons seeking WIC service by providing a food package suited to the participant's unique nutritional deficiencies, not to exceed the maximum food benefit allowed under regulations. This rule proposes a funding formula to meet this overall goal.

The objective of fair share allocation is to give each State agency a percentage of total available funds based on its number of WIC-eligibles as a percent of the total number of WIC-eligibles nationally. Accordingly, an "under fair share" State agency is one whose percent share of grant funds is less than its percent share of the total national WIC-eligible population. An "over fair share" State agency is one whose percent share of grant funds is greater than its percent share of the WIC-eligible population. While there is general agreement that the fair share concept is important and that it is necessary to bring "under fair share"

State agencies closer to their fair share objective, the best way to implement this concept was a more difficult decision. The current formula provides a "stability" grant which assures all State agencies of their prior year grant plus some inflationary increases. While "stability" funding was important in the past to avoid eroding participation gains, fully funding the WIC Program does not ensure that grant levels to individual State agencies will be stable, since States' eligible populations may increase or decrease over time due to changes in the economy or other factors.

The current formula for allocating food funds was published in a final rule on July 2, 1987 (52 FR 25182). Most recently, it was amended by a Final Rule published March 11, 1994, at 59 FR 11475. This preamble is organized first to describe the most significant current provisions, and to explain the proposed revision or elimination of these provisions. Second, a summary of how the proposed food funding formula will work is provided.

Current Provisions

Section 246.16(c)(1) Allocation Formula—Use of Participation Data in the Formula

The proposed food funding formula would no longer use reported priority participation data or data reflecting State-funded participation for imputing the figures needed for the targeting components of the formula described in § 246.16(c)(3)(ii) and (c)(1)(ii)(A). Accordingly, the Department is proposing to revise § 246.16(c)(1) to eliminate the use of participation data for these purposes.

Section 246.16(c)(3)(i) Allocation of Stability Funds

Currently, in allocating funds to State agencies, first priority is given to maintaining each State's operating level "stability funding". The stability component of a State agency's allocation is initially based on the amount of food funds received by each State agency in the prior fiscal year, adjusted to restore 50 percent of any grant funds voluntarily returned in the prior year. This base level is then adjusted to account for a portion of the inflation estimated for the upcoming fiscal year (except that Indian State agencies receive a full inflation adjustment).

The proposed formula retains this component with some modification. The principle of stability is maintained to help assure that each State agency receives enough funds to support its current participation level. However, the proposed rule tempers this with the principle of fair share allocation based on each State agency's eligible population.

This rule proposes deleting the provision allowing a State agency the option to retain 50 percent of funds it returns before July 16 as a part of its stability grant the next fiscal year. For example, currently a State agency which voluntarily returns $100 in unspent food funds would be reduced by only $50 of that $100 in its stability grant for the next year.

The 50 percent credit was intended as an incentive for a State agency to return food funds that it could not spend, thereby making those funds available for reallocation to State agencies that needed additional funds. Actually, almost all State agencies which have elected to return funds under this provision have been those which were in danger of failing to spend at least 95 percent of their allocated food funds. Failure to achieve this expenditure level results in a specific decrease in the amount of food funds in the subsequent fiscal year as specified in § 246.16(e)(2). In these instances, State agencies simply returned the amount of funds necessary to ensure expenditures of at least 95 percent of their adjusted food grants. The Department no longer believes restoration of 50 percent of returned funds to State agencies in the next year is prudent. The restoration of these funds makes it possible for a State agency already serving all of its eligible population to retain funds it does not need.

Section 246.16(c)(3)(i)(A) Inflation Adjustment

The current food funding formula uses a calculation referred to as the "targeted inflation factor". It is designed to provide an inflation adjustment proportionate to a State agency's service to the highest priority participants. Under this process, the full inflation increase is adjusted according to each State agency's percentage of participants in the top three priority level categories (Priority I–III women, infants and children at nutritional or medical risk). Specifically, the formula requires multiplying the percentage of its participation which is in the top three priorities by the full rate of inflation. The resultant factor is multiplied by the prior year food grant to determine the stability grant, as adjusted for targeted inflation. For instance, if 75 percent of a State agency's participation was in the Priority I to III participation categories, and the full inflation rate was 4 percent, that State agency would receive a targeted inflation rate of 3 percent applied against its prior year grant to determine its stability grant. An exception is made for Indian State agencies which receive full inflation.

The intent of the existing provision is twofold. First, it gives a greater inflation increase to State agencies which are serving high priority participants. Second, by not providing full inflation to all State agencies, some funds remain after stability grant allocations. These funds are distributed under the "residual funds" portion of the formula and provide additional funds to all State agencies. The impact of targeted inflation, coupled with the residual funds portion of the formula, has been to provide almost all State agencies with a full inflation increase anyway. However, the targeted inflation process is complicated and, since service to the highest risk participants is now largely achieved, is no longer relevant. This rule proposes the more straight-forward process of providing all State agencies with a full inflationary increase as long as funds are adequate to do so.

If, however, the appropriation for any given year is insufficient to support prior year grant levels plus full inflation, the funding formula must reduce State agency grants to allow for funds allocation within available funding. Two options were considered when the appropriation is inadequate to support stability. The first option, and the one most favored by the Committee, was an equal pro rata reduction for all State agencies for that fiscal year. The second option is that State agencies with under fair share allocations receive first priority for any available inflationary increases, and those State agencies at or above their fair share allocation for that fiscal year receive second priority. The Department believes that when funds are limited, the concept of a fair share allocation should remain a priority in the allocation of funds. Therefore, this rule proposes to adopt the second option. This will assure continued progress in increasing the grants of States that are under their fair share.

Section 246.16(c)(3)(i)(B) Migrant Set-Aside

Section 17(g)(4) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)(4)) provides that not less than 9/10 of one percent of the funds appropriated for the WIC Program be available first for services to migrant women, infants and children. Currently, the regulations stipulate that the full 9/10 of one percent set-aside is to be subtracted from all States' stability grants and then added to stability grants of States that report serving migrants. Because these adjustments for the migrant set-aside

become part of the base grant of stability funds for the next fiscal year, FNS found that stability grants were skewed over time, directly causing some State agencies to receive more than their fair share of funds while preventing other States from receiving their fair share. This distorting effect becomes even larger as overall funding increases.

Additionally, for the last few years, the number of reported migrants receiving WIC services is consistently and substantially less than the number that could be supported by the full migrant set-aside. The Department thinks that continued increases in the appropriation have made the full migrant set-aside excessive and unnecessary. With full funding and the fair share allocation objective proposed by this rule, the current method of allocating the migrant set-aside is irrelevant, since the proposed funding formula is based upon an estimate of WIC eligibles which already includes the migrant population.

This rule proposes that for State agencies that serve migrants, a portion of the grant be designated for service to the migrant population. The designated amount would be based on prior year migrant participation reported by each State agency. By designating a target funding level, the migrant grant does not distort subsequent grant allocations, yet establishes service to this needy population as a priority. This is an approach similar to the one employed to target expenditures for breastfeeding promotion and support. However, as under current regulations, a State agency would not be penalized for not fully spending the portion of its grant designated for migrants as this would be to the detriment of other needy participants waiting for service. As the migrant population served in a State in a prior year may change in the following year when migrant workers travel to other States where work is available, it is unreasonable to hold funds to serve a population that may not be present that year. In a full funding environment, migrant populations actually pose a dilemma similar to unexpected changes in the overall eligible population. At any time, a demographic change could result in greater or fewer eligibles than estimated. The Department believes that State agencies must estimate and accommodate such changes according to the information available from State and local sources.

Therefore, for planning purposes, expenditure targets will be established for both food grants and nutrition services and administration grants to insure that 9/10 of one percent of the appropriation is made available for service to migrants. State agencies would be expected to plan for migrant participants as now required in their State Plan of Operation and give priority service to migrant participants that arrive from another State agency seeking WIC services.

Section 246.16(c)(3)(ii) Allocation of Residual Funds

Under the current rule, any funds remaining after stability grants are allocated are "residual funds". Residual funds are allocated under two components—"targeting" and "growth". This rule proposes eliminating the targeting component and modifying the growth component as discussed below.

Section 246.16(c)(3)(ii)(A) "Targeting" Component for Food Funds

The current funding formula requires that 50 percent of residual funds be distributed to all State agencies for the targeting component. These targeting funds are allocated to each State agency based primarily on its number of Priority I participants. The targeting formula procedure is complex, requiring many computations to calculate a targeting index by which each State agency's share of targeting funds is determined.

The targeting component was originally designed to provide an incentive for targeting benefits to the highest risk participants, Priority I women and infants. However, State-reported participation data indicate that nationwide, 90 percent of all fully (categorical, income and at nutritional risk) eligible infants and pregnant women are receiving services through the WIC Program. Therefore, the targeting component is no longer needed to encourage service to Priority I participants.

The Department is also concerned that the targeting component is a barrier to achieving funding equity among State agencies. All State agencies receive targeting funds, regardless of whether their stability grants already provide a fair share allocation. With targeting, funding levels for State agencies at or above their fair share level can continue to increase, while State agencies receiving below their fair share amount have difficulty catching up. With the elimination of the targeting component, funding equity can be reached more rapidly. In short, this rule proposes the elimination of the targeting component to simplify the formula, and ensure greater funding equity based on each State agency's eligible population.

Section 246.16(c)(3)(ii)(B) "Growth" Component for Food Funds

Under the current formula, after targeting funds are allocated, the remaining half of residual funds are allocated for "growth" within State agencies that have less opportunity to serve their eligible population compared to other State agencies. Growth funds are allocated based primarily on a "fair share" concept similar to that discussed earlier. To determine fair share funding, FNS uses a mathematical equation to create an estimate of each State's eligible WIC population. The estimate begins with each State agency's number of income eligibles, currently extracted from decennial census data. The estimate is adjusted slightly to account for State agency variations in infant mortality and low birth weight rates ("health indicators"). Also, women, infants and children served by the Commodity Supplemental Food Program (CSFP) are subtracted from this estimate for those States in which CSFP operates.

Each State agency's estimated ratio of the eligible WIC population is divided by the national estimated eligible WIC population to establish each State agency's "fair share" percent of total funds. A State agency receives growth funds if the funds it was allocated through the stability and targeting components are less than its calculated fair share. The amount of funds available for growth are divided among all State agencies receiving less than their fair share of funds, with State agencies furthest from their fair share of funds receiving greater allocations. The number of State agencies receiving growth funds each fiscal year varies.

As explained below, the Department proposes retaining the "growth" component of the formula using only the estimate of income eligibles (with some adjustments) and deleting the use of health indicators. It is believed that this best defines each State agency's actual need for program funds and greatly simplifies the "fair share" equation. Each component and revision of the eligibles database is discussed below.

Income Eligibles

Currently, each State agency's estimate of WIC income eligible persons is based on data from the 1990 Decennial Census, which reflects population characteristics as of 1989. Although the Census data provides the most current State-by-State information, the Department recognizes that data which describe a population at a fixed point in the past may not accurately

reflect recent and future socioeconomic and demographic trends. Accordingly, the Department is currently exploring other potential data sources for the state-level income eligibles estimates. One such potential source is the Current Population Survey (CPS), which provides state-level population data by income on an annual basis. CPS is used to estimate the total number of WIC income eligibles on a national basis. State-level CPS data, used in conjunction with other state-level economic, demographic and program participation data, may prove to be a better and more current alternative source for state-level income eligibles estimates. This proposed rule does not establish or define the exact source of the eligibles database in order to allow for the use of the most timely and reliable data as it becomes available.

The fair share funding allocations are based on estimates of the State agency's target population at or below 185 percent of poverty rather than estimates of fully-eligibles (persons income eligible and at nutritional risk). This is, in part, because consistent state-level data on income is more readily available than state-level data on nutritional risk. In addition, the use of income-eligibles data results in consistent treatment of State agencies regardless of nutritional risk criteria. That is, State agency allocations are not adjusted for nutritional risk standards which, compared with other State agencies, are more or less inclusive.

It should be noted that the state level income-eligible estimates will be used to determine each state's proportion of the national total of WIC income-eligibles. Funding allocations are based on this proportion—not on the absolute number of estimated income eligibles in each State. Each State agency's fair share allocation thus depends on both its share of income eligibles and the total amount of funds available nationally.

Under full funding, the total amount of funds available should reflect a national estimate of the cost of serving all fully-eligible persons who wish to participate in the program. Because a national estimate will assume "average" nutritional risk criteria, each State agency's fair share allocation will also implicitly assume average nutritional risk certification practices, as well as average food costs. The allocation formula does not provide additional funds to States with higher than average food package costs or broader than average definitions of nutritional risk. This basic approach to establishing each State agency's fair share funding allocation would likely be maintained regardless of any foreseeable changes in the data and methodologies used to estimate income eligibles.

Health Indicators

In the current formula, the calculation of each State's eligible WIC population, used to compute its fair share allocation, includes an adjustment for its infant mortality and low birth weight rates. These health indicators were originally included in the food funding formula to help direct limited funds to States that were especially needy. However, as appropriation levels have grown, the WIC Program has been better able to serve high risk participants (who tend to have the highest rates of infant mortality and low birth weight babies). Since this prenatal population is now largely served, these adjustments are no longer necessary. Moreover, as service to the highest risk participants has increased, the overall impact of the health indicators on the amount of food funds received by States has become negligible. FNS examined the effect of these health indicators on States' Fiscal Year 1993 food grants and found that, as currently factored in the growth component, health indicators affected food grants for very few State agencies and only by a difference of one percent or less. Furthermore, the inclusion of the health indicators unduly complicates and reduces understanding of the food funding formula. Therefore, this rule proposes to eliminate the use of the health indicator adjustments.

Adjustments for Higher Cost Areas

The current growth component also makes an adjustment for the higher food costs of State agencies located outside of the continental United States. This adjustment is done to ensure that the share of funds received by these State agencies is adequate to serve their share of the eligible population given their higher costs. The current regulation provides detailed specifications for those States and territories with higher food costs as recognized by the Food Stamp Program's Thrifty Food Plan (TFP). These States and territories include Alaska, Hawaii, Guam, and the Virgin Islands.

The Department proposes to retain this adjustment, but to allow more flexibility than the current regulation. Therefore, the proposed rule incorporates more general requirements so that if economic data is available that can measure and document higher costs in particular outlying State agencies, the Department may use available data to construct adjustment factors for such State agencies. Consideration of such adjustments would be predicated on the condition that State agencies with higher food costs aggressively pursue cost containment initiatives, such as stringent vendor management practices, participation in multi-state agency infant formula rebate contracts and other cost containment efforts.

Adjustments for Indian Tribal Organizations

The growth allocation for the Indian Tribal Organizations has traditionally presented problems due to inadequate data regarding eligibles. Currently, 30 Indian State agencies, each primarily representing members from one or more Native American tribes, operate WIC programs. The Department recognizes that the method for determining eligibles to be served by these Indian State agencies is imprecise, since census and Vital Statistics data on Native Americans are not available by tribe. Often these Indian State agencies also serve non-Native Americans, who are not captured within their estimated eligible population data. In many cases, the present method of determining growth allocations indicates that many Indians State agencies are already receiving adequate funds to fully serve their estimated eligible populations.

The Department knows of no data source to resolve this problem. Therefore, the rule proposes to give FNS the authority to organize and oversee negotiations between the Indian State agency (or agencies) and the geographic State agency (or agencies) in which the Indian State agency is located. FNS could, acting independently or at the request of a State agency, involve affected State agencies in an agreement on the temporary or permanent transfer of funds. Negotiations could be conducted to shift funds among these State agencies to better reflect the actual service being provided by each of the State agencies.

Commodity Supplemental Food Program

The Commodity Supplemental Food Program's (CSFP) service to low-income women, infants and children contributes to the Administration's goal of fully funding the WIC Program by the end of Fiscal Year 1996. The Fiscal Year 1995 budget request and out year targets assume CSFP women, infants and children participation will equal the authorized caseload level.

In those States where both CSFP and WIC operate, the current rule requires the subtraction from the WIC income eligible database of those participants (based on actual, average CSFP participation in the prior fiscal year) who are eligible for the WIC Program,

but elect to receive benefits under CSFP. As CSFP is currently authorized to serve, in addition to WIC eligibles, 5 year old children and postpartum women from 6 months to 1 year postpartum, not all CSFP participants are categorically eligible for the WIC Program. Therefore, FNS currently assumes that one-fourth of the children and one-half of the postpartum women participating in CSFP are not eligible for the WIC Program. The balance of CSFP participants are subtracted from the WIC eligibles estimate.

The Department is proposing to revise § 246.16(c)(3)(i) to make three changes to this deduction from the WIC eligibles baseline data. First, the proposed rule modifies the method for determining the number of CSFP women, infants and children to subtract from the WIC eligibles baseline. The deduction will now be based upon the authorized CSFP women, infants and children caseload, rather than actual participation figures. Second, the deduction will be based on the CSFP caseload authorized at the beginning of the caseload cycle of the prior fiscal year (generally announced on December 1). This is a change from the current practice of using actual, average participation for the prior fiscal year. Finally, the adjustment described above for those CSFP participants who are not also categorically eligible for WIC (postpartum women from 6 months to 1 year postpartum and 5 year old children) will no longer be made. Utilizing the total CSFP caseload level for women, infants and children, rather than performance, more equitably accounts for the resources provided to a State agency to serve the WIC target population using CSFP. These changes will ensure that States that do not have access to CSFP will not be disadvantaged in their access to WIC funds when compared with States that operate both programs.

Summary of the Proposed Food Funding Formula

The foregoing has described the components of the current formula that are proposed for deletion, retention or modification. To ensure that the proposed formula is fully understood, the following describes the proposed allocation process and provides simplified examples of the proposed process.

Fair Share Allocation Objective

In the proposed § 246.16(c)(3), the funding objective would be to give each State agency its fair share allocation of funds to the extent funds are available. Funds available would include funds appropriated for the fiscal year as well as unspent funds carried over from the prior fiscal year that State agencies have not retained under spendforward authority as provided in § 246.16(b)(3)(ii). An example of a simplified fair share allocation is shown below. This example assumes that available funds total $5000, and the total number of income eligibles is 1000 persons.

State agency	Eligibles No.	Fair share percentage	Fair share allocation
A	200	20	$1,000
B	500	50	2,500
C	300	30	1,500
Total	1,000	100	5,000

Stability Allocation

Recognizing that State agencies may already have participants on the program supported with the grant funds each State agency received in the prior year, the formula would strive to protect this service depending on total funds available. Section 246.16 (c)(ii) proposes a Stability Allocation which protects prior year grant levels contingent on availability of funds.

It is proposed that if funds are not adequate to fully fund prior year grants, all State agencies will receive a pro-rata reduction from their prior year grant level commensurate with the shortfall of available funds. If funds are available, each State agency would receive a stability allocation equal to its final authorized grant level as of September 30 of the prior fiscal year. If funds are still available, State agencies will receive an inflation adjustment in the following two-step sequence.

(1) Each State agency with a prior year final authorized grant level which is less than its fair share allocation shall receive its prior year final authorized grant level, increased by an inflation factor which reflects the anticipated rate of food cost increases as determined by the Department, not to exceed its fair share allocation. Should funds be inadequate to fully meet this adjustment, each under fair share State agency will receive an equal percent increase as permitted by the amount of funds available.

(2) If funds remain after completing step 1, each State agency with a prior year final authorized grant level that is at or greater than its fair share allocation shall receive its prior year final authorized grant level, increased by an inflation factor which reflects the anticipated rate of food cost increases as determined by the Department. Should funds be inadequate to fully meet this adjustment, each State agency will receive an equal percent increase as permitted by the amount of the funds available.

Growth Allocation

If funds remain after step 1 and 2 above, then funds are provided for a "growth allocation". The growth allocation gives additional funds to each State agency which has an inflation-adjusted stability allocation which is less than its fair share allocation. The formula subtracts each State agency's current year stability allocation from its fair share allocation to determine the dollar shortfall. Each State agency's shortfall, as a percent of all State agency's shortfalls, yields its percent share of the funds available for the growth allocation.

Example of Formula Allocation Process

The example below describes allocation steps for stability and growth. First, all State agencies have received at least their prior year final grant, which totaled $4,500. As $5,000 is available to allocate in this case, funds are sufficient to do both stability and growth allocations.

1. Stability Allocation—Under Fair Share

First, under fair share State agencies get an inflationary increase, based on full inflation, to the extent permitted by available funding. In this example, available funding permits the entire inflationary increase:

State agency	Fair share	Prior year final grant	Inflation 3 percent	New grant
A	$1,000	$1,100	NA	$1,100
B	2,500	2,000	$60	2,060
C	1,500	1,400	42	1,442

State agency	Fair share	Prior year final grant	Inflation 3 percent	New grant
Total	5,000	4,500	102	4,602
Funds remaining = $398				

2. Stability Allocation—Over Fair Share

Next, over fair share State agencies get an inflationary increase, based on full inflation, to the extent permitted by available funding. In this example, available funding permits the entire inflationary increase:

State agency	Fair share	Prior year final grant	Inflation 3 percent	New grant
A	$1,000	$1,100	$33	$1,133
B	2,500	2,000	60	2,060
C	1,500	1,400	42	1,442
Total	5,000	4,500	135	4,635
Funds remaining = $365				

3. Growth Allocation

Under fair share State agencies get a proportion of remaining funds based on the shortfall between their fair share allocation and stability grant. In the example below, the $365 available for growth funding is shared by States B and C according to their respective shortfalls from their fair share allocations.

State agency	Fair share	Stability grant	Shortfall		Funds received	Final grant
			Dollar's	Percent		
A	$1,000	$1,133	NA	NA	NA	$1,133
B	2,500	2,060	$440	88	$322	2,382
C	1,500	1,442	58	12	43	1,485
Total	5,000	4,635	498	100	365	5,000
Funds remaining = $0.						

If any funds allocated in the three steps above cannot be used and are declined by one or more State agencies, then these funds will be allocated, using the method in Step 3, to the under fair share State agencies which have the ability to use more funds. If all funds are still not distributed, then these remaining funds would be allocated to State agencies which have a stability allocation which is at or greater than its fair share allocation. Each of these State agencies which can document the need for additional funds will be eligible to receive additional funds based on the difference between its stability allocation level and fair share allocation. State agencies closest to their fair share allocation shall receive first consideration.

For instance, in the example above, State A would be able to receive funds declined by State B or C. In this way, the precedence for funding will be to increase funding to under fair share State agencies to the extent possible, while still allowing State agencies that are over their fair share level to receive additional funds when a documented need for additional funds exists. All grants awarded through this process would become the basis of the following year's stability allocation.

Performance Standard

The 95 percent performance standard in current regulations was reevaluated. This standard reduces the current year grant for any State agency that did not spend at least 95 percent of its food grant. The Department is concerned that this current standard of 95 percent of the grant is too generous in the context of a fully funded program. While the Department is sympathetic to the difficulties of rapidly growing States of meeting the 95 percent expenditure level, State agencies with relatively stable funding and participation do not face the same difficulties. For stable State agencies, expending less than the 95 percent of allocated food funds is likely to indicate they have funds they cannot use. Therefore, the Department has proposed in § 246.16(e)(2)(i) a 95 percent standard for State agencies receiving less than their fair share allocation, and 98 percent for those at or over their fair share level. Additionally, prior to applying the performance standard, the current provision in § 246.16(e)(3)(i) allows for exclusion from the grant of food funds that are spent forward into a succeeding fiscal year as authorized by § 246.16(b)(3)(ii), and (iv) and (v). Since spentforward funds are merely unspent funds that the State agency can retain, the Department no longer believes that they should be excluded when assessing spending performance. Accordingly, the proposed rule deletes this provision. Any food funds backspent under § 246.16(b)(3)(i) or converted to Nutritional Services and Administration (NSA) funds under § 246.16(g) will continue to be excluded from the food grant for purposes of applying the performance standard. These two reductions are appropriate in that they reflect food funds actually expended in the current year, and not merely reserved for future use.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

Accordingly, 7 CFR part 246 is proposed to be amended as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 246.16
a. Paragraph (c)(1) is revised.
b. Paragraph (c)(3) is revised.
c. Paragraph (e)(2)(i) is revised.
The revisions read as follows:

§ 246.16 Distribution of Funds.

* * * * *

(c) Allocation formula. * * *

(1) *Use of participation data in the formulas.* Wherever the formula set forth in paragraphs (c)(2) and (c)(3) of this section require the use of participation data, the Department shall use participation data reported by State agencies according to § 246.25(b).

* * * * *

(3) *Allocation of food benefit funds.* In any fiscal year, any amounts remaining from amounts appropriated for such fiscal year and amounts appropriated from the preceding fiscal year after making allocations under paragraph (a)(6) of this section and allocations for nutrition services and administration (NSA) as required by paragraph (c)(2) of this section shall be made available for food costs. Allocations to State agencies for food costs will be determined according to the following procedure:

(i) *Fair share allocation.* (A) For each State agency, establish a fair share allocation which shall be an amount of funds proportionate to the State agency's share of the national aggregate population of persons who are income eligible to participate in the Program based on the nationally uniform 185 percent of poverty criterion. The Department will determine each State agency's population of income eligible persons through the best available indicators as determined by the Department. If the CSFP also operates in the area served by the WIC State agency, the CSFP women, infants and children caseload level at the beginning of the caseload cycle of the prior fiscal year shall be deducted from the WIC State agency's population of income eligible persons.

(B) The Department may adjust the respective amounts of food funds that would be allocated to a State agency which is outside the 48 contiguous states and the District of Columbia when the State agency can document that economic conditions result in higher food costs for the State agency. Prior to any such adjustment, the State agency must demonstrate that it has successfully implemented voluntary cost containment measures, such as improved vendor management practices, participation in multi-state agency infant formula rebate contracts or other cost containment efforts. The Department may use the Thrifty Food Plan amounts used in the Food Stamp Program, or other available data, to formulate adjustment factors for such State agencies.

(ii) *Stability allocation.* If funds are available, each State agency shall receive a stability allocation equal to its final authorized grant level as of September 30 of the prior fiscal year. If funds are not available to provide all State agencies with their prior year final authorized grant level, all State agencies shall receive a pro-rata reduction from their prior year grant level as required by the short fall of available funds. If additional funds are available after each State agency receives a stability allocation, the balance of funds shall be allocated first to meet the requirement in paragraph(c)(3)(ii)(A) of this section, then paragraph (c)(3)(ii)(B) of this section.

(A) Each State agency with a prior year final authorized grant level which is *less* than its current fair share allocation shall receive its prior year final authorized grant level, increased by an inflation factor which reflects the anticipated rate of food cost increases as determined by the Department; not to exceed its fair share allocation. Should funds be inadequate to fully meet this requirement, each State agency will receive an equal percent increase as permitted by the funds available.

(B) Each State agency with a prior year final authorized grant level that is at or greater than its fair share allocation shall receive its prior year final authorized grant level, increased by an inflation factor which reflects the anticipated rate of food cost increases as determined by the Department. Should funds be inadequate to fully meet this requirement, each State agency will receive an equal percent increase as permitted by the funds available.

(iii) *Growth allocation.* (A) If additional funds remain available after the allocation of funds under paragraph (c)(3)(ii) of this section, each State agency which has a stability allocation, as calculated in paragraph (c)(3)(ii)(A) of this section, which is less than its fair share allocation shall receive additional funds based on the difference between its stability allocation and fair share allocation. Each State agency's difference shall be divided by the total of the differences for all such State agencies, to determine the percent share of the available growth funds each State agency shall receive. In the event a State agency declines any of its allocation in paragraph (c)(3)(ii) of this section or this paragraph, the funds declined shall be allocated to the remaining State agencies which are still under their fair share.

(B) In the event funds still remain after completing the distribution in paragraph (c)(3)(iii)(A) of this section, these funds shall be allocated to all State agencies including those with a stability allocation at, or greater than, their fair share allocation. Each State agency which can document the need for additional funds shall receive additional funds based on the difference between its prior year grant level and its fair share allocation. State agencies closest to their fair share allocation shall receive first consideration.

(iv) *Migrant services.* At least 9/10 of one percent of appropriated funds for each fiscal year shall be available first to assure service to eligible members of migrant populations. For those State agencies serving migrants, a portion of the grant shall be designated to each State agency for service to members of migrant populations based on that State agency's prior year reported migrant participation. The national aggregate amount made available first for this purpose shall equal 9/10 of one percent of all funds appropriated each year for the Program. Funds designated or used for migrant services shall not be included in a State agency's stability allocation, under paragraph (c)(3)(ii) of this section.

(v) *Special provisions for indian state agencies.* The Department may choose to adjust the allocations and/or eligibles data among Indian State agencies and the geographic State agencies in which they are located when eligibles data for the State agencies' population is determined to not fairly represent the population to be served. Such allocations may be redistributed from one State agency to another, based on negotiated agreements among the affected State agencies approved by FNS.

* * * * *

(e) *Recovery and reallocation of funds.*

* * * * *

(2) * * *

(i) The amount allocated to any State agency for food benefits in any fiscal year shall be reduced if such State agency's food expenditures for the preceding fiscal year were less than the established performance standard. For State agencies which received less than

their fair share allocation as defined in paragraph (c)(3)(i) of this section, the performance standard shall be the expenditure of funds at no less than 95 percent of the food grant. For State agencies over their fair share allocation, the performance standard shall be the expenditure of funds at no less than 98 percent of the food grant. Such reduction shall equal the difference between the State agency's preceding year food expenditures and applicable percent performance standard applied to the amount allocated to the State agency for such benefits. For purposes of determining the amount of such reduction, the amount allocated to the State agency for food benefits for the preceding fiscal year shall not include food funds expended for food costs incurred under the spendback provision in paragraph (b)(3)(i) of this section or conversion authority in paragraph (g) of this section. Temporary waivers of the performance standard may be granted at the discretion of the Department.

* * * * *

Dated: June 2, 1994.

Ellen Haas,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 94–13891 Filed 6–7–94; 8:45 am]

BILLING CODE 3410–30–U

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 94–035–1]

Importation of Fuji Variety Apples From Japan and the Republic of Korea

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Fruits and Vegetables regulations to allow the importation of Fuji variety apples from Japan and the Republic of Korea. As a condition of entry, the Fuji variety apples would have to be cold treated and fumigated for certain injurious insects in Japan or the Republic of Korea under the supervision of the Animal and Plant Health Inspection Service. The Fuji variety apples would also have to be inspected by the Animal and Plant Health Inspection Service and the national plant protection agency in Japan or the Republic of Korea prior to export. This action would relieve restrictions on the importation into the United States of Fuji variety apples from Japan and the Republic of Korea without presenting a significant risk of introducing injurious insects into the United States.

DATES: Consideration will be given only to comments received on or before July 8, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 94–035–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser or Mr. Frank E. Cooper, Senior Operations Officers, Port Operations Staff, Plant Protection and Quarantine, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56–8 (referred to below as the regulations) prohibit or restrict the importation into the United States of fruits and vegetables from certain parts of the world to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within and throughout the United States.

Currently, the regulations do not allow the importation of Fuji variety apples from Japan and the Republic of Korea. However, the agricultural ministries of those countries have recently requested that the Animal and Plant Health Inspection Service (APHIS) allow Fuji variety apples to be imported into the United States.

Several plant pest, including the peach fruit moth (*Carposina niponensis*), the yellow peach moth (*Conogethes punctiferalis*), the fruit tree spider mite (*Tetranychus viennensis*), and the kanzawa mite (*T. kanzawai*), are known to attack Fuji variety apples in Japan and the Republic of Korea. If introduced into the United States, these pests would represent a serious threat to domestic fruit crops. Therefore, we are proposing to allow Fuji variety apples to be imported into the United States from Japan and the Republic of Korea only if they are cold treated and fumigated prior to export from Japan or the Republic of Korea.

The cold treatment would be carried out at the packing house while the apples were still in the wooden or plastic field bins in which they are collected at harvest. To offer a measure of flexibility to exporters in Japan and the Republic of Korea, we would allow the fumigation to be conducted either at the packing house, while the apples are still in their field bins, or at the port of export, after the apples have been packaged in cartons. The treatments, which would have to be conducted under APHIS supervision, would be as follows:

Treatment for *Carposina niponensis, Conogethes punctiferalis, Tetranychus viennensis,* and *T. kanzawai:*

1. Cold treatment in wooden or plastic field bins:

40 days at 1.1 °C (34 °F) or below

2. Followed by fumigation with methyl bromide at normal atmospheric pressure (NAP) in a chamber or under tarpaulin:

a. With apples in wooden or plastic field bins; maximum load factor 50 percent or less:

48 g/m³ (3 lb/1000 ft³) for 2 hours at 10 °C (50 °F) or above, with minimum gas concentrations of:

44g (oz) at ½ hour after fumigation begins
36g (oz) at 2 hours after fumigation begins or

b. With apples in export cartons; maximum load factor 40 percent or less:

38 g/m³ (2.375 lb/1000 ft³) for 2 hours at 15 °C (59 °F) or above, with minimum gas concentrations of:

35g (oz) at ½ hour after fumigation begins
29g (oz) at 2 hours after fumigation begins

Fuji variety apples treated in this manner would present an insignificant risk of introducing the peach fruit moth, the yellow peach moth, the fruit tree spider mite, and the kanzawa mite into the United States. Pest risk analyses conducted by APHIS have determined that any other injurious insects that might be carried by Fuji variety apples would be readily detectable by an inspector. Therefore, after the treatments described above have been completed, the Fuji variety apples would have to be inspected in Japan or the Republic of Korea by inspectors from APHIS and the national plant protection agency of the respective country; the apples would be subject to further disinfection if additional plant pests were found. The apples would also be subject to inspection and disinfection at the port of first arrival in the United States, as provided in § 319.56–6.

Trust Fund Agreement

We are proposing that APHIS' participation in the activities necessary for importation of Fuji variety apples be contingent upon the national plant protection agencies of Japan and the

Republic of Korea each entering into a trust fund agreement with APHIS. These agreements would require each agency to pay, in advance of each shipping season, all costs that APHIS estimates it will incur in providing the necessary services in Japan or the Republic of Korea during that shipping season. These costs would include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing the services.

The agreements would require each national plant protection agency to deposit a certified or cashiers check with APHIS for the amount of these costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreements would further require the agencies to deposit with APHIS a certified or cashiers check for the amount of the remaining costs, as determined by APHIS, before any additional Fuji variety apples would be treated or inspected. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the national plant protection agency that made the overpayment or held on account until needed, at that agency's option.

Department Not Responsible for Damage

The proposed regulations would explain that the United States Department of Agriculture is not responsible for any damage that might be sustained by Fuji variety apples as a result of the prescribed treatment.

PPQ Treatment Manual

We propose to add the cold treatment and fumigation for Fuji variety apples from Japan and the Republic of Korea to the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference into the Code of Federal Regulations at 7 CFR part 300.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The 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.

We are proposing to amend the Fruits and Vegetables regulations by allowing the importation of Fuji variety apples from Japan and the Republic of Korea

According to an estimate by the International Apple Institute, U.S. growers produced approximately 160 million pounds of Fuji apples in 1993, about 1.5 percent of the total U.S. apple production for that year. It is likely that this estimate understates the amount of Fuji apples produced domestically, as Fuji acreage in California, Washington, and other States is expanding rapidly.

About 75 percent of the Fuji variety apples grown in the United States are grown in California and Washington. In 1993, growers in California and Washington produced about 60 million pounds per State, while growers in other States produced a total of about 40 million pounds. Statistics on the number of domestic growers of Fuji apples and their sizes are not available.

Most of the domestic production of Fuji apples is exported because demand, and consequently the price, for Fuji apples is quite low in the United States as compared to other countries, particularly in the Pacific Rim. Prices of $30 to $50 per 40-pound box (depending upon quality) are common in Hong Kong, Taiwan, and other Pacific Rim markets. Domestic buyers, however, have been paying less than half that price.

Growers in the Republic of Korea produce annually about 923 million pounds of Fuji variety apples. APHIS estimates that about 220,000 to 440,000 pounds of Fuji variety apples might be exported per year from the Republic of Korea to the United States. This estimate assumes the Republic of Korea's exports to the United States will approach levels currently exported to European countries.

Japanese growers produce annually about 1.18 billion pounds of Fuji variety apples, just over half of Japan's total annual apple production. APHIS estimates that exports to the United States of all varieties of Japanese apples would probably never exceed 2.2 million pounds.

It is unlikely that imports of Fuji variety apples from Japan and the Republic of Korea would reach the estimated levels above, due to the low demand and low price for Fuji variety apples in the United States. However, even if imports were to reach 2.6 million pounds (2.2 million pounds from Japan and 440,000 pounds from the Republic of Korea), this would constitute less than 1.4 percent of domestic production of Fuji variety apples. Consequently, allowing Fuji variety apples to be imported from Japan and the Republic of Korea would not have a significant economic impact on domestic Fuji variety apple producers or other small entities.

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

Executive Order 12778

This proposed rule would allow Fuji variety apples to be imported into the United States from Japan and the Republic of Korea under certain conditions. If this proposed rule is adopted, State and local laws and regulations regarding imported Fuji variety apples under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will 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 proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, title 7, chapter III, of the Code of Federal Regulations would be amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would be revised to read as follows:

Authority: 7 U.S.C. 150ee, 161, 162; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 300.1, paragraph (a) would be revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was revised and reprinted November 30, 1992, and includes all revisions through _____, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

4. In Subpart—Fruits and Vegetables, a new § 319.56–2cc would be added to read as follows:

§ 319.56–2cc Administrative instructions governing the entry of Fuji variety apples from Japan and the Republic of Korea.

Fuji variety apples may be imported into the United States from Japan and the Republic of Korea only under the following conditions:

(a) *Treatment and fumigation.* The apples must be cold treated and then fumigated, under the supervision of an Animal and Plant Health Inspection Service (APHIS) inspector, either in Japan or the Republic of Korea, for the peach fruit moth (*Carposina niponensis*), the yellow peach moth (*Conogethes punctiferalis*), the fruit tree spider mite (*Tetranychus viennensis*), and the kanzawa mite (*T. kanzawai*), in accordance with the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

(b) *APHIS inspection.* The apples must be inspected upon completion of the treatments required by paragraph (a) of this section, prior to export from Japan or the Republic of Korea, by an APHIS inspector and an inspector from the national plant protection agency of Japan or the Republic of Korea. The apples shall be subject to further disinfection in the exporting country if additional plant pests are found prior to export. Imported Fuji variety apples inspected in Japan or the Republic of Korea are also subject to inspection and disinfection at the port of first arrival, as provided in § 319.56–6.

(c) *Trust fund agreements.* The national plant protection agency of the exporting country must enter into a trust fund agreement with APHIS before APHIS will provide the services necessary for Fuji variety apples to be imported into the United States from Japan or the Republic of Korea. The agreement requires the national plant protection agency to pay in advance of each shipping season all costs that APHIS estimates it will incur in providing services in Japan or the Republic of Korea during that shipping season. These costs include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by APHIS in performing these services. The agreement requires the national plant protection agency to deposit a certified or cashiers check with APHIS for the amount of these costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the national plant protection agency to deposit with APHIS a certified or cashiers check for the amount of the remaining costs, as determined by APHIS, before APHIS will provide any more services necessary for Fuji variety apples to be imported into the United States from that country. After a final audit at the conclusion of each shipping season, any overpayment of funds will be returned to the national plant protection agency, or held on account until needed, at that agency's option.

(d) *Department not responsible for damage.* The treatments prescribed in paragraph (a) of this section are judged from experimental tests to be safe for use with Fuji variety apples from Japan and the Republic of Korea. However, the Department assumes no responsibility for any damage sustained through or in the course of such treatment or by compliance with requirements under paragraph (a) of this section.

Done in Washington, DC, the 3rd day of June 1994.

Alex B. Thiermann,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–13889 Filed 6–7–94; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 362

RIN 3064–AB20

Activities and Investments of Insured State Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Response to petitions for rulemaking.

SUMMARY: On April 29, 1993, the FDIC sought comment on whether to amend its regulations governing insurance underwriting by well-capitalized insured state banks and their subsidiaries to provide that excepted insurance underwriting activities may only take place in the state in which the bank is chartered and in the state in which the bank's insurance underwriting subsidiary is incorporated. After reviewing the comments, the FDIC has determined not to amend the regulation.

FOR FURTHER INFORMATION CONTACT: Curtis L. Vaughn, Examination Specialist, (202) 898–6579, Division of Supervision, FDIC, 550 17th Street NW., Washington, DC 20429 or Pamela E.F. LeCren, Senior Counsel, (202) 898–3730, Legal Division, FDIC, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background

On December 19, 1991, President George Bush signed into law the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102–242, 105 Stat. 2236). Section 303 of FDICIA added section 24 to the Federal Deposit Insurance Corporation Act, "Activities of Insured State Banks" (FDI Act)(12 U.S.C. 1831a). With certain exceptions, section 24 of the FDI Act limits the activities and equity investments of state chartered insured banks to the activities and equity investments that are permissible for national banks. Well-capitalized insured state banks and their subsidiaries that were lawfully providing insurance as principal in a state on November 21, 1991 may continue to provide insurance of the same type to residents of the state, individuals employed in the state and any other person to whom insurance was provided without interruption since such person resided, or was employed,

in the state. (Section 24(d)(2)(B), 12 U.S.C. 1831a(d)(2)(B)).[1]

On June 16, 1992, the FDIC's Board of Directors adopted a proposed regulation implementing the above described insurance underwriting provisions of section 24. (12 CFR part 362, "Activities and Investments of Insured State Banks", 57 FR 30435, July 9, 1992). The preamble accompanying the proposed regulation indicated that it was the FDIC's intention to construe the reference to "in a state" as excepting insurance underwriting activities by an insured state bank only in the state in which the bank was chartered and as limiting the subsidiary of the bank to insurance underwriting activities in the state in which the subsidiary was incorporated and doing business as of November 21, 1991.

The final rule adopted by the FDIC's Board of Directors did not limit the geographic scope of the insurance underwriting exception to the bank's home state and the subsidiary's state of incorporation. (57 FR 53213, November 9, 1992). At the conclusion of the comment period, the FDIC's Board of Directors decided that the proper construction of section 24(d)(2)(B) was that the insurance underwriting exception should extend to any state in which the bank or its subsidiary was underwriting insurance on November 21, 1992. The change of position resulted from information brought to the FDIC's attention during the comment period. (See discussion at 57 FR 53226, November 9, 1992).

The FDIC was subsequently petitioned pursuant to section 553(e) of the Administrative Procedure Act (5 U.S.C. 553(e)) to repeal that portion of part 362 construing the phrase "in a state" and to seek further comment before adopting any provision concerning insurance underwriting by insured state banks. The FDIC granted the petitions and solicited public comment on whether that portion of part 362 dealing with the geographic scope of the insurance underwriting exception should be amended to read as had originally been proposed or should be left unchanged (58 FR 25953, April 29, 1993). In doing so, the Board indicated that it was of the opinion that the position reflected in part 362 as adopted in final was correct but that it was possible that further comment on the issue would bring additional information to the FDIC's attention that should be weighed by the agency.

[1] Section 24(d)(2)(B) reads as follows: (2) Insurance Underwriting Prohibited.—

* * *

(B) Continuation of Existing Activities.—notwithstanding subparagraph (A), a well-capitalized insured State bank or any of its subsidiaries that was lawfully providing insurance as principal in a State on November 21, 1991, may continue to provide, as principal, insurance of the same type to residents of the State (including companies or partnerships incorporated in, organized under the laws of, licensed to do business in, or having an office in the State, but only on behalf of their employees resident in or property located in the State), individuals employed in the State, and any other person to whom the bank or subsidiary has provided insurance as principal, without interruption, since such person resided in or was employed in such State.

Comment Summary

Thirty-three comments were submitted in response to the request for comment. Of the thirty-three comments, twenty-three urged the FDIC not to modify the regulation and ten urged the FDIC to amend part 362 so as to return the language regarding the insurance underwriting grandfather to that which had been originally proposed. The arguments on either side can be summarized as follows:[2]

Leave regulation as is:

(1) The language of section 24(d)(2)(B) is clear and unambiguous on its face and should be construed without resort to any analysis of the FDI Act's legislative history. The most important tool in determining the meaning of a statute is the text of the statute itself and there is no need to go beyond that text if the statute is unambiguous. The use of the indefinite article "a" in the phrase "in a state" has a clear meaning which is consistent with part 362 as adopted by the FDIC. Congress could have inserted language such as "state of charter", "state of incorporation", "home state", etc. but it chose not to do so. That approach having been rejected by Congress, the FDIC should not by regulation impose restrictions that Congress chose not to impose.

(2) If the FDIC feels compelled to resort to an analysis of the FDI Act's legislative history, that history clearly shows that Congress specifically rejected the result contemplated by the FDIC in its original proposal. The comments pointed to specific language changes from an earlier version of the legislation as evidence of the fact that Congress specifically chose not to adopt the more limited version of the exception which was originally reported out of committee in the Senate.

(3) The FDIC should not place any weight on the unpublished conference committee transcript as such exchanges are not reliable evidence of legislative intent. Even if the FDIC were to consider that transcript in determining its views on the proper construction of the section, the exchanges set out in the transcript are ambiguous and should not be relied upon to override much clearer statements made to the entire legislative body.

(4) In the opinion of the commenters, those who oppose the existing regulation do not understand how the insurance industry operates. In order for a bank or a subsidiary of a bank to underwrite insurance in a state, the bank and/or subsidiary must be licensed by the state to underwrite in that state. No one state can authorize its banks or their subsidiaries to underwrite insurance in any other state. Those other states, however, may do so. The existing regulation does not, therefore, permit a state bank to use its home state as a spring board to launch a nationwide underwriting campaign. The regulation limits the availability of the exception to those states in which a bank or subsidiary was licensed to underwrite (i.e., in which the bank or subsidiary was "lawfully providing insurance as principal").

Reinstate original interpretation:

(1) The FDIC improperly attached substantive importance to the technical amendment which substituted the word "a" for "that" in the insurance underwriting exception (the exception originally used the phrase "in that state").

(2) There is ample support in the legislative history demonstrating the intent of Congress to limit the insurance underwriting exception to the state in which the bank is chartered and the state in which the subsidiary is incorporated. The FDIC placed too much emphasis on the remarks of Senator Roth who was not a conferee and overlooked the statements of

[2] In addition to addressing the geographic scope of the insurance underwriting exception, one comment expressed the concern that part 362 allows banks that are not well-capitalized to take advantage of the insurance underwriting exception, and three comments objected to the FDIC's posture, reflected in the preamble accompanying part 362 when it was adopted in final, that annuities are not insurance. Both of these issues were raised in the section 553(e) rulemaking petitions which were filed with the FDIC. When the petitions were taken up by the FDIC, the Board of Directors declined to reopen the rulemaking on part 362 on either issue. It was (and still is) the FDIC's posture that part 362 does not permit an other than well-capitalized bank to take advantage of the insurance underwriting exception. Persons who read the regulation as so allowing are misreading the regulation. It was (and likewise still is) the agency's position that in applying part 362 and section 24 of the FDI Act the FDIC should apply the law pertaining to national bank powers as construed by the Office of the Comptroller of the Currency (OCC). It has been the OCC's opinion that an annuity contract is not a contract of insurance. Although recently a court came to the opposite conclusion, the OCC has asked the Supreme Court to review that decision. (*Ludwig v. Variable Annuity Life Ins. Co.*, petition for cert. filed, _____ U.S.L.W. _____ (U.S. April 13, 1994)(No. 93–1613). Until such time as the issue is finally decided, the FDIC will continue to follow the OCC's view on this matter.

conferees as reflected in the conference committee transcript.

(3) The FDIC's interpretation of the statute allows state banks to underwrite insurance in any state in which the bank sold insurance policies on November 21, 1991. The rule thus exposes banks and the deposit insurance fund to exactly the risks section 24 sought to prevent.

Decision After Review of the Comments

The FDIC is persuaded by the comments which urge the FDIC not to amend part 362. A careful review of the comments leads the FDIC to conclude that while the original intent of the legislation that ultimately became section 24(d)(2)(B) may have been to restrict the exception to a bank's home state and the state of incorporation of the bank's subsidiary, subsequent changes to the language of the section were made which broadened the scope of the exception.

The exception as originally reported out of committee on the Senate side limited the exception to "that" state in which the bank and its subsidiary were lawfully providing insurance as principal on July 15, 1991. The legislation at that point also contained a transition rule which permitted an insured state bank and any of its subsidiaries which were lawfully engaged in insurance underwriting activities made unlawful by the bill to continue to underwrite insurance for one year after the enactment date of the legislation. A section-by-section analysis of the exception as worded when reported out of committee on the Senate side indicated that the exception allowed a bank to continue to provide insurance of the same type to residents or an individual employed in the state in which the bank is chartered. These things taken together demonstrate that the provision as reported out of committee probably was intended to limit the insurance grandfather to a bank's home state.

The language as reported out of committee was subsequently amended, however, to refer to providing insurance as principal in "a" state; the grandfather date was changed to November 21, 1991; the transition rule was deleted; and the section was given the heading "Continuation of Existing Activities". It is the agency's belief that these changes had a substantive impact on the legislation and were not merely technical changes. It is a tenet of statutory construction that the best indication of the meaning of a statute is the statute itself and that where the language of a statute is plain on its face, the statute should be accorded its plain meaning. *Norfolk and Western Railway Co.* v. *American Train Dispatchers Ass'n*, 499 U.S. 117 (1991).

It is the agency's opinion that the plain meaning of the phrase "in a state" as used in section 24(d)(2)(B) as ultimately adopted means in "any" state in which the bank and/or its subsidiary were lawfully underwriting insurance on November 21, 1991. The word "a" is defined in Webster's Dictionary to mean either "one" or "any". According to Black's Law Dictionary (Fourth Ed., 1989), the proper meaning of the word "a" depends upon the context in which it is used. It may mean one where only one is intended or it may mean any one of a great number. As there are many states in the United States and any of those states may have authorized the lawful provision of insurance as principal on November 21, 1991, the context of the word "a" in section 24(d)(2)(B) appears to be "any" and not "one". Furthermore, there is nothing in the text of the provision itself which suggests that the phrase "in a state" is limited to encompassing activities in the bank's chartering state or the subsidiary's state of incorporation. The statute could have used words like "home state" or "chartering state" but it does not. The elimination of the transition rule in conjunction with the addition of the heading "continuation of existing activities" are also evidence that the changes made to the statute resulted in a substantive amendment to the scope of the insurance underwriting exception.

As the regulation is, in the FDIC's view, consistent with the plain meaning of section 24(d)(2)(B), there is no need to rely upon legislative history in construing the statute. However, the FDIC did carefully review all of the legislative history brought to the agency's attention.[3] We find that as there are conflicting statements in the legislative history, the history of the section is not necessarily very enlightening. To the extent that the history does shed light on the issue under consideration, however, the FDIC finds that the history is weighted more in favor of the position reflected in the FDIC's current regulation which, as we have already indicated, is consistent with the plain meaning of the language of the statute.

In consideration of the above, the FDIC's Board of Directors has voted to decline to amend § 362.5 of the FDIC's regulations.

By Order of the Board of Directors.

Dated at Washington, DC this 24th day of May, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary

[FR Doc. 94–13366 Filed 6–7–94; 8:45 am]

BILLING CODE 6714–01–P

[3] Although the FDIC re-opened the comment period with the thought that by doing so additional information pertaining to the section's legislative history might be brought to the agency's attention, the additional comment period did not produce any material not previously on the record.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–94–12]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petitions or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received September 5, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. 27542, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT:

Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on May 31, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 27542.
Petitioner: Ms. Debra Russi.
Regulations Affected: 14 CFR 105.
Description of Rulechange Sought:
To require all parachute training be performed in accordance with the United States Parachute Association (USPA) training program or in accordance with a plan approved by the Federal Aviation Administration (FAA); incorporated by reference the USPA training program in part 105; and require that the operator of an aircraft immediately, and by the most expeditions means available, notify the nearest FAA Air Traffic Facility when a sport parachute accident/incident occurs involving a person who made an international jump from that aircraft.

Petitioner's Reason for the Request

The petitioner feels that this amendment is needed to protect the citizens of the United States of America, who wish to participate in sport parachuting, by providing participants the assurance of a training course which adheres to approved specifications; and, in the event of a parachute accident, the proposed changes would facilitate prompt notification of the nearest FAA field office, enabling timely investigative procedures.

[FR Doc. 94–13914 Filed 6–7–94; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–AGL–19]

Modification of Class E Airspace; Hutchinson, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Hutchinson Municipal Airport-Butler Field, Hutchinson, MN, to accommodate the Nondirectional Beacon (NDB) Runway 15 and Very High Frequency Omni-Directional Radio Range and Distance Measuring Equipment (VOR/DME) Runway 33, Standard Instrument Approach Procedure (SIAP). Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before July 20, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 94–AGL–19, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Robert J. Woodford, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AGL–19." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Hutchinson Municipal Airport-Butler Field, Hutchinson, MN, to accommodate the Nondirectional Beacon (NDB) Runway 15 and Very High Frequency Omni-Directional Radio Range and Distance Measuring Equipment (VOR/DME) Runway 33, Standard Instrument Approach Procedure (SIAP). Controlled airspace extending from 700 to 1200 feet AGL is needed for aircraft executing the approach. The intended effected of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rules requirements.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in

this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter than will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas listed below extend upward from 700 feet or more above the surface

* * * * *

AGL MN E5 Hutchinson, MN [Revised]

Hutchinson Municipal Airport-Butler Field, MN
(Lat. 44°51'32" N., Long. 94°22'54" W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Hutchinson Municipal Airport-Butler Field and within 2.5 miles each side of the 336° bearing from the airport, extending from the 6.3-mile radius to 7 miles northwest of the airport.

* * * * *

Issued in Des Plaines, Illinois on May 26, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–13913 Filed 6–7–94; 8:45 am]

BILLING CODE 4910–13–M

SUSQUEHANNA RIVER BASIN COMMISSION

18 CFR Parts 803, 804 and 805

Review and Approval of Projects; Special Regulations and Standards; Hearings/Enforcement Actions

AGENCY: Susquehanna River Basin Commission (SRBC).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The Susquehanna River Basin Commission is proposing a reorganized and revised set of regulations and procedures for review of projects. These rules implement the commission's general project review authority set forth in Section 3.10 of the Susquehanna River Basin Compact and contain special review and approval requirements for consumptive uses of water, ground-water withdrawals and surface water withdrawals. In addition, new regulations are proposed to be added to include special regulations on water withdrawal registration, water conservation standards, public hearing procedures and imposition of penalties or other enforcement actions. This proposal is prompted by: The need to improve the overall precision and clarity of the regulations; The need to reorganize the regulations into an integrated format that is more readily understandable by the regulated community and others who work with the regulations; The need to add provisions covering subject matter not addressed or inadequately addressed in the existing regulations; and The need to deal more effectively with certain segments of the regulated community.

DATES: All written comments must be received by August 1, 1994. The commission will hold a series of public hearings on the proposed regulations as follows:

(1) June 23, 1994, 1:30 p.m. and 7 p.m., Apalachin, N.Y.
(2) June 24, 1994, 1 p.m., Williamsport, Pa.
(3) June 28, 1994, 10 a.m. and 7 p.m., Harrisburg, Pa.
(4) July 6, 1994, 1:30 p.m. and 7 p.m., Perryville, Md.
(5) July 14, 1994, 1:30 p.m., Easton, Md.

ADDRESSES: Submit comments to Richard A. Cairo, General Counsel/Secretary, Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, Pa. 17102–2391. Addresses for public hearings: (1) The Fred L. Waterman Conservation Education Center, Hilton Road, Apalachin, N.Y.; (2) The Days Inn, River Ave. Exit from Rt. 180, Williamsport, Pa.; (3) Pennsylvania Game Commission Headquarters Auditorium (10 a.m.) 2001 Elmerton Ave., Harrisburg, Pa.; SRBC Headquarters Building (7:00 p.m.), 1721 N. Front St., Harrisburg, Pa.; (4) Perryville High School, Perryville, Md.; (5) The Tidewater Inn, 101 E. Dover Street, Easton, Md.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel/Secretary at the above address, or telephone 717/238–0423.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed regulations by submitting such data, views, or arguments as they may desire, either in writing or by making an oral statement at one of the scheduled public hearings. The proposals contained in this notice may be changed in light of the comments received.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the commission at the above address.

Discussion

The proposed rules are the product of 12 months of intensive in house review, input from a federal/state interagency advisory committee, and consultation with the commission's signatory parties. All parties involved in this process agreed that the existing SRBC "Regulations and Procedures for Review of Projects," presently codified at 18 CFR part 803, are badly in need of revision and reorganization. The existing regulations were promulgated in several separate pieces between 1975 and 1979. The first set of regulations was put into place in 1975 to allow the commission to exercise its basic project review authority under section 3.10 of the Susquehanna River Basin Compact. section 803.61 regulating consumptive use of water was added in 1976; section 803.62 regulating ground-water withdrawals was added in 1978; and finally, water conservation standards were added via section 803.63 in 1979.

As a result of this piecemeal promulgation, general procedures for review of projects set forth in the initial set of regulations do not always mesh

cleanly with the more specific requirements of the special regulations on consumptive use and ground-water withdrawals. For example, the regulated community has confused the effective date for general project review with the more specific effective dates set forth in sections 803.61 & 803.62. There has also been confusion about whether project review applications should be submitted directly to the commission or through signatory agencies.

The commission attempted to correct these types of deficiencies with certain regulatory amendments adopted in 1990; however, the confusion persists in the regulated community and even among the signatory party agencies who cooperate with the commission in the management of the river basin's water resources. Subpart B—Application Procedure, as it is presently written, directs the sponsors of certain types of projects to apply to the commission, though ultimately these projects may not require commission approval. This has been a constant source of confusion, as applicants and others who work with the regulation find it difficult to distinguish the application process from the approval process.

The proposed regulations consolidate the disparate portions of the regulations and establish a procedure for determining whether a project is subject to commission approval *before* an application is filed. Projects requiring approval are clearly listed. Sponsors of other projects which may require approval are directed to seek a determination from the commission's executive director.

Beyond the need for a reorganized format, there is also a need to add provisions covering subject matter either not addressed in the current regulation or inadequately addressed therein. For example, there is no existing regulation applying to surface water withdrawals. The proposed regulations will add an explicit section requiring approval of surface water withdrawals exceeding 100,000 gpd.

A new Part 804 is created to house a water withdrawal registration requirement for any withdrawal exceeding 10,000 gpd. Existing section 803.63 on water conservation standards is also moved into the new Part 804.

A new Part 805 houses procedures governing the holding of public hearings, including hearings or additional hearings conducted as adjudicatory hearings. The current regulations contain only the barest of provisions on the conduct of hearings. Criteria and procedures for the imposition of penalties and abatement or remedial requirements on alleged violators of commission regulations and orders are also included in this part. Settlements are also permitted with alleged violators.

A final reason for this package of revisions and additions is the need to deal more effectively with certain segments of the regulated community. For example, the existing consumptive use regulation 803.61 applies to agricultural activities such as crop irrigation. Nevertheless, agricultural compliance with the regulation has been spotty and inconsistent due mainly to a lack of knowledge of the regulation in the agricultural community and SRBC enforcement limitations. When the commission made an affirmative effort to inform the agricultural community of these requirements, agriculture quickly responded on the need for adjustments in the regulation to take into account the special compliance problems faced by farmers. As a result, special provisions have been included in the revised consumptive use regulation extending a 50% compliance credit to agricultural consumptive users as an incentive for their up front compliance with the regulation.

Summary of Additions and Changes

The following is a section-by-section summary of the additions and changes made by the proposed rules.

PART 803—REVIEW AND APPROVAL OF PROJECTS

Subpart A—General Provisions

Section 803.1—Introduction (change)

Roughly like original format but revised to note that scope of review includes consumptive use, ground-water withdrawal, and surface water withdrawal projects, as well as those reviewed and approved under section 3.10 of the compact.

Also, savings clause added in (d) in case any portion declared invalid.

Section 803.2—Purposes (new)

Unlike prior regulations, the purposes of all the review regulations are consolidated and set forth in one place.

Section 803.3—Definitions (new)

Unlike prior regulations, virtually all definitions are consolidated and set forth in one place.

Section 803.4—Projects Requiring Review and Approval (change)

Only projects which clearly and unambiguously require commission approval under the compact or the special sections on consumptive use and water withdrawals are set forth in this section.

Section 803.5—Projects Which May Require Review and Approval (new)

All other projects which fall into an uncertain or ambiguous category as to the requirement for SRBC approval are set forth and directed to file a "request for determination" with the executive director.

Section 803.6—Concurrent Project Review by Signatory Parties (change)

This section providing for cooperation with signatory agencies on project review is left mostly unchanged; however, previous provisions providing that, in some instances, application to a signatory is tantamount to application to the commission, are removed. All applications should come directly to the commission unless the commission has a clear and workable arrangement with a signatory agency to do otherwise.

Section 803.7—Waiver/Modification (change)

Previously only included in the ground-water regulation. This section gives it general application, allowing waiver of any requirement if consistent with the purposes of the regulation.

Subpart B—Application Procedure

Section 803.22—Request for Determination (new)

This section outlines the procedure for submitting a "request for determination" to the executive director in the event a project falls into a classification that makes the need for commission approval a possibility. It goes on to describe the method by which the director goes on to make his/her determination, how that determination is published, how requests for reconsideration can be filed with the director, and how the director's final determination can be appealed to the commission.

Section 803.23—Submission of Application (change)

This section plainly sets forth the requirement for submission of an application for a project requiring approval or determined to require approval.

Section 803.24—Contents of Application (change)

Not radically changed but does include special requirement for additional information in the case of a proposed diversion

Section 803.25—Notice of Receipt of Application (change)

Broadened to include notification of additional parties beyond the local media that an application has been received including the local municipality and the county planning agency. The responsibility of publishing a notice of submission of an application in a local newspaper is placed upon the applicant. Contents of the notice are generally prescribed.

Section 803.26—Staff Review/Action/ Recommendations (new)

A clear statement of what actions staff takes, once it receives an application right up to formal docketing of the project and action by the commission.

Section 803.27—Emergencies (change)

Revised to allow the executive director to allow emergency "actions," rather than an emergency "approval." It should be clear that only the commission has authority to approve a project. The commission should not simply be ratifying an approval by the executive director.

Section 803.28—Application/ Monitoring Fees (new)

Explicit reference to authority to impose these fees. This had not been included in previous regs and the agency has been relying only on a separate resolution of the commission.

Subpart C—Terms and Conditions of Approval

Section 803.30—Duration of Approvals (new)

Sets definite limits on duration of SRBC approvals. Approvals would be for 25 years or the duration of an accompanying signatory permit if one exists. If there is no duration on an accompanying permit, the duration of commission approval will be 25 years. This provision is made retroactive to previous commission approvals.

A paragraph is also included providing that, unless an approved project is implemented within three years, commission approval expires. This may be extended by the commission.

Section 803.31—Transferability of Approvals (new)

Sets forth conditions for the transferability of SRBC approvals.

Section 803.32—Reopening/ Modification (new)

Explicitly sets forth in the regulations themselves what had only been included as a docket condition, i.e. right to reopen and modify a docket decision to protect the public, health, safety and welfare.

Section 803.33—Interest on Fees (new)

Explicitly sets forth what had only been a policy and covers any kind of fee payable to the SRBC, not just application and monitoring fees.

Subpart D—Standards for Review and Approval

Section 803.40—Purpose of this Subpart (new)

The purpose of this subpart is to set forth general review standards for all projects and special standards for consumptive use, ground-water withdrawal and surface water withdrawal regulations.

Section 803.41—General Standards (new)

The original regulations did not make clear the criteria for approval of a project which are so clearly set forth in Section 3.10 of the compact. This section reiterates those criteria.

Section 803.42—Standards for Consumptive Uses of Water (change)

This section includes the remnants of old Section 803.61 minus the definitions and general terms and conditions which have been consolidated elsewhere. Significant changes include: (1) The addition of public water suppliers in paragraph (j); (2) The special 50% credit for ag consumptive use and a general approval procedure in paragraph (h); and (3) The "certificate of pre-compact use" procedure in Paragraph (i) which greatly limits grandfathering of pre-compact consumptive uses but does allow transfers to subsequent owners of land on which agricultural consumptive uses are located. Also, list of methods for providing compensation is eliminated in favor of a method or methods acceptable to the commission (paragraph b); ground-water as a source of make-up is virtually eliminated with its only use being made an alternative to compensation, rather than a method of compensation; the definitions of consumptive use, low flow and trigger flow are amended. (see Section 803.3) The effective date of this section is preserved as January 23, 1971.

Section 803.43—Standards for Ground-water Withdrawals (change)

This section includes the remnants of old Section 803.62 minus the definitions and general terms and conditions which have been consolidated elsewhere. Significant changes are few but include elimination of the five year review, elimination of any exemptions to the metering requirement, and a new definition of a "ground-water source" (See Section 803.3). The effective date of this section is preserved as July 13, 1978 and grandfathered withdrawals which increase their taking are required to apply to the commission for approval.

Section 803.44—Standards for Surface Water Withdrawals (new)

This section provides for SRBC approval of surface water withdrawals exceeding 100,000 gpd. It removes any past ambiguity regarding when the SRBC must approve a surface water withdrawal. Previously, the commission had relied solely on the general authority of Section 3.10 of the compact to review surface water withdrawals rather than a set of separately promulgated standards. This section removes any legal uncertainty regarding when a surface water withdrawal must be approved. The regulation itself is modeled closely after the ground-water regulation and becomes effective with the adoption of the omnibus package except for withdrawal projects previously approved by the commission.

PART 804—SPECIAL REGULATIONS AND STANDARDS

Subpart A—Water Withdrawal Registration

Sections 804.1–804.4 (new)

These sections require registration of water withdrawals exceeding 10,000 gpd, set forth time requirements for registration, allow registration through administrative agreements with signatory parties, and become effective with this proposed package of revisions.

Subpart B—Water Conservation Requirements

Sections 804.20 and 804.21 (change)

Some minor wording changes to cover direct and indirect withdrawals, correct phrasing inconsistencies, and add a clear effective date of January 11, 1979.

PART 805—HEARINGS/ ENFORCEMENT ACTIONS

Subpart A—Conduct of Hearing

Sections 805.1–805.6 (change)

These sections greatly broaden rules pertaining to public hearings. The occasions when public hearings are held are detailed, participants are listed and a presiding officer is designated.

Additional provisions are included for the holding of an adjudicatory hearing. An adjudicatory hearing procedure is set forth, the powers of the hearing officer prescribed, hearing costs are assessed, and provisions are made for a report and action by the commission. Hearings may be consolidated or held jointly with other agencies. Hearings may also be continued for good cause.

Subpart B—Enforcement Actions and Settlements

Sections 805.20–805.28 (new)

These sections provide a procedure for assessing penalties or making abatement and remedial action orders against violators of commission regulations or orders. Alleged violators can be ordered by the executive director to appear before the commission and show cause why a penalty should not be assessed; an adjudicatory hearing can be held if necessary; factors to be considered in assessing a penalty are listed; and a possible settlement with alleged violators is allowed.

List of Subjects

18 CFR Part 803

Administrative practice and procedure; water resources.

18 CFR Part 804

Water resources.

18 CFR Part 805

Administrative practice and procedure.

Dated: May 31, 1994.

Paul O. Swartz,

Executive Director.

Accordingly, Chapter VIII of title 18 of the Code of Federal Regulations is proposed to be amended as set forth below:

1. Part 803 is revised to read as follows:

PART 803—REVIEW AND APPROVAL OF PROJECTS

Subpart A—General Provisions

Sec.

803.1 Introduction.
803.2 Purposes.
803.3 Definitions.
803.4 Projects requiring review and approval.
803.5 Projects which may require review and approval.
803.6 Concurrent project review by signatory parties.
803.7 Waiver/modification.

Subpart B—Application Procedure

803.20 Purpose of this subpart.
803.21 Preliminary consultations.
803.22 Request for determination.
803.23 Submission of application.
803.24 Contents of application.
803.25 Notice of application.
803.26 Staff review/action/recommendations.
803.27 Emergencies.
803.28 Application/monitoring fees.

Subpart C—Terms and Conditions of Approval

803.30 Duration of approvals.
803.31 Transferability of approvals.
803.32 Reopening/modification.
803.33 Waiver/modification.
803.34 Interest on fees.

Subpart D—Standards for Review and Approval

803.40 Purpose of this subpart.
803.41 General standards.
803.42 Standards for consumptive uses of water.
803.43 Standards for ground-water withdrawals.
803.44 Standards for surface-water withdrawals.

Authority: Secs. 3.4, 3.8, 3.10 and 15.2, Pub. L. 91–575, 84 Stat. 1509 *et seq.*

Subpart A—General Provisions

§ 803.1 Introduction.

(a) This part establishes the scope and procedures for review and approval of projects under Section 3.10 of the Susquehanna River Basin Compact, Public Law 91–575, 84 Stat. 1509 et seq., (the compact) and establishes regulations governing water withdrawals, and the consumptive use of water.

(b) Except for activities relating to site evaluation, no person or governmental entity shall begin construction or operation of any project subject to commission review and approval until such project is approved by the commission.

(c) When projects subject to commission review and approval are sponsored by governmental entities, the commission shall submit recommendations and findings to the sponsoring agency which shall be included in any report submitted by such agency to its respective legislative body or to any committee thereof in connection with any request for authorization or appropriation therefor. The commission review will ascertain the project's compatibility with the objectives, goals, guidelines and criteria set forth in the comprehensive plan. If determined compatible, the said project will also be incorporated into the comprehensive plan if so required by the compact.

(d) If any portion of this part shall, for any reason, be declared invalid by a court of competent jurisdiction, all remaining provisions shall remain in full force and effect.

(e) Except as otherwise stated in this part, this part shall be effective on [effective date of final rule]; provided, however, that nothing in this paragraph shall be deemed to exempt any project which has been or could have been subject to review and approval by the commission under the authority set forth in Section 3.10 of the compact or any prior regulations of the commission.

(f) When any period of time is referred to in this part, such period in all cases shall be so computed as to exclude the first and include the last day of such period. Whenever the last day of any such period shall fall on Saturday or Sunday, or on any day made a legal holiday by the law of the United States, such day shall be omitted from the computation.

§ 803.2 Purposes.

(a) The general purposes of this part are to advance the purposes of the compact and include but are not limited to:

(1) The promotion of interstate comity;

(2) The conservation, utilization, development, management, and control of water resources under comprehensive, multiple purpose planning; and

(3) The direction, supervision and coordination of water resources efforts and programs of federal, state and local governments and of private enterprise.

(b) In addition, §§ 803.42, 803.43 and 803.44 contain the following specific purposes: Protection of public health, safety and welfare; stream quality control; economic development; protection of fisheries and aquatic habitat; recreation; dilution and abatement of pollution; the regulation of flows and supplies of surface and ground waters; the avoidance of conflicts among water users; the prevention of undue salinity; and protection of the Chesapeake Bay.

(c) The objective of all interpretation and construction of this part is to ascertain and effectuate the purposes and the intention of the commission set out in paragraph (b) of this section.

§ 803.3 Definitions.

For purposes of this part, the words listed in this section are defined as follows:

Agricultural consumptive use. A consumptive use associated primarily with the raising of food or forage crops, trees, flowers, shrubs, turf, aquaculture and livestock.

Application. A request for action oy the commission in written form including without limitation thereto a letter, referral by any agency of a

signatory party, or an official form prescribed by the commission.

Basin. The Susquehanna River basin.

Commission. The Susquehanna River Basin Commission, a body politic created under Article 2, Section 2.1 of the compact.

Compensation. Water utilized or provided from surface storage as makeup for a project's consumptive use.

Comprehensive Plan. The "Comprehensive Plan for Management and Development of the Water Resources of the Susquehanna River Basin" prepared and adopted by the commission pursuant to Article 3, Section 3.3 of the compact.

Consumptive use. Consumptive use is the loss of water from a ground-water or surface water source through a manmade conveyance system (including such water that is purveyed through a public water supply system), due to transpiration by vegetation, incorporation into products during their manufacture, evaporation, diversion from the Susquehanna River basin, or any other process by which the water withdrawn is not returned to the waters of the basin undiminished in quantity. Deep well injection shall not be considered a return to the waters of the basin.

Construction. Clearing or excavation of the site or installation of any portion of the project on the site.

Dedicated augmentation. Release from an upstream storage facility which is required for any other instream or withdrawal use.

Deep Well Injection. Injection of waste or wastewater substantially below aquifers containing fresh water.

Diversion. The transfer of water into or from the basin.

Executive Director. The chief executive officer of the commission appointed pursuant to Article 15, Section 15.5 of the compact.

Governmental entity. The federal government, the signatory states, their political subdivisions, public corporations, public authorities and special purpose districts.

Ground-water source. (1) Pumped wells or well fields;

(2) Flowing wells;

(3) Pumped quarries, pits, and underground mines having no significant surface water inflow (significant meaning that any surface water inflow is greater than the withdrawal); or

(4) A spring in which the water level is sufficiently lowered by pumping to eliminate the surface flow. All other springs will be considered to be surface water.

Low flow. Any flow less than or equal to the trigger flow.

Person. An individual, corporation, partnership, unincorporated association, and the like and shall have no gender and the singular shall include the plural.

Pre-Compact Use. The maximum average quantity or volume of water consumptively used over any consecutive 30 day period prior to January 23, 1971 expressed in "gallons per day".

Project. Any work, service, activity, or facility undertaken which is separately planned or financed for the conservation, utilization, control, development, or management of water resources which can be established and utilized independently, or as an addition to an existing facility, and can be considered as a separate entity for purposes of evaluation.

Signatory party. The States of Maryland and New York, the Commonwealth of Pennsylvania, and the federal government.

Signatory state. The States of Maryland and New York, the Commonwealth of Pennsylvania.

Sponsor. Any person or governmental entity proposing to undertake a project. The singular shall include the plural.

Surface water source. Any river, stream, lake, pond, spring, wetland or other body of surface water situated in the basin.

Susquehanna River basin. The area of drainage of the Susquehanna River and its tributaries into the Chesapeake Bay to the southern edge of the former Pennsylvania Railroad Bridge between Havre de Grace and Perryville, Maryland.

Trigger flow. The 7-day 10-year low flow value plus the project's approved consumptive use and any dedicated augmentation, measured at an appropriate stream gage location.

Water(s). Surface and ground water(s) contained within the Susquehanna River basin either before or after withdrawal.

§ 803.4 Projects requiring review and approval.

The following projects are subject to review and approval by the commission and require an application to be submitted to the commission in accordance with the procedures outlined in § 803.23:

(a) Projects on or crossing the boundary between two signatory states;

(b) Projects involving the diversion of water;

(c) Projects resulting in a consumptive use of water exceeding an average of 20,000 gallons per day (gpd) for any consecutive thirty-day period or such other amounts as stipulated in § 803.42;

(d) Projects withdrawing in excess of an average of 100,000 gpd for any consecutive thirty-day period from a ground-water or surface water source or such other amounts as stipulated in §§ 803.43 and 803.44; and

(e) Projects which have been included by the commission in its comprehensive plan.

§ 803.5 Projects which may require review and approval.

The following projects, if not already covered under § 803.4, may be subject to commission review and approval and require, in accordance with the procedures outlined in § 803.22, a "request for determination" to be submitted to the executive director:

(a) Projects which may change interstate water quality standards or criteria.

(b) Projects within a signatory state that have the potential to affect waters within another signatory state. This includes but is not limited to projects which have the potential to alter the physical, biological, chemical or hydrological characteristics of water and related natural resources of interstate streams designated by the commission under separate resolution.

(c) Projects which may have a significant effect upon the comprehensive plan.

(d) Projects not included in paragraphs (a) through (c) of this section, but which could have an adverse, adverse cumulative, or interstate effect on the water resources of the basin; provided that the project sponsor is notified in writing by the executive director that it shall submit a "request for determination".

§ 803.6 Concurrent project review by signatory parties.

(a) The commission recognizes that agencies of the signatory parties will exercise their review authority and evaluate many proposed projects in the basin. The commission will adopt procedures to assure compatibility between signatory review and commission review.

(b) To avoid duplication of work and to cooperate with other government agencies, the commission may develop agreements of understanding in accordance with the above procedures with appropriate agencies of the signatory parties regarding joint review of projects. These agreements may provide for joint efforts by staff, delegation of authority by an agency or the commission, or any other matter to support cooperative review activities. Permits issued by a signatory agency shall be considered commission

approved if issued pursuant to an agreement of understanding with the commission specifically providing therefor.

§ 803.8 Waiver/modification.

The commission may, in its discretion, waive or modify the requirements of this part if the essential purposes set forth in § 803.2 continue to be served.

Subpart B—Application Procedure

§ 803.20 Purpose of this subpart.

The purpose of this subpart is to set forth procedures governing applications required by §§ 803.4 and 803.5.

§ 803.21 Preliminary consultations.

(a) Any sponsor of a proposed project that is or may be subject to the commission's review jurisdiction under § 803.4 or § 803.5 is encouraged, prior to making application for commission review, to request a preliminary consultation with the commission staff for an informal discussion of preliminary plans for the proposed project. To facilitate preliminary consultations, it is suggested that the sponsor provide a general description of the proposed project, a map showing its location and, to the extent available, data concerning dimensions of any proposed structures and the environmental impacts.

(b) Preliminary consultations shall be optional with the project sponsor and shall not relieve the sponsor from complying with the requirements of the compact or with this part.

§ 803.22 Request for determination.

(a) Sponsors of projects which may require review and approval, as described in § 803.5, shall submit a "request for determination" to the executive director with such accompanying information and data as the executive director shall prescribe.

(b) If a project sponsor is uncertain whether a "request for determination" should be filed with the commission, the sponsor may ask for and, within thirty days after submission of information in such form and manner as will allow the executive director to make a decision, receive from the executive director a letter stating whether a "request for determination" should be filed. The executive director may also direct a project sponsor to submit a "request for determination."

(c) Within thirty days of the receipt of such "request for determination," the executive director shall determine whether the said project must be reviewed and approved by the commission. In making such determination, the executive director shall be guided primarily by his/her findings as to the following factors:

(1) Whether the proposed project will have a significant interstate effect on water supply, stream flows, aquifers, water quality, flooding, sensitive land areas, aquatic or terrestrial forms of plant or animal life, historical or cultural resources, or any other water-related resource.

(2) Whether the proposed project will have a significant impact upon the goals, objectives, guidelines, plans, or projects included in the comprehensive plan.

(3) Whether the proposed project may have an adverse or adverse cumulative effect on the water resources of the basin.

(d) The executive director shall notify the sponsor of the project, the agency of the signatory party, if any, reviewing the project, the governing body of each municipality and the planning agency of each county in which the project is located of his/her initial determination under this section. Notice to the sponsor shall be by certified mail, and to all other interested parties by regular, first class mail. At a cost to be assessed to the project sponsor, the executive director shall also publish in a newspaper of general circulation in that municipality, at least once, a notice of such determination. If no objection is made to the executive director's initial determination, it shall become final ten days after publication as set forth in this paragraph.

(e) Any interested party objecting to the determination may, within ten days of the newspaper publication, object to such determination and appeal to the executive director by letter for reconsideration. Following such reconsideration, if requested, the executive director shall serve notice upon the agency of the signatory party, the applicant and each such objector of his/her determination. Any such party may appeal such final determination to the commission by notice in writing served upon the executive director within 14 days after the service of the executive director's decision upon reconsideration. The commission will determine such appeal at a regular meeting thereafter.

§ 803.23 Submission of application.

(a) Sponsors of projects requiring the review and approval of the commission under § 803.4, or determined to require the approval of the commission under § 803.22, shall, prior to the time the project is undertaken, submit an application to the commission. The application shall be submitted to the commission at its headquarters, 1721 N. Front Street, Harrisburg, Pennsylvania 17102–2391, and shall contain the information prescribed in § 803.24.

(b) An application shall not be deemed to be pending before the commission until such time as the information required under § 803.24 has been provided and any applicable fee has been paid.

(c) As determined from applications or otherwise, the commission shall review and either approve, approve with conditions or modifications, or disapprove such projects.

§ 803.24 Contents of application.

(a) Applications shall be submitted on forms prescribed by the commission.

(b) If no forms are prescribed by the commission for a particular type of project, the sponsor shall submit an application addressing the following items (as they may be) applicable to the project:

(1) Identification of sponsor and name of person authorized to speak for the sponsor.

(2) Description of project and site in terms of:

(i) Water use and availability.

(ii) Engineering feasibility.

(iii) Ability of sponsor to fund the project or action.

(iv) Project location.

(v) Project purpose.

(vi) Identification and description of reasonable alternatives, the extent of their economic and technical investigation, and an assessment of their potential environmental impact. In the case of a proposed diversion, the sponsor should include information: Detailing the efforts that have been made to develop its own in-basin sources of water; and demonstrating that the proposed diversion will not substantially impede the ability of the Susquehanna River basin to meet its own water needs.

(vii) Supporting studies, reports and other information upon which assumptions and assertions have been based.

(viii) Compatibility of proposed project with existing and anticipated uses.

(ix) Plans for avoiding or compensating for consumptive use during low flow periods.

(x) Anticipated impact of the proposed project on:

(A) Flood damage potential considering the location of the project with respect to the flood plain and flood hazard zones;

(B) Surface water characteristics (quality, quantity, flow regimen, other hydrologic characteristics);

(C) Recreation potential;

(D) Fish and wildlife (habitat quality, kind and number of species);

(E) Natural environment uses (scenic vistas, natural and manmade travel corridors, wild and wilderness areas, wild, scenic and recreation rivers);

(F) Site development considerations (geology, topography, soil characteristics, adjoining and nearby land uses, adequacy of site facilities); and

(G) Historical, cultural and archaeological impacts.

(3) Governmental considerations:

(i) Need for governmental services or finances.

(ii) Commitment for government to provide services or finances.

(iii) Status of application with other governmental regulatory bodies.

(4) Project completion date and construction schedule.

(c) A report about the project prepared for any other purpose, or an application for approval prepared for submission to a signatory party, may be accepted by the commission provided the said report or application addresses the applicable items listed in paragraph (b) of this section.

§ 803.25 Notice of application.

(a) The project sponsor shall, within ten days of the submission of an application to the commission, notify area and regional news media, each municipality and the planning agency for each county in which the project is situated, contiguous property owners and all other interested parties known to the project sponsor or the commission, that an application has been submitted to the commission. The commission shall compile a list of additional interested parties who comment on the application, request a hearing or make inquiries concerning the application. The project sponsor shall also publish at least once in a newspaper of general circulation in that municipality a notice of the submission of the application which contains a sufficient description of the project, its purpose and its location. Both the notification and the notice shall contain the address and phone number of the commission.

(b) The project sponsor shall provide the commission with a copy of the return receipt for the required municipal notification and a proof of publication for the required newspaper notice. The project sponsor shall also provide certification or documentation acceptable to the commission that it has made such other notifications as required under paragraph (a) of this section. Until these items are provided to the commission, processing of the application will not proceed.

§ 803.26 Staff review/action/recommendations.

(a) The commission's staff shall review the application, and if necessary, request the sponsor to provide any additional information that is deemed pertinent for proper evaluation of the project. The staff review shall include:

(1) Determination of completeness of the application. An application deemed incomplete will not be processed.

(2) Identification of the issues pertinent to commission review.

(3) Assessment of the project's compatibility with the compact, comprehensive plan, and with the other requirements of this part.

(4) Consultation with the project sponsor if requested or deemed necessary.

(5) Determination of the appropriate application fee and the transmission of a billing to the project sponsor for that fee. Applications will not be presented to the commission for review and action until such application fee has been paid.

(6) Formal docketing of the project and, within 90 days of receipt of a complete application, presentation to the commission along with the recommendations of the staff for disposition of the application. The executive director may, for good cause, extend this review period for up to an additional 60 days. Any further extension must be approved by the commission.

(b) If the project sponsor fails to respond to the commission's request for additional information, the commission may notify the project sponsor that the application process has been terminated. To reactivate the closed file, the project sponsor shall reapply and may be required to submit new or updated evaluations.

§ 803.27 Emergencies.

In the event of an emergency requiring immediate action to protect the public health, safety and welfare or to avoid substantial and irreparable injury to any person, property, or natural resources and the circumstances do not permit a review and determination in the regular course of the regulations in this part, the executive director, with the concurrence of the chairperson of the commission and the member from the affected signatory state, may issue an emergency certificate authorizing a project sponsor to take such action as the executive director may deem necessary and proper in the circumstances, pending review and determination by the commission as otherwise required by this part.

§ 803.28 Application/monitoring fees.

The commission may, by separate resolution, establish and modify fees for the submission and processing of applications and for the monitoring of project compliance with this part.

Subpart C—Terms and Conditions of Approval

§ 803.30 Duration of approvals.

(a) Approvals issued under this part shall have a duration equal to the term of any accompanying signatory permit or license regulating the same subject matter. If there is no such accompanying license or permit or if no term is specified in such accompanying license or permit, the duration of a commission approval issued hereunder shall be 25 years, unless otherwise stipulated by the commission in the project's docket approval. This provision applies to all projects previously approved by the commission under this part.

(b) For projects that have been approved by the commission but not implemented, approval by the commission under this part shall expire three years from the date of commission action. Likewise, if the use of a project is discontinued for such a period of time and under such circumstances that an abandonment of the project may reasonably be inferred, the commission may rescind a prior approval for such abandoned project. In either case, an approval may be extended or renewed by the commission upon request.

(c) The sponsors of projects previously approved by the commission should apply for renewal of their approvals no later than within six months of the expiration of their previous approval.

§ 803.31 Transferability of approvals.

Approvals by the commission are transferable to new owners of projects, provided that the transferors or the transferees notify the commission of the transfer either before or within 60 days after the date of the transfer and that the new owners, within 30 days of being requested to do so by the commission, submit in writing their intention to comply with all conditions of the project's docket approval and assume all other associated obligations. The commission may waive or extend any of these deadline periods for good cause.

§ 803.32 Reopening/modification.

Once approved, the commission, upon its own motion, or upon application of the project sponsor or any interested party, may at any time reopen any project docket and make additional orders that may be necessary to mitigate

or avoid adverse impacts or to otherwise protect the public health, safety, and welfare or natural resources.

§ 803.33 Interest on fees.

The commission may, by resolution, establish interest to be paid on all overdue or outstanding fees of any nature that are payable to the commission.

Subpart D—Standards for Review and Approval

§ 803.40 Purpose of this subpart.

The purpose of this Subpart is to set forth standards that shall be used by the commission to evaluate proposed projects pursuant to §§ 803.4 and 803.5. General standards applying to all projects and special standards applying to certain types of projects are set forth in this subpart. This subpart does not identify all the aspects of a proposed project that will be evaluated, nor should it be construed as a self-imposed limitation upon the commission's authority and scope of review.

§ 803.41 General standards.

(a) A project shall not be detrimental to the proper conservation, development, management, or control of the water resources of the basin.

(b) The commission may modify and approve as modified, or may disapprove, a project if it determines that the project is not in the best interest of the conservation, development, management, or control of the basin's water resources, or is in conflict with the comprehensive plan.

§ 803.42 Standards for Consumptive Uses of Water.

(a) *Requirement.* (1)(i) Compensation in an amount equal to the project's total consumptive use shall be required when the streamflow at the appropriate gaging station is or is anticipated to be less than or equal to the trigger flow. The commission reserves the right to modify the trigger flow for a particular stream reach when it finds, as the result of evidence presented at a public hearing, that it is needed to serve the purposes outlined in § 803.2. For the purposes of implementing this section, the commission will identify the appropriate stream gaging station for determining the applicable trigger flow.

(ii) Consumptive uses by a project not exceeding an average of 20,000 gpd for any consecutive thirty-day period are exempt from the requirement unless such uses have a significant adverse affect on the purposes outlined in § 803.2.

(iii) The required amount of compensation shall be provided by the applicant or project sponsor near or above the point of taking or another appropriate site as approved by the commission to satisfy the purposes outlined in § 803.2.

(2) If compensation for consumptive use from a surface source is to be provided upstream from the point of taking, such compensation shall reasonably assure no diminution of the flow which would otherwise exist naturally immediately downstream from the point of taking, plus any other dedicated augmentation.

(b) *Method of compensation.* (1) Compensation may be provided by construction, acquisition or utilization of storage facilities acceptable to the commission or by a monetary payment to the commission in an amount and method to be determined by the commission from time-to-time for the purpose of developing, operating or maintaining makeup water storage or taking such other action as may improve the basinwide management of low flows.

(2) Alternatives to compensation may be appropriate such as discontinuance of that part of the project's operation that consumes water, use of conservation measures or use of an alternative source that is unaffected by the compensation requirement.

(3) The commission shall, in its sole discretion, determine the acceptable manner of compensation, alternatives to compensation, or combinations thereof, as applicable, for consumptive use by a project. Such a determination will be made after considering the project location, anticipated amount of consumptive use and its effect on the purposes set forth in § 803.2, and any other pertinent factors.

(c) *Quantity of consumptive use.* For purposes of evaluating a proposed project, the commission shall require estimates of anticipated consumptive use from the project sponsor. In no case shall consumptive use exceed the maximum consumptive use approved by the commission. In setting this maximum amount, the commission shall apply the same criteria it uses to limit ground-water withdrawals under § 803.43 and surface water withdrawals under § 803.44.

(d) *Metering, monitoring and reporting requirements.* The commission, as part of the project review, shall evaluate the proposed methodology for monitoring consumptive losses and compensating flows, including flow metering devices, stream gages, and other facilities used to measure the consumptive use of the project or the rate of streamflow. If the commission determines that additional flow measuring devices are required, these shall be provided at the expense of the applicant and shall be subject to inspection by the commission at any time. When the project is operational, the commission shall be responsible for determining when compensation is required and shall notify the project sponsor accordingly. The project sponsor shall provide the commission with periodic reports in the time and manner as the commission requires showing actual consumptive uses associated with the project. The commission may use this data to modify, as appropriate, the magnitude and timing of the compensating releases initially required when the project was approved.

(e) *Quality of compensation water.* The water used for compensation shall at all times meet the quality requirements for the purposes listed in § 803.2, as applicable.

(f) *Effective date.* Notwithstanding the overall effective date for other portions of this part set forth in § 803.1(e), this section shall apply to all consumptive uses initiated on or after January 23, 1971, the effective date of the compact. Any project that has initiated consumptive use on or after this effective date is subject to this section. The sponsor of any project initiated before this effective date shall be issued or may apply for a certificate of pre-compact use under the conditions set forth in paragraph (i) of this section.

(g) *Public water suppliers.* Public water suppliers shall be subject to the requirements of this section; provided, however, that nothing herein shall be construed to exempt individual consumptive users connected to any such public water supply system from the requirements of this section; and provided further that such public water suppliers shall receive a credit against the amount of their consumptive use for each consumptive user connected to their system that is or should be regulated by the commission under this section. Existing public water suppliers subject to this section shall submit an application to the commission pursuant to this part upon being notified by the commission to do so.

(h) *Agricultural consumptive use.* (1) The sponsors of agricultural consumptive use projects may receive a 50 percent credit toward the amount of compensation or alternative to compensation they must make under the requirements of this part. To receive this credit, the sponsors of existing projects shall both register with the commission pursuant to part 804, subpart A, of this chapter and submit an application to the commission pursuant

to this section by April 30, 1996. In no case shall the sponsors of such existing projects be required to implement the method of compensation required under paragraph (b) of this section prior to April 30, 1996. Thereafter, the sponsors of all new projects shall be registered in accordance with part 804, subpart A, of this chapter and, prior to operation, apply to the commission in order to receive the 50 percent credit.

(2) The sponsors of agricultural consumptive use projects consuming a consecutive 30 day average in excess of 20,000 gpd but no more than 100,000 gpd, may be generally approved by the commission. In such cases, the commission staff shall summarily issue a certificate of approval to the project sponsor without formal review, docketing and action by the commission. At least 10 days prior to issuance, the commission shall distribute via its regular meeting notice mailing list, a notice of general approvals it intends to issue. When such general approval is given, the project shall be exempt from any and all commission application or monitoring fees and the sponsor's only method of compliance shall be a monetary payment to the commission as provided in paragraph (b) (1) of this section.

(i) *Certificate of pre-compact use.* (1)(i) The executive director, by [90 days from the publication of this section as a final rule in the **Federal Register**], shall issue by certified mail to the sponsors of all previously approved consumptive use projects a "notice of pre-compact use" specifying the amount of consumptive use, if any, constituting the pre-compact consumptive use of the sponsor as of January 23, 1971. The executive director shall publish a notice of this action in the **Federal Register**.

(ii) Such preliminary notice of pre-compact use shall become a final "certificate of pre-compact use" unless the sponsor, within 20 days after service of the notice, or any interested party, within 20 days after publication of the notice in the **Federal Register**, shall file a request for hearing by the commission. At such hearing, the water user or interested party may show cause why the proposed pre-compact use shall not take effect.

(iii) The executive director will schedule a hearing before the commission at the next convenient regular meeting of the commission, but in no case more than two regular meetings past the date of the hearing request. The hearing will be conducted in accordance with the requirements set forth in part 805, subpart A, of this chapter.

(iv) A final certificate of pre-compact use will be issued either upon expiration of the time to request a hearing, where there has been no request, or in accordance with the determination of a hearing where one is held.

(2) Any other sponsor of a consumptive use project may apply for a certificate of pre-compact use as part of a regular project application to the commission or otherwise; provided, however, that such applications shall be filed with the commission no later than April 30, 1996. The consumptive use project of any sponsor not applying for a certificate by that date will be presumed to have been initiated after January 23, 1971.

(3) Each sponsor may submit proof satisfactory to the commission of the factors constituting pre-compact use as defined in § 803.3. Whenever adequate records of pre-compact use for agricultural irrigation purposes are not available to the commission, such pre-compact use shall be measured by the maximum number of acres under irrigation by the water user during any year prior to 1971, allowing one acre-foot of surface water annually per acre irrigated.

(4) A certificate of pre-compact use is not transferable except that:

(i) A certificate issued for an agricultural consumptive use may be transferred to a subsequent owner or operator of the land on which the use occurs, provided that the transferee continues to use the land for the raising of food or forage crops, trees, flowers, shrubs, turf, aquaculture or livestock, and provided that written notice of the transfer is provided to the commission.

(ii) A certificate issued for any consumptive use may be transferred in connection with a corporate reorganization within any of the following categories, provide that written notice of the transfer is given to the commission:

(A) Whenever property is transferred to a corporation by one or more persons solely in exchange for stock or securities of the same corporation, provided that immediately after the exchange the same person or persons are in control of the transferee corporation, that is, they own 80 percent or more of the voting stock and 80 percent or more of all other stock of the corporation.

(B) Whenever the transfer is an incident of a statutory merger or consolidation pursuant to the corporation laws of any state, the District of Columbia or the United States.

(C) Whenever the transfer is included in a transfer by a corporate holder of a certificate of entitlement of all or a part of its assets to another corporation if immediately after the transfer the transferor or one or more of its stock holders or any combination thereof, are in control of the corporation to which the assets are transferred and such transfer is in exchange solely for stocks or securities of the transferee corporation as a party to a reorganization within the meaning of section 354 or section 361 of the Internal Revenue Code (26 U.S.C. 354 or 361).

(D) Where such transfer is required merely as a result of a change of the name, identify, form or place of organization of a corporate holder of a certificate of pre-compact use.

(5) If the consumptive use for which a certificate has been issued is documented for such a period of time and under such circumstances that an abandonment of the use may reasonably be inferred, the commission may rescind the certificate after notice and opportunity to be heard have been given to the holder of the certificate.

§ 803.43 Standards for ground-water withdrawals.

(a) *Requirement.* (1) Any project sponsor proposing to withdraw from a ground-water source in excess of an average of 100,000 gpd for any consecutive thirty-day period or proposing to increase an existing withdrawal to more than an average of 100,000 for any consecutive thirty-day period shall apply for approval pursuant to subpart B of this part. These withdrawals may be denied or may be limited by the commission to the amount (quantity and rate) of ground water that is needed to meet the reasonably foreseeable needs of the project sponsor and that can be withdrawn from an aquifer or aquifer system without causing adverse lowering of ground-water levels, rendering competing supplies unreliable, causing water quality degradation that may be injurious to any existing or potential ground or surface water use, causing permanent loss of aquifer storage capacity, or having substantial impact on low flow of perennial streams.

(2) Projects withdrawing more than an average of 100,000 gpd for any consecutive thirty-day period prior to the effective date of this section are exempt from the above approval requirements, provided that the current withdrawal rate does not exceed the amount withdrawn before the said effective date. The sponsor of any such exempted project that proposes to increase the said average withdrawal in

excess of 100,000 gpd above that which it was withdrawing prior to the said effective date shall submit said proposal to the commission for review and approval as provided herein.

(3) After obtaining approval for the withdrawal pursuant to this paragraph, the sponsor shall also comply with metering, monitoring and reporting requirements as set forth in this section..

(b) *Withdrawal application.* Information required by the commission is specified in the commission's ground-water withdrawal application and includes but is not limited to the results of a constant rate pumping test. Review and approval by SRBC staff of the test procedures to be used by the applicant are necessary before the test is started.

(c) *Metering.* Projects approved hereunder shall meter all approved ground-water withdrawals. The meters shall be accurate to within 5 percent of the actual flow..

(d) *Monitoring and reporting.* (1) Monitoring and periodic reporting of water levels, well production, and ground-water quality are required of all approved ground-water withdrawals. The required information is listed in Form SRBC #30 (Ground-water Withdrawal Reporting Form) [1] and includes but is not limited to the following:

(i) Ground-water levels shall be measured weekly in all approved production wells and reported to the commission annually. Additional water level measurements may be required in one or more observation wells as determined by the commission.

(ii) Production from approved ground-water sources shall be recorded weekly and reported to the commission annually.

(iii) Samples of ground water for water quality analysis shall be obtained and the results reported to the commission every three years. The required chemical constituents to be included in the analysis are listed in Form SRBC #30.

(2) The information in paragraph (d)(1) of this section may be provided to the commission either on Form SRBC #30 or other similar document containing all of the required information.

(e) *Planning.* If projections indicate that a project's ground-water supply will be constrained in the future by either the quantity or quality of available ground water, the commission may, in its discretion, require the submission of a water resource development plan prior to accepting any new withdrawal applications for the same or related projects.

(f) *Interference with existing withdrawals.* If review of the application or substantial data demonstrates that operation of a proposed ground-water withdrawal will significantly affect or interfere with an existing ground-water or surface water withdrawal, the project may be denied or the project sponsor may be required to provide, at its expense, an alternate water supply or other mitigating measures.

(g) *Effective date.* Notwithstanding the overall effective date for other portions of this part set forth in § 803.1(e), this section shall apply to all ground-water withdrawals initiated on or after July 13, 1978.

§ 803.44 Standards for surface water withdrawals.

(a) *Requirement.* (1) Any project sponsor proposing to withdraw either directly or indirectly (through another user) from a surface source in excess of an average of 100,000 gpd for any consecutive thirty-day period or proposing to increase an existing withdrawal to more than an average of 100,000 gpd for any consecutive thirty-day period shall obtain commission approval of the withdrawal. These withdrawals may be denied or may be limited by the commission to the amount (quantity and rate) of water that is needed to meet the reasonably foreseeable needs of the project sponsor and that can be withdrawn without causing adverse lowering of streamflow levels, rendering competing supplies unreliable, causing water quality degradation that may be injurious to any existing or potential water use, adversely affecting fish, wildlife or other living resources or their habitat, or having substantial impact on the low flow of perennial streams.

(2) A project that proposes to increase the said average withdrawal above that which was previously approved by the commission or in excess of 100,000 gpd above that which it was withdrawing prior to the said effective date, shall submit said proposal to the commission for review and approval as provided herein.

(3) Any sponsor of a project subject to this section shall complete a surface water withdrawal application. After obtaining approval hereunder, the sponsor shall comply with metering, monitoring, and conservation requirements as set forth.

(b) *Withdrawal application.* Information required by the commission is specified in the commission's application for withdrawal from surface water sources.

(c) *Metering.* Project sponsors shall meter all approved surface withdrawals. The meters shall be accurate to within 5 percent of the actual flow.

(d) *Monitoring and reporting.* Monitoring and periodic reporting of all approved surface water withdrawals is required. The required information includes but is not limited to the following:

(1) Daily records of withdrawals by source reported annually;

(2) Description of conservation activity; and

(3) Records of releases or flowby for instream protection reported annually.

(e) *Planning.* If projections indicate that a project's surface water supply will be constrained in the future by either the quantity or quality of available surface water, the commission may, in its discretion, require the submission of a water resource development plan prior to accepting any new withdrawal applications for the same or related projects.

(f) *Interference with existing withdrawals.* If review of the application or substantial data demonstrates that operation of a proposed surface water withdrawal will significantly affect or interfere with an existing ground-water or surface water withdrawal, the project may be denied or the project sponsor may be required to provide, at its expense, an alternate water supply or other mitigating measures.

(g) *Effective date.* This section shall be effective as provided in § 803.1(e), except for projects previously reviewed and approved by the commission under the general authority of section 3.10 of the compact. Commission authority shall continue over such previously approved projects.

2. Parts 804 and 805 are added to read as follows:

PART 804—SPECIAL REGULATIONS AND STANDARDS

Subpart A—Water Withdrawal Registration

Sec.

804.1 Requirement.
804.2 Time limits.
804.3 Administrative agreements.
804.4 Effective date.
804.5 Definitions.

Subpart B—Water Conservation Requirements

804.20 Requirement.
804.21 Effective date.
804.22 Definitions.

Authority: Secs. 3.4(2) and (9), 3.8, 3.10 and 15.2, Pub. L. 91–575, 84 Stat. 1509 *et seq.*

[1] This form is available from SRBC, 1721 North Front Street, Harrisburg, PA 17102–2391.

Subpart A—Water Withdrawal Registration

§ 804.1 Requirement.

In addition to any other requirements of commission regulations, all persons withdrawing or diverting in excess of an average of 10,000 gpd for any consecutive thirty-day period, from surface or ground-water sources, as defined in part 803 of this chapter, shall register the amount of this withdrawal with the commission and provide such other information as requested on forms prescribed by the commission. This requirement applies to all present and future withdrawals or diversions, irrespective of when such withdrawals or diversions were initiated.

§ 804.2 Time limits.

Except as provided in § 803.42(h) of this chapter regarding existing agricultural consumptive users, all registration forms shall be submitted within one year of [the effective date of this final rule] or within six months of their initiation, whichever is later; provided, however, that nothing in this section shall limit the responsibility of an applicant to apply for and obtain an approval as may be required under part 803 of this chapter. All registered withdrawals shall re-register with the commission within five years of their initial registration, and at five-year intervals thereafter, unless sooner discontinued.

§ 804.3 Administrative agreements.

The commission may complete appropriate administrative agreements or informal arrangements to carry out this registration requirement through the offices of signatory agencies. Forms developed by the commission shall apprise registrants of any such agreements or arrangements and provide appropriate instructions to complete and submit the form. Permits issued by a signatory party agency shall be considered a registration with the commission if issued pursuant to an agreement of understanding with the commission specifically providing therefor.

§ 804.4 Effective date.

This subpart shall be effective on [effective date of final rule].

§ 804.5 Definitions.

Terms used in this subpart shall be defined as set forth in § 803.3 of this chapter..

Subpart B—Water Conservation Requirements

§ 804.20 Requirement.

Any project sponsor proposing to withdraw water either directly or indirectly (through another user) from surface or ground-water sources or both shall comply with the following requirements:

(a) *Public water supply utilities.* As circumstances warrant, the utility shall:

(1) Reduce distribution system losses to a level not exceeding 20 percent of the gross withdrawal.

(2) Install meters for all users.

(3) Establish a program of water conservation that will:

(i) Require installation of water conservation devices, as applicable, by all classes of users;

(ii) Prepare and distribute literature to customers describing available water conservation techniques;

(iii) Implement a water pricing structure which encourages conservation; and

(iv) Encourage water reuse.

(b) *Industrial water users.* Industrial users shall:

(1) Designate a company representative to manage plant water use.

(2) Install meters or other suitable devices or utilize acceptable flow measuring methods for accurate determination of water use by various parts of the company operation.

(3) Install flow control devices which match the needs of the equipment being used for production.

(4) Evaluate and utilize applicable recirculation and reuse practices.

(c) *Agricultural and other irrigation.* Water users for irrigation purposes shall utilize irrigation systems properly designed for the user's respective soil characteristics, topography and vegetation.

§ 804.21 Effective date.

Notwithstanding the effective date for other portions of this part, this subpart shall apply to all surface and ground-water withdrawals initiated on or after January 11, 1979.

§ 804.22 Definitions.

Terms used in this subpart shall be defined as set forth in § 803.3 of this chapter.

PART 805—HEARINGS/ ENFORCEMENT ACTIONS

Subpart A—Conduct of Hearing

Sec.

805.1 Public hearings
805.2 Adjudicatory Hearing.
805.3 Consolidation of hearing.
805.4 Joint hearings.
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Subpart B—Enforcement Actions and Settlements

805.20 Scope of subpart.
805.21 Notice to possible violators.
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805.23 Adjudicatory hearings/alleged violations.
805.24 Assessment of a penalty/abatement or remedial action.
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805.29 Definitions.

Authority: Secs. 3.4(9), 3.5(5), 3.10, 15.2 and 15.17, Pub. L. 91–575, 84 Stat. 1509 *et seq.*

Subpart A—Conduct of Hearing

§ 805.1 Public hearings.

(a) A public hearing shall be conducted in the following instances:

(1) Addition of projects or adoption of amendments to the comprehensive plan.

(2) Rulemaking.

(3) Approval of projects.

(4) Hearing requested by a signatory party.

(5) When in the opinion of the commission, a hearing is necessary to give adequate consideration to issues relating to public safety, protection of the environment, or other important societal factors.

(6) At all other times required by the compact or commission regulations.

(b) *Notice of public hearing.* At least 20 days before any public hearing required by the compact, notices stating the date, time, place and purpose of the hearing including issues of interest to the commission shall be published at least once in a newspaper or newspapers of general circulation in the area affected. Occasions when public hearings are required by the compact include, but are not limited to, amendments to the comprehensive plan, drought emergency declarations, and review and approval of diversions. In all other cases, at least 10 days prior to the hearing, notice shall be posted at the office of the commission, mailed by first class mail to the parties who, to the commission's knowledge, will participate in the hearing, and mailed by first class mail to persons, organizations, news media and governmental entities who have made requests to the commission for notices of hearings or of a particular hearing. In the case of hearings held in connection

with rulemaking, notices need only be forwarded to the directors of the New York Register, the Pennsylvania Bulletin, the Maryland Register, and the Federal Register, and it is sufficient that this notice appear only in the **Federal Register** at least 20 days prior to the hearing and in each individual state publication at least 10 days prior to any hearing scheduled in that state.

(c) *Participants to a public hearing.* (1) Hearings shall be open to the public. Participants to a public hearing shall be the project sponsor and the commission staff. Participants may also be any person or governmental entity wishing to appear at the hearing and make an oral or written statement. Statements may favor or oppose the project/proposal or may simply express a position without specifically favoring or opposing the project/proposal. Statements shall be made a part of the record of the hearing, and written statements may be received up to and including the last day on which the hearing is held, or within a reasonable time thereafter as may be specified by the presiding officer, which time shall be not less than ten days nor more than 30 days, except that a longer time may be specified if requested by a participant.

(2) Participants (except the project sponsor and the commission staff) are encouraged to file with the commission at its headquarters written notice of their intention to appear at the hearing. The notice should be filed at least three days prior to the opening of the hearing.

(d) *Representative capacity.* Participants wishing to be heard at a public hearing may appear in person or be represented by an attorney or other representative. A governmental entity may be represented by one of its officers, employees or by a designee of the governmental entity. Any person intending to appear before the commission in a representative capacity on behalf of a participant shall give the commission written notice of the nature and extent of his/her authorization to represent the person or governmental entity on whose behalf he/she intends to appear.

(e) *Description of project.* When notice of a public hearing is issued, there shall be available for inspection at the commission offices such plans, summaries, maps, statements, orders or other supporting documents which explain, detail, amplify, or otherwise describe the project the commission is considering. Instructions on where and how the documents may be obtained will be included in the notice.

(f) *Presiding officer.* A public hearing shall be conducted by the commission, the executive director, or any member or designee of the commission. The presiding officer shall have full authority to control the conduct of the hearing and make a record of the same.

§ 805.2 Adjudicatory hearing.

(a) *Generally.* The commission, upon application by any interested party or upon its own motion, may determine that, due to outstanding issues of fact, an adjudicatory hearing shall be conducted. If, for any reason, the commission determines that there are not sufficient issues of fact to schedule an adjudicatory hearing, it may still require briefs or oral argument on any issues of law.

(b) *Hearing procedure.* (1) The presiding officer shall have the power to rule upon offers of proof and the admissibility of evidence, to regulate the course of the hearings, to hold conferences for the settlement or simplification of issues, to determine the proper parties to the hearing, to determine the scope of any discovery procedures, and to delineate the issues to be adjudicated.

(2) The presiding officer shall cause each witness to be sworn or to make affirmation.

(3) Any party to a hearing shall have the right to present evidence and to examine and cross-examine witnesses.

(4) When necessary, in order to prevent undue prolongation of the hearing, the presiding officer may limit the number of times any witness may testify, the repetitious examination or cross-examination of witnesses, or the extent of corroborative or cumulative testimony.

(5) The presiding officer shall exclude irrelevant, immaterial or unduly repetitious evidence, but the parties shall not be bound by technical rules of evidence, and all relevant evidence of reasonably probative value may be received.

(6) Any party may appear and be heard in person or be represented by an attorney at law.

(7) Briefs and oral argument may be required by the presiding officer and shall be permitted upon request made prior to the close of the hearing by any party. They shall be part of the record unless otherwise ordered by the presiding officer.

(c) *Staff and other expert testimony.* The executive director shall arrange for the presentation of testimony by the commission's technical staff and other experts, as he/she may deem necessary or desirable, to incorporate in the record or support the administrative action, determination or decision which is the subject of the hearing.

(d) *Written testimony.* If the direct testimony of an expert witness is expected to be lengthy or of a complex, technical nature, the presiding officer may order that such direct testimony be submitted to the commission in sworn, written form. Copies of said testimony shall be served upon all parties appearing at the hearing at least ten days prior to said hearing. Such written testimony, however, shall not be admitted whenever the witness is not present and available for cross-examination at the hearing unless all parties have waived the right of cross-examination.

(e) *Assessment of costs.* (1) Whenever an adjudicatory hearing is required, the costs thereof, as herein defined, shall be assessed by the presiding officer to the project sponsor or such other party as the hearing officer deems equitable. For the purposes of this section, costs include all incremental costs incurred by the commission, including, but not limited to, hearing examiner and expert consultants reasonably necessary in the matter, stenographic record, rental of the hall and other related expenses.

(2) Upon the scheduling of a matter for adjudicatory hearing, the commission secretary shall furnish to the applicant a reasonable estimate of the costs to be incurred under this section. The applicant may be required to furnish security for such costs either by cash deposit or by a surety bond of a corporate surety authorized to do business in a signatory state.

(f) *Findings and report.* The presiding officer shall prepare a report of his/her findings and recommendations. The report shall be served by personal service or certified mail (return receipt requested) upon each party to the hearing or its counsel unless all parties have waived service of the report. Any party may file objections to the report within 20 days after the service upon the party of a copy of the report. A brief shall be filed together with objections and briefs shall be promptly submitted to the commission. The commission may require or permit oral argument upon such submission prior to its decision.

(g) *Action by the commission.* The commission will act upon the findings and recommendations of the presiding officer pursuant to law. The determination of the commission will be in writing and shall be filed together with any transcript of the hearing, report of the hearing officer, objections thereto, and all plans, maps, exhibits and other papers, records or documents relating to the hearing.

§ 805.3 Consolidation of hearing.

The commission may order any two or more public hearings involving a common or related question of law or fact to be consolidated for hearing on any or all the matters at issue in such hearings.

§ 805.4 Joint hearings.

The commission may conduct public hearings in concert with any other agency of a signatory party.

§ 805.5 Transcript.

A verbatim transcript of the adjudicatory hearings shall be kept by the commission. Other public hearings may be electronically recorded and a transcript made only if deemed necessary by the executive director or general counsel. A certified copy of the transcript and exhibits shall be available for review during business hours at the commission's headquarters to anyone wishing to examine them. Persons wishing to obtain a copy of the transcript of any hearing shall make arrangements to obtain it directly from the recording stenographer at their expense.

§ 805.6 Continuance.

The sponsor and all other persons wishing to be heard should be prepared to proceed on the date of the hearing. Applications for continuances will not be granted, except when good cause is shown.

§ 805.7 Effective date.

This subpart shall be effective on [effective date of final rule].

§ 805.8 Definitions.

Terms used in this subpart shall be defined as set forth in § 803.3 of this chapter.

Subpart B—Enforcement Actions and Settlements

§ 805.20 Scope of subpart.

This subpart shall be applicable where the commission has information indicating that a person or governmental entity (hereafter referred to as alleged violator) has violated or attempted to violate any provision of the compact or any of the commission's rules, regulations or orders.

§ 805.21 Notice to possible violators.

Upon direction of the commission, the executive director shall, and in all other instances, the executive director may require an alleged violator to show cause before the commission why a penalty should not be assessed in accordance with the provisions of this chapter and section 15.17 of the compact. The notice to the alleged violator shall:

(a) Set forth the date on which the alleged violator shall respond;

(b) Set forth any information to be submitted or produced by the alleged violator; and

(c) Specify the violation that is alleged to have occurred.

§ 805.22 The record for decision-making.

(a) *Written submission.* In addition to the information required by the commission, any alleged violator shall be entitled to submit in writing any other information that it desires to make available to the commission before it shall act. The executive director may require documents to be certified or otherwise authenticated and statements to be verified. The commission may also receive written submissions from any other persons as to whether a violation has occurred and the adverse consequences resulting from a violation of the compact or the commission's rules, regulations and orders.

(b) *Presentation to the commission.* On the date set in the notice, the alleged violator shall have the opportunity to supplement its written presentation before the commission by any oral statement it wishes to present and shall be prepared to respond to any questions from the commission or its staff or to the statements submitted by persons affected by the alleged violation.

§ 805.23 Adjudicatory hearings/alleged violations.

(a) An adjudicatory hearing (which may be in lieu of or in addition to proceedings pursuant to §§ 805.21 and 805.22) shall not be scheduled unless the executive director or the commission determines that a hearing is required to have an adequate record for the commission, or the commission directs that such a hearing be held.

(b) If an adjudicatory hearing is scheduled, the alleged violator shall be given at least 14 days written notice of the hearing date unless waived by consent. Notice of such a hearing may be given to the general public and the press in the manner provided in § 805.1(b), but may be waived by the executive director.

(c) Except to the extent inconsistent with the provisions of this subpart, adjudicatory hearings shall be conducted in accordance with the provisions of §§ 805.2 through 805.6.

§ 805.24 Assessment of a penalty/abatement and remedial action.

The executive director may recommend to the commission the amount of the penalty to be imposed or the abatement and remedial actions to be required. Such a recommendation shall be in writing and shall set forth the basis for the penalty amount proposed. Based upon the record submitted to the commission, the commission shall decide whether a violation has occurred that justifies the imposition of a penalty pursuant to section 15.17 of the compact or the requirement of abatement or remedial action. If it is found that such a violation has occurred, the commission shall determine the amount of the penalty to be paid and the nature of the abatement or remedial action to be undertaken.

§ 805.25 Factors to be applied in fixing penalty amount.

(a) Consideration shall be given to the following factors in deciding the amount of any penalty or any settlement:

(1) Previous violation, if any, of the compact, commission regulations or orders;

(2) The intent of the alleged violator;

(3) The extent to which the violation caused adverse environmental consequences;

(4) The costs incurred by the commission or any signatory party relating to the failure to comply with the compact, commission regulations or orders;

(5) The extent to which the violator has cooperated with the commission in correcting the violation and remediating any adverse consequences or harm that has resulted therefrom;

(6) The extent to which the failure to comply with the commission's compact and regulations was economically beneficial to the violator; and

(7) The length of time over which the violation occurred and the amount of water used during that time period.

(b) The commission retains the right to waive any penalty or reduce the amount of the penalty should it determine that, after consideration of the factors in paragraph (a) of this section, extenuating circumstances justify such action.

§ 805.26 Enforcement of penalties/abatement or remedial orders.

Any penalty imposed or abatement or remedial action ordered by the commission shall be paid or completed within such time period as shall be fixed by the commission. The executive director and commission counsel are authorized to take such action as may be necessary to assure enforcement of this Subpart. If a proceeding before a court becomes necessary, the action of the commission in determining a penalty amount shall constitute the penalty

amount recommended by the commission to be fixed by the court pursuant to section 15.17 of the compact.

§ 805.27 Settlement by agreement.

An alleged violator may request settlement of an enforcement proceeding by agreement. If the executive director determines that settlement by agreement is in the best interest of the commission, he/she may submit to the commission a proposed settlement agreement. No settlement will be considered by the commission unless the alleged violator has indicated in writing to the commission acceptance of the terms of the agreement and the intention to comply with all requirements of the settlement agreement including payment of any settlement amount or completion of any abatement or remedial action within the time period provided. If the commission determines not to approve a settlement agreement, the commission may proceed with an enforcement action in accordance with this subpart.

§ 805.28 Effective date.

This subpart shall be effective on [effective date of final rule].

§ 805.29 Definitions.

Terms used in this subpart shall be defined as set forth in § 803.3 of this chapter.

[FR Doc. 94–13831 Filed 6–7–94; 8:45 am]
BILLING CODE 7040–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300344; FRL–4868–1]

RIN 2070–AC18

Vinyl Pyrrolidone-Dimethylaminoethylmethacrylate Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer (CAS Reg. No. 30581-59-0) when used as an inert ingredient (leaching inhibitor, binder for water dispersable aggregates, sticker and suspension stabilizer) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest, and to animals. This proposed regulation was requested by International Specialty Products.

DATES: Comments, identified by the document control number [OPP-300344], must be received on or before July 8, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, Crystal Mall Bldg. #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Tina Levine, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th floor, Arlington, VA 22202, (703)-308-8393.

SUPPLEMENTARY INFORMATION: International Specialty Products, 1361 Alps Rd., Wayne, NJ 07470, submitted pesticide petition (PP) 4E04319 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)), propose to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for residues of vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer (CAS Reg. No. 30581-590) when used as an inert ingredient (leaching inhibitor, binder for water dispersable aggregates, sticker and suspension stabilizer) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest, and to animals.

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

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients, published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies that would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that no data, in addition to that described below, for vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer will need to be submitted. The rationale for this decision is described below:

In the case of certain chemical substances that are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer conforms to the definition of a polymer given in 40 CFR 723.250(b)(11) and meets the following criteria that are used to identify low-risk polymers:

1. The minimum number-average molecular weight of vinyl pyrrolidone-dimethylaminoethylmethacrylate

copolymer is greater than 20,000. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through skin or GI tract generally are incapable of eliciting a toxic response.

2. Vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

3. Vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer does not contain less than 32.0 percent by weight of the atomic element carbon.

4. Vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer contains as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. Vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. Vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or a modification of a biopolymer that is substantially intact.

7. Vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer is not manufactured from reactants containing, other than impurities, halogen atoms or cyano groups.

8. Vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer does not contain a reactive functional group that is intended or reasonably anticipated to undergo further reaction.

9. Vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer is not designed or reasonably expected to substantially degrade, decompose, or depolymerize.

Based on the information above and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, that contains any of the ingredients listed herein may request within 30 days after the publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [OPP-300344]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

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

List of Subjects in 40 CFR Part 180

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

Dated: May 26, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

Part 180—[Amended]

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

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

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

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer (CAS Reg. No. 30581-590), minimum number average molecular weight 20,000..	.....	Leaching inhibitor, binder for water dispersable aggregates, sticker and suspension stabilizer.
* * * * * * *		

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[FR Doc. 94–13674 Filed 6–7–94; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BPD–409–P]

RIN 0938–AD02

Medicare Program; Optional Payment System for Low Medicare Volume Skilled Nursing Facilities

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement section 9126 of the Consolidated Omnibus Budget Reconciliation Act of 1985 by allowing skilled nursing facilities (SNFs) that provide fewer than 1,500 days of care to Medicare beneficiaries in a cost reporting period to have the option of receiving prospectively determined payment rates in the following cost reporting period. The prospectively determined payment rates would be based on components of SNF costs such as routine operating costs, capital-related costs, and a return on equity for proprietary facilities for routine services furnished before October 1, 1993. This proposed rule would also specify, as required by section 13503(c) of the Omnibus Budget Reconciliation Act of 1993, that the return on equity provision for proprietary SNFs is eliminated for services furnished on or after October 1, 1993.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on August 8, 1994.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–409–P, P.O. Box 7517, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–409–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Allison Herron Eydt, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 3001, New Executive Office Building, Washington, DC 20503.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 783–3238 or by faxing to (202) 275–6802. The cost for each copy is $4.50. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

David Goldberg—Simplified Cost Reporting (410) 966–4517

Robert Kuhl—All Other Issues (410) 966–4597

SUPPLEMENTARY INFORMATION:

I. Background

A. Payment on a Reasonable Cost Basis

Skilled nursing facilities (SNFs) are paid on the basis of reasonable cost as defined by section 1861(v)(1) of the Social Security Act (the Act). Under this section, the Secretary is also authorized to establish limits on the allowable costs incurred by providers of health care services, such as SNFs, in furnishing care to Medicare beneficiaries. The limits are based on estimates of the costs necessary for the efficient delivery of needed health services. Implementing regulations appear at 42 CFR 413.30.

Sections 1861(v)(1)(A), (v)(1)(E), (v)(7), and 1888 of the Act provide authority for the payment of routine service costs to SNFs. Section 1888 of the Act provides for the following:

- Separate cost limits for hospital-based and freestanding SNFs.
- Cost limits for freestanding SNFs are to be set at 112 percent of the mean inpatient routine service costs for freestanding SNFs in urban and rural areas respectively.
- Cost limits for hospital-based SNFs are to be set at the freestanding limit plus 50 percent of the difference between 112 percent of mean per diem hospital-based inpatient routine service costs for urban and rural SNFs, respectively, and the freestanding limit.
- For cost reporting periods beginning before October 1, 1993, cost differences between hospital-based and freestanding SNFs attributable to excess overhead allocations resulting from Medicare payment principles are recognized as an add-on to the cost limit for hospital-based SNFs, as determined by the Secretary. Section 13503(a)(3) of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) eliminated this add-on for cost reporting periods beginning on or after October 1, 1993.

B. Legislation

On April 7, 1986, the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272) was enacted. Section 9126(a) of Public Law 99–272 added a new section (d) to section 1888 of the Act to require the establishment of prospectively determined payment rates for routine services furnished by certain SNFs. (Technical changes to section 1888(d) of the Act were subsequently made in sections 1895(b)(7)(A) and (b)(7)(B) of the Tax Reform Act of 1986 (Pub. L. 99–514).)

In response to a strong interest by Congress in beneficiary access to SNF care, HCFA conducted a study of SNF payment on a reasonable cost basis. The first results of this study were reported to Congress in 1985 (See Health Care Financing Review, Fall 1986, Vol. 8, No. 1). This study showed that it was widely believed that the current payment system contributed to the limited access to care and that the reporting burden involved plus the time delay in determining exact payment amounts inherent in this system due to retrospective payment adjustments may have discouraged facilities that would have had a low Medicare patient load from furnishing services to Medicare beneficiaries. A change was needed to increase beneficiary access to SNF services by easing the reporting burden for low volume SNFs. In enacting section 9126(a) of Public Law 99–272, Congress made this change possible.

Section 1888(d) of the Act provides that the prospectively determined payment rate is optional for the eligible SNFs, and it is to be determined on a per diem basis for the cost of furnishing inpatient routine services and associated capital-related costs. As specified in the Conference Committee Report accompanying Public Law 99–272 (H.R. Rep. No. 453, 99th Cong., 2nd Sess. 480 (1985)), the rates paid to proprietary SNFs were to include a component for return on equity related to routine service costs.

The specific provisions of section 9126 of Public Law 99–272 are as follows:

• Requirements for Eligibility To Receive SNF Prospectively Determined Payment Rate: Maximum Medicare Inpatient Days

Under section 1888(d)(1) of the Act, SNFs that had fewer than 1,500 Medicare inpatient days in one cost reporting period have the option of being paid on the basis of a prospectively determined payment rate in the following cost reporting period.

• Determining the Amount of Payment for Routine Services

Section 1888(d)(2) of the Act requires that the amount of payment under the SNF prospectively determined payment rate system be determined on a per diem basis. However, it may not exceed the limit on routine service costs set forth in section 1888(a) of the Act with respect to the facility, adjusted to take into account average capital-related costs with respect to the type and location of the facility. The limit used for this purpose is the applicable routine service cost limit in effect when the provider elects to be paid a prospectively determined payment rate.

For SNFs located in an urban area, the prospectively determined payment amount is equal to 105 percent of the mean of the per diem reasonable routine service and routine capital-related costs of services for SNFs in urban areas within the same census region. The mean per diem is determined without regard to the limitations of section 1888(a) of the Act and is adjusted for different area wage levels.

For SNFs located in a rural area, the prospectively determined payment amount is equal to 105 percent of the mean of the per diem reasonable routine service and routine capital-related costs of covered services for SNFs in rural areas within the same census region. The mean per diem is determined without regard to the limitations of section 1888(a) of the Act and is adjusted for different area wage levels.

• Determining Area Prospectively Determined Payment Rates

Section 1888(d)(3) of the Act requires that, for purposes of determining SNF prospectively determined payment rates, urban and rural areas be determined in the same manner as for purposes of section 1888(a) of the Act (that is, the provisions governing the SNF cost limits). It further requires that the term "region" have the same meaning as that under section 1886(d)(2)(D) of the Act. That section defines "region" for purposes of the inpatient hospital prospective payment system as one of the nine census divisions, comprising the 50 States and the District of Columbia, that are established by the Bureau of the Census for statistical and reporting purposes. Since rates must be determined on a regional basis, eligibility is limited to SNFs within the areas for which rates are available.

• Notification Required

Under section 1888(d)(4) of the Act, the Secretary is required to establish the prospectively determined payment rates for each Federal fiscal year, at least 90 days prior to the beginning of that fiscal year. The law also requires an SNF to notify the Secretary of its intention to be paid a prospectively determined payment rate no later than 30 days before the beginning of the cost reporting period for which the request is made.

• Cost Report Simplification

Under section 1888(d)(5) of the Act, the Secretary is required to provide for a simplified cost report to be filed by SNFs being paid under prospectively determined payment rates. This cost report must require only the cost information necessary for determining prospectively determined payment rates in accordance with section 1888(d)(2) of the Act and reasonable costs of ancillary services.

• Payment for Ancillary Services

Section 1888(d)(6) of the Act provides that, in the case of an SNF receiving prospectively determined payment rates, the Secretary may pay for ancillary services on a reasonable charge basis, rather than on a cost basis, if the Secretary determines that a reasonable charge basis provides an equitable level of payment and eases the SNF's reporting burden.

• Costs of Implementing Nursing Home Reform Provisions

Section 1888(d)(7) of the Act requires that the computation of the rates of payment take into account the additional costs of implementing nursing home reform provisions (including the costs of conducting nurse aide training and competency evaluation programs). In the manual issuances effective on or after October 1, 1989, we have allowed for an adjustment to the prospectively determined payment rates to account for these additional costs. However, this adjustment is necessary only if the cost data used to develop the prospectively determined payment rates were compiled from cost reporting periods that began prior to October 1, 1990, the effective date of the nursing home reform provisions. In the future, when later cost report data reflect these additional costs, the resulting prospectively determined payment rates will automatically include these costs and an adjustment will not be necessary. Therefore, we believe that it is not necessary to implement this provision in the proposed regulations.

In addition, section 9311(a) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), which was enacted on October 21, 1986, amended section 1815 of the Act to identify situations in which we are to provide (or continue to provide) payment on a periodic interim basis. Section 1815(e)(2)(C) of the Act specifically directs that periodic interim payments be made available to facilities furnishing extended care services, including facilities being paid on a reasonable cost basis as well as those being paid prospectively determined payment rates.

Section 1815(e)(2) of the Act provides that periodic interim payments be made under the standards established under § 405.454(j) of the regulations (now redesignated as § 413.64(h); see 51 FR 34790, September 30, 1986). Section 413.64(h)(2) sets forth the requirements that providers of health care services (such as SNFs) must meet in order to qualify for periodic interim payments. The requirements concern the level of a provider's estimated annual Medicare payment, whether a Medicare cost report has been filed, and recordkeeping and financial matters.

While SNFs that elect prospectively determined payment rates may qualify for periodic interim payments, we note that electing a bill-by-bill payment method has the advantage of providing a payment amount for routine services under prospectively determined payment rates that would not create the need for retroactive payment adjustments. Such adjustments would be necessary under the periodic interim payment method and are the source of

some criticism under payment on a reasonable cost basis.

On August 10, 1993, Public Law 103–66 was enacted. Section 13503(c) of Public Law 103–66 amended section 1861(v)(1)(B) of the Act to eliminate the provision for payment for a return on equity for services furnished by proprietary SNFs on or after October 1, 1993. Also, we note that section 13503(b) states that the Secretary may not change the amount of any prospectively determined payment rate paid to a SNF under section 1888(d) of the Act for services furnished during cost reporting periods beginning during FYs 1994 and 1995, except as necessary to take into account the elimination of the return on equity provision.

C. Manual Issuance

As noted above, section 1888(d) of the Act, as enacted by section 9126(a) of Public Law 99–272, provides for the optional prospectively determined payment rate system for SNF routine services. In order to provide the public with information on the rates as soon as possible and to implement the prospectively determined rates, we issued sections 2820 through 2822 of Chapter 28 of the Provider Reimbursement Manual (HCFA Pub. 15–1) in August 1986.

In the manual transmittal, we provided guidelines for implementing per diem prospectively determined payment rates for SNF routine services. The rates were effective for cost reporting periods beginning on or after October 1, 1986, but before October 1, 1987. Additional transmittals were issued providing rates for subsequent cost reporting periods. The provisions of Chapter 28 of the Provider Reimbursement Manual closely adhere to the requirements of section 1888(d) of the Act, as described below. In calculating the prospectively determined payment rates announced in the manual transmittals, we used the most recent data available at that time.

The provisions of Chapter 28 of the Provider Reimbursement Manual are as follows:

- Eligibility Criteria

We stipulated the statutory criterion that an SNF may choose to be paid under the prospectively determined payment rate option for general inpatient routine services if the facility had, in its immediately preceding cost reporting period, fewer than 1,500 Medicare patient days.

- Classification Criteria

For prospectively determined payment rate purposes, we grouped SNFs by census region, and by urban area or rural area designation within the region. As required by section 1888(d)(3) of the Act and as stated above, the term "region" means one of the nine census divisions, comprising the fifty States and the District of Columbia. The term "urban area" means an area within a Metropolitan Statistical Area (MSA) (as defined by the Office of Management and Budget (OMB)). The term "rural area" means any area outside an urban area.

- Adjustment of SNF Cost Data by Wage Index

We adjust the labor portion of the prospectively determined payment rate to account for area wage differences through the application of an appropriate wage index.

The labor-related costs are those costs in the market basket that change with local wage variations. This method of adjusting labor-related costs is the same as that used in implementing the current SNF limits. The wage index values are the same as those used to compute the SNF limits in effect for the same period as the prospectively determined payment rates.

- Use of SNF Market Basket Index

We based the prospectively determined payment rate on reported costs, adjusted for actual and projected cost increases by applying the SNF market basket index. The methodology of applying this index is the same as that described in our October 7, 1992 notice of SNF limits (57 FR 46177). Capital costs are not adjusted for inflation because depreciation is fixed on a straight line basis, capital-related interest is long term fixed rate debt and, where appropriate, return on equity can fluctuate from year to year. We cannot predict the amount or direction of fluctuations in equity.

- Ancillary Services

For SNFs electing to receive payment under prospectively determined payment rates, ancillary services are paid on the basis of reasonable cost with retroactive adjustment based on an annual cost report.

II. Discussion of Proposed Regulations

We stated in the original manual transmittal discussed above that we planned to pursue rulemaking to establish a framework in regulations for payment to SNFs under prospectively determined payment rates. Below, we describe proposed regulations that would be effective for revising the prospectively determined payment rates for the Federal fiscal year that begins at least 30 days after the publication of a final rule. In the interim, we will continue to update the prospectively determined payment rates through Chapter 28 of the Provider Reimbursement Manual.

We are proposing to add a new Subpart I, Optional Prospectively Determined Payment Rates for Certain Skilled Nursing Facilities, to 42 CFR part 413. This new subpart would set forth regulations that are consistent with the statutory changes to section 1888 of the Act made by provisions in Public Laws 99–272, 99–514, and 103–66.

A. General Provisions

We are proposing to add new § 413.300 to introduce the contents of Subpart I. This section would broadly list the conditions and procedures for making prospectively determined payments to qualifying SNFs. In new § 413.302, we would provide definitions of the terms "area wage level", "census region", "routine operating costs", "routine capital-related costs", and "urban" and "rural" areas as described above.

B. Eligibility Criteria

We are proposing to add new § 413.304 to describe the eligibility criteria specified in section 1888(d)(1) of the Act. SNFs that furnished fewer than 1,500 Medicare covered inpatient days in a cost reporting period as reported on the Medicare cost report would be allowed the option of being paid on the basis of prospectively determined payment rates during the next cost reporting period. If an SNF's preceding Medicare cost reporting period was shorter than a full calendar year, it must have had an average daily Medicare census (that is, the total Medicare inpatient days divided by the total number of inpatient days) for the period of not greater than 4.1 to qualify for prospectively determined payment. This figure was determined by dividing 1,499 (that is, the largest number of Medicare inpatient days fewer than 1,500) by the number of days in a calendar year. If there is no preceding cost reporting period for which an SNF was approved for Medicare participation, we propose that the SNF would automatically qualify for prospectively determined payment.

C. Approval Process

In the new § 413.308, we would establish rules to govern the process by which SNFs may request and be approved for payment under the prospectively determined payment rate option. Under section 1888(d) of the Act, we are required to establish the

prospectively determined payment rates at least 90 days prior to the beginning of each Federal fiscal year (that is, by July 1 of each year). An SNF may request to receive prospectively determined payments by notifying its fiscal intermediary of its intention at least 30 days prior to the beginning of the cost reporting period for which the request is made. The intermediary would notify the SNF as to whether the SNF qualifies for the option.

In most cases, a final count of Medicare inpatient days cannot be made for a cost reporting period prior to the beginning of the next cost reporting period. Therefore, the intermediary's initial determination of provider eligibility would be a tentative approval or disapproval. The final determination would be made once a count of the total Medicare inpatient days in the preceding cost reporting period is available. We would provide that the intermediary notify the SNF of the final determination within 10 working days after the data necessary to make the determination are available. If tentative approval was given and the final determination is that the SNF does not qualify to be paid on the basis of a prospectively determined payment rate, the intermediary will adjust payments to reflect payment on a reasonable cost basis.

For a newly certified SNF with no preceding cost reporting period, the election must be made within 30 days of its notification of approval to participate in Medicare.

The election by the SNF and any approval by the intermediary would be effective for only one cost reporting period at a time. We would also specify that once an election has been made and approved and the cost reporting period has begun, the SNF may not revoke its election for that period. Each SNF electing to receive a prospectively determined payment rate would agree to accept that rate prior to the start of the cost reporting period, regardless of what its final costs for the period would be. Under this proposed rule, the provider has traded the opportunity for any retroactive adjustments for the opportunity to operate at a profit and the foreknowledge of a specified rate. To allow a provider to reverse its election would entirely defeat the purpose and the philosophy of a prospectively determined payment program.

D. Basis of Payment

We propose to add new § 413.310 to set forth the basis of payment to be used for routine service costs, capital-related costs, and return on equity (for services furnished before October 1, 1993), as well as for ancillary service costs, as specified in sections 1888 (d)(2) and (d)(6) of the Act. We would specify the following:

- Prospectively determined payment is in lieu of payment on a reasonable cost basis for routine services.
- The routine operating component of the prospectively determined payment rate excluding capital cost, and excluding return on equity (if applicable) may not exceed the amount of the provider's routine service cost limit determined under § 413.30 that is in effect when the provider elects to be paid a prospectively determined payment rate.

E. Methodology for Calculating Rates

We are proposing to add new § 413.312 to establish the methodology for determining the prospectively determined payment rates as specified in sections 1888 (d)(2) and (d)(6) of the Act. Under these sections of the Act, mean per diem routine operating costs, capital-related costs, and, for proprietary SNFs, return on equity for services furnished before October 1, 1993, are determined separately for SNFs located in urban areas and those in rural areas for the nine census regions. To reflect those statutory provisions, the basic methodology discussed below would be established in regulations. This methodology would be used to establish the prospectively determined payment rates each year. The rates would be published in the **Federal Register** as described in § 413.320. Amendments to the regulations would be proposed to implement changes to the basic methodology described in §§ 413.312 through 413.314.

The capital-related portion of the per diem rate would be calculated from the SNF's capital costs as reported on the Medicare cost report. The capital-related portion includes both direct and indirect capital costs allocated to routine services. A per diem capital amount would be determined by dividing each SNF's capital-related costs by its inpatient days. A group mean would be computed and the mean multiplied by 105 percent.

For services furnished before October 1, 1993, the return on equity portion of the per diem rate would be calculated using the return on equity from each proprietary SNF's cost report. The current allowable return on equity is equal to 100 percent of the average rate of interest of public debt obligations issued by the Federal Hospital Insurance Trust Fund. For cost reporting periods beginning prior to October 1, 1985, the allowable return on equity was equal to 150 percent of the average rate. Therefore, the return on equity data from cost reports for periods beginning prior to October 1, 1985 must be adjusted and is multiplied by 67 percent to reflect the decrease in the rate of return on equity. (The 67 percent represents the ratio of 100 percent to 150 percent. When future updates of the prospectively determined payment rates use later cost report data that include the current allowable return on equity, this adjustment would no longer be needed.) The per diem would then be determined by dividing the SNF's adjusted return on equity by its inpatient days. A group mean would be determined and each group mean multiplied by 105 percent to determine that portion of the rate.

F. Determining Routine Per Diem Rate

In § 413.314, we describe proposed methodology for determining the routine per diem rate for an SNF. We explain that the per diem rate would be composed of a routine operating portion, a capital-related cost portion applicable to routine services, and, for proprietary SNFs, a return on equity portion for services furnished before October 1, 1993. The labor-related costs of the routine operating portion would be adjusted to reflect area wage differences. The total rate would be adjusted by using a factor based on the projected increase in the market basket index to reflect a different cost reporting period if an SNF's cost reporting period is other than October 1 through September 30.

We would also provide that the prospectively determined payment rate, excluding capital, and excluding return on equity (if applicable) may not exceed the amount of an SNF's routine service cost limit that is in effect when the provider elects to be paid a prospective payment rate.

In developing the proposed prospectively determined payment rates, we considered: a rate for freestanding facilities based on freestanding SNF cost data and a rate for hospital-based facilities based on hospital-based SNF cost data; and a single rate (for urban and rural locations, respectively) based on combined freestanding and hospital-based SNF cost data. The current and the proposed single prospectively determined payment rates are based on combined freestanding and hospital-based SNF cost data. We believe that the proposed methodology of basing the prospectively determined payment rates on combined freestanding and hospital-based SNF cost data is consistent with and represents the most accurate

reading of section 1888(d)(2)(B) of the Act. We are especially interested in receiving public comments on the proposed methodology.

G. Determining Payment Amount for Ancillary Services

In searching for a way to implement section 1888(d)(6) of the Act and bring ancillary services under the prospectively determined payment rate system, we considered a number of different payment methodologies.

We determined that only one methodology could clearly fit the requirement for a method for determining payment rates prospectively based on reasonable charges. This method would develop reasonable charge payment screens applicable to ancillary services furnished by all SNFs in a particular area. These payment screens would function similarly to current Medicare reasonable charge based fee schedule amounts. However, we have no data at this time upon which to base payment screens that would provide an equitable level of payment, as required under 1888(d)(6) of the Act.

We also considered the following alternative payment methodologies, some of which may not be consistent with the reasonable charge methodology intended by the statute, while others clearly are not based on charges. However, we believe that it may be beneficial to discuss and solicit comments on these methodologies in this proposed rule.

Currently, ancillary payments are determined by applying the provider's cost-to-charge ratio to ancillary charges. One method we considered was establishing an average total cost-to-charge ratio for urban and rural areas within each census area. This ratio could be used by all SNFs within the geographic area and could be applied to the charges for all services. While this would be a simplified approach, we do not believe that it would provide appropriate payment in all cases. It would not account for the wide variation among SNFs in the kinds of services furnished, or the wide variations in the providers' cost-to-charge ratios. It could also discriminate against those SNFs furnishing more resource-intensive ancillary services and could encourage substituting low cost services for more costly services. Some of these problems could be ameliorated by the use of a separate ratio for each service. We did not review the data for this option because we do not believe this payment methodology meets the statutory requirements.

We considered a method of paying for ancillary services on the basis of estimated cost with no retroactive cost settlement. Payment would be based on current charges converted to estimated cost, using the cost-to-charge ratio from the cost report for the most recent 12-month cost reporting period for which a Notice of Amount of Program Reimbursement (NPR) has been issued. From that cost report, we would obtain the cost-to-charge ratio (not to exceed 1.0) for each ancillary cost center and multiply the ratio by the same cost center's ancillary charges in the period for which the election to receive prospectively determined payment is made. The average cost-to-charge ratio (not to exceed 1.0) for the urban and rural area within each census region would be used if, for any reason, there is no prior year period for which an NPR has been issued. Capital cost would also be reflected in the cost-to-charge ratio; therefore, no additional capital payment would be made. This methodology would be used to determine payment under both Part A and Part B of Medicare. All applicable coinsurance and deductibles would continue to be applied.

While this approach does present some positive features, it could be problematic. First, this method is not consistent with the statutory requirement that ancillary services be paid on the basis of either actual cost or reasonable charges. In addition, it is possible that there would be a wide variation between estimated cost and actual cost. However, as in a prior approach, we did not review the data for this option because we do not believe this payment methodology meets the statutory requirements.

We considered two methodologies for establishing a prospective per diem rate for ancillary services. The rate would be based on historical cost report data, as follows:

- Develop a flat average per diem in the aggregate for all ancillary services, by location; or
- Develop an average by ancillary service equal to 105 percent of the appropriate group mean, by location.

While both of these approaches would have the advantage of being easy to administer and informing the provider precisely how much it would be paid, there are some problems with implementing an average per diem cost based rate. First, neither approach meets the alternative statutory methodology of payment for ancillary services on the basis of reasonable charges. The first approach would also not recognize the wide variations in the types of ancillary services provided by different SNFs. Neither approach would take into consideration the fact that, with respect to SNFs, ancillary services may be provided by outside suppliers. Either approach could also act as a disincentive to providing resource-intensive services, or in some cases, any ancillary services. The historical data used in either approach do not take into account any changes, especially increases, in patient acuity levels that could impact on the utilization of current ancillary services.

We considered a facility specific prospectively determined per diem payment for ancillary services subject to an adjustable limit. Both the payment amount and the adjustable limit would be based on historical cost data. Therefore, in addition to not meeting the mandate for an alternate methodology of payment on the basis of reasonable charges, the historical data do not account for changes in utilization of ancillary services due to increases in patient acuity.

We considered one methodology even though it does not meet the alternate prospective methodology of payment on the basis of reasonable charges but does meet the requirement of 1861(v)(1)(A). That is, similar to the current routine cost limit system, we would make payments for ancillary services not to exceed 105 percent of the appropriate group mean for SNFs by location. Since this payment could not be prospectively determined, we did not consider incorporating this methodology into this proposed notice.

Finally, we considered developing a case-mix adjusted per diem payment for ancillary services. HCFA is currently studying the feasibility of a case-mix type payment system for Medicare SNFs. The data to develop a case-mix adjusted ancillary cost per diem are not currently available.

In reviewing these various methodologies for payment of ancillary costs, we are interested in a methodology that would be easy to apply and that would result in payment commensurate with the services provided. We also would prefer to adopt a methodology that recognizes the wide variation in services among SNFs. We were unable to develop a methodology based on available data that met these requirements. We therefore are soliciting comments on any of the methodologies described above or any additional methodologies not mentioned.

Until such time as a methodology can be developed, ancillary services would continue to be paid on the basis of reasonable costs.

H. Publication of Rates

In new § 413.320, we would provide that HCFA will update the routine prospectively determined payment rates in a **Federal Register** notice published no later than July 1 of each year. In the notices, we would establish the rates for routine services under the prospectively determined payment rate system.

I. Simplified Cost Report

All Medicare providers with low Medicare utilization have had, at the intermediary's discretion, the option of filing less than a full Medicare cost report. This option would continue to be available to those SNFs that qualify for it.

In addition, in new § 413.321, we would provide that a simplified cost report would be filed by certain SNFs receiving a prospectively determined rate. At this time, a simplified form is available only for freestanding SNFs. The simplified form is not applicable to hospital-based SNFs or SNFs that are a part of a health care complex. Another simplified form to be used by those facilities will be available in the future.

The new simplified cost report requires inputting only the cost information necessary for determining prospective payment rates. The report employs a simplified method of cost finding to be used in lieu of the cost finding methods described in § 413.24(d). This method is specified in the instructions for Form-HCFA 2540S, contained in sections 3000–3027.3 of Part 2 of the Provider Reimbursement Manual. We are also proposing to change § 413.24(d) to clarify that the cost finding provisions of that regulation do not apply to those SNFs that qualify for the simplified method of cost finding. In addition, § 413.24(h) would be revised to clarify that the waiver of full cost reporting for low program utilization also applies to providers filing a simplified cost report.

III. Impact Statement

Unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612). For purposes of the RFA, we consider SNFs as small entities.

Medicare payments to SNFs comprise only about 5.3 percent of total SNF revenues and this rule would only have a small impact on those revenues. Moreover, the purpose of this rule is to ease the compliance burden for small entities, and we believe the rule would have a positive impact on small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact statement if a proposed rule may have a significant economic impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain rural counties adjacent to urban areas, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds.

We have determined, and the Secretary certifies, that this proposed rule would not have a significant effect on the operations of a substantial number of small entities or on small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis or an analysis of the effects of this rule on small rural hospitals.

In accordance with the provisions of Executive Order 12866 this regulation was not reviewed by the Office of Management and Budget.

IV. Response to Comments

A. Public Comment

Because of the large number of items of correspondence we normally receive on FR documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

B. Paperwork Reduction Act

Section 413.308 of this proposed rule contains information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511), we have submitted a copy of this proposed rule to the Executive Office of Management and Budget (EOMB) for its review of these information collection requirements. Total public reporting burden for this collection of information is estimated to be 1,200 hours during the first 12-month period that the rule would be in effect. A notice will be published in the **Federal Register** after approval is obtained. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the OMB official whose name appears in the **ADDRESSES** section of this preamble.

List of Subjects in 42 CFR Part 413

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

For the reason set out in the preamble 42 CFR part 413 is proposed to be amended as follows:

A. The title of part 413 is amended to read as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

B. Part 413 is amended as follows:

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

Authority: Secs. 1102, 1814(b), 1815, 1833 (a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 1395l (a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww); sec. 104(c) of Public Law 100–360 as amended by sec. 608(d)(3) of Public Law 100–485 (42 U.S.C. 1395ww (note)); sec. 101(c) of Public Law 101–234 (42 U.S.C. 1395ww (note)); and sec. 13503 of Public Law 103–66 (42 U.S.C. 1395ww (note)).

Subpart A—Introduction and General Rules

2. In § 413.1, a new paragraph (g) is added to read as follows:

§ 413.1 Introduction.

* * * * *

(g) *Prospectively determined payment rates for low Medicare volume SNFs.* Rules governing requests by SNFs for prospectively determined payment rates under section 1888(d) of the Act are set forth in subpart I of this part.

Subpart B—Accounting Records and Reports

3. In § 413.24 the introductory text of paragraph (d), and paragraph (h), are revised to read as follows:

§ 413.24 Adequate cost data and cost finding.

* * * * *

(d) *Cost finding methods.* After the close of the accounting period, providers must use one of the following methods of cost finding to determine the actual costs of services furnished during that period. These provisions do not apply to SNFs that elect and qualify for prospectively determined payment rates under subpart I of this part for cost reporting periods beginning on or after October 1, 1986. For the special rules that are applicable to those SNFs, see

§ 413.321. For cost reporting periods beginning after December 31, 1971, providers using the departmental method of cost apportionment must use the step-down method described in paragraph (d)(1) of this section or an "other method" described in paragraph (d)(2) of this section. For cost reporting periods beginning after December 31, 1971, providers using the combination method of cost apportionment must use the modified cost finding method described in paragraph (d)(3) of this section. Effective for cost reporting periods beginning on or after October 1, 1980, HHAs not based in hospitals or SNFs must use the step-down method described in paragraph (d)(1) of this section. (HHAs based in hospitals or SNFs must use the method applicable to the parent institution.) However, an HHA not based in a hospital or SNF that received less than $35,000 in Medicare payment for the immediately preceding cost reporting period, and for whom this payment represented less than 50 percent of the total operating cost of the agency, may use a simplified version of the step-down method, as specified in instuctions for the cost report issued by HCFA.

* * * * *

(h) *Waiver of full or simplified cost reporting for low program utilization*— (1) If the provider has had low utilization of covered services by Medicare beneficiaries (as determined by the intermediary) and has received correspondingly low interim payments for the cost reporting period, the intermediary may waive a full cost report or the simplified cost report described in § 413.321 if it decides that it can determine, without a full or simplified report, the reasonable cost of covered services provided during that period.

(2) If a full or simplified cost report is waived, the provider must submit within the same time period required for full or simplified cost reports:

(i) The cost reporting forms prescribed by HCFA for this situation; and

(ii) Any other financial and statistical data the intermediary requires.

4. A new subpart I is added to read as follows:

Subpart I—Prospectively Determined Payment Rates for Skilled Nursing Facilities

Sec.

413.300 Basis and scope.
413.302 Definitions.
413.304 Eligibility for prospectively determined payment rates.
413.308 Rules governing election of prospectively determined payment rates.
413 310 Basis of payment.
413.312 Methodology for calculating rates.
413.314 Determining payment amounts: Routine per diem rate.
413.316 Determining payment amounts: Ancillary services.
413.320 Publication of prospectively determined payment rates or amounts.
413.321 Simplified cost reports for SNFs.

Subpart I—Prospectively Determined Payment Rates for Skilled Nursing Facilities

§ 413.300 Basis and scope.

(a) *Basis.* This subpart implements section 1888(d) of the Act, which provides for optional prospectively determined payment rates for qualified SNFs.

(b) *Scope.* This subpart sets forth the eligibility criteria an SNF must meet to qualify, the process governing election of prospectively determined payment rates, and the basis and methodology for determining prospectively determined payment rates.

§ 413.302 Definitions.

For purposes of this subpart—

Area wage level means the average wage per hour for all classifications of employees as reported by health care facilities within a specified area.

Census region means one of the nine census divisions, comprising the fifty States and the District of Columbia, established by the Bureau of the Census for statistical and reporting purposes.

Routine capital-related costs means the capital-related costs, allowable for Medicare purposes (as described in subpart G of this part), that are allocated to the SNF participating inpatient routine service cost center as reported on the Medicare cost report.

Routine operating costs means the cost of regular room, dietary, and nursing services, and minor medical and surgical supplies for which a separate charge is not customarily made. It does not include the costs of ancillary services, capital-related costs, or, where appropriate, return on equity.

Rural area means any area outside an urban area in a census region.

Urban area means a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA), as defined by the Office of Management and Budget, or a New England county deemed to be an urban area, as listed in § 412.62(f)(ii)(B) of this chapter.

§ 413.304 Eligibility for prospectively determined payment rates.

(a) *General rule.* An SNF may receive a prospectively determined payment rate for a cost reporting period only if it had fewer than 1,500 Medicare covered inpatient days as reported on a Medicare cost report in its immediately preceding cost reporting period. This criterion applies even if the SNF received a prospectively determined payment rate during the preceding cost reporting period.

(b) *Less than a full cost reporting period.* If the cost reporting period that precedes an SNF's request for prospectively determined payment is not a full cost reporting period, the SNF may receive prospectively determined payment rates only if the average daily Medicare census for the period (Medicare inpatient days divided by the total number of days in the cost reporting period) is not greater than 4.1.

(c) *Newly-participating SNFs.* An SNF may receive prospectively determined payment rates for its first cost reporting period for which it is approved to participate in Medicare.

§ 413.308 Rules governing election of prospectively determined payment rates.

(a) *Requirements.* An SNF must notify its intermediary at least 30 calendar days before the beginning of the cost reporting period for which it requests to receive such payment that it elects prospectively determined payment rates. A separate request must be made for each cost reporting period for which an SNF seeks prospective payment. A newly participating SNF with no preceding cost reporting period must make its election within 30 days of its notification of approval to participate in Medicare.

(b) *Intermediary notice.* After evaluating an SNF's request for prospectively determined payment rates, the intermediary notifies the SNF in writing as to whether the SNF meets any of the eligibility criteria described in § 413.304. The intermediary must notify the SNF of its determination within 10 working days after it receives all the data necessary to make the determination. The intermediary's determination is limited to one cost reporting period.

(c) *Prohibition against revocation.* An SNF may not revoke its request after it has received final determination of eligibility from the intermediary and the cost reporting period has begun.

§ 413.310 Basis of payment.

(a) *Method of payment.* Under the prospectively determined payment rate system, a qualified SNF receives a per diem payment of a predetermined rate for inpatient services furnished to Medicare beneficiaries. Each SNF's routine per diem payment rate is determined according to the methodology described in § 413.312 and is based on various components of SNF costs.

(b) *Payment in full.* The payment rate represents payment in full for routine services as described in § 413.314 (subject to applicable coinsurance as described in subpart G of part 409 of this title). Payment is made in lieu of payment on a reasonable cost basis for routine services.

§ 413.312 Methodology for calculating rates.

(a) *Data used*—(1) To calculate the prospectively determined payment rates, HCFA uses:

(i) The SNF cost data that were used to develop the applicable routine service cost limits;

(ii) A wage index to adjust for area wage differences; and

(iii) The most recent projections of increases in the costs from the SNF market basket index.

(2) In the annual schedule of rates published in the **Federal Register** under the authority of § 413.320, HCFA announces the wage index and the annual percentage increases in the market basket used in the calculation of the rates.

(b) *Calculation of per diem rate*—(1) *Routine operating component of rate*—(i) *Adjusting cost report data.* The SNF market basket index is used to adjust the routine operating cost from the SNF cost report to reflect cost increases occurring between cost reporting periods represented in the data collected and the midpoint of the initial cost reporting period to which the payment rates apply.

(ii) *Calculating a per diem cost.* For each SNF, an adjusted routine operating per diem cost is computed by dividing the adjusted routine operating cost (see paragraph (b)(1)(i) of this section) by the SNF's total patient days.

(iii) *Adjusting for wage levels*—(A) The SNF's adjusted per diem routine operating cost calculated under paragraph (b)(1)(ii) of this section is then divided into labor-related and nonlabor-related portions.

(B) The labor-related portion is obtained by multiplying the SNF's adjusted per diem routine operating cost by a percentage that represents the labor-related portion of cost from the market basket. This percentage is published when the revised rates are published as described in § 413.320.

(C) The labor-related portion of each SNF's per diem cost is divided by the wage index applicable to the SNF's geographic location to arrive at the adjusted labor-related portion of routine cost.

(iv) *Group means.* SNFs are grouped by urban or rural location by census region. Separate means of adjusted labor-related and nonlabor routine operating costs for each SNF group are established in accordance with the SNF's region and urban or rural location. For each group, the mean labor-related and mean nonlabor-related per diem routine operating costs are multiplied by 105 percent.

(2) *Computation of routine capital-related cost.* (i) The SNF routine capital-related cost for both direct and indirect capital costs allocated to routine services, as reported on the Medicare cost report, is obtained for each SNF in the data base.

(ii) For each SNF, the per diem capital-related cost is calculated by dividing the SNF's routine capital costs by its inpatient days.

(iii) SNFs are grouped by urban and rural location by census region, and mean per diem routine capital-related cost is determined for each group.

(iv) Each group mean per diem capital-related cost is multiplied by 105 percent.

(3) *Computation of return on owner's equity for services furnished before October 1, 1993*—(i) Each proprietary SNF's Medicare return on equity is obtained from its cost report and the portion attributable to the routine service cost is determined as described in § 413.157.

(ii) For each proprietary SNF, per diem return on equity is calculated by dividing the routine cost related return on equity determined under paragraph (b)(3)(i) of this section by the SNF's total Medicare inpatient days.

(iii) Separate group means are computed for per diem return on equity of proprietary SNFs, based on regional and urban or rural classification.

(iv) Each group mean is multiplied by 105 percent.

§ 413.314 Determining payment amounts: Routine per diem rate.

(a) *General rule.* An SNF that elects to be paid under the prospectively determined payment rate system is paid a per diem rate for inpatient routine services. This rate is adjusted to reflect area wage differences and the cost reporting period beginning date (if necessary) and is subject to the limitation described below.

(b) *Per diem rate.* The prospectively determined payment rate for each urban and rural area in each census region is comprised of the following:

(1) A routine operating component, which is divided into:

(i) A labor-related portion adjusted by the appropriate wage index; and

(ii) A nonlabor-related portion.

(2) A routine capital-related cost portion.

(3) For proprietary SNFs only, a portion that is based on the return on owner's equity related to routine cost, applicable only for services furnished before October 1, 1993.

(c) *Adjustment for cost reporting period.* (1) If a facility has a cost reporting period beginning after the beginning of the Federal fiscal year, the intermediary increases the labor-related and nonlabor-related portions of the prospective payment rate that would otherwise apply to the SNF by an adjustment factor. Each factor represents the projected increase in the market basket index for a specific 12-month period. The factors are used to account for inflation in costs for cost reporting periods beginning after October 1. Adjustment factors are published in the annual notice of prospectively determined payment rates described in § 413.320.

(2) If a facility uses a cost reporting period that is not 12 months in duration, the intermediary must obtain a special adjustment factor from HCFA for the specific period.

(d) *Limitation of prospectively determined payment rate.* The per diem prospectively determined payment rate for an SNF, excluding capital-related costs and excluding return on equity for services furnished prior to October 1, 1993, may not exceed the individual SNF's routine service cost limit. Under § 413.30, the routine service cost limit is the limit determined without regard to exemptions, exceptions, or retroactive adjustments, and is the actual limit in effect when the provider elects to be paid a prospectively determined payment rate.

§ 413.316 Determining payment amounts: Ancillary services.

Ancillary services are paid on the basis of reasonable cost in accordance with section 1861(v)(1) of the Act and § 413.53.

§ 413.320 Publication of prospectively determined payment rates or amounts.

At least 90 days prior to the beginning of a Federal fiscal year to which revised prospectively determined payment rates are to be applied, HCFA publishes a notice in the **Federal Register**:

(a) Establishing the prospectively determined payment rates for routine services; and

(b) Explaining the basis on which the prospectively determined payment rates are calculated.

§ 413.321 Simplified cost report for SNFs.

SNFs electing to be paid under the prospectively determined payment rate system may file a simplified cost report.

The cost report contains a simplified method of cost finding to be used in lieu of cost methods described in § 413.24(d). This method is specified in the instructions for Form HCFA–2540S, contained in sections 3000–3027.3 of part 2 of the Provider Reimbursement Manual. This form may not be used by hospital-based SNFs or SNFs that are part of a health care complex. Those SNFs must file a cost report that reflects the shared services and administrative costs of the hospital and any other related facilities in the health care complex.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance).

Dated: March 29, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: May 24, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–13506 Filed 6–7–94; 8:45 am]

BILLING CODE 4120–01–P

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1002

[Ex Parte No. 246 (Sub-No. 12)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—1994 Update

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to adopt the 1994 User Fee Update and revise its fee schedule in compliance with the regulatory requirement that its fees be updated annually. Several new fee items are proposed. In addition, the Commission proposes to realign and clarify some fee items and to adopt fee policy changes which will improve the Commission's user fee program.

DATES: Comments on this proposal are due July 8, 1994.

ADDRESSES: Send an original and 15 copies of comments referring to Ex Parte No. 246 (Sub-No. 12) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, (202) 927–5493 or for costing questions David T. Groves, (202) (927–6395) or John C. Pertino, (202) 927–6229. [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Most of the proposed fee revisions result from the application of the Commission's fee update formula and the addition of new direct labor costs for processing fees and checks.

One of the most common fee items which is proposed to be increased is Fee Item (74)(i) for tariff filings. Based on the fee update process and addition of fee and check processing costs, the fee would increase to $13.00. In addition, a special assessment of $2.16 will cover the cost of the Commission's new tariff optical imaging system and should be added to the fee item cost. Therefore, the Commission proposes to increase the tariff filing fee to $15.00.

In addition, the Commission is proposing to modify the fees for previously capped rail finance, abandonment, and exemption proceedings based on a current cost study. However, the Commission is deferring any increases in the capped fees for rail finance petitions for exemption and complaints and complaint-type declaratory order proceedings until next year, because the costs of those fee items are still under study.

The Commission also is proposing to adopt new fee items for accounting interpretations, operational interpretations, extensions of temporary authority, special docket proceedings involving sums of less than $25,000, requests for pleadings lists, the Practitioners' Exam information package, Uniform Railroad Costing System (URCS) software and information, and faxed copies of operating authority.

The fee policy changes proposed will allow the Commission: (1) To accept foreign checks payable in U.S. currency; (2) to update user fees more than once a year; and (3) to charge for publications.

The Commission believes these fee changes will not have a significant economic impact on a substantial number of small entities because the Commission's regulations provide for waiver of filing fees for those entities which can make the required showing of financial hardship. The proposed fee policy changes will not have a significant economic impact on a substantial number of small entities because those changes only involve minor revisions of the Commission's user fee policy.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: May 31, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Morgan.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is proposed to be amended as follows:

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701 and 49 U.S.C. 10321.

2. Section 1002.1 is proposed to be amended by revising paragraphs (a), (b), (c), (d), and (e)(1) and the chart in paragraph (f)(6) to read as follows:

§ 1002.1 Fees for records search, review, copying, certification, and related services.

* * * * *

(a) Certificate of the Secretary, $9.00.

(b) Service involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of $23.00 per hour.

(c) Service involved in checking records to be certified to determine authenticity, including clerical work etc., incidental thereto, at the rate of $16.00 per hour.

(d) Electrostatic copies of tariffs, reports, and other public documents, at the rate of $.70 per letter size or legal size exposure. A minimum charge of $5.00 will be made for this service.

(e) * * *

(1) A fee of $38.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

* * * * *

(f) * * *

(6) * * *

Grade	Rate
GS–1	$6.74
GS–2	7.33
GS–3	8.27
GS–4	9.28
GS–5	10.38
GS–6	11.57
GS–7	12.86
GS–8	14.24

Grade	Rate
GS–9	15.73
GS–10	17.32
GS–11	19.03
GS–12	22.81
GS–13	27.12
GS–14	32.05
GS–15 and over	37.70

* * * * *

3. Section 1002.2 is proposed to be amended by revising paragraphs (a)(3) and (f) to read as follows:

§ 1002.2 Filing fees.

(a) * * *

(3) Fees will be payable to the Interstate Commerce Commission by a check payable in United States currency drawn upon funds deposited in a United States or foreign bank or other financial institution, money order payable in United States' currency, or credit card (VISA or MASTERCARD).

* * * * *

(f) Schedule of filing fees.

Type of proceeding	Fee
Part I: Non-Rail Applications for Operating Authority or Exemptions:	
(1) An application for motor carrier operating authority; a certificate of registration including a certificate of registration for certain foreign carriers; broker authority; water carrier operating or exemption authority; or household goods freight forwarder authority.	$300
(2) A fitness-only application for motor common carrier authority under 49 U.S.C. 10922(b)(4)(E) or motor contract authority under 49 U.S.C. 10923(b)(5)(A) to transport food and related products.	150
(3) A petition to interpret or clarify an operating authority under 49 CFR 1160.66	2,800
(4) A request seeking the modification of operating authority only to the extent of making a ministerial correction, when the original error was caused by applicant, a change in the name of the shipper or owner of a plant site, or the change of a highway name or number.	50
(5) A petition to renew authority to transport explosives under 49 U.S.C. 10922 or 10923	200
(6) An application to remove restriction or broaden unduly narrow authority	300
(7) An application for authority to deviate from authorized regular-route authority	150
(8) An application for motor carrier or water carrier temporary authority under 49 U.S.C. 10928	100
(9) An application for motor carrier emergency temporary authority under 49 U.S.C. 10928(c)(1)	100
(10) An extension of the time period during which an outstanding application for temporary or emergency temporary authority as defined in 49 U.S.C. 10928 may continue.	26
(11) Request for name change of carrier, broker, or household goods freight forwarder	13
(12) A notice required by 49 U.S.C. 10524(b) to engage in compensated intercorporate hauling including an updated notice required by 49 CFR 1167.3.	150
(13) A notice of intent to operate under the agricultural co-operative exemption in 49 U.S.C. 10526(a)(5)	70
(14) [Reserved]..	
(15) A joint petition to substitute applicant in a pending operating rights proceeding	30
(16) [Reserved].	
Part II: Non-Rail Proceedings to Discontinue Transportation:	
(17) A notice or petition to discontinue ferry service under 49 U.S.C. 10908	11,900
(18) A petition to discontinue motor carrier of passenger transportation in one state	1,000
(19) [Reserved].	
Part III: Non-Rail Applications or Proceedings to Enter Upon a Particular Financial Transaction or Joint Arrangement:	
(20) An application for the pooling or division of traffic	2,300
(21) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor or water carrier or carriers under 49 U.S.C. 11343.	1,100
(22) An application for approval of a non-rail rate association agreement 49 U.S.C. 10706	14,500
(23) An application for approval of an amendment to a non-rail rate association agreement-	
(i) Significant amendment	2,400
(ii) Minor amendment	50
(24) An application for temporary authority to operate a motor or water carrier. 49 U.S.C. 11349	250
(25) An application to transfer or lease a certificate or permit, including a certificate of registration, and a broker's license under 49 U.S.C. 10926, or a transfer of a water carrier exemption authorized under 49 U.S.C. 10542 and 10544.	300
(26) [Reserved].	
(27) A petition for exemption under 49 U.S.C. 11343(e)	300
(28)–(32) [Reserved].	
Part IV: Rail Licensing Proceedings other than Abandonment or Discontinuance Proceedings:	
(33):	
(i) An application for a certificate authorizing the construction, extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901.	3,800
(ii) Notice of exemption under 49 CFR 1150.31–1150.35	950
(iii) Petition for exemption under 49 U.S.C. 10505	3,000
(34) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(i)	4,600
(35) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b(1)(A)(ii)	2,600
(36)–(37) [Reserved]	
Part V: Rail Abandonment or Discontinuance of Transportation Services Proceedings:	
(38):	
(i) An application for authority to abandon all or a portion of a line of railroad or discontinue operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the North East Rail Service Act [Subtitle E of Title XI of Pub. L. 97–35], bankrupt railroads, or exempt abandonments under 49 CFR 1152.50).	11,600
(ii) Notice of an exempt abandonments or discontinuances under 49 CFR 1152.50	1,900
(iii) A petition for exemption under 49 U.S.C. 10505	3,300
(39) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by Consolidated Rail Corporation pursuant to North East Rail Service Act.	250
(40) Abandonments filed by bankrupt railroads. 49 CFR 1152.40	950

Type of proceeding	Fee
(41) [Reserved].	
(42) A notice or petition to discontinue passenger train service	11,800
(43) [Reserved].	
Part VI: Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement:	
(44) An application for use of terminal facilities or other applications under 49 U.S.C. 11103	9,900
(45) An application for the pooling or division of traffic. 49 U.S.C. 11342	5,400
(46) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11343:	
(i) Major transaction	195,200
(ii) Significant transaction	39,000
(iii) Minor transaction	3,200
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	900
(v) Responsive application	3,200
(vi) Petition for exemption under 49 U.S.C. 10505	3,625
(47) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11343:	
(i) Major transaction	195,200
(ii) Significant transaction	39,000
(iii) Minor transaction	3,200
(iv) A notice of an exempt transaction under 49 CFR 1180.2(d)	700
(v) Responsive application	3,200
(vi) Petition for exemption under 49 U.S.C. 10505	3,625
(48) An application to acquire trackage rights over, joint ownership in, or joint use of any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11343:	
(i) Major transaction	195,200
(ii) Significant transaction	39,000
(iii) Minor transaction	3,200
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	650
(v) Responsive application	3,200
(vi) Petition for exemption under 49 U.S.C. 10505	3,625
(49) An application of a carrier or carriers to purchase, lease or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11343:	
(i) Major transaction	195,200
(ii) Significant transaction	39,000
(iii) Minor transaction	3,200
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	750
(v) Responsive application	3,200
(vi) Petition for exemption under 49 U.S.C. 10505	3,625
(50) An application for a determination of fact of competition. 49 U.S.C. 11321(a)(2) or (b)	39,000
(51) An application for approval of a rail rate association agreement. 49 U.S.C. 10706	36,700
(52) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706:	
(i) Significant amendment	6,800
(ii) Minor amendment	50
(53) An application for authority to hold a position as officer or director. 49 U.S.C. 11322	400
(54):	
(i) An application to issue securities; an application to assume obligation or liability in respect to securities of another; an application or petition for modification of an outstanding authorization; or an application for competitive bidding requirements of Ex Parte No. 158, under 49 CFR part 1175 and 49 U.S.C. 11301.	1,700
(ii) Notice of an exempt transaction under 49 CFR part 1175	150
(55) A petition for exemption under 49 U.S.C. 10505 (other than a rulemaking) filed by rail carriers not otherwise covered.	1,625
(56)–(59) [Reserved].	
Part VII: Formal Proceedings:	
(60) A complaint alleging unlawful rates or practices of carriers, property brokers, or freight forwarders of household goods.	1,000
(61) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates, fares, or charges. 49 U.S.C. 10705(f)(1)(A).	4,600
(62) A petition for declaratory order:	
(i) A petition for declaratory order involving dispute over an existing rate or practice which is comparable to a complaint proceeding.	1,000
(ii) All other petitions for declaratory order	1,300
(63) Requests for nationwide and regional collectively filed general rate increases and major rate restructures accompanied by supporting cost and financial information justifying the increases.	8,100
(64) A petition for exemption from filing tariffs by bus carriers	250
(65) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	3,700
(66) Petition for review of state regulation of intrastate rates, rules, or practices filed by interstate rail carriers. 49 U.S.C. 11501.	1,000
(67) Petition for review of state regulation of intrastate rates, rules, or practices filed by interstate bus carriers. 49 U.S.C. 11501.	2,300
(68)–(71) [Reserved].	
Part VIII: Informal Proceedings:	

Type of proceeding	Fee
(72) An application for authority to establish released value rates or ratings under 49 U.S.C. 10730 (except that no fee will be assessed for applications seeking such authority in connection with reduced rates established to relieve distress caused by drought or other natural disaster).	650
(73) An application for special permission for short notice or the waiver of other tariff publishing requirements.	60
(74):	
(i) The filing of tariffs, rate schedules, contracts, and/or contract summaries, including supplements	15 per series transmitted.
(ii) Tariffs transmitted by fax	1 per page.
(75):	
(i) Special docket applications from rail and water carriers	80
(ii) Special docket application involving sums of $25,000 or less	40
(76) Informal complaint about rail rate application	300
(77):	
(i) An application for original qualification as self-insurer for bodily injury and property damage insurance (BI&PD).	3,900
(ii) An application for original qualification as self-insurer for cargo insurance	400
(78) A service fee for insurer, surety, or self-insurer accepted certificate of insurance, surety bond, or other instrument submitted in lieu of a broker surety bond.	10 per accepted certificate or other instrument in lieu of a broker surety bond.
(79) A petition for waiver of any provision of the lease and interchange regulations. 49 CFR Part 1057	400
(80) A petition for reinstatement of revoked operating authority	70
(81)–(82) [Reserved].	
(83) Petition for reinstatement of a dismissed operating rights application	400
(84) Filing of documents for recordation. 49 U.S.C. 11303 and 49 CFR 1177.3(c)	21 per document.
(85) Valuations of railroad lines in conjunction with purchase offers in abandonment proceeding	1,500
(86) Informal opinions about rate applications (all modes)	50
(87):	
(i) A railroad accounting interpretation	600
(ii) A motor carrier accounting interpretation	150
(88) An operational interpretation	750
(89)–(95) [Reserved]	
Part IX: Services:	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent	16 per delivery.
(97) Request for service or pleading list for proceedings	12 per list.
(98) Requests for copies of the 1% carload waybill sample	150
(99) Verification of surcharge level pursuant to Ex Parte No. 389, Procedures for Requesting Rail Variable Cost & Revenue Determination for Joint Rates Subject to Surcharge or Cancellation.	22 per movement verified.
(100):	
(i) Application fee for Interstate Commerce Commission Practitioners' Exam	100
(ii) Practitioners' Exam Information Package	25
(101) Uniform Railroad Costing System (URCS) software and information:	
(i) Initial PC version URCS Phase III software program and manual	25
(ii) Updated URCS PC version Phase III cost file if diskette provided by requestor	5
(iii) Updated URCS PC version Phase III cost file, if diskette provided by the Commission	10
(iv) Public requests for Source Codes to the PC version URCS Phase III	500
(v) PC version or mainframe version URCS Phase II	200
(vi) PC version or mainframe version Updated Phase II databases	25
(vii) Public requests for Source Codes to PC version URCS Phase II	1,000
(102) Faxed copies of operating authority to applicants or their representatives who did not receive a served copy.	5

4. Section 1002.3 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1002.3 Updating user fees.

(a) *Update.* Each fee established in this part shall be updated in accordance with this section at least once a year. However, any fee may be updated more than once a year, if the Commission finds that an additional update is necessary.

* * * * *

[FR Doc. 94–13907 Filed 6–7–94; 8:45 am]

BILLING CODE 7035–01–P

Notices

Federal Register
Vol. 59, No. 109
Wednesday, June 8, 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.

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Colorado Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission will convene on Thursday, June 23, 1994, from 1:30 p.m. to 3:30 p.m. at the Mile High Center, 1700 Broadway, 4th Floor Conference Room, Denver, Colorado 80200. The purpose of the meeting is to review and approve a draft report of the committee's project on the retention of minorities in Colorado higher education.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Gwendolyn A. Thomas or William F. Muldrow, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 24, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–13820 Filed 6–7–94; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 940548–4148]

Annual Capital Expenditures Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with title 13, United States Code, sections 182, 224, and 225, I have determined that 1993 Annual Capital Expenditures data from a comprehensive source are needed by various Government agencies, as well as private organizations and researchers, for measuring and analyzing economic performance. Effective with the 1993 survey, this program will provide data on capital expenditures in private nonfarm industry on a comprehensive and consistent basis. Data in the basic annual survey include value of assets for companies and total capital expenditures, capital expenditures for new versus used structures and equipment, and capital expenditures by industry activities in which companies operate. In the 1994 survey, data will include detailed information on capital expenditures by types of structures. The 1995 survey data will include detailed information about capital expenditures by types of equipment. The data are not publicly available from nongovernment or other Government sources.

FOR FURTHER INFORMATION CONTACT: Elinor Champion on (301) 763–7161.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to conduct surveys to furnish current data on subjects covered by the major censuses authorized by title 13, United States Code. This survey will provide continuing and timely national statistical data on capital expenditures for the period between economic censuses. The data collected in this survey will be within the general scope and nature of those inquires covered in the economic censuses. The Bureau of the Census will select a probability sample of private nonfarm firms in the United States to report in the survey. The sample will provide national level statistics, with measurable reliability, on capital expenditures by industry activity. We will mail report forms to the firms selected for the survey and require most firms to submit their forms 45 days after receipt. We will allow the largest firms 60 days to submit their forms.

This survey has been approved by the Office of Management and Budget (OMB Control Number 0607–0782) in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, DC 20233.

Based on the foregoing determination, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: May 17, 1994.

Harry A. Scarr,

Acting Director, Bureau of the Census.

[FR Doc. 94–13832 Filed 6–7–94; 8:45 am]

BILLING CODE 3510–07–P

National Oceanic and Atmospheric Administration

[I.D. 052494B]

Endangered Species; Permits

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

ACTION: Issuance of Incidental Take Permit 908 to the Idaho Department of Fish and Game (P503K).

On November 26, 1993, notice was published (58 FR 62328) that an application (P503K) had been filed by Idaho Department of Fish and Game (IDFG), to take listed species of Snake River salmon 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 take of listed species would occur incidental to IDFG's resident fish stocking program.

Notice is hereby given that on May 25 1994, as authorized by the provisions of the ESA, NMFS issued Permit 908 for the above taking, subject to certain conditions set forth therein.

Issuance of this permit, as required by the ESA, was based on a finding that: (1) The taking will be incidental; (2) the applicant will, to the maximum extent practicable, monitor, minimize, and mitigate the impacts of such taking; (3) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (4) there are adequate assurances that the conservation plan will be funded and implemented, including any measures required by the Assistant Administrator.

The application, permit, and supporting documentation are available

for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226 (301–713–2322); and

Environmental and Technical Services Division, NMFS, NOAA, 911 North East 11th Ave., Room 620, Portland, OR 97232 (503-230-5400).

Dated: May 25, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–13822 Filed 6–7–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

June 3, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: June 10, 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 certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 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.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 3, 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 June 10, 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	
219	6,351,695 square meters.
345	338,203 dozen.
359–C/659–C [2]	698,877 kilograms.
359–S/659–S [3]	686,219 kilograms.
445/446	60,099 dozen.
604–A [4]	276,114 kilograms.
625/626/627/628/629.	19,925,949 square meters.
645/646	523,345 dozen.
Group II	
200, 201, 218, 220, 222-224, 226, 227, 229, 237, 239, 330, 332, 333, 349, 350, 352–354, 359–O [5], 360–363, 369–O [6], 400, 410, 414, 431, 432, 433, 434, 435, 436, 438, 439, 440, 442, 444, 447, 448, 459, 464, 465, 469, 603, 604–O [7], 606, 607, 621, 622, 624, 630, 632, 633, 643, 644, 649, 650, 652–654, 659–O [8], 665, 666, 669–O [9], 670–O [10], 831–836, 838, 839, 840, 842–846, 850–852, 858 and 859, as a group.	73,332,884 square meters equivalent.
Subgroup in Group II	
400, 410, 414, 431, 432, 433, 434, 435, 436, 438, 439, 440, 442, 444, 447, 448, 459, 464, 465 and 469, as a group.	2,690,640 square meters equivalent.

[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.

[4] Category 604–A: only HTS number 5509.32.0000.

[5] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025; 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.2010, 6211.11.2020, 6211.12.3003 and 6211.12.3005 (Category 359–S).

[6] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[7] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A)

[8] Category 659–O: all HTS numbers except 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, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[9] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[10] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

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,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–13936 Filed 6–7–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

June 3, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 10, 1994.

FOR FURTHER INFORMATION CONTACT: Anne Novak, 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) 927–6718. 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 Categories 350 and 351/651 are being increased by application of swing, reducing the Fabric Group to account for the increases.

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 59 FR 5394, published on February 4, 1994.

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.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 3, 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 January 31, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Turkey and exported during the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994.

Effective on June 10, 1994, you are directed to amend the directive dated January 31, 1994 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 the Republic of Turkey:

Category	Adjusted twelve-month limit [1]
219, 313, 314, 315, 317, 326, 617, 625, 626, 627 and 628, as a group.	129,074,047 square meters of which not more than 30,211,029 square meters shall be in 219; 36,924,591 square meters shall be in 313; 21,483,398 square meters shall be in 314; 28,868,318 square meters shall be in 315; 30,211,029 square meters shall be in 317; 3,356,780 square meters shall be in 326; 20,140,687 square meters shall be in 617; 3,356,780 square meters shall be in 625; 3,356,780 square meters shall be in 626; 3,356,780 square meters shall be in 627; 3,356,780 square meters shall be in 628.
Limits not in a group:	
350	426,436 dozen.
351/651	681,798 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

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,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–13937 Filed 6–7–94; 8:45 am]

BILLING CODE 3510–DR–F

Amendment of Export Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

June 3, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: June 15, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and

Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The existing export licensing system between the Governments of the United States and the People's Republic of China is being amended to require an export visa for part-Categories 224–V (cotton and man-made fiber woven pile fabric) and 224–O (all other fabric in Category 224), produced or manufactured in China and exported from China on and after June 15, 1994. Goods in Category 224 which are exported during the period June 15, 1994 through July 15, 1994, shall be permitted entry if visased as 224 or the correct part category.

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 49 FR 7269, published on February 28, 1984; 52 FR 28741, published on August 3, 1987; and 59 FR 3847, published on January 27, 1994.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 3, 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 February 23, 1984, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China for which the Government of the People's Republic of China has not issued an appropriate visa.

Effective on June 15, 1994, you are directed to amend further the February 23, 1984 directive to require an export visa for shipments of cotton and man-made fiber textile products in part-Categories 224–V [1] and 224–O [2], produced or manufactured in China and exported from China on and after June 15, 1994. Merchandise in Category 224 which is exported from China during the period June 15, 1994 through July 15, 1994 may be visaed as Category 224 or the correct part-category. Merchandise in Category 224 which is exported on and after July 15, 1994 must be visaed as Category 224–V or 224–O.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa or replacement visa must be obtained.

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,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–13935 Filed 6-7-94; 8:45 am]

BILLING CODE 3510–DR–F

[1] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[2] Category 224–O: all HTS numbers in Category 224 except those in 224–V.

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 94–C0007]

Neeley Sales Company, Inc., a Corporation; Final Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Final acceptance of a Settlement Agreement.

SUMMARY: The Commission has finally accepted a Settlement Agreement with Neeley Sales Company, Inc.

DATES: The Consent Order Agreement became effective on May 27, 1994.

FOR FURTHER INFORMATION CONTACT:

Dennis C. Kacoyanis, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: On January 24, 1994, the Commission provisionally accepted a Settlement Agreement and Order in the matter of the Neeley Sales Company, Inc., and published it for comment in the **Federal Register** on January 31, 1994 (55 FR 4269). The Commission received three comments on the Provisional Settlement Agreement and Order. After considering those comments, the Commission voted on May 26, 1994 to finally accept the Agreement. The text of the Agreement and the Order were published in the January 31, 1994 **Federal Register.**

Dated: June 2, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Order

Upon consideration of the Settlement Agreement entered into between respondent Neeley Sales Company, Inc., a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Neeley Sales Company; and it appearing that the settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted; and it is

Further Ordered, that upon final acceptance of the Settlement Agreement, Neeley Sales Company, Inc. shall pay to the Commission a civil penalty in amount of ten thousand and 00/100 dollars ($10,000.00) in two (2) installment payments of five-thousand and 00.100 dollars ($5,000.00). The first installment payment of five-thousand and 00/100 dollars ($5,000.00) shall be due twenty (20) days after service of the Final Order of the Commission accepting the Settlement Agreement. The second installment payment of five-thousand and 00.100 dollars ($5,000.00) is due and payable no later than 365 days after service of the Final Order. For any payment that is overdue less than thirty (30) days, Neeley Sales Company, Inc. shall be charged interest, payable to the Commission, in accordance with the rate and method of calculation set forth in 28 U.S.C. 1961 (a) and (b), during the period that the payment is overdue. Any payment that is thirty (30) days or more overdue shall cause the entire outstanding balance to become due immediately and payable with interest in accordance with 28 U.S.C. 1961 (a) and (b) as set forth above, during the period that the outstanding balance is overdue. Payment of the full amount of the civil penalty shall settle fully the staff's allegations set forth in paragraph five through ten in the Settlement Agreement that Neeley Sales Company, Inc. or Dennis Neeley, individually, or any of Neeley's officers, agents, or employees has violated the FHSA.

Provisionally accepted and Provisional Order issued on the 24th day of June 1994.

By order of the Commission:

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Upon consideration of the Settlement Agreement between Neeley Sales Company, Inc. and the staff and the comments received on the provisional

Settlement Agreement and Order, the Consumer Product Safety Commission finally accepts the Settlement Agreement.

Final Order issued on the 1st day of June 1994

By order of the Commission:

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94–13929 Filed 6–7–94; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program

ACTION: Notice.

In accordance with Title 10, U.S.C. 2902 the Strategic Environmental Research and Development Program (SERDP) 1994 Strategic Investment Plan is available for review by the public for a period of 30 days from the date of this notice. Reviews shall be by appointment only, by calling Ms. Amy Levine at (703) 525–9400 ext 575 and conducted at the SERDP Program Office in the spaces of LABAT–ANDERSON Incorporated, 2200 Clarendon Blvd, Suite 900, Arlington, VA 22201. Additional copies of the Strategic Investment Plan are not available.

Dated: June 2, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–13815 Filed 6–7–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary of the Army

Final Environmental Impact Statement for Mission Expansion/Multiple Construction at Camp Grayling, MI

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: This plan facilitates the training of Reserve Component Forces of Camp Grayling to better prepare them for mission accomplishment by providing the best training facilities possible. The FEIS analyzes the alternatives of: Implement Master Plan projects as proposed, Implement Master Plan projects at different locations and the No Action Alternative (Do not implement Master Plan projects).

Within each alternative, the installation Master Plan projects are: Construction of two logistic support facilities, and construction to upgrade an existing Armor training facility to a Multi-Purpose Range Complex-Heavy-Reduced (MPRC–H–R). The Draft Environmental Impact Statement proposed implementation of 20 projects, 13 of which were deleted due to public comment, budget reductions, or became unnecessary in the installation Master Plan; and 4 projects were completed under separate environmental documentation.

There will be a 30-day public review period for the FEIS prior to making a final decision on implementation of Installation Master Plan projects.

ADDRESSES: Copies of the FEIS will be mailed to individuals who participated in the public comment process or who requested a copy. Copies will also be sent to city, county, federal officials, civic organizations, and public libraries. Individuals not currently on the mailing list may obtain a copy of the FEIS by request.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory N. Huntington, Environmental Manager, Michigan Department of Military Affairs, 2500 S. Washington Avenue, Lansing, Michigan 48913–5101.

Dated: June 1, 1994.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety, and Occupational Health) OASA (IL&E).

[FR Doc. 94–13839 Filed 6–7–94; 8:45 am]

BILLING CODE 3710–08–M

Department of the Army

Availability for Exclusive or Partially Exclusive Licensing of U.S. Patent No. 5,176,466, Revetment Unit and Method for Protecting Shoreline or Waterway

AGENCY: U.S. Army Engineer Waterways Experiment Station, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of the availability of U.S. Patent No. 5,176,466 for licensing. This patent is assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

DATES: Proposals for an exclusive or partially exclusive license must be submitted within 120 days following publication of this notice in the **Federal Register** (October 6, 1994).

ADDRESSES: United States Army Corps of Engineers, Waterways Experiment Station, ATTN: CEWES–CT–C, Vicksburg, MS 39180–6199.

FOR FURTHER INFORMATION CONTACT: Ms. Tina Wright, (601) 634–4317.

SUPPLEMENTARY INFORMATION: This patent concerns a revetment unit for protecting shoreline or waterway embankments from erosion caused by waves or currents. The object of the invention is to provide a revetment unit which has a simplified design and enhanced interlocking capabilities when arranged with other identical units into a protective matrix covering. The unit is generally L-shaped, has a low center of gravity for stability, and maximizes area covered per unit weight. The units form a matrix which has sufficient porosity to allow drainage and prevent excessive water pressure under the units. A model revetment formed from the units has been tested in a laboratory wave flume at the U.S. Army Engineer Waterways Experiment Station. The units have demonstrated a high stability coefficient when subjected to the action of water waves.

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 as represented by the U.S. Army Engineer Waterways Experiment Station wishes to license the above-mentioned technology in an exclusive, or partially exclusive manner to any party interested in manufacturing and selling revetment units covered by the above-mentioned patent.

Each interested party is requested to submit a proposal for an exclusive or a partially exclusive license within 120 days of publication of this notice in the **Federal Register**. The proposals for manufacturing and selling the revetment units covered by the above mentioned patent will be evaluated using the following criteria:

1. Demonstrated ability to manufacture and market revetment units.

2. Presentation of applicants plan to manufacture and market revetment units employing the patented technology.

3. Capability of manufacturing and installing revetment units.

4. Time required to bring item to market and production rate.

5. License Fee and Royalty.

6. Technical Capability.

7. Small Business.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–13892 Filed 6–7–94; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Notice of Public Hearing for the Draft Environmental Impact Statement for the Realignment of Naval Training Center, Great Lakes, IL

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for the realignment of Naval Training Center Great Lakes, Illinois.

In response to the recommendations of the 1993 Defense Base Closure and Realignment Commission (BRAC–93) and to legislative requirements in the 1990 Base Closure and Realignment Act (Pub. L. 101–510), Naval Training Center (NTC) Orlando, Florida; NTC San Diego, California; Naval Technical Training Center (NTTC) Treasure Island; and Combat Systems Technical Schools Command (CSTC) Mare Island are to be closed and some of the Service School Command (SSC) training is to be realigned and collocated at NTC Great Lakes, Illinois. The proposed action consists of renovations to existing buildings within the SSC, some new construction and increases in student and instructor personnel over current levels. Also, 240 new family housing units are to be constructed at Naval Air Station Glenview, which is closing.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and the media. A limited number of single copies are available at the address listed at the end of this notice for public review and comment. A public hearing to inform the public of

The public hearing will be conducted by the Navy. Federal, state, local agencies, and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, oral comments should not exceed five minutes. Longer statements should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement.

All written statements must be postmarked by July 11, 1994, to become part of the official record.

Additional information concerning this notice may be obtained by contacting Mr. Robert Teague (Code 203RT), Southern Division, Naval Facilities Engineering Command, P.O. Box 190010, North Charleston, South Carolina 29419–9010, telephone (803) 743–0785.

Dated: June 3, 1994.

Lewis T. Booker, Jr,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–13871 Filed 6–7–94; 8:45 am]

BILLING CODE 3810–AE–M

Government-Owned Invention; Availability for Licensing

AGENCY: Department of the Navy, Defense.

ACTION: Notice of availability of invention for licensing.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Request for copies of patent application cited should be directed to the Office of Naval Research (Code 00CC3), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the application serial number

FOR FURTHER INFORMATION CONTACT: Mr R.J. Erickson, Staff Patent Attorney, Office of Navy Research (ONR 00CC3), 800 North Quincy Street, Arlington, Virginia 22217–5600, telephone (703) 696–4001.

Patent Application 07/983,990: REMOVING THE EFFECTS OF ACOUSTIC RINGING AND REDUCING TEMPERATURE EFFECTS IN THE DETECTION OF EXPLOSIVES BY NQR; FILED NOVEMBER 30, 1992.

Dated: May 31, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer

[FR Doc. 94–13870 Filed 6–7–94; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; 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 Naval Research and Development will meet on June 21 and 22, 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 5:00 p.m. on June 21 the second session will commence at 8:30 a.m. and terminate at 5:00 p.m. on June 22, 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 missions, functions, processes, and core competencies of the Naval Research and Development (R&D) infrastructure, applying the following criteria: relevance to the Naval customer; criticality to the Department of the Navy (critical technology interests); integration of R&D; interaction with industry/academia; in-house cost and efficiency vs. out-of-house; and ability to meet Naval needs of the twenty-first century.

The meeting will primarily be devoted to working sessions during which panel members will begin to formulate a report outline and out briefing of their findings and conclusions. The working sessions will include discussions relating to laboratory management and funding; 1995 Base Realignment and Closure; Program Executive Officer interface with R&D; future naval technology requirements; and sub-panel reports of laboratory visits.

For further information concerning this meeting contact: Captain Michael Brinkac, USN, Office of Naval Research Ballston Center Tower One, 800 North Quincy Street, Arlington, VA 22217-5660, Telephone Number: (703) 696-4870.

Dated: June 3, 1994

Lewis T. Booker, Jr.

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94-13868 Filed 6-7-94; 8:45 am]

BILLING CODE 3810-AE-F

Intent To Grant Partially Exclusive Patent License; Poiesis Research

AGENCY: Department of the Navy.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Poiesis Research a revocable, nonassignable, partially exclusive license in the United States to practice the Government-owned invention described in U.S. Patent Application Serial No. 08/186,058 entitled "Acoustic Attenuation and Vibration Damping Materials" filed January 25, 1994 in

which the Government owns an undivided interest.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research (ONR 00CC3), Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR 00CC3), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: May 31, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–13869 Filed 6–7–94; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Golden Field Office; Cooperative Agreement Award to Electric Power Research Institute (EPRI)

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 make a financial assistance award to the Electric Power Research Institute (EPRI) to design, build and test a 1 meter and a 30 meter High-Temperature Superconducting underground transmission cable.

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: John W. Meeker, Contract Specialist, or at 303/275–4748. The Contracting Officer for this action is Dr. Paul K. Kearns.

SUPPLEMENTARY INFORMATION: The EPRI application was initially submitted in response to a Department of Energy solicitation for financial assistance application titled "Superconductivity Partnership Initiative" (SPI) dated January 19, 1993. While the application submitted by EPRI was technically acceptable, it was considered not to merit a competitive award under the limited funding available for that solicitation. That solicitation was closed on April 19, 1993, and three awards were made. EPRI now has reworked its original application into the current proposal resulting in the government's cost share being reduced, and the program being extended from two (2) to four (4) years. This proposal was then resubmitted to DOE as an application for a non-competitive financial assistance award. A reduction in the government's cost share allowed this project to fit within the programs budget. The lengthening of the time schedule from 2 to 4 years allowed the project to move at a slower pace while achieving the same objective.

The proposed project will contribute to the DOE mission of "* * * providing the scientific foundation and technology * * * necessary to achieve efficiency in energy use * * *" by developing an energy efficient underground transmission cable using High-Temperature Superconducting (HTS) materials. Superconductivity is defined as a disappearance of electrical resistance in a substance. This occurs in common electrical conductors at or very near a temperature of zero (0) Kelvin or absolute zero (−273.15°C or −459.67°F). High Temperature Superconductors, discovered in 1986, have superconducting characteristics at temperatures up to 77 Kelvin (−196°C or −321°F). The main advantage of an HTS cable is that it can carry more current than conventional underground cables of comparable size. The underground HTS cable design implemented in this project can carry a maximum transmission current or about 2500 amperes. This power capacity matches the typical maximum current carried by an overhead line. The proposed HTS cable will have a higher power capacity, as well as lower operating losses than conventional cable systems. The proposed project fits into the SPI program by developing and demonstrating HTS material applications.

The ultimate goal of this program is to develop a commercially viable HTS power transmission cable. The objective of this project is an intermediate phase, where a 30-meter prototype 115 kv HTS power cable will be manufactured and tested by conventional industry-accepted techniques. This project will conclude with the design of a 3-phase, 100-meter cable system

The probability of success is high, because the applicant, EPRI, has brought together a team, consisting of American Superconductor Co. and the Pirelli Cable Corp., that has unique expertise in each area of concern as follows:

EPRI

Was founded in 1973 to enable the United States electric power industry to pool resources and conduct research and development that will benefit utilities, their customers and society. EPRI's Underground Transmission Program has participated in every major innovation in underground transmission for nearly two decades. EPRI also has short and long term transmission testing facilities at the EHV Cable Test Center in Yonkers, New York, and the Underground Cable Test Facility in Waltz Mill, Pennsylvania. These test centers have become the preferred proving ground for new cable technologies.

American Superconductor Corp

Is a United States concern primarily involved in the development and manufacturing of commercially viable HTS products, including electromagnetic coils, electromagnets, and multistrand conductors for electric power and magnet systems such as motors, generators and power transmission cables.

Pirelli Cable Corp

A United States based manufacturing, marketing and research affiliate of the international Pirelli group of companies, is the United States leading cable supplier. Pirelli started HTS research activity in 1987 in Milan to investigate the performance of HTS materials, develop ways to incorporate them into practical wires, characterize wires for the required properties, and study the technical and economic potential related to their use, particularly in power cables. Work under this proposal will be conducted at the Pirelli Research and Development Center in Lexington, South Carolina, which has been involved in developing new technologies in the field of wire and cable. Integrated within the worldwide Pirelli Research, Development and Engineering, this center is in an excellent position to develop prototype cables.

The project team that has been assembled by the Electric Power Research Institute (EPRI) is uniquely qualified to develop a high temperature superconducting (HTS) cable for the U.S. Utility industry. The vertically integrated project team consists of the leading U.S. HTS wire maker (American Superconductor Corporation), the country's leading cable supplier (Pirelli Cable Corporation) and the utility industry's research organization (EPRI—supported by 700 member utilities).

The project will be overseen by EPRI's Underground Transmission Task Force which consists of 30 cable experts drawn from EPRI's member utilities. This interaction with the utility industry will facilitate technology

transfer and commercialization and is unique to EPRI audits HTS cable project team.

The project team has been working together for the past two years. In 1992, EPRI contracted with Pirelli to develop detailed designs of a manufacturing plan for constructing HTS cable. Pirelli's interaction with American Superconductor dates back to 1990 when they initiated a contract to develop HTS wire that could be used for transmission cable.

EPRI's EHV Laboratory and Walts Mill Test Center (where the 30-meter HTS cable will be tested) have been the proving grounds for all new cable innovations introduced in this country during the last 20 years. These centers will be utilized for testing the HTS cable, and will lend a great deal of credibility and confidence in the performance of the system.

The personnel within the team are uniquely qualified to develop an HTS cable system. The facilities that are/will be available to the EPRI lead team will provide manufacturing ability and will provide the utilities with confidence in the testing and demonstration of the cable.

The major public benefit to be derived from this project is providing a more economical, efficient and versatile underground transmission cable. EPRI has identified three applications for an HTS cable system: 1) Retrofitting existing underground circuits, 2) one-to-one transition from an overhead line to an underground cable system, and 3) long-distance underground transmission.

(1) Retrofit Existing Underground Circuits: About 20% of the underground transmission cables in the U.S. are nearing the end of their planned 30 to 40 year design life and may require replacement over the next decade. utilities could increase the power transmission capacity of these systems by 50 to 500% by retrofitting them with HTS cables.

(2) One-to-One Transition from an Overhead Line to an Underground Cable System: Utilities typically install two or more underground circuits to match the capacity of a single overhead line. Since a single HTS circuit can match the power rating of an overhead line, it will enable utilities to cut their excavation and installation costs (which account for up to 70% of the total capital costs of a new underground cable).

(3) Long-Distance Underground Transmission: The difficulty of acquiring overhead rights-of-way may force utilities to consider installing longer underground transmission cables HTS cable systems will carry higher currents and will require much less compensation than comparable underground installations, and could operate in lengths comparable to overhead lines.

In addition to the above uses, this project will advance the U.S. competitiveness in a highly sought after market. An annual installation of 50 Kilometers of cable would create an HTS cable market of approximately $75 million per year. Other countries, namely Japan and Germany, are actively working to develop HTS applications/products to capture this market.

The development and demonstration of a HTS transmission cable system fits comfortably within the direction and objectives of DOE's Superconducting Partnership Initiative program. Through the Superconductivity Partnership Initiative, three awards have been made to industry teams to develop and demonstrate applications for HTS material. The initial EPRI proposal was considered meritorious but funding of that initiative limited awards to the three that were made. However, with the additional refinements contained in the EPRI proposal, DOE can now propose funding this application at $300,000 per fiscal year.

Competition for this effort would have a significant adverse impact on the continuity and completion of the proposed activity. Ten applications were received through the Superconductivity Partnership Initiative solicitation. EPRI had submitted the only application that proposed developing a transmission cable. This industry team is uniquely qualified for this effort since EPRI represents the U.S. power industry's research organization, American Superconductor Corp. is the leading U.S. manufacture of HTS conductors and Pirelli Cable is the country's leading cable supplier. Therefore, we do not believe that a solicitation to build and test an HTS transmission cable would generate much interest or be cost effective.

Issued in Golden, CO, on April 25, 1994.

John W. Meeker,

Chief, Procurement, Golden Field Office.

[FR Doc. 94–13922 Filed 6–7–94; 8:45 am]

BILLING CODE 6450–01–M

Secretary of Energy Advisory Board Task Force on Alternative Futures for the DOE National Laboratories

AGENCY: Department of Energy.

ACTION: Notice of open public meeting.

SUMMARY: Notice is hereby given of the following open public meeting of the Task Force:

Name: Secretary of Energy Advisory Board Task Force on Alternative Futures for the DOE National Laboratories.

Date and Time: Thursday, June 23, 1994, 9 a.m.–4 p.m.

Place: Capitol Hilton, Federal Room "B", 16th & K Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Dr. Michele Donovan, Task Force Director, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092.

SUPPLEMENTARY INFORMATION: Purpose of the Task Force: The Secretary of Energy Advisory Board Task Force on Alternative Futures of the DOE National Laboratories was established to serve as the Secretary of Energy's primary mechanism for examining options for change within the laboratories and proposing specific alternatives for directing the scientific and engineering resources of the laboratories toward the economic, environmental, defense, scientific and energy needs of the Nation. The Task Force was established under the Secretary of Energy Advisory Board Charter and consists of 21 members, including Board members and outside experts. The Task Force is expected to report in February 1995.

Tentative Agenda

9 a.m.—Opening Remarks by Chairman Bob Galvin
9:15 a.m.—Discussion of Headquarters/Field Offices Laboratories Roles with DOE Officials
10:15 a.m.—Break
10:30 a.m.—DOE Labs' Contributions to DoD—Deputy Secretary of Defense, John Deutch
11:30 a.m.—Public Comment
Noon—Break for Lunch
1 p.m.—Task Force Discussion
4 p.m.—Adjourn.

A final agenda will be available at the meeting.

Public Participation

The Task Force welcomes the public's input and written representations. If business permits, members of the public may be heard in the order in which their requests are received and the five minute rule will ordinarily apply. The Task Force will make every effort to hear the views of interested parties. Written comments addressed to the Task Force are urged, and may be submitted to Dr. Michele Donovan, Task Force Director, Secretary of Energy of Advisory Board, 1000 Independence Avenue, SW., 7B–198/HR–2, Washington, DC 20585. Written comments received by Monday, June 20, 1994, will be made available to Task Force members prior to the meeting.

Minutes

Minutes of the meeting will be available for public review and copying approximately 30 days following the meeting at the Department of Energy Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Issued at Washington, DC, on June 3, 1994.

Joan Williams,

Acting Advisory Committee Management Officer.

[FR Doc. 94–13923 Filed 6–7–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. QF94–91–000]

Anheuser-Busch, Inc.; Amendment To Filing

June 2, 1994.

On May 27, 1994, Anheuser-Busch, Inc. tendered for filing a supplement to its filing in this docket.

The supplement pertains to the ownership structure and technical aspects of the facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status 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. All such motions or protests must be filed by June 20, 1994, and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13843 Filed 6–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–552–000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

June 2, 1994.

Take notice that on May 18, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue SE, Charleston, West Virginia 25314–1599, filed in Docket No. CP94–552–000 a request pursuant to sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization, under its blanket certificate issued in Docket No. CP83–76–000, to establish an additional delivery point for interruptible transportation service under part 284 of the Commission's regulations, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia states the additional delivery point in Northampton County, Pennsylvania was requested by Penn Fuel Gas Inc (PFG) for interruptible transportation service. The transportation service will be provided under Columbia's Rate Schedule ITS or it may be provided under firm capacity released by other shippers. The end use of the gas will be industrial and the new delivery point will be utilized to serve Metropolitan Edison Company's Portland Station power plant.

Pursuant to a blanket certificate issued in Docket No. CP86–240–000, Columbia states the new delivery point will have a Maximum Daily Quantity of 43,200 Dth and an Estimated Annual Quantity of 15,768,000 Dth. Since the quantities will be provided on an interruptible basis, Columbia does not expect any impact on its existing design day and annual obligations for its customers.

Columbia states $381,300 as the estimated cost for establishing the new delivery point with PFG reimbursing Columbia for the total cost, plus any gross-up for tax purposes.

Columbia proposes to revamp an existing measuring station for the increase in delivery to PFG by installing two filter separators, two turbine meter runs, flow control, remote terminal unit and a building.

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. 94–13841 Filed 6–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–93–002]

K N Interstate Gas Transmission Co.; Proposed Changes In FERC Gas Tariff

June 2, 1994.

Take notice that on May 27, 1994, K N Interstate Gas Transmission Co. (KNI), tendered for filing proposed changes to its FERC Gas Tariff in compliance with the Commission's May 24, 1994, Letter Order in these proceedings. In particular, the tariff filing reflects the revision of KNI's Account No. 858 tracker.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13844 Filed 6–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP92–446–002]

Pacific Interstate Transmission Co.; Petition

June 2, 1994.

Take notice that on May 25, 1994, Pacific Interstate Transmission Company (PITCO), 633 West Fifth Street, Los Angeles, CA 90071–2071, filed in Docket No. CP92–446–002 a petition, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207). PITCO seeks to remove a previous certificate condition, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

PITCO and Southern California Gas Company (SoCalGas) jointly petition the Commission to remove the two-year limitation in the order issued in this case on December 1, 1992 (61 FERC ¶ 61,282). The order granted a certificate

of public convenience and necessity to PITCO for sales and deliveries of natural gas to SoCalGas at Ignacio, Colorado until December 31, 1994. PITCO requests that the use of the Ignacio Delivery Point be extended for the term of PITCO's current service agreement with El Paso Natural Gas Company, which is coterminous with PITCO's gas purchase agreement with Northwest Alaskan Pipeline Company (Northwest Alaskan). Recent negotiations are expected to result in a termination date of PITCO's gas supply agreement with Northwest Alaskan on October 31, 2003.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 23, 1994, 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. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13840 Filed 6–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88–6–007]

Texas Gas Transmission Corp.; Proposed Changes In FERC Gas Tariff

June 2, 1994.

Take notice that on May 24, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with an effective date of June 1, 1994:

First Revised Sheet No. 352
First Revised Sheet No. 353

Texas Gas states that the referenced tariff sheets have been revised to reflect changes in the list of affiliated marketing companies as a result of the sale and reorganization of certain assets by Transco Energy Company.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's affected customers and interested state commissions.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13842 Filed 6–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA89–1–43–004 and RP89–39–005]

Williams Natural Gas Co.; Order Granting in Part and Denying in Part Rehearing and Rejecting Motion for Summary Judgment and Providing Notice to Colorado and Wyoming Producers of Further Proceedings

Issued June 2, 1994.

On March 17, 1994, the Missouri Public Service Commission (Missouri PSC) filed a request for rehearing of a Commission letter order issued February 15, 1994,[1] accepting certain tariff sheets and supplemental information filed by Williams Natural Gas Company (Williams), and terminating a technical conference. For the reasons discussed below, the Commission grants in part and denies in part the request for rehearing. The Commission also rejects a motion for summary judgment of one of the issues raised in the rehearing, and issues a notice of further proceedings.

Background

On March 1, 1989, Williams submitted its proposed annual adjustment to its PGA clause in Docket No. TA89–1–43–000, to be effective May 1, 1989.[2] Reflected in the PGA, *inter alia*, was $18,087,099 in payments that Williams made to its producer-suppliers to reimburse them for their payments of *ad valorem* taxes to Kansas, Colorado, and Wyoming. The producers had charged these amounts to Williams as an add-on to the ceiling prices permitted by Section 110 of the Natural Gas Policy Act (NGPA).[3] Williams reflected these amounts in its PGA as net adjustments to its unrecovered gas costs. Several protesters claimed that the *ad valorem* tax reimbursements could be contract reformation costs that should not be reflected in Williams' PGA. By order issued April 27, 1989, the Commission accepted and suspended the filing subject to a technical conference to address this and other issues, and subject to Commission "review of the additional information requested regarding *ad valorem* tax reimbursements and pricing dispute settlements."[4] The suspension order stated that these costs related to taxes assessed by the states of Kansas, Colorado, and Wyoming. On May 30, 1989, Williams filed revised tariff sheets to comply with the directives in the April 27, 1989 order.

The technical conference was held in 1989, but Staff held its report in abeyance while the issue of whether certain Kansas *ad valorem* taxes were severance taxes eligible for recovery under NGPA section 110 was being decided in another case before the Commission. In 1988, in Colorado Interstate Gas Company (CIG)[5] the U.S. Court of Appeals for the D.C. Circuit had remanded to the Commission the issue of whether the Kansas *ad valorem* tax was a severance tax qualifying under NGPA section 110 as an add-on to the maximum lawful price. On December 1, 1993, the Commission issued its order in the CIG case.[6] On remand, the Commission stated that, to determine if a tax was a "severance tax" for purposes of NGPA section 110, there had to be a systematic analysis of whether the tax is more like a severance tax on the production of gas as opposed to a personal property tax on the value of the gas remaining in the ground or on other production assets of the lease. The Commission found that the Kansas *ad valorem* taxes are not a tax on production and thus do not qualify as severance taxes recoverable under NGPA section 110. Accordingly, the Commission ordered all Kansas producers that had unlawfully charged any interstate pipeline for such taxes after the June 28, 1988 date of issuance of the Court's decision in the CIG case,

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[1] Williams Natural Gas Co., 66 FERC ¶ 61,198 (1994).

[2] Williams also filed tariff sheets in Docket No. RP88–39–000 to eliminate its standby service rates.

[3] Section 110 of the NGPA permitted producers to charge as an add-on to the maximum lawful price "State severance taxes attributable to the production of such natural gas." 15 U.S.C. 3320(a). All NGPA price ceilings were eliminated as of January 1, 1993.

[4] Williams Natural Gas Co., 47 FERC ¶ 61,114 at 61,340 (1989); reh'g 48 FERC ¶ 61,017 (1989).

[5] *Colorado Interstate Gas Co. v. FERC*, 850 F.2d 769 (DC Cir. 1988).

[6] 65 FERC ¶ 61,292 (1993); reh'g denied 67 FERC ¶ 61,209 (1994).

to repay the excess over the maximum lawful price to the pipelines, and for the pipelines to pass those refunded costs along to its customers.

Missouri PSC sought clarification of the Commission's statement in CIG that it would not require that pipelines be guarantors of refunds of the Kansas *ad valorem* taxes. Missouri PSC asked the Commission to clarify that it was not prejudging the merits of this issue in the instant Williams case. Missouri PSC argued that, because Williams' instant rates were protested and accepted subject to refund, Williams could have taken steps to protect itself, such as establishing an escrow account to ensure that it would be able to account for tax reimbursements. In the order on remand in CIG, the Commission found that this issue would be addressed in the instant proceeding, based upon the rulings in the CIG proceeding.[7]

Following the CIG order, the Commission, by the February 15, 1994 letter order, accepted Williams' revised tariff sheets in this case. The Commission also accepted the supplemental information filed by Williams on May 30, 1989, subject to Williams refunding the Kansas *ad valorem* taxes reflected in its filing according to the methodology set out in CIG, and the Commission terminated the technical conference. The Commission held that all other issues addressed in the technical conference regarding Williams' PGA are now moot, since Williams no longer has a PGA mechanism after restructuring.

Rehearing

On March 17, 1994, the Missouri PSC filed for rehearing of the February 15, 1994 letter order. Missouri PSC argues that, while the issue of the Kansas *ad valorem* taxes may have been resolved by the Commission's decision in CIG, Williams' PGA also included payments made by Williams to producers to reimburse them for Colorado and Wyoming *ad valorem* taxes. Missouri PSC argues that the issue as to whether the Colorado and Wyoming taxes are severance taxes under NGPA section 110 has never been addressed. Accordingly, Missouri PSC argues that the Commission should not have accepted the compliance tariff sheets or terminated the refund obligation in this proceeding until the Commission has determined whether Colorado and Wyoming *ad valorem* taxes were eligible for recovery under NGPA section 110.

Missouri PSC also claims that the refund methodology in CIG should not be applied here because the circumstances in the instant case differ from those in CIG. Missouri PSC contends that, in CIG, the Commission found that Kansas first sellers of gas that collected revenues in excess of the NGPA maximum lawful price as a result of the reimbursement of the Kansas taxes had to refund those amounts, with interest, to their customers, and that the pipeline was then to flow the refunds through to its customers through a lump-sum payment. Missouri PSC contends that the refund liability in CIG was contingent upon the pipelines' recovery of the subject costs from its suppliers. Missouri PSC claims that the subject tariff sheets in the instant proceeding were accepted subject to refund, and that such refund should not be contingent on Williams receiving any refunds of the costs from producers. Missouri PSC claims that it does not matter when Williams paid the related taxes to its suppliers. The issue, contends Missouri PSC, is that Williams included these taxes in its rates that are subject to refund. Accordingly, Missouri PSC argues that the Commission should order Williams to immediately refund amounts collected from its customers for the unlawful reimbursements of Kansas property taxes.

Motion

Missouri PSC also filed a motion for summary judgment in this proceeding on March 17, 1994, arguing that there is no material question of fact or law in this proceeding regarding the Kansas property taxes, and repeats the arguments made on rehearing regarding the need for immediate refunds by Williams of amounts it paid to reimburse producers for Kansas *ad valorem* taxes. Therefore, Missouri PSC moves that the Commission immediately order Williams to immediately calculate the amount of Kansas property taxes recovered in its rates subject to refund, and to promptly refund those amounts.

On April 1, 1994, Williams filed an answer to Missouri PSC's motion, arguing that the motion is a collateral attack on CIG, and is an attempt to induce the Commission to amend the CIG order, or to misapply it to the instant proceeding. Williams contends that the CIG order was a broad industry-wide determination that established refund procedures applicable to all pipelines reflecting Kansas *ad valorem* taxes in their rates. Williams contends that the Commission's letter order in the instant proceeding confirmed that the CIG ruling is fully applicable to Williams, and that the ruling should be applied to all pipelines in a uniform, non-discriminatory manner. Williams states that the Commission determined in CIG that pipelines will not be required to be guarantors of refunds from producers, even in situations similar to the instant case. Williams contends that Missouri PSC is wrongfully attempting to overturn that determination. Williams also claims that this determination that pipelines should not be guarantors of refunds is consistent with the Commission's determinations in other producer refund situations where rates were accepted subject to refund.[8] Williams also argues that it would be unfair for the Commission to order it to pay refunds before it collects these payments from its producers.

Discussion

Further Proceedings

The Commission agrees with Missouri PSC that there are issues in the instant proceeding that had not been resolved when the Commission issued its February 15, 1994 letter order terminating the technical conference in this proceeding. First, the issue remains as to whether the Wyoming and Colorado *ad valorem* taxes paid by Williams to its producer-suppliers are production taxes that producers in these states could recover from their customers as an add-on under NGPA section 110 to the otherwise applicable maximum lawful price. The issue must still be addressed by the Commission pursuant to the standards established by the Commission in its order on remand in CIG. If the severance taxes are so recoverable by the producers, then they were properly paid to the producers by Williams and did qualify as gas costs recoverable under Williams' PGA. If they were not so recoverable, then the producers could be required to refund these amounts and issues would arise as to Williams' right to recover the amounts in its PGA. Accordingly, the Commission grants in part rehearing, and reverses its decision to terminate this proceeding.[9]

The Commission also finds that additional information and briefing is necessary in order to decide the remaining issues of whether the

[7] 67 FERC ¶ 61,209 at fn. 46 (1994).

[8] Citing Refunds Resulting from Btu Measurement Adjustments, Order No. 399, FERC Stats. and Regs., Regs. Preambles 1982–1985, ¶ 30,597 at 31,154, reh'g Order No. 399–A, FERC Stats. and Regs., Regs. Preambles 1982–1985, ¶ 30,612 (1984), vacated in part on other grounds, *Interstate Natural Gas Ass'n of America* v. *FERC*, 756 F.2d 166 (D.C. Cir. 1985), cert. denied sub nom., *Pennzoil Co.* v. *Associated Gas Distributors*, 474 U.S. 847 (1985).

[9] Missouri PSC has not shown a reason why it was error to accept the tariff sheets in the February 15, 1994 order. As the Commission is not terminating the proceeding, the rates reflected in such tariff sheets remain subject to refund.

Wyoming and Colorado *ad valorem* taxes are severance taxes eligible to be recovered by first sellers under NGPA section 110 as an add-on to the maximum lawful, first-sale, ceiling price. The Commission finds that fairness dictates that Williams and its Wyoming and Colorado producers be allowed to address the Commission's recent decision in CIG as it applies to the instant proceeding, and more specifically, as it applies to the Wyoming and Colorado *ad valorem* taxes. In CIG, the Commission established a test to use in determining whether a state tax qualifies as a severance tax that would be includable as a gas cost under the NGPA. The Commission directs Williams to submit to the Commission, within 20 days of the date of this order, a filing that sets forth: (1) The amounts of Wyoming and Colorado *ad valorem* taxes reflected in Williams' PGA filings beginning with the rates in the instant proceeding and ending on the December 31, 1992 expiration date of the NGPA ceiling rates; and (2) the text of the state laws or regulations pertaining to the taxes at issues. Producers that recovered the Wyoming and Colorado *ad valorem* taxes are invited to intervene in this proceeding within 40 days of the date of this order. In addition, within 40 days of the date of this order, Williams must (and any producer wishing to do so may) file an analysis of why the Wyoming and Colorado *ad valorem* taxes qualify for recovery under the CIG test, and thus were properly includable in Williams' PGA filing. Parties to this proceeding are invited to file answers to Williams' filing within 60 days of the date of this order.

Refunds

The Commission denies in part rehearing as it applies to Missouri PSC's request that partial refunds be immediately ordered for the full amount of the Kansas *ad valorem* taxes reflected in the filing. The Commission made a ruling in CIG as to how these taxes were to be refunded by the producers to the pipelines (including Williams) and then, in turn, by the pipelines to their customers. The finding in CIG as it applies to Williams, will not be overturned here.

The only difference that Missouri PSC points out between the CIG case and the instant case is that in the instant case the rates were accepted subject to refund. The Commission fails to see why that would dictate the outcome Missouri PSC requests. The acceptance of certain rates subject to refund does not determine the manner in which the Commission will order that those refunds be made. While Missouri PSC did protest the inclusion of *ad valorem* taxes in Williams' instant PGA filing, and the Commission did accept that filing subject to refund, that is not to say that if the Commission found that such taxes were not a production cost that the pipeline must deduct them entirely even before it had recovered these costs from its producers. Rather, the acceptance subject to refund meant that the Commission would order whatever refunds it found to be appropriate when it made a determination on the underlying issue. The Commission made that determination in CIG.

The Commission did state, in its order on remand in CIG, that refunds would be appropriate from the date producers "could have taken steps to protect themselves, such as establish an escrow account for such tax reimbursement," [10] but that reference was to the effective date of refunds and not to the issue of whether the pipeline must guarantee all refunds. Further, Williams merely included in its PGA filing the tax costs that it had paid to its producers. Hence, there would be no additional revenues for Williams to put into an escrow account. The producers, on the other hand were recovering unlawful tax costs, the proceeds of which could have been set aside for future refund obligations. Therefore, there is no reason why Williams should guarantee refunds when the Commission has found in CIG that other pipelines did not have that same obligation. Accordingly, the Commission finds that the instant case is not different from the GIG case in a manner that would require that the Commission to order refunds in a manner that is inconsistent with our decision in CIG. As the Commission has denied this request for rehearing regarding refunds, the Commission will reject the motion for summary judgment as moot.

The Commission Orders

(A) Notice is hereby provided to all producers in Colorado and Wyoming that a proceeding is being instituted in this docket to determine if the *ad valorem* taxes of those two states are recoverable as production costs. Producers that recovered the Wyoming and Colorado *ad valorem* taxes may file to intervene in this proceeding within 30 days of the date of this order.

(B) Rehearing is granted in part, in that the instant proceeding is not terminated.

(C) Rehearing is denied in part, in that the Commission will not order further refunds in this case at this time.

(D) Missouri PSC's motion for summary judgment is rejected.

(E) Williams is directed to file, within 20 days of this order:

(1) the dollar amounts of Wyoming and Colorado *ad valorem* taxes reflected in the subject filing and subsequent PGA filings through the December 31, 1992 expiration date of the NGPA ceiling prices; and

(2) the text of the state laws or regulations pertaining to the Wyoming and Colorado *ad valorem* taxes at issues; and

(F) Williams is directed to file, within 40 days of this order, an analysis, under the CIG test, of why those taxes qualify for recovery in the instant PGA filing.

(G) Within 40 days of the date of this order, producers that recovered the Wyoming and Colorado *ad valorem* taxes are invited to intervene in this proceeding, and are also invited to file their analysis of why those taxes qualify for recovery in the instant PGA filing under the CIG test.

(H) Parties to this proceeding may file answers to Williams' filing within 60 days of the date of this order.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94-13875 Filed 6-7-94; 8:45 am]

BILLING CODE 6717-01-P

[10] 65 FERC at 62,373.

[Docket No. TM94-4-49-000]

Williston Basin Interstate Pipeline Co.; Annual Take-Or-Pay Reconciliation Filing

June 2, 1994.

Take notice that on May 31, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing its Annual Take-or-Pay Reconciliation Filing pursuant to sections 36 and 37 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. More specifically, Williston Basin tendered for filing as part of its FERC Gas Tariff, the following tariff sheets:

Second Revised Volume No. 1
Fourth Revised Sheet No. 15
Fourth Revised Sheet No. 16
Fourth Revised Sheet No. 18
Fifth Revised Sheet No. 21
First Revised Sheet No. 308
First Revised Sheet No. 320
First Revised Sheet No. 321
Original Volume No. 2
Fifty-first Revised Sheet No. 11B

Williston Basin has requested that the Commission accept this filing to become effective July 1, 1994.

Williston Basin states that the revised tariff sheets are being filed to reflect

recalculated fixed monthly surcharges and revised throughput surcharges to be effective during the period July 1, 1994 through June 30, 1995, pursuant to the procedures contained in sections 36 and 37 of the General Terms and Conditions of Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1. Williston states that this filing reflects a revised total throughput surcharge of 20.211 cents per dkt on all applicable transportation volumes.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13845 Filed 6–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–5–49–000]

Williston Basin Interstate Pipeline Co.; Annual Gas Supply Realignment Reconciliation Filing

June 2, 1994.

Take notice that on May 31, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing its Annual Gas Supply Realignment Reconciliation Filing pursuant to subsection 39.3.3 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. More specifically, Williston Basin tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Fifth Revised Sheet No. 15
Fifth Revised Sheet No. 16
Fifth Revised Sheet No. 17

Williston Basin has requested that the Commission accept this filing to become effective July 1, 1994.

Williston Basin states that the revised tariff sheets reflect the annual reconciliation of the GSR cost recovery period and a new reservation charge surcharge of 117.807¢ per equivalent dkt of Maximum Daily Delivery Quantity applicable to service under Rate Schedule FT–1, a new volumetric reservation charge surcharge of 24.391¢ applicable to service under Rate Schedule ST–1 and a new base rate unit cost of 6.186¢ applicable to service under Rate Schedule IT–1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13846 Filed 6–7–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Cases Filed During the Week of May 6 Through May 13, 1994

During the Week of May 6 through May 13, 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: May 31, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Date	Name and location of applicant	Case No.	Type of submission
4/1/94	Westinghouse Hanford Company, Richland, Washington.	LWZ-0031	Motion to Dismiss. If granted: Helen Gaidine Oglesbee, Case No. LWA–0006 would be dismissed.
5/9/94	ARCO/B & D Butane Company, Atlantic Beach, Florida.	RR304–68	Request for Modification/Rescission in the Arco Refund Proceeding. If granted: The June 4, 1993 Dismissal Letter (Case No. RF304–13517) issued to B & D Butane Company would be modified regarding the firm's application for refund submitted in the Arco refund proceeding.
5/9/94	Chambers Oil Company, Beckley, West Virginia.	LEE–0116	Exception to the Reporting Requirements. If granted: Chambers Oil Company would not be required to file Form EIA–782B, "Resellers'/Retailers Monthly Petroleum Product Sales Report."
5/9/94	Time Oil/California National Helium/California Charter/California, Sacramento, California	RQ334–589 RQ3–590 RM23–269	Implementation of Second-Stage Refund Procedures. If granted: California would receive funds in the Time Oil and National Helium refund proceedings, and the March 12, 1990 Decision an Order (Case No. RQ23–546) issued to California would be modified regarding the state's application submitted in the Charter second-stage refund proceedings.
5/10/94	Arco/Pearl Oil Company, Inc., Bethsda, Maryland.	RR304–69	Request for Modification/Rescission in the Arco Refund Proceeding. If granted: The April 1, 1994 Decisions and Order (Case No. RF304–14786) issued to Pearl Oil Company, Inc. would be modified regarding the firm's application for refund submitted in the Arco refund proceeding.

Date	Name and location of applicant	Case No.	Type of submission
5/10/94	Donco Carriers, Inc., Washington, DC	RR272–130	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The April 5, 1994 Decision and Order (Case No. RC272–234) issued to Donco Carriers, Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
5/11/94	C. D. Varnadore & Betty Freels, Houston, Texas.	LFA–0375	Appeal of an Information Request Denial. If granted: The May 4, 1994 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and C. D. Varnadore & Betty Freels would receive access to documents relating to government monies spent by a contractor organization defending against certain whistleblower claims.
5/12/94	William H. Payne, Albuquerque, New Mexico	LFA–0376	Appeal of an Information Request Denial. If granted: The December 16, 1993 Freedom of Information Request Denial issued by the FOI and Privacy Acts Branch would be rescinded, and William H. Payne would receive access to names and phone numbers of individuals in the Inspector General's office who corresponded verbally or in writing with Sandia National Laboratory personnel between November 1992 and the day of request.
5/13/94	Kenneth H. Besecker, Martinez, Georgia	LFA–0377	Appeal of an Information Request Denial. If granted: The April 25, 1994 Freedom of Information Request Denial issued by the Office of Civil Rights would be rescinded, and Kenneth H. Besecker would receive access to information requested.

Date received	Name of refund proceeding/name of refund application	Case No.
05/09/94	Turkey Express, Inc.	RF321–20983
05/10/94	Whaley's Arco #2	RF304–15457
05/13/94	Waterloo Service Company	RF344–2
05/06/94 thru 5/13/94	Crude Oil Refund Applications Received	RF272–95277 thru RF272–95295

[FR Doc. 94–13924 Filed 6–7–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00382; FRL–4870–8]

Update of Pesticide Residue Chemistry Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability and Request for Comments.

SUMMARY: This notice announces the availability of and requests comments on updated guidance for registrants on the residue data requirements in 40 CFR Part 158 to support registration of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and tolerances under Federal Food, Drug and Cosmetic Act. The updated guidance consists of a revision of Table II of the Pesticide Assessment Guidelines, Subdivision O, Residue Chemistry, describing raw and processed foods and animal feeds.

ADDRESSES: Copies of this proposed updated Table II may be obtained from the Pesticides Docket, Office of Pesticide Programs, Public Response and Program Resources Branch, Rm. 1132, Crystal Mall # 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Contact by mail: Jerry Stokes, Health Effects Division (7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by telephone: Rm. 803, Crystal Mall 2, 1921 Jefferson Davis Highway. Arlington, VA, (703) 305–7561. Comments will be accepted for 75 days following publication of this notice.

SUPPLEMENTARY INFORMATION: Table II of the Pesticide Assessment Guidelines, Subdivision O, Residue Chemistry, provides a listing of all significant food and feed commodities, both raw and processed, for which residue data are collected and tolerances are set. In addition, for feed commodities, Table II provides (1) the maximum percent of the diet for beef and dairy cattle, poultry and swine, and (2) guidance on which crops EPA believes it would be appropriate to allow lable restrictions prohibiting use of commodities as feeds.

As a culmination of a long-term project to update the "Guide For Estimating Toxic Residues in Animal Feeds or Diets" (authored by Dr. L. Harris in 1975, and commonly known as the "Harris Guide") EPA has updated Table II. This update of Table II was deemed appropriate because there have been significant change in agricultural, processing and feeding practices in the past decade. The update has revised which raw agricultural and processed commodities and livestock feeds are listed in the Table II and the percentage of these items in the diets of animals. More information on the basis for these revisions are included in the updated Table II.

In reviewing the data collected on animal fees EPA also reevaluated the policy of allowing as a substitute for data, a label restriction prohibiting the use (or sale) of a commodity for livestock feed purposes. EPA derived three criteria which would be weighed in determining whether to permit label restrictions in lieu of data in the future. More details on the criteria are provided in the revised Table II. Generally, the Agency does not consider it good public policy to regulate pesticides in such a way that growers/farmers using a registered product must then destroy an economically and nutritionally valuable portion of the treated crop. EPA's preliminary view is that there are only four cases: safflower forage, buckwheat forage, lentil forage, and sunflower forage. EPA will reevaluate the

appropriateness of label restrictions on a commodity by commodity basis in future registration and tolerance actions. Comments are specifically requested on the Agency's label restriction policy. Comments should provide information, and documentation if available, of the economic value of specific commodities in terms of cash, barter, or as fed directly on the farm. If commodities can practically be diverted from use as a livestock feed, their alternative use or disposal should be explained. After all comments on the updated Table II are received, they will be reviewed and the document revised and if necessary, reissued.

As guidelines, EPA will begin with the publication of this notice to use the revised Table II in its evaluation of pesticide registrations and tolerances. EPA realize that in some instances where studies have already begun or are scheduled to begin in the near future, data may not be able to be collected on the commodities that have been added to Table II. EPA believes that six months should be sufficient time for registrants to familiarize themselves with the changes in Table II. For studies begun either prior to the publication of this notice or in the next six months, EPA will be flexible regarding whether studies which do not supply data on the new commodities in Table II are adequate for registration and tolerance purposes and when additional data, if any, will be required to be submitted under EPA's data call-in authority.

List of Subjects

Environmental protection.

Dated: May 31, 1994.

Penelope A. Fenner-Crisp,

Director, Health Effects Division, Office of Pesticide Programs.

[FR Doc. 94–13789 Filed 6–7–94; 8:45 am]

BILLING CODE 6560–50–F–M

[OPP–180938; FRL 4867–4]

Receipt of Application for Emergency Exemption to Use Imidacloprid; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Texas Department of Agriculture (hereafter referred to as the "Applicant") to use the pesticide imidacloprid (CAS 105827–78–9) to treat up to 11,000 acres of broccoli, cabbage, and cauliflower to control the sweet potato whitefly (*Bemesia tabaci*). The Applicant proposes the first food use of an active ingredient; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before June 23, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180938," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8791.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of imidacloprid on broccoli, cabbage, and cauliflower to control the sweet potato whitefly (SPWF). Information in accordance with 40 CFR part 166 was submitted as part of this request.

The SPWF is common on many wild and cultivated crops such as tomatoes, cotton, cucurbits and solanaceae. The SPWF was first confirmed in Texas in 1987. The Applicant states that in 1990, cotton growers in the Lower Rio Grande Valley began to experience significant crop losses due to infestation by the SPWF. The sweet potato whitefly (SPWF) is a relatively new pest on broccoli, cauliflower, and cabbage. The SPWF has caused severe economic damage to several other commodities nationwide including cotton, lettuce, squash, beans, peanuts, and ornamentals. The Applicant states that in 1991, SPWF severely infested many more fields of cotton and caused severe devastation to fall vegetable crops upon harvesting of the cotton. According to the Applicant, SPWF populations for this season are expected to be widespread, and heavy enough to cause serious economic loss to the broccoli, cabbage, and cauliflower crops. SPWF causes damage through feeding activities, and also indirectly through the production of a honeydew, which encourages growth of sooty mold and other fungi. The Applicant claims that adequate control of the SPWF is not being achieved with the currently registered materials. The Applicant indicates that without adequate control of the SPWF in broccoli, cabbage, and cauliflower, significant economic losses could be suffered.

The Applicant proposes to apply imidacloprid at a maximum rate of 0.3016 lb. active ingredient (20 fluid oz. of product) per acre with a maximum of one application per crop season on a total of 11,000 acres of the above-listed crops. For each of the crops named, it is possible to produce two crops per calendar year on a given acre, and therefore, the acreage could potentially receive two applications of imidacloprid per calendar year. However, the Applicant proposed to limit the maximum amount which could be applied per calendar year to 0.5 lb. a.i. (32 fl. oz. product) per acre. Therefore, use under this exemption could potentially amount to a maximum total of 5,500 lbs. of active ingredient, or 2,750 gal. of product. This is the first time that the Applicant has applied for the use of imidacloprid on the named crops.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing the first food use of an active ingredient. Accordingly, interested persons may submit written views on

this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Texas Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: May 20, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–13671 Filed 6–7–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66193; FRL 4864–9]

Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by September 6, 1994, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the Federal Register before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 78 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000070–00067	Kill-Ko Mange Cure	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
000070–00163	Kill-Ko Lindane Concentrate	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
000070–00205	Rigo Tobacco Transplant Solution	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
000070–00273	Lindane Multi-Purpose Spray	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
000352 AL–81–0031	Du Pont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 AL–81–0032	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 CA–77–0431	Du Pont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
		S-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 CA–80–0187	Du Pont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 CA–80–0188	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 CA–80–0189	Dupont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 CA–80–0190	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 CA–82–0037	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 CA–90–0036	Dupont Lannate Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 DE–80–0010	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 FL–78–0038	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 FL–78–0056	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 FL–80–0010	Du Pont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 FL–80–0011	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 FL–82–0015	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 FL–84–0014	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 FL–84–0015	Du Pont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 FL–88–0005	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 LA–81–0033	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 LA–81–0037	Du Pont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 MS–80–0049	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
000352 NC–82–0012	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 NM–82–0021	Du Pont Lannate L Methomyl & Ambush Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 OR–78–0005	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 PA–91–0004	Du Pont Lannate Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 PR–78–0002	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 TX–77–0014	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 TX–82–0025	Du Pont Lannate L Methomyl & Ambush Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 TX–91–0014	Dupont Lannate Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 TX–91–0015	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 TX–92–0010	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000491–00103	New Vixol	Hydrogen chloride
000527–00121	Rocadyne	Nonylphenoxypolyethoxyethanol - iodine complex
		Phosphoric acid
000550–00152	Grid-10 Dairy Cleaner Sanitizer	Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12})
		Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C_{12}, 32%C_{14})
		Phosphoric acid
000655–20203	Prentox Boric Acid Powder 99%	Boric acid
001043–00032	Staphene O	Potassium 2-benzyl-4-chlorophenate
		o-Phenylphenol, potassium salt
		p-tert-Amylphenol, potassium salt
001043–00095	Staphene SE	4-tert-Amylphenol
		o-Phenylphenol
001270–00120	Zepona Insecticide	2,2-Dichlorovinyl dimethyl phosphate
001744–00002	Sunny Sol "150"	Sodium hypochlorite
002393–00361	Hopkins Hog Mange Powder	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
002393–00371	Lindane Emulsifiable Concentrate	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
003487–00022	Eagles-7 Spra-Kill with Baygon	*o*-Isopropoxyphenyl methylcarbamate
		2,2-Dichlorovinyl dimethyl phosphate
004822–00112	Johnson Wax Big Wally Wall Washer	Sodium *o*-phenylphenate
005535–00096	Gro-Well Lawn Fungicide	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
005887–00054	Black Leaf Borer Spray	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
006198–00006	Det-San Detergent-Sanitizer	Sodium dichloroisocyanurate dihydrate
008536–00010	Brom 70/30	1,3-Dichloropropene
		Methyl bromide
010182–00181	Sutan 6E	*S*-Ethyl diisobutylthiocarbamate
010182–00182	Sutan+10g	*S*-Ethyl diisobutylthiocarbamate
010182–00192	Sutan + 7E	*S*-Ethyl diisobutylthiocarbamate
010182–00201	Sutazine + 18 - 6G Selective Herbicide	*S*-Ethyl diisobutylthiocarbamate
		2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
010182–00211	Sutan & 6E	*S*-Ethyl diisobutylthiocarbamate
010182–00236	Sutan & Encapsulated	*S*-Ethyl diisobutylthiocarbamate
010182–00248	Sutazine + Selective Herbicide	*S*-Ethyl diisobutylthiocarbamate
		2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
010182–00249	Sutan + A 6-E	*S*-Ethyl diisobutylthiocarbamate
010182–00286	Butylate-7EC	*S*-Ethyl diisobutylthiocarbamate
010182–00288	Genate Plus 6.7 EC	*S*-Ethyl diisobutylthiocarbamate

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
010182–00289	Captan 50 Wettable Fungicide	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
010182–00295	Orthocide 80 Wettable	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
010182–00305	Orthocide 15 Dust	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
010182–00315	Orthocide Sulfur 15–40 Dust	Sulfur
		cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
010182 NC–91–0014	Dyfonate II 10-G	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
044446–00005	Fogasol Room Fogger	*o*-Isopropoxyphenyl methylcarbamate
		2,2-Dichlorovinyl dimethyl phosphate
051793–00019	Elite Flea Collar for Cats	2,2-Dichlorovinyl dimethyl phosphate
051793–00020	Elite Flea Collar for Dogs	2,2-Dichlorovinyl dimethyl phosphate
056228 ND–88–0001	Gas Cartridge for Control of Coyotes	Carbon
		Sodium nitrate
056228 TX–93–0015	Gas Cartridge for Control of Coyotes	Carbon
		Sodium nitrate
056228 UT–93–0002	Gas Cartridge for Control of Coyotes	Carbon
		Sodium nitrate
056228 WY–93–0001	Gas Cartridge for Control of Coyotes	Carbon
		Sodium nitrate
062719–00133	Treflan Milled Concentrate	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N*,*N*-dipropyl-*p*-toluidine) (Note: α = alpha)
065564 NC–88–0009	JSM Stylet - Oil	Aliphatic petroleum hydrocarbons
067360–00001	Copper Naphthenate 8%	Copper naphthenate
067360–00006	Intercide ABF	10,10'-Oxybisphenoxarsine
067360–00008	Intercide ABF-5 Solid	10,10'-Oxybisphenoxarsine

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90–day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000070	Wilbur-Ellis Co., Box 16458, Fresno, CA 93755.
000352	E. I. Du Pont De Nemours & Co, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000491	The Selig Chemical Industries, 840 Selig Dr., SW, Atlanta, GA 30378.
000527	Rochester Midland, c/o Unytex Research Corp., Box 818, Rochester, NY 14603.
000550	Van Waters & Rogers, Inc., Subsidiary of Univar, Box 34325, Seattle, WA 98104.
000655	Prentiss Inc., C. B. 2000, Floral Park, NY 11002.
001043	Calgon Vestal Laboratories Inc., Subsidiary of Merck & Co. Inc., Box 147, St Louis, MO 63166.
001270	ZEP Mfg. Co., Box 2015, Atlanta, GA 30301.
001744	Jones Chemicals, Inc., 80 Munson Street, Leroy, NY 14482.
002393	Haco, Inc., Box 7190, Madison, WI 53707.
003487	Bacon Products Co. Inc., Box 22187, Chattanooga, TN 37422.
004822	S.C. Johnson & Son Inc., 1525 Howe Street, Racine, WI 53403.
005535	J & L Adikes Inc., 103-23 178th St., Box 600, Jamaica, NY 11431.
005887	Wilbur-Ellis Co., Box 9518, Fresno, CA 93792.
006198	National Chemicals Inc., 105 Liberty Street, Box 32, Winona, MN 55987.
008536	Soil Chemicals Corp. Products, D/b/a SCC Products & Soil Chemicals Co., Box 782, Hollister, CA 95024.
010182	Zeneca Inc., 1800 Concord Pike, Wilmington, DE 19897.
044446	Quest Chemical Corp., 12255 F.M. 529 Northwoods Industrial Park, Houston, TX 77041.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
051793	RSR Laboratories, Inc., 501 Fifth St., Bristol, TN 37620.
056228	U. S. Dept of Agriculture, Animal & Plant Health Inspection, Federal Building, Room 533, Hyattsville, MD 20782.
062719	DowElanco, 9330 Zionsville Rd, Indianapolis, IN 46268.
065564	Jms Flower Farms Inc., 1105 25th Ave, Vero Beach, FL 32960.
067360	Akcros Chemicals America, c/o Charles Yeager, Registration Consulting Assoc., 12184 Woodland Ct. (LOP), Auburn, CA 95603.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before September 6, 1994. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1–year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: May 27, 1994.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

[FR Doc. 94–13670 Filed 6–7–94; 8:45 am]

BILLING CODE 6560–50–F

[PP 2G4048 and 2G4049/T660; FRL 4867–8]

Miles Inc.; Renewal of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed temporary tolerances for residues of the insecticide *O*-[2-(1,1-Dimethylethyl)-5-pyrimidinyl] *O*-ethyl *O*-(1-methylethyl)phosphorothioate and for residues of the insecticide cyfluthrin in or on certain raw agricultural commodities.

DATES: These temporary tolerances expire December 31, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Forrest, Product Manager (PM) 14, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6600.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of July 28, 1993 (58 FR 40425), announcing that temporary tolerances had been established for residues of the insecticide *O*-[2-(1,1-Dimethylethyl)-5-pyrimidinyl] *O*-ethyl *O*-(1-methylethyl)phosphorothioate in or on the raw agricultural commodities corn, sweet (K + CWHR); corn, grain, field and pop; corn, forage and fodder, field, pop, and sweet at 0.01 part per million (ppm), and for residues of the insecticide cyfluthrin Cyano-(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate in or on these raw agricultural commodities at 0.01 ppm. These tolerances are being renewed in response to pesticide petitions (PP) 2G4048 and 2G4049, submitted by Miles Inc., Agricultural Division, P.O. Box 4913, Kansas City, MO 64120–0013.

The company has requested a 1–year renewal of the temporary tolerances for residues of the insecticides to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 3125-EUP-202, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136). The scientific data reported and other relevant material were evaluated, and it was determined that renewal of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Miles Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire December 31, 1994. Residues not in excess of these amount remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12866.

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

Authority: 21 U.S.C. 346a(j).

List of Subjects

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

Dated: May 26, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–13672 Filed 6–7–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180940; FRL 4867-6]

Receipt of Application for Emergency Exemption to Use Propazine; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Kansas Department of Agriculture (hereafter referred to as the "Applicant") to use the pesticide propazine (CAS 139–40–2) to treat up to 120,000 acres of sorghum to control various weeds. The Applicant proposes the use of a new (unregistered) chemical; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before June 23, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180940," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8791.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of propazine on sorghum to control pigweed. Information in accordance with 40 CFR part 166 was submitted as part of this request.

Sorghum is grown as a rotational crop with cotton and wheat, in order to comply with the soil conservation requirements. Propazine, which was formerly registered for use on sorghum, was voluntarily canceled by the former Registrant, who did not wish to support its re-registration. The Applicant claims that this has left many sorghum growers with no pre-emergent herbicides that will adequately control certain broadleaf weeds, especially pigweed. The Applicant states that other available herbicides have serious limitations on their use, making them unsuitable for control of pigweed in sorghum. The Applicant claims that significant economic losses will occur without the availability of propazine.

Although the original Registrant of propazine has decided not to support this chemical through re-registration, another company has committed to support the data requirements for this use. Propazine was once registered for this use, but has now been voluntarily canceled and is therefore considered to be a new chemical.

The Applicant proposes to apply propazine at a maximum rate of 1.2 lbs. a.i. (2.4 pt. of product) per acre, by ground or air, to a maximum of 120,000 acres of sorghum, with one application allowed per crop growing season. Therefore, use under this exemption could potentially amount to a maximum total of 144,000 lbs. of active ingredient (36,000 gal. of product). This is the first time that Kansas has applied for this use of propazine on sorghum. Requests for exemptions for this use were also received earlier this year from Oklahoma and Colorado, which are currently under EPA review. New Mexico and Texas were recently issued exemptions for this use for this growing season, and Texas was issued an exemption for this use for last growing season. This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Kansas Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: May 20, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–13676 Filed 6–7–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200864.

Title: Port Authority of New York & New Jersey/Puerto Rico, Marine Management Container Incentive Agreement.

Parties: The Port Authority of New York & New Jersey, Puerto Rico Marine Management.

Filing Agent: Donald H. Lotz, Manager, The Port Authority of NY & NJ, One World Trade Center, New York, N.Y. 10048.

Synopsis: The Agreement provides for the Port to pay Puerto Rico Marine Management a container incentive of $20.00 for each import container and $30.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1994, provided each container is shipped by rail to or from points more than 260 miles from the port.

Dated: June 2, 1994.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–13835 Filed 6–7–94; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 202–011432–002.

Title: Pacific Central America Agreement.

Parties: Sea-Land Service, Inc., Central American Container Line, S.A., A.P. Moller-Maersk Line.

Synopsis: The proposed amendment expands the scope of the Agreement to include ports and points in Ecuador, Pacific Coast of Colombia, Peru, Chile and intransit cargo to and from Bolivia via ports in Peru and Chile. The amendment also changes the name of the Agreement to the Pacific Latin America Agreement.

Agreement No. 232–011455.

Title: South Seas Steamship Co. and South Pacific Interline, Ltd. Management, Cross-Space Charter and Sailing Agreement.

Parties: South Seas Steamship Co. ("South Seas"), South Pacific Interline, Ltd. ("South Pacific").

Synopsis: The proposed Agreement provides for South Seas to manage South Pacific and for the parties to enter into a cross space charter and sailing arrangement in the trades between West Coast ports and points of the United States (including Hawaii), and ports and points in Tahiti, American Samoa, Western Samoa, Tonga, Fiji, New Guinea, New Caledonia, Australia and Canada. The parties have requested a shortened review period.

Dated: June 2, 1994.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–13836 Filed 6–7–94; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Federal Building-Courthouse, Central Islip, NY; Environmental Assessment/ FONSI and Public Hearing

This notice serves to inform the public of the availability of the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) prepared by the U.S. General Services Administration for the proposed construction of a Federal Building-Courthouse in Central Islip, New York. This notice also serves to inform the public of a public hearing to be held for the above project. The public hearing will be held on June 23, 1994, from 3 p.m. to 5 p.m. and from 7 p.m. to 9 p.m. The public hearing will be held at the Student Activities Center Auditorium of the New York Institute of Technology Suffolk campus, located on Carleton Avenue in Central Islip, Long Island, New York. Comments on the proposed action may be submitted verbally at the public hearing or in writing during the 30-day public comment period, which starts on June 10, 1994, and ends on July 11, 1994. The Finding of No Significant Impact will be signed and become final after completion of the public comment period, provided that no information leading to a contrary finding is received or comes to light during the 30-day comment period.

For further information please contact Mr. Peter A. Sneed, Director of Planning Staff, Public Buildings Service, General Services Administration, 26 Federal Plaza, room 1609, New York, New York 10278. Telephone: (212) 264–3581.

Issued in New York, NY on June 2, 1994.

Robert W. Martin,

Deputy Regional Administrator, General Services Administration.

[FR Doc. 94–13908 Filed 6–7–94; 8:45 am]

BILLING CODE 6820–23–M

[G–94–1]

Delegation of Authority to the Secretary of Veterans Affairs

Pursuant to the authority vested in the Administrator of General Services by section 3726 of title 31, United States Code and redelegated to the Director,

Office of Transportation Audits, Federal Supply Service. I have determined that it is both cost effective and in the public interest to delegate authority to the Secretary of Veterans Affairs to conduct a prepayment audit of transportation bills relating to foreign and domestic household goods, freight, and passenger movements, subject to the provisions of the Federal Property Management Regulations, title 41, Code of Federal Regulations, subpart 101–41, and amendments thereto. This prepayment audit will be conducted by a General Services Administration contractor, at the contractor's site, on behalf of the Austin Finance Center (AC), Austin, Texas, for the Department of Veterans' Affairs field station locations, medical centers, regional offices, and outpatient clinics.

The Secretary of Veterans Affairs may redelegate this authority to any officer, official, or employee of the Department of Veterans' Affairs.

The Secretary of Veterans Affairs shall notify GSA in writing of these additional delegations. This delegation is effective upon publication in the **Federal Register**.

Dated: May 26, 1994.

Joseph I. Cosimano,

Director, Office of Transportation Audits (FW).

[FR Doc. 94–13824 Filed 6–7–94; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94N–0169]

Assessment of Serum and Red Blood Cell Folate Methodology; Availability of Tentative Report; Announcement of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a report entitled "Tentative Report: Assessment of Serum and Red Blood Cell Folate Methodology Used in NHANES III." The report was prepared for FDA by the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (FASEB). This document also announces a public meeting on the subject of the tentative report. The announcement of this meeting and the tentative report are intended to provide FDA with scientific information on the assessment of folate status in the U.S. population.

DATES: The public meeting on the subject of the tentative report will be held on July 15, 1994, 9 a.m., by LSRO/FASEB. Requests to make oral presentations at the open meeting must be submitted in writing and received by July 1, 1994. Scientific data, information, and views to be considered at the public meeting should be submitted on or before July 12, 1994.

ADDRESSES: Submit written requests for single copies of "Tentative Report. Assessment of Serum and Red Blood Cell Folate Methodology Used in NHANES III" to LSRO/FASEB, 9650 Rockville Pike. Bethesda, MD 20814–3998. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. A copy of the tentative report is available for public examination at LSRO/FASEB (address above) and at 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.

Submit written requests to make oral presentations of scientific data, information, and views at the public meeting to LSRO/FASEB and to the Dockets Management Branch. Requests must be identified with the docket number found in brackets in the heading of this document. Two copies of the scientific data, information, and views should be submitted to each office.

The public meeting will be held in the Chen Auditorium, Lee Bldg., FASEB, 9650 Rockville Pike, Bethesda, MD 20814–3998.

FOR FURTHER INFORMATION CONTACT:

Kenneth D. Fisher, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814–3998, 301–530–7030; or

Jeanne I. Rader, Center for Food Safety and Applied Nutrition (HFS–175), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–205–5375.

SUPPLEMENTARY INFORMATION: FDA has a contract (number 223–92–2185) with LSRO/FASEB concerning the analysis of scientific issues that bear on the safety of foods and cosmetics. The objective of this contract is to provide information to FDA on general and specific issues of scientific fact associated with the analysis of human nutrition.

Analysis of serum and red blood cell (RBC) folate samples from Phase 1 (1988–1991) of the Third National Health and Examination Survey (NHANES III) was recently completed. These analyses were performed using a radioassay kit with 125-I-folate as the tracer. The radioassay kit that previously has been used to determine folate values is based on pteroylglutamic acid (PGA) standards, which were developed in 1975.

In a 1993 report (Ref. 1), Levine reported that the folate data derived from the radioassay kits used for Phase 1 of NHANES III were about 30 percent higher than he would have expected based upon internal PGA standards prepared in his laboratory. He suggested that this discrepancy was related to differences between the standards in his laboratory and the standard values established in 1975 that have been provided with the radioassay kits (Ref. 1). According to Edwards (Ref. 2), the folate radioassay kit introduced in 1975 was calibrated against the *Lactobacillus casei* microbiological assay which was the accepted standard at that time. The Centers for Disease Control and Prevention (CDC) and others have consistently confirmed Levine's finding. Thus the serum and RBC folate values derived by use of the radioassay kits in Phase 1 of NHANES III are likely to be high by a factor of about 30 percent.

Based on these results, CDC has recommended the use of an "adjustment" factor to more accurately reflect the actual serum and RBC folate concentrations relative to corrected reference standards. This adjustment, however, may also require reconsideration of the interpretative criteria for evaluating the folate status of the U.S. population from blood samples from Phases 1 and 2 of NHANES III.

FDA is announcing that it has asked FASEB, as a task under contract number 223–92–2185, to provide its Center for Food Safety and Applied Nutrition with an up-to-date scientific assessment of the methodology used in NHANES III to assess serum and RBC folate in the U.S. population. Specifically, FDA asked FASEB to address the following matters in its tentative and final reports: (1) Examine the analytical and biochemical bases for the discrepancies associated with serum and RBC folate values derived from use of the radioassay kits used in Phase 1 of NHANES III, (2) evaluate the scientific basis and validity of the procedures recommended by CDC to make corrections to serum and RBC folate values obtained in Phase 1 of NHANES III, (3) re-examine current

"cut-off" values for estimation of "deficient" and "low" folate status in light of the need for application of a correction factor for survey sample values, (4) determine whether these approaches are still useful for estimating the prevalence of inadequate folate nutriture, and (5) obtain suggestions on approaches to addressing the comparability of the folate assays from Phase 1 and Phase 2 of NHANES III, and the comparability of the NHANES III data with those obtained in NHANES II. In response to this request, FASEB directed LSRO to obtain state-of-the-art scientific information about the analytical methodology and possible use of an adjustment factor for Phase 1 NHANES III serum and RBC folate data.

LSRO has prepared a tentative report entitled "Assessment of Serum and Red Blood Cell Folate Methodology Used in NHANES III" (Ref. 3). Requests for a copy of the report should be made to LSRO/FASEB. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. The tentative report will be on display at LSRO/FASEB and at the Dockets Management Branch (address above).

FDA and FASEB are announcing that LSRO/FASEB will hold a public meeting on the report announced in this document on July 15, 1994. It is anticipated that the public meeting will not exceed 1 day depending on the number of requests to make oral presentations.

Written requests to make oral presentations of scientific data, information, and views at the open meeting on the five issues given in this document must be submitted in writing to LSRO/FASEB and the Dockets Management Branch and received by July 1, 1994.

FDA and FASEB are also inviting submission of written presentations of scientific data, information, and views on the issues identified above for this topic. These materials should be submitted on or before July 12, 1994. Two copies of the written material to be considered at the open meeting must be submitted to each office listed above.

Pursuant to its contract with FDA, FASEB will provide the agency with a final report of its review and evaluation on or before September 30, 1994.

References

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

1. Levine, S., "Analytical Inaccuracy for Folic Acid with a Popular Commercial Vitamin B12/Folate Kit," *Clinical Chemistry*, 39(10):2209–2210, 1993.

2. Edwards, R. B., "Response," *Clinical Chemistry*, 39(10):2210, 1993.

3. "Tentative Report: Assessment of Serum and Red Blood Cell Folate Methodology Used in NHANES III," Life Sciences Research Office, Federation of American Societies for Experimental Biology, Bethesda, MD, May 1994.

Dated: June 3, 1994.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 94–13934 Filed 6–3–94; 3:17 pm]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Final Minimum Percentages for "High Rate" and "Significant Increase in the Rate" for Implementation of the General Statutory Funding Preference for Nurse Anesthetist Traineeships for Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces the final minimum percentages for "high rate" and "significant increase in the rate" for implementation of the general statutory funding preference for fiscal year (FY) 1994 Grants for Nurse Anesthetist Traineeships funded under the authority of section 831(a), title VIII of the Public Health Service (PHS) Act, as amended by the Nurse Education and Practice Improvement Amendments of 1992, title II of the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992.

Purpose

Section 831(a) of the Public Health Service Act authorizes the Secretary to award grants to cover the costs of traineeships for licensed registered nurses to become nurse anesthetists.

Statutory Funding Preference

Preference will be given to any qualified applicant that:

(a) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(b) During the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

Minimum Percentages for "High Rate" and "Significant Increase in the Rate"

A notice which announced this grant cycle was published in the **Federal Register** on November 3, 1993 at 58 FR 58701, and proposed minimum percentages for "high rate" and "significant increase in the rate" for implementation of the general statutory funding preference. One letter was received during the 30 day comment period. The respondent suggested that the reference to public health nurses in the definition of "high rate" be deleted since it is not relevant to this program. The definition of "high rate" has been revised to include this suggestion. Other comments on issues not specifically proposed for public comment are not addressed in this notice. The final minimum percentages are shown below

"High rate" is defined as a minimum of 20 percent of graduates in academic years 1990–91, 1991–92 or 1992–93 who spend at least 50 percent of their worktime in clinical practice in the specified settings. Graduates who are providing care in a medically underserved community as a part of a fellowship or other educational experience can be counted.

"Significant increase in the rate" means that, between academic years 1991–92 and 1992–93, the rate of placing graduates in the specified settings has increased by a minimum of 50 percent and that not less than 15 percent of graduates from the most recent year are working in these settings.

Additional Information

If additional programmatic information is needed, please contact: Ms. Donna English, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 9–36, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–5763 FAX: (301) 443–8586.

This program, Grants for Nurse Anesthetist Traineeships, is listed at 93.124 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: June 3, 1994.

Ciro V. Sumaya,

Administrator.

[FR Doc. 94–13932 Filed 6–7–94; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

Notice of a Meeting of the Acquired Immunodeficiency Syndrome Program Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the NIH Acquired Immunodeficiency Syndrome Program Advisory Committee on June 20, 1994. The meeting will take place from 9 a.m. to 5 p.m. at the Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland.

The meeting will be open to the public from 9 a.m. to 3 p.m. to review the NIH Plan for HIV-Related Research and projects to be funded by the Office of AIDS Research discretionary fund.

In accordance with the provisions set forth in section 552b(c)(4), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 3 p.m. until adjournment for the review and discussion of issues related to human subject protections under a protocol for expanded availability of an investigational new drug through the parallel track mechanism. This discussion could reveal confidential trade secrets or commercial property such as patentable material.

A summary of the Committee meeting and a roster of members may be obtained from Ms. Linda Reck, Senior Program Analyst, Office of AIDS Research, Building 31, room 5C02, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–0358, upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Reck in advance of the meeting.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

Dated: June 1, 1994.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 94–13838 Filed 6–7–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

United States Geological Survey

Technology Transfer Act of 1986

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of proposed cooperative research and development Agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is planning to enter a cooperative research and development agreement (CRADA) with Radon Abatement Systems, Inc., of Evergreen, Colorado, and COLOG, Inc., of Golden, Colorado. The purpose of the CRADA is to develop a method for decreasing concentration of radon–222 in ground water used for drinking-water supplies.

Any other organization interested in entering the CRADA for similar kinds of activities should contact the USGS. We are interested in potential partners that have the following capabilities: National or extended geographic coverage of well servicing and well rehabilitation; financial, marketing, and educational support; and scientific expertise. Interested parties should contact the USGS.

ADDRESSES: Inquiries may be addressed to the Chief, Branch of Sedimentary Processes, U.S. Geological Survey, Box 25046, MS 939, Denver Federal Center, Denver CO 80225.

FOR FURTHER INFORMATION CONTACT: Richard B. Wanty, U.S. Geological Survey, Box 25046, MS 916, Denver Federal Center, Denver CO 80225; telephone (303) 273–8620.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: May 24, 1994.

Benjamin A. Morgan,

Chief Geologic Division.

[FR Doc. 94–13823 Filed 6–7–94; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[NM 018–4210–04; NM 91327]

Realty Action-Exchange, Federal Surface in San Miguel County, New Mexico for Private Surface in Taos County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction regarding segregation period of public lands.

SUMMARY: This notice corrects the third full paragraph in the second column of the Notice of Realty Action published in the **Federal Register** on May 19, 1994 (59 FR 26318). The paragraph referred to should read: Publication of this notice segregates the public land from the operation of the public laws, including the general mining laws, but not the mineral leasing laws. The segregation period will terminate 2 years from the date of this publication or upon issuance of a patent whichever occurs first.

Dated: June 2, 1994.

Chuck Schultz,

Acting District Manager.

[FR Doc. 94–13853 Filed 6–7–94; 8:45 am]

BILLING CODE 4310–FB–M

[MT–930–4210–06–P; MTM 011811 and MTM 1171]

Notice of Proposed Continuation of Withdrawal; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that withdrawals for the Philipsburg Administrative Site and the Elkhorn Cemetery, totaling 155.18 acres, continue for an additional 20 years. The lands will remain closed to mining, but those lands currently closed to surface entry will be opened to such forms of disposition as may by law be made of National Forest System lands. Of the 155.18 acres, 145.18 will be opened to mineral leasing, but have been and will remain open to oil and gas; the remaining 10 acres have been and will remain open to mineral leasing.

DATE: Comments should be received on or before August 8, 1994.

ADDRESS: Comments should be sent to the Montana State Director, BLM, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, 406–255–2949.

SUPPLEMENTARY INFORMATION: The Department of Agriculture proposes that the existing land withdrawals made by PLO 1217 (amended by PLO 1268) and PLO 4463, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988). The lands are described as follows:

Principal Meridian, Montana

Elkhorn Cemetery

T. 6 N., R. 3 W.,

Sec. 14, SW¼SW¼ of lot 13, SE¼SE¼ of lot 14, NE¼NE¼SW¼SW¼, and NW¼NW¼SE¼SW¼.

Philipsburg Administrative Site

T. 7 N., R. 13 W.,

Sec. 31, that portion of lot 13 lying within the SW¼SW¼.

T. 7 N., R. 14 W.,

Sec. 36, lots 5, 8, 9, 10, and 12.

The areas described aggregate 155.18 acres in Granite and Jefferson Counties.

The purpose of the withdrawals is to protect the Philipsburg Administrative Site, which was segregated from settlement, sale, location, and entry, including location and entry under the

mining and mineral leasing laws, except oil and gas, and the Elkhorn Cemetery, which was segregated from settlement, sale, location, and entry, including location and entry under the mining laws, but not the mineral leasing laws. No change is proposed in the purposes of the withdrawals; the lands will be segregated from mining only.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Land Resources in the Montana State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawals will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

May 27, 1994.

Thomas P. Lonnie,

Acting State Director.

[FR Doc. 94–13821 Filed 6–7–94; 8:45 am]

BILLING CODE 4310–DN–P

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Donald G. McMillan, Mendota Heights, CA, PRT–790775

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. M. G. Wienand, "Longwood", Bedford, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Circus Productions, Inc., New York, NY, PRT–790823

The applicant requests a permit to import one male and one female captive-bred leopard (*Panthera pardus*), and two female captive-bred Asian elephants (*Elephas maximus*), from the Moscow Circus, Russia, for the purpose of enhancement of survival through conservation education.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: June 2, 1994.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–13833 Filed 6–7–94; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Acadia National Park Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. Ap. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, June 20, 1994.

The Commission was established pursuant to Public Law 99–420, section 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands and termination of rights of use and occupancy.

The meeting will convene on Islesford, Cranberry Isles, Maine, at 1 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held December 6, 1993.
2. Report of the Conservation Easement Subcommittee.
3. Report of the Acquisition Subcommittee.
4. Superintendent's report.
5. Public comments.
6. Proposed agenda and date of next Commission meeting.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting. Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288–3338.

Dated: May 31, 1994.

Evelyn Sheehan,

Acting Regional Director.

[FR Doc. 94–13816 Filed 6–7–94; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–663 (Final)]

Certain Paper Clips From the People's Republic of China

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–663 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China (China) of certain paper clips wholly of wire of base metal, provided for in subheading 8305.90.30 of the Harmonized Tariff Schedule of the United States (HTS).[1]

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part

[1] The products covered by this investigation are certain paper clips, wholly of wire of base metal, whether or not galvanized, whether or not plated with nickel or other base metal (e.g., copper), with a wire diameter between 0.025 inches and 0.075 inches (0.64 to 1.91 millimeters), regardless of physical configuration, except as specifically excluded. The products subject to this investigation may have a rectangular or ring-like shape and include, but are not limited to, clips commercially referred to as "No. 1 clips", "No. 3 clips", "Jumbo" or "Giant" clips, "Gem clips", "Marcel Gems", "Universal clips", "Nifty clips", Peerless clips", "Ring clips", and "Glide-on clips". Specifically excluded from the scope of this investigation are plastic and vinyl covered paper clips, or other paper fasteners that are not made wholly of wire of base metal and are covered under a separate subheading of the HTS.

201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: May 16, 1994.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain paper clips from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on October 13, 1994, by ACCO USA, Inc. (Wheeling, IL) and Noesting, Inc. (Bronx, NY). Commerce postponed the date of its final determination until September 30, 1994.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on September 21, 1994, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on October 4, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 26, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 28, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is September 28, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is October 13, 1994; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before October 13, 1994. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: May 31, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–13905 Filed 6–7–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–365]

Certain Audible Alarm Devices for Divers; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 28, 1994, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of David A. Hancock, 4257 24th Avenue West, Seattle, WA 98199 and Ideations Design Inc., 4257 24th Avenue West, Seattle, WA 98199. Supplementary letters were filed on May 23, 1994. The complaint alleges violations of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain audible alarm devices for divers, by reason of infringement of claim 6 of U.S. Letters Patent 4,950,107 and claim 1 of U.S. Letters Patent 5,106,236, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the

Secretary, U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on May 31, 1994, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of section 337(a)(1)(B)(i) in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain audible alarm devices for divers, by reason of infringement of claim 6 of U.S. Letters Patent 4,950,107 or claim 1 of U.S. Letters Patent 5,106,236, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

David A. Hancock, 4257 24th Avenue West, Seattle, Washington 98199

Ideations Design Inc., 4257 24th Avenue West, Seattle, Washington 98199.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Duton Industry Co., Ltd., 3F, No. 85, Ming Teh Road, Peitou, Taipei, Taiwan

IHK International Corp., 2902 Oregon Court, B–1, Torrance, California 90503.

(c) Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., room 401–O, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: May 31, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–13898 Filed 6–7–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–360]

Certain Devices for Connecting Computers Via Telephone Lines; Decision Not To Review Initial Determinations Granting Joint Motions To Terminate the Investigation With Respect to Respondent Focus Enhancements, Inc. on the Basis of Patent and Settlement Agreements, and With Respect to Good Way Industrial Co., Ltd., Caltechnology International Ltd., Shiunn Yang Enterprises Co., Ltd., Tremon Enterprises Co., Ltd, and Taiwan Techtron Corp. on the Basis of Settlement Agreements

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review three initial determinations (IDs) (Order No. 23 and Order Nos. 24, and 25) issued on May 2, 1994, and May 4, 1994, respectively, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the joint motion of complainant Farallon Computing, Inc. ("Farallon") and respondent Focus Enhancements, Inc. ("Focus") to terminate the investigation as to Focus on the basis of a licensing agreement and a settlement agreement, and the joint motions of Farallon and respondents Good Way Industrial Co., Ltd. ("Good Way"), Caltechnology International Ltd. ("Caltechnology"), Shiunn Yang Enterprises Co., Ltd. ("Shiunn Yang"), Tremon Enterprises Co., Ltd. ("Tremon"), and Taiwan Techtron Corp. ("Techtron") to terminate the investigation as to Good Way, Caltechnology, Shiunn Yang, Tremon, and Techtron on the basis of settlement agreements.

FOR FURTHER INFORMATION CONTACT: Elizabeth C. Rose, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Telephone: (202) 205–3113.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain devices for connecting computers via telephone lines, on November 12, 1993; a notice of the institution was published in the **Federal Register** on November 17, 1993 (58 FR 60671). Complainant Farallon alleges infringement of certain claims of U.S. Letters Patent 5,003,579.

On April 21, 1994, Farallon and respondent Focus filed a joint motion to terminate the investigation with respect to Focus on the basis of licensing and settlement agreements. Also on April 21, 1994, Farallon and respondents Good Way, Caltechnology, and Shiunn Yang filed joint motions to terminate the investigation with respect to Good Way, Caltechnology, and Shiunn Yang on the basis of settlement agreements. On April 26, 1994, Farallon and respondents Tremon and Techtron filed joint motions to terminate the investigation with respect to Tremon and Techtron on the basis of settlement agreements. The Commission investigative attorney supported the joint motions. The ALJ issued IDs granting the joint motions and terminating the investigation as to Focus, Good Way, Caltechnology, Shiunn Yang, Tremon, and Techtron. No petitions for review of the IDs were

filed. No agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the nonconfidential version of the IDs and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

Issued: June 2, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–13899 Filed 6–7–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–360]

Certain Devices for Connecting Computers Via Telephone Lines; Decision Not To Review an Initial Determination Granting Joint Motions To Terminate the Investigation With Respect to Respondents CPU Products and Ming Technology Corp. on the Basis of Settlement Agreements

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 26) issued on May 9, 1994, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the joint motions of complainant Farallon Computing, Inc. ("Farallon") and respondents CPU Products ("CPU") and Ming Technology Corp. ("Ming") to terminate the investigation as to CPU and Ming on the basis of settlement agreements.

FOR FURTHER INFORMATION CONTACT: Elizabeth C. Rose, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Telephone: (202) 205–3113.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain devices for connecting computers via telephone lines, on November 12, 1993; a notice of the institution was published in the **Federal Register** on November 17, 1993 (58 FR 60671). Complainant Farallon alleges infringement of certain claims of U.S. Letters Patent 5,003,579.

On April 29, 1994, Farallon and respondent CPU filed a joint motion to terminate the investigation with respect to CPU on the basis of a settlement agreement. On May 2, 1994, Farallon and respondent Ming filed a joint motion to terminate the investigation with respect to Ming also on the basis of a settlement agreement. The Commission investigative attorney supported the joint motions. The ALJ issued an ID granting the joint motions and terminating the investigation as to CPU and Ming. No petitions for review of the ID were filed. No agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the nonconfidential version of the IDs and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

Issued: June 2, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–13900 Filed 6–7–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–702 (Preliminary)]

Ferrovanadium and Nitrided Vanadium From Russia

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–702 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Russia of ferrovanadium and nitrided vanadium, provided for in subheadings 7202.92.00 and 8112.40.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by July 15, 1994.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: May 31, 1994.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on May 31, 1994, by counsel on behalf of Shieldalloy Metallurgical Corp., New York, NY.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation

upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on June 21, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202–205–3185) not later than June 17 to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 24, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: June 2, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–13901 Filed 6–7–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 731–TA–703, 704 and 705 (Preliminary)]

Furfuryl Alcohol From China, South Africa, and Thailand

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–703, 704 and 705 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China, South Africa, and Thailand of furfuryl alcohol, provided for in subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by July 15, 1994.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: May 31, 1994.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on May 31, 1994, by QO Chemicals, Inc., West Lafayette, IN.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 21, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jim McClure (202–205–3191) not later than June 16, 1994, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 24, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: June 2, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–13902 Filed 6–7–94; 8:45 am]

BILLING CODE 7020–02–P

Iron Construction Castings From Canada; Request for Comments Concerning the Institution of a Section 751(b) Review Investigation

AGENCY: International Trade Commission.

ACTION: Request for comments regarding the institution of a section 751(b) review investigation concerning the Commission's affirmative determination in investigation No. 731–TA–263 (Final), Iron Construction Castings from Canada.

SUMMARY: The Commission invites comments from the public on whether changed circumstances exist sufficient to warrant the institution of an investigation pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) (the Act) to review the Commission's affirmative determination in the above investigation. The purpose of the proposed review investigation is to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of iron construction castings from Canada if the existing antidumping order on such merchandise were to be modified or revoked. Iron construction castings are provided for in subheading 7325.10.00 of the Harmonized Tariff Schedule of the United States.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

On March 5, 1986, the Commission issued an affirmative injury determination with respect to iron construction castings in investigation No. 731–TA–263 (Final), Iron Construction Castings from Canada (51 FR 7646), following the U.S. Department of Commerce's final determination that imports of such merchandise were being sold at less than fair value (LTFV) (51 FR 2412, January 16, 1986). The Commission's determination was based on a cumulative assessment of imports from Canada with imports from Brazil, the People's Republic of China (China), and India, which Commerce also determined were being sold at LTFV (51 F.R. 9477, March 19, 1986). Commerce issued antidumping orders for all four countries.

On May 20, 1994, the Commission received a petition to review its final injury determination with respect to Canada in the light of changed circumstances, pursuant to section 751(b) of the Trade Act of 1930. The petition was filed by counsel on behalf of Associated Foundry, Ltd.; Laperle Foundry Division of Fonderies Bibby-Ste-Croix; Fonderies Bibby-Ste-Croix, Inc.; and Titan Foundry, Ltd.—producers of the subject products in Canada. The alleged changed circumstances include: (1) An exclusion of foreign producers from an estimated 60–75 percent of the market due to a 1991 extension of Buy America provisions to iron products used in highway construction; (2) an exclusion of foreign producers from an additional 2 percent of the market due to a 1992 extension of Buy America provisions to iron products used in airport and airway construction; and (3) an effective exclusion of foreign producers from an estimated 12 percent of the market for heavy iron castings due to Customs' enforcement of a 1984 statute that requires the country of origin to appear boldly on the top surface of manhole covers that show the name of a U.S. location, thus increasing the cost of foreign-produced covers, making them less price competitive, and discouraging purchases by local and municipal governments that do not wish to so boldly advertise the purchase of a foreign-produced product. The petitioners maintain that with such a substantial portion of the United States market "closed" to Canadian producers, domestic producers are effectively protected from injury and would continue to be protected if the order for Canada were to be revoked.

Because the alleged changed circumstances relate to the domestic industry and are not limited to imports from Canada, submissions should also address the possibility of reviewing outstanding orders on imports from other countries. Also at issue is the subject of cumulation and whether the Commission should cumulate imports from Canada with those from Brazil, China, and/or India in any review investigation.

Written Comments Requested

Pursuant to § 207.45(b)(2) of the Commission's rules of practice and procedure (19 CFR 207.45(b)(2)), the Commission requests comments concerning whether the alleged changed circumstances are sufficient to warrant institution of a review investigation.

Written Submissions

In accordance with § 201.8 of the Commission's rules (19 CFR 201.8), the signed original and 14 copies of all written submissions must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436. All comments must be filed no later than 30 days after the date of publication of this notice in the **Federal Register**. The Commission's determination regarding initiation of a review is due within 30 days of the close of the comment period. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request business confidential treatment under § 201.6 of the Commission's rules (19 CFR 201.6). Such requests should be directed to the Secretary to the Commission and must include a full

statement of the reasons why the Commission should grant such treatment. Each sheet must be clearly marked at the top "Confidential Business Information." The Commission will either accept the submission in confidence or return it. All nonconfidential written submissions will be available for public inspection in the Office of the Secretary.

Copies of the request for review of the injury determination and any other documents in this matter are available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission; telephone 202–205–2000.

Issued: June 3, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–13903 Filed 6–7–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–366]

Certain Microsphere Adhesives, Process for Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 9, 1994, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Minnesota Mining and Manufacturing Company, 3M Center, St. Paul, Minnesota 55133. An amended complaint was filed on May 27, 1994. The complaint, as amended, alleges violations of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain microsphere adhesives, and products containing same, including self-stick repositionable notes, by reason of alleged infringement of claims 1–8 and 10 of U.S. Letters Patent 4,166,152, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: John M. Whealan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2574.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on June 2, 1994, *ordered* that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of section 337(a)(1)(B) in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain microsphere adhesives, and products containing same, including self-stick repositionable notes, by reason of alleged infringement of claims 1–8 or 10 of U.S. Letters Patent 4,166,152, or whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Minnesota Mining and Manufacturing Company, 3M Center, St. Paul, Minnesota 55133.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Taiwan Hopax Chemicals Mfg. Co. Ltd., 13 F–2, 77, Li Wen Rd., Tso Ying District, Kaohsiung, Taiwan.

Yuen Foong Paper Co. Ltd., 4F, 51 Chung Ching S. Rd., Sec. 2, Chung Cheng Dist., Taipei, Taiwan.

Beautone Specialties Co. Ltd., 4th Floor, 51 Chung Ching South Road, Section 2, Chung Cheng District, Taipei, Taiwan.

Kudos Finder Tape Industrial Ltd., 10th Floor, 811 Chung Hsiao East Road, Section 5, Taipei, Taiwan TW–115.

Kudos Finder Trading Co. Ltd., 10th Floor, 811 Chung Hsiao East Road, Section 5, Nan Kang District, Taipei Taiwan TW–115.

Print-Inform GmbH & Co., Borsigstr 8, 24568 Kaltenkirchen, Germany.

Beautone Specialties Co. Ltd. Inc., 200 High Street, 5th Floor, Boston, MA 02110.

Z-International, 110 East 16th Avenue, North Kansas City, MO 64116.

(c) John M. Whealan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401–P, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received no later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: June 3, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–13904 Filed 6–7–94; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

TA–W–29, 405

General Motors Corporation Inland Fisher Guide Division, Syracuse, NY; Notice of Negative Determination on Reconsideration

On May 23, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former worker of the Inland Fisher Guide Division of General Motors (GM) in Syracuse, New York. The notice was will soon be published in the **Federal Register.**

The United Auto Workers (UAW) stated that a production relationship existed between the subject firm and GM's Tarrytown, New York plant whose workers were certified under TA–W–26,063.

The workers produced exterior and interior plastic trim for GM vehicles.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act were not met. This test is generally demonstrated through survey of the worker's firm's customers. The Department's survey showed that none of the respondents increased their purchases of imported trim while decreasing their purchase from the subject firm during the relevant period.

Findings on reconsideration show that purchases from Tarrytown and all other GM plants where workers are certified eligible to apply for TAA did not constitute an important portion of Syracuse's 1993 sales decline.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers and former workers of the Inland Fisher Guide Division of General Motors Corporation in Syracuse, New York.

Signed at Washington, DC, this 31st day of May 1994.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 94–13883 Filed 6–7–94; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00083]

Miami Trim, Inc; Miami, FL; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on April 18, 1994, in response to a petition filed by the company on behalf of workers at Miami Trim, Inc. in Miami, Florida. The firm produces buttons and trim for apparel.

In a letter dated May 20, 1994, the petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 25th day of May, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–13886 Filed 6–7–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than June 20, 1994.

Interested person are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 20, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 23rd day of May 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Sunshine Rope Manufacturing (Wkrs)	Miami, FL	05/23/94	04/11/94	29,883	Synthetic Twine and Rope.
Jockey International, Inc. (Wkrs)	Belzoni, MS	05/23/94	05/11/94	29,884	Men's T Shirts and Briefs.
Peerless Winsmith, Inc. (Wkrs)	Warren, OH	05/23/94	05/10/94	29,885	Fans and Blowers.
Mascotech Forming Technologies (Wkrs).	Roseville, MI	05/23/94	05/02/94	29,886	Screw Machine Parts.
Baxter Healthcare Corp. (Co)	Kingstree, SC	05/23/94	05/09/94	29,887	Latex Medical Gloves.
Alcan Aluminum Corp./Alcan Ingot (Co)	Henderson, KY	05/23/94	05/12/94	29,888	Primary Aluminum.
American Battery Tubes, Inc. (Co)	Weddington, NC	05/23/94	05/11/94	29,889	Fabric Gauntlets for Batteries.
Canon Business Machines, Inc. (Wkrs)	Costa Mesa, CA	05/23/94	05/16/94	29,890	Electronic Word Processors.
August F. Nelson Co., Inc. (Wkrs)	Allentown, PA	05/23/94	05/11/94	29,891	Children's Sleepwear.
Trico Products Corp. (UAW)	Buffalo, NY	05/23/94	05/04/94	29,892	Windshield Wiper Systems for Autos.
Producers Service Corp. (Co)	Zanesville, OH	05/23/94	05/11/94	29,893	Crude Oil & Natural Gas.
Neil Sportswear, Inc. (ILGWU)	Cambridge, MA	05/23/94	05/11/94	29,894	Ladies' Skirts and Jackets.
Keytronic Southwest (Wkrs)	Las Cruces, NM	05/23/94	05/07/94	29,895	PC Keyboards.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
General Electric Co. (IUE)	Linton, IN	05/23/94	05/09/94	29,896	Fractional H.P. Electric Motor Parts.
Dimensional Products (Wkrs)	Mobile, AL	05/23/94	04/28/94	29,897	Furniture/Clock Cases.
Commodore Semiconductor Group (Wkrs).	Norristown, PA	05/23/94	05/09/94	29,898	Computer Chips.
Clayton Williams Energy, Inc. (Wkrs)	San Antonio, TX	05/23/94	05/01/94	29,899	Exploration & Production of Oil/Gas.
Caddo Well Service, Inc. (Co)	Shreveport, LA	05/23/94	05/08/94	29,900	Oil.
C.H. Hartshorn Co. (IUE)	Gardner, MA	05/23/94	05/09/94	29,901	Furniture.
Arsynco, Inc. (Wkrs)	Carlstadt, NJ	05/23/94	05/02/94	29,902	Organic Intermediates.
ABB Process Automation (Wkrs)	Houston, TX	05/23/94	05/06/94	29,903	Software & General Services.
J&G Shake (Co)	Forks, WA	05/23/94	04/21/94	29,904	Cedar Shakes and Shingles.
Citation Oil & Gas Corp. (Co)	Oklahoma City, OK	05/23/94	05/10/94	29,905	Crude Oil.
Citation Oil & Gas Corp. (Co)	Odessa, TX	05/23/94	05/10/94	29,906	Crude Oil.
Citation Oil & Gas Corp. (Co)	Cement, OK	05/23/94	05/10/94	29,907	Crude Oil.
Citation Oil & Gas Corp. (Co)	Lyford, TX	05/23/94	05/10/94	29,908	Crude Oil.
Citation Oil & Gas Corp. (Co)	Odessa, TX	05/23/94	05/10/94	29,909	Crude Oil.
Citation Oil & Gas Corp. (Co)	Stratton, NE	05/23/94	05/10/94	29,910	Crude Oil.
Swiss Precision Products, Inc. (Wkrs)	Lake Havasu, AZ	05/23/94	04/13/94	29,911	Connectors, Pins, Contacts & Etc.

[FR Doc. 94–13885 Filed 6–7–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29,766]

USA Enterprises of Georgia A/K/A USA Enterprises, Inc.; Conyers, GA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of USA Enterprises of Georgia in Conyers, Georgia. The certification notice was issued on May 24, 1994 and will soon be published in the **Federal Register.**

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that some of the claimants' wages are reported under unemployment insurance (UI) tax account for USA Enterprises, Inc., in Conyers, Georgia. Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–29,766 is hereby published as follows:

"All workers of USA Enterprises of Georgia, Conyers, Georgia a/k/a USA Enterprises, Inc. of Conyers, Georgia who became totally or partially separated from employment on or after March 24, 1993, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 26th day of May 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–13884 Filed 6–7–94; 8:45 am]
BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (94–033)]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee.

DATES: June 29, 1994, 8:30 a.m. to 5 p.m.; and June 30, 1994, 8:30 a.m. to 4:45 p.m.

ADDRESSES: National Aeronautics and Space Administration, room MIC–5, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Arnauld Nicogossian, Code U, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0215.

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Thursday, June 30, 1994, from 11:30 a.m. to 12:15 p.m. in accordance with 5 U.S.C. 522b(c)(6), to allow for discussion on qualifications of individuals being considered for membership to the Committee. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of Office of Life and Microgravity Sciences and Applications Status and Congressional Activities
—Subcommittee Reports
—Review of Flight Programs Status and Space Station Facilities
—Results of the Centrifuge Review
—Report on Science and Education
—Review of Phase I Mir Program and International Cooperation
—Committee Recommendations/Future Planning

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 1, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 94–13927 Filed 6–7–94; 8:45 am]
BILLING CODE 7510–01–M

[Notice (94–032)]

Intent To Grant a Partially Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant Final Touch of Virginia, Inc., of Richmond, Virginia, a partially

exclusive, royalty-bearing, revocable license to practice the invention described and claimed in U.S. Patent No. 5,266,252, which issued on November 30, 1993, and entitled "Ceramic Slip Casting Technique." The proposed patent license will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR part 1245, subpart 2. The fields of use will be limited to the manufacture of ceramic parts for the recreational and commercial marine industries, electrical insulator industry, and for heat insulation in the medical equipment industry. NASA will negotiate the final terms and conditions and grant the partially exclusive license, unless within 60 days of the Date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation. The Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the partially exclusive.

DATES: Comments to this notice must be received by August 8, 1994.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 358–2041.

Dated: May 27, 1994.

Edward A. Frankle,

General Counsel.

[FR Doc. 94–13928 Filed 6–7–94; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by June 15, 1994, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C.).

DATES: Comments on this information collection must be submitted by June 10, 1994.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202–395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–682–5401).

SUPPLEMENTARY INFORMATION: The Endowment requests the review of all of its funding application guidelines. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Blanket Justification for NEA Funding Application Guidelines FY 1995–FY 1998.

Frequency of Collection: Annually.

Respondents: Individuals, nonprofit arts organizations, state and local arts agencies.

Use: Guideline instructions and applications elicit relevant information from individuals, nonprofit arts organizations, and state and local arts agencies that apply for funding in the following Endowment programs: Challenge/Advancement, Dance, Design Arts, Expansion Arts, Folk & Traditional Arts, Literature, Media Arts, Museum, Music, Opera-Musical Theater, Presenting & Commissioning, Theater, Visual Arts, Arts in Education, International, Local Arts Agencies, State & Regional, and Arts Administration Fellows. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the review process.

Estimated Number of Respondents: 17,000.

Average Burden Hours Per Response: 26.75.

Total Estimated Burden. 454,750.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 94–13849 Filed 6–7–94; 8:45 am]

BILLING CODE 7537–01–M

U.S. 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 May 16, 1994, through May 26, 1994. The last biweekly notice was published on May 25, 1994 (59 FR 27049).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the

expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11555 Rockville Pike, Rockville, 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 July 8, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station; Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: December 30, 1993

Description of amendment requests: The proposed amendment would modify Tables 3.3-4 and 3.3-5 of Technical Specification 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation," to provide clarification of settings for undervoltage relay trip values for the Class IE 4.16 kV electrical bus. The proposed amendment would also add Figure 3.3-1, "LOSS OF VOLTAGE RELAY (GE IAV) TIME VS VOLTAGE CURVE," to clarify the relay setpoints and methodology.

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.

The proposed TS amendment does not significantly increase the probability of an accident previously evaluated. The methodology remains the same.

Clarifying the minimum acceptable voltage and allowing more conservative values of the 4.16 kV bus undervoltage trip value will ensure that 4.16 kV ESF [Engineered Safety Features] bus voltages are sufficient to provide adequate voltage to equipment necessary for accident response.

Standard 2—Create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously analyzed. No new or different methodology is being proposed.

The minimum undervoltage relay setpoints are specified and the new wording will allow a more conservative setpoint to ensure voltage levels to equipment powered by the 4.16 kV ESF bus.

The proposed amendment also adds a figure to clarify the relay setpoints and methodology.

Standard 3—Involve a significant reduction in a margin of safety.

The margin of safety as defined in the TS will be increased by specifying the minimum and allowing more conservative values for the 4.16 kV ESF bus undervoltage relay trip values. This clarification will ensure that the trip setpoint adequately protects that equipment powered by the 4.16 kV ESF bus from a potentially damaging degraded voltage condition.

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

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: March 28, 1994

Description of amendment requests: The proposed amendment would change Technical Specification 3/4.3.7.1.3 Condensate Storage Tank. The licensee proposed to change the minimum condensate storage tank (CST) indicated level from 25 feet to 29.5 feet to ensure that the CST contains sufficient volume of water. In addition, the licensee proposed to make an editorial change to the Unit 3 Technical Specification 3/4.3.7.1.3, from "with a level" to "with an indicated level," to be consistent with the Units 1 and 2 Technical Specifications.

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.

This amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated based on the safety analysis for the CST [condensate storage tank] minimum indicated level. The proposed change increases the minimum indicated CST water level from 25 feet to 29.5 feet. Increasing the minimum indicated CST water level ensures that the requirements of BTP [Branch Technical Position] RSB [Reactor System Branch] 5-1 and UFSAR [Updated Final Safety Analysis Report] Section 9.2.6 continue to be met. Therefore, this proposed change ensures that the consequences of an accident previously evaluated are not affected.

Standard 2—Create the possibility of a new or different kind of accident from any accident previously analyzed.

This amendment request does not create the possibility of a new or different kind of accident from any accident previously analyzed since the minimum water volume of 300,000 gallons is maintained by this change. The change in the CST minimum required water level does not change the operation of any plant equipment while ensuring that the required 300,000 gallons are available. Since this change does not affect the operation of plant equipment and ensures that the minimum CST water inventory is maintained, the proposed change does not create the possibility of a new or different kind of accident from any accident previously analyzed.

Standard 3—Involve a significant reduction in a margin of safety.

The margin of safety presently provided is not reduced by the proposed change in the CST minimum required water level. The proposed change ensures that the CST volume of 300,000 gallons is available to satisfy the requirements of BTP RSB 5-1, UFSAR Section 9.2.6 and the BASES for Technical Specification 3/4.3.7.1.3. Therefore, since the minimum required CST level in maintained, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: 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, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: May 20, 1994

Description of amendment request: The proposed amendment will change the Technical Specifications (TS) to (1) add an exception to TS 6.3.1 regarding the requirement for the Manager - Operations position to hold a Senior Reactor Operator's (SRO's) license, (2) add a new TS 6.3.2 to describe the

qualifications for the Manager - Operations and Manager - Shift Operations positions. This new section will require the Manager-Operations to hold or have held an SRO license for either the H. B. Robinson Steam Electric Plant, Unit No. 2 (Robinson), or a similar plant and require the Manager-Shift Operations to hold an SRO license at the Robinson plant, and (3) renumber the sections to allow for the insertion of a new TS 6.3.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The total number of senior reactor operator licensed personnel on shift remains unchanged. The change to provide a middle level of management will lessen the burden of the daily shift operations placed on the Manager - Operations. This will allow for more effective overall management of the Operations Unit. Requiring the Manager shift Operations to hold an SRO license will assure that supervision of operator activities continues to be performed by a senior licensed individual. The proposed changes to the Operations management organization do not involve physical alterations of the plant configuration or changes in setpoints or operating parameters. Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. As described above, these changes affect the organization of the Operations Unit. They do not represent any appreciable change in the current methodologies; they merely update the TS to reflect current personnel organization configuration and standards. The proposed changes to the Operations management organization do not involve physical alterations of the plant configuration or changes in setpoints or operating parameters. Therefore, the changes proposed do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The changes proposed do not reduce the number of senior reactor operator licensed personnel on shift. The changes to the Operations organization, as reflected in the proposed change, will enhance the overall effectiveness of plant operations and will serve to improve nuclear safety. There are no changes to the plant configuration or changes in setpoints or procedures. Therefore, the changes proposed have no affect on the facility's margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 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: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29550

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

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: May 10, 1994

Description of amendment request: The proposed amendment would remove component lists from Technical Specification (TS) sections in accordance with the guidance provided in Generic Letter (GL) 91-08 dated May 6, 1991. Related TS which reference the lists are also modified.

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 will not result in any hardware or operating changes. The proposed change is based upon Generic Letter 91-08 and merely removes component lists, removes details relating to the component lists, provides clarifying information supporting the removal of the component listings, or removes details (which are considered administrative) that are no longer applicable to the TS. The removal of tabular component listings from the TS does not impact affected component OPERABILITY requirements. TS will continue to require the components to be OPERABLE. Action statements and surveillance requirements for the components will also remain in the TS. The tabular component lists will be relocated to plant procedures which will be controlled in accordance with the provisions specified in the Administrative Controls Section of the TS. Therefore, this change is administrative in nature and does not involve a significant increase in the probability or consequences of an accident previously evaluated. Further, the proposed changes do not alter the design, function, or operation of the components involved and therefore, do not affect the consequences of any previously evaluated accident.

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 will not impose any different operational or surveillance requirements. The changes propose to relocate these component lists to plant procedures whereby adequate control of information is maintained. Further, as stated above, the proposed changes do not alter the design, function, or operation of the components involved and therefore, no new accident scenarios are created.

3. The proposed changes do not involve a significant reduction in a margin of safety. The proposed change will not reduce a margin of safety because it has no impact on any safety analysis assumption. The proposed change does not alter the scope of equipment currently required to be OPERABLE or subject to surveillance testing nor does the proposed change affect any instrument setpoints or equipment safety functions. Therefore, the 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: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226

NRC Project Director: Ledyard B. Marsh

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: July 15, 1993

Description of amendment request: The revision proposed by Technical Specification Change Request (TSCR) No. 211 to the Technical Specifications would remove a footnote to specification 3.24, "Reactor Coolant Inventory Trending System," and would revise that specification to be consistent with the revised Babcock & Wilcox revised Standard Technical Specifications, issued as NUREG-1430.

The July 15, 1993, request supersedes the request of September 5, 1991, published in the **Federal Register** on November 13, 1991 (56 FR 57697).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

1. The revised Limiting Condition for Operation represents no increase in the probability of occurrence or consequences of an accident previously evaluated.

The TSCR represents no change to the physical configuration or operation of the Reactor Coolant Inventory Trending System.

As stated in the Bases for the existing Technical Specification 3.24, the system is not a system required to mitigate accidents. It may be useful to have the system operable, but adverse impact does not result if it is not operable; other useful information for monitoring inadequate core cooling is available. The change proposed is in accordance with the Limiting Condition for Operation in NUREG 1430.

2. The revised Limiting Condition for Operation does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As identified above, the TSCR represents no change to the physical configuration or operation of the Reactor Coolant Inventory Trending System.

3. The revised Limiting Condition for Operation does not involve a significant reduction in a margin of safety.

The margin of safety for the proposed Limiting Condition for Operation is no different from that for existing 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: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: April 11, 1994

Description of amendment request: The purpose of the request is to revise the Technical Specifications (TS) by relocating the detailed inspection criteria, methods and frequencies of the containment tendon surveillance program to the Final Safety Analysis Report (FSAR) and providing a direct reference to the existing tendon surveillance program in the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. 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 proposed amendment only relocates the tendon surveillance program detailed requirements and criteria to the FSAR, consistent with the BWOG [Babcock & Wilcox Owners Group] Revised Standard Technical Specifications. The proposed amendment does not affect the requirement to verify the containment structural integrity in accordance with the inservice tendon surveillance program. The proposed Technical Specification specifies that the tendon surveillance program conforms to the recommendations of U.S. NRC Regulatory Guide 1.35, which ensures the effectiveness of the program is not reduced and containment structural integrity is not affected. Therefore, this change does not increase the probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The tendon surveillance program is required to conform to the recommendations of U.S. NRC Regulatory Guide 1.35. Therefore, the effectiveness of the surveillance program is maintained, thus providing continued assurance of containment structural integrity.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The performance of the inservice tendon surveillance program is maintained in conformance with the recommendations of U.S. NRC Regulatory Guide 1.35, thus providing continued assurance of containment structural integrity. Therefore, it is concluded that operation of the facility in accordance with the proposed amendment does not involve a reduction in a margin of safety as defined in the basis of any Technical Specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: April 19, 1994

Description of amendment request: The purpose of the request is to delete the quality assurance (QA) audit program frequency requirements from the Technical Specifications (TS) and to utilize the Operational Quality Assurance (OQA) Plan as the controlling document.

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. These changes do not affect the function of any system or component. Therefore, they do not increase the probability of occurrence or the consequences of an accident previously evaluated in the SAR [Safety Analysis Report].

2. These changes do not involve a physical change to plant configuration and they do not affect the performance of any equipment. Therefore, they do not create the possibility of a new or different kind of accident or malfunction of a different type than previously identified.

3. The shifting of the audit frequency requirements from the Technical Specifications to the OQA Plan and the extension of the maximum interval between audits of certain areas do not change the activities to be audited nor the scope of individual audits. Furthermore, audit frequencies are not associated with the marginof safety in the bases of any Technical Specification. Therefore, the margin of safety in not affected by this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: April 14, 1994.

Description of amendment request: The licensee proposes to revise Technical Specification 5.3.1, "Fuel Assemblies." The amendment would permit fuel assembly reconstitution to restore the usefulness of fuel assemblies containing damaged or leaking fuel rods.

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 a previously evaluated

accident.

Fuel assemblies containing filler rods will be shown to meet the current nuclear, mechanical, and thermal-hydraulic design limits on a cycle-specific basis. Since fuel assemblies containing filler rods will be shown to meet the current nuclear, mechanical, and thermal-hydraulic design limits on a cycle-specific basis, there is no impact on the design basis of the plant.

Replacement of fuel rods with fuel rods containing natural uranium or fuel rods from fresh or burned assemblies will be evaluated by South Texas Project's internal 10 CFR 50.59 review process. Reconstituted fuel assemblies with fuel rods containing natural uranium and/or fuel rods from fresh or burned assemblies will be analyzed using the normal design methodology as described in Section 6.9.1.6 of the Technical Specifications.

Since current reload core design limits will be met by fuel assemblies using zirconium alloy or stainless steel filler rods, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind accident from any previously evaluated.

The use of filler rods does not involve any alteration to plant equipment or procedures which would introduce any new or unique operational modes or accident precursors. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The use of filler rods does not change the reload design or safety analysis limits for a reload core. Their use will be evaluated on a cycle-specific basis using NRC-accepted fuel rod configurations and analysis techniques. Since the safety analysis limits are unaffected and since the modified fuel assemblies will be shown to meet existing design limits on nuclear, mechanical, and thermal-hydraulic parameters, 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 standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J: M. Hodges, Learning Center, 911 Boling Highway, Wharton, Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, N.W., Washington, D.C. 20036

NRC Project Director: James E. Lyons, Acting

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: April 29, 1994

Description of amendment request: The licensee proposes to revise Technical Specification 3.7.1.1, "Turbine Cycle - Safety Valves." The amendment would change the maximum allowable power range neutron flux high setpoint when one or more main steam safety valve (MSSV) is inoperative. The Bases for Technical Specification 3.7.1.1 would also be changed to reflect the new algorithm used to calculate the revised setpoint values.

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 a previously evaluated accident. The Main Steam Safety Valves [MSSVs] are only actuated after a transient has occurred. Therefore, revising the maximum power level with inoperable MSSVs would not increase the probability of a previously evaluated accident. Following a loss of load/turbine trip, the revised Technical Specification Table 3.7-1 maximum allowable power range neutron flux high setpoints would ensure that the maximum power level allowed for operation with inoperable MSSVs is below the heat removing capability of the operable MSSVs. This would ensure that the design limit of 110% overpressurization is not exceeded. Therefore, there is no increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change would not alter the design, configuration, or method of operation of STP [South Texas Project]. For this reason, as well as the reasons stated in response to Criterion 1 above, the proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The revised Table 3.7-1 setpoint values were calculated using a conservative method where the maximum power level allowed for operation with inoperable MSSVs is below the heat removing capability of the operable MSSVs. Using the revised maximum plant operating power levels will ensure that the secondary system pressure will be limited to within 110% of its design pressure. Therefore, since the design criteria will continue to be met, 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 standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges, Learning Center, 911 Boling Highway, Wharton, Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, N.W., Washington, D.C. 20036

NRC Project Director: Suzanne C. Black

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: April 27, 1994

Description of amendment request: The amendment would delete Technical Specifications Surveillance Requirement 4.4.1.1.1, which requires that the reactor recirculation pump discharge valve be demonstrated operable by performing a full-stroke test of the valve prior to reactor thermal power exceeding 25% of rated reactor thermal power.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to delete the TS Surveillance Requirement (SR) does not require any modifications to the plant or equipment, and will not impact the operation of the reactor recirculation system. The reactor recirculation system will continue to function as designed to maintain reactor pressure boundary integrity and to provide sufficient flow through the reactor core to remove heat from the fuel. This proposed TS change does not affect the operation of any Emergency Core Cooling System (ECCS) or other plant equipment important to safety. The purpose of this TS SR is to satisfy an ECCS operability requirement for Boiling Water Reactor (BWRs) where the reactor recirculation system piping serves as the injection flowpath to the reactor pressure vessel for the Low Pressure Coolant Injection (LPCI) system, an ECCS. Each LPCI subsystem, at LGS, has an independent flowpath which does not rely on the reactor recirculation system piping for injecting to the reactor pressure vessel. The reactor recirculation system pump discharge valves do not perform an active safety-related function and are classified as passive safety-related components designed to maintain the reactor pressure boundary integrity during reactor recirculation pump maintenance activities. These valves are not normally used during plant operations except to establish normal shutdown cooling, a manually initiated non-safety related function. These valves are not used to mitigate the consequences of design bases accidents.

Therefore, the proposed change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed TS does not require physical changes to the plant or equipment, and does not impact any design or functional requirements of the reactor recirculation system, LPCI system, or other plant systems important to safety. The purpose for this TS SR is to satisfy an ECCS operability requirement for BWRs where the reactor recirculation system piping serves as the injection flowpath to the reactor pressure vessel for the LPCI system. The LPCI system at LGS has an independent flowpath for injecting to reactor pressure vessel and does not rely on the reactor recirculation system piping as part of the injection flowpath. Since the intent of this requirement is to support LPCI operation, and the LPCI system design function is accident mitigation, eliminating this TS SR has no impact on the types of accidents that could occur. The reactor recirculation system pump discharge valves do not perform an active safety-related function and are classified as passive safety-related components designed to maintain the reactor pressure boundary integrity during reactor recirculation pump maintenance activities

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The proposed change to delete the TS SR does not involve a change to the physical design or functional requirements of the reactor recirculation system, LPCI system, or other plant system important to safety. The reactor recirculation system will continue to function as designed to maintain reactor pressure boundary integrity and to provide sufficient flow through the reactor core to remove heat from the fuel. This proposed TS change does not impact the safety-related operation of the LPCI system. The LPCI system will continue to function as designed to mitigate the consequences of an accident. These valves do not perform an active safety-related function and are classified as passive safety-related components designed to maintain the reactor pressure boundary integrity during reactor recirculation pump maintenance activities.

Therefore, the proposed TS change 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: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Philadelphia Electric Company, Public Service Electric and Gas Company,Delmarva Power and Light Company, and Atlantic City Electric Company,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: April 27, 1994

Description of amendment request: These technical specifications (TS) changes are being proposed to support the implementation of proposed Modification 5274 which is intended to replace the Peach Bottom Atomic Power Station (PBAPS), Unit 2 Containment Atmospheric Dilution (CAD) System and Containment Atmospheric Control (CAC) System analyzers. This modification was performed on PBAPS, Unit 3 during the previous Unit 3 outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The design function and operation of the CAC and CAD Systems, which are supported by the operation of the containment monitoring system, have not been altered as a result of these changes. The CAC System monitors the content of oxygen during startup and normal operation and the CAD System is utilized to monitor the content of hydrogen and oxygen during post-LOCA [loss-of-coolant accident] operation. The monitoring of these variables will continue to mitigate the consequences of accidents previously evaluated. Additionally, no accident precursors will be impacted by these changes.

The new system meets or exceeds the design standards of the original system. Additionally, the decrease in warmup time will increase the availability and usefulness of the analyzers to mitigate the consequences of an accident. Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different type of accident from any accident previously evaluated; or,

The proposed TS changes do not involve the introduction of any new accident initiators. The new containment monitoring system will enhance the ability of [the] CAD system to mitigate the consequences of an accident and prevent the introduction of a new or different type of accident previously evaluated. The new system meets or exceeds existing design standards and will be tested to ensure its reliability. The new containment monitoring system is a monitoring system and will not introduce new accident initiators. Therefore, the proposed changes will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

Although the number of analyzers is being reduced, the proposed modification and TS changes will enhance the ability of the containment monitoring system to support the operation of the CAC and CAD systems [through] the use of improved equipment that meets or exceeds the design standards of the original system. Therefore, the proposed changes will not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (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

Power Authority of The State of New York, Docket No. 50-286, Indian PointNuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: May 10, 1994

Description of amendment request: The proposed amendment would revise Section 3.1.C.3 and Table 4.1-1 of Appendix A of the Operating License. This change would require that the reactor coolant average temperature (T_{avg}) be restored to greater than or equal to 540° F within a 15-minute period or be in hot shutdown within the following 15 minutes. The proposed change in Table 4.1-1 entitled, "Minimum Frequencies for Checks, Calibrations and Tests," will add the requirement for T_{avg} instrument check frequency to be reduced to 30 minutes when the T_{avg} deviation and low T_{avg} alarms are not reset and the control banks are above zero steps. This application also proposes revision to the Bases to reflect that the minimum temperature for criticality provides assurance that the reactor is operated within the bounds of the safety analyses. In addition, the proposed application also includes an administrative change to correct some typographical errors on page 3.1-25 of the Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The probability or the consequences of an accident previously evaluated will not be affected because the proposed changes will make the Minimum Temperature for Criticality Specification (540° F) more restrictive than the current specification which allows reactor criticality at a temperature as low as 450° F. The proposed changes will also make the minimum temperature for criticality consistent with the licensing basis safety analyses. In addition, critical operation at T_{avg} less than 540° F will require operator response to restore T_{avg} to [greater than or equal to] 540° F within 15 minutes or be in hot shutdown within the following 15 minutes. [***] [T]he minimum temperature for criticality when defined to be within 7° F below the no-load T_{avg} value of 547° F does not adversely affect pressurizer operability, reactor vessel nil-ductility temperature, the reactor protection system operability, nor the plant design basis analyses and is supported by the current licensing basis safety analyses. The presence of two separate alarms, each annunciating on a 1-out-of-4 T_{avg} signal, will provide assurance that constant T_{avg} monitoring is available during approaches to criticality. The proposed change also increases the surveillance frequency for T_{avg} instrument check when the T_{avg} deviation and low T_{avg} alarms are not reset and the control banks are above zero steps. Therefore, the proposed changes have no effect on the probability or consequences of an accident previously evaluated.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve the addition of any new or different type of equipment, nor do they involve the operation of equipment required for safe operation of the facility in a manner different from those addressed in the Final Safety Analysis Report. The safety analyses, which assume a critical temperature of 547° F, are applicable for critical temperatures as low as 540° F. The proposed changes will ensure that the plant parameters are within their analyzed ranges and will increase the surveillance frequency for the T_{avg} instrument check when the T_{avg} deviation and low T_{avg} alarms are not reset and the control banks are above zero steps. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

:Response:

The proposed license amendment does not involve a significant reduction in a margin of safety. The proposed changes do not affect any safety related system or component operation or operability, instrument operation, or safety system setpoints and do not result in increased severity of any of the accidents considered in the safety analyses. Operator response to a drop in temperature after reaching criticality for a specified period of time will place the reactor in the hot shutdown condition where the LCO [limiting condition for operation] does not apply. The proposed changes are being made to make the Technical Specifications consistent with the licensing basis safety analyses and increase the surveillance frequency. These changes have no effect on any margin of safety and, therefore, do not create a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Michael L. Boyle, Acting

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: March 31, 1994

Description of amendment request: This amendment request would revise the diesel fuel oil storage operability requirements and the 5 minute diesel hot restart test conditions. In addition, the amendment request also revises the Surveillance Requirements to allow the 24-hour diesel generator endurance test to be conducted during any operational condition.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The addition of a 48 hour period to complete restoration of the required fuel oil level prior to declaring the diesel generator inoperable does not significantly increase the probability or consequences of an accident previously evaluated. PSE&G believes that the attendant risk of maintaining the diesel generator OPERABLE status under temporary conditions where fuel oil supply is below 48,800 gallons (but greater than 44,709 gallons) is less than the attendant risk of initiation and completion of shutdown actions currently required by Technical Specifications under these conditions. Since a minimum 44,709 gallon [6 day] supply of oil will be maintained for these 48 hours, and procedures are implemented to obtain replenishment fuel oil when the level falls below 48,800 gallons of fuel, and the

probability of an event requiring the onsite power sources during this brief period are low (as stated in NUREG-1433), PSE&G concludes that this change does not increase the likelihood of accidents occurring nor significantly affect the performance of any system involved in the occurrence or mitigation of the accidents.

The proposed amendment to allow the 24 hour diesel generator endurance run to be conducted during any mode of operation does not significantly increase the probability or consequences of an accident previously evaluated in Chapter 15 of the UFSAR since the capability to safely shutdown the plant following a Loss of Offsite Power (LOP), LOCA or LOCA/LOP coincident with a single failure is maintained throughout the surveillance test. The 24 hour endurance test does not disable any of the automatic actuations and interlocks of the diesel generator control functions, nor prevent the satisfactory completion of the LOP or LOCA/LOP loading sequence if a LOP or LOCA signal is received at any time during the test. Required Class-1E onsite power OPERABILITY during normal operation, shutdown cooling, loss of off-site power, and accident conditions will be the same.

In addition, the performance of proposed Surveillance Requirement 4.8.1.1.2.k.1 during Operational Conditions 1 or 2 will not significantly increase the consequences of perturbations to any of the electrical distribution systems that could result in a challenge to steady state operation or to plant safety systems. Performance of proposed Surveillance Requirement 4.8.1.1.2.k.1 during Operational Conditions 1 or 2, or failure of the surveillance, will not cause, or result in, an anticipated operational occurrence with attendant challenges to plant safety systems that has not been previously analyzed for the existing monthly surveillances.

Therefore, PSE&G concludes that this above change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The establishment of the new Surveillance Requirement 4.8.1.1.2.k.2, allows the five minute diesel hot restart test to be performed at times other than after the 24 hour endurance run test, but does not alter nor modify the test requirements currently required by Surveillance Requirement 4.8.1.1.2.h.4.b. The proposed Surveillance Requirement 4.8.1.1.2.k.2 maintains the test conditions required by current Specifications, and satisfies the intent of Regulatory Guide 1.9, Rev. 3, paragraph 2.2.10. Therefore, PSE&G believes that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not involve any physical changes to plant structures, systems or components, or change the manner in which the plant is operated. Therefore, the proposed changes will not increase the probability of accidents of a different type, nor will they create malfunctions of a different type than any previously evaluated in the SAR.

3. Will not involve a significant reduction in a margin of safety. The basis for this statement is outlined in Item 1 above.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: March 31, 1994

Description of amendment request: The amendment request would establish an allowed out-of-service time (AOT) of 72 hours for any one low pressure Emergency Core Cooling System injection subsystem inoperable in addition to an inoperable High Pressure Coolant Injection system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change establishes a 72 hour Allowed Out-of-Service Time (AOT) for coincidental High Pressure Coolant Injection system (HPCI) and one low pressure injection/spray subsystem inoperability, in accordance with NUREG-1433. In addition, PSE&G will justify retaining the existing HCGS AOTs for one, two, and three Low Pressure Coolant Injection (LPCI) subsystems inoperable.

The HCGS electrical distribution system that supplies the ECCS (Emergency Core Cooling System) equipment with power contains four (4) Emergency Diesel Generator (EDGs) while the electrical distribution system of the NUREG-1433 plant contains only three (3) EDGs. This additional, redundant system adds reliability to the overall electrical distribution system. In NUREG-1433, the loss of one EDG (Emergency Diesel Generator) results in the inoperability of two (2) Low Pressure Injection (LPCI) pumps or one (1) LPCI and one (1) 100% capacity CS subsystem, whereas the loss of one EDG at HCGS would only result in the inoperability of one LPCI pump and one-half of a CS subsystem (50% capacity). Another design feature of the HCGS LPCI system that makes it more reliable than the plant discussed in NUREG-1433 is that the LPCI system injects directly into the reactor vessel via water boxes mounted inside the core shroud. The LPCI system of the NUREG-1433 plant injects into the reactor vessel via the recirculation loops, 2 LPCI pumps inject into each recirculation loop. Therefore, following a rupture of a recirculation line, a Design Base Accident Loss of Coolant Accident, the NUREG-1433 plant would lose 2 LPCI subsystems, while HCGS would maintain all 4 LPCI subsystems available for injection. The end result is that, following assumed loss of a single EDG electrical system, the HCGS plant is left with much more injection capability than the NUREG-1433 plant. For these reasons:

*the HCGS AOT for one LPCI subsystem inoperable, given at least one CS subsystem is operable, is 30 days as opposed to 7 days as specified in NUREG-1433, and

*the HCGS AOT for two LPCI subsystems inoperable, given at least one CS subsystem is operable, is 7 days. This AOT is the same as the AOT in NUREG-1433 for one (1) LPCI subsystem inoperable. However, this AOT is less restrictive than the action required in NUREG-1433 for one (1) LPCI subsystem inoperable with one (1) CS subsystem inoperable, which is immediate entry into Technical Specification 3.0.3., and

*the HCGS AOT for three LPCI subsystems inoperable, given both CS subsystems are operable, is 72 hours as opposed to immediate entry into Technical Specification 3.0.3 as specified in NUREG-1433.

NUREG-1433 would be overly conservative for HCGS, since HCGS has four (4) EDGs and four (4) physically separate channels of electrical power, while the NUREG-1433 plant only has 3 EDGs. HCGS has greater capability to supply power to its ECCS in an emergency than the NUREG-1433 plant. Similarly, the incorporation of an AOT of 72 hours for HPCI and one low pressure injection/spray subsystem as proposed in NUREG-1433 would also be conservative for HCGS.

In the HCGS safety analysis, the small break LOCA is the design basis event for the HPCI system. The most limiting single failure coincident with a large or small break LOCA is the failure of the DC source (Channel A) common to the HPCI system, one CS subsystem, and one LPCI subsystem. The change made by this submittal would establish a 72 hour AOT for either one LPCI subsystem or one CS subsystem to be inoperable coincident with HPCI being inoperable. As discussed above, if an initiating event occurs while in the proposed AOT for the ECCS, the resulting scenario would be within the design basis of the HCGS. Even with a failure of one CS subsystem while HPCI and LPCI are in a 72 hour LCO or a failure of one LPCI subsystem while HPCI and CS are in a 72 hour LCO, HCGS would still be within its design basis if an initiating event occurred. Adequate core

cooling is ensured by the operability of the ADS and the remaining low pressure injection/spray subsystems.

The loss of feedwater flow transient analyzed in Chapter 15 of the HCGS UFSAR assumes both the HPCI and RCIC systems to be operable. The existing TS for HPCI allows the system to be inoperable for up to 14 days. Sufficient injection capability is assured because the RCIC system will be required to be operable if the HPCI is inoperable. For this transient, the proposed 72 hour AOT for the HPCI and one low pressure injection/spray subsystem inoperable presents no challenge greater than the existing 14 day HPCI AOT.

For the steam line breaks outside of containment, the HPCI system is assumed unavailable. For feed line breaks outside of containment, either the HPCI or RCIC systems are capable of providing adequate cooling to the vessel to prevent cladding damage. The RCIC system will be required to be operable during the proposed 72 hour AOT.

The Core Damage Frequency (CDF) at HCGS is calculated based on Probabilistic Risk Assessment (PRA) models using present Technical Specifications that do not allow simultaneous outages of either HPCI and one LPCI subsystem or HPCI and one CS subsystem. The proposed action statement, which would allow 72 hours of plant operation with the HPCI system inoperable coincident with one low pressure ECCS injection/spray subsystem (LPCI or CS) inoperable, was determined to have a potential impact on 28 of the core damage sequences. These 28 core damage sequences were requantified with a new model (based on the proposed action statement that would allow the simultaneous outage), and none of the frequencies of the 28 sequences were significantly affected.

In addition, the probability of an accident is not affected because no physical modifications are being made to the plant.

Finally, implementation of this proposed change would reduce unnecessary plant shutdowns without commensurate effects on safety and minimize associated challenges to safety systems.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Establishing an AOT of 72 hours for the HPCI system inoperable in addition to any one (1) low pressure injection/spray subsystem does not alter the function of the equipment nor involve any type of plant modification. Additionally, no new modes of plant operation are involved with these changes. The proposed change therefore will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

The basis for this statement is outlined in item 1 above.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: April 25, 1994

Description of amendment request: The proposed amendment would change the minimum level in the Emergency Diesel Generator (EDG) Fuel Oil Day Tank from 200 gallons to 360 gallons. The change is necessary to support a required run time of 55-60 minutes from the day tank. The Bases would also be changed to include reference to Amendment 59, which authorized a change to the EDG surveillance requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of the Hope Creek Generating Station (HCGS) in accordance with the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment to the Technical Specifications will bring the minimum allowable EDG fuel oil day tank levels into agreement with the levels corresponding to EDG run times reviewed and approved by the NRC in Amendment 59 to the Hope Creek Generating Station Facility Operating License. Increasing the minimum level requirement is conservative and when compared to the current level requirement, will act to reduce the consequences of any accident or malfunction of equipment important to safety previously evaluated in the Updated Final Safety Analysis Report (FSAR). The proposed change will have no impact on the probability of any accident.

2. The operation of the Hope Creek Generating Station (HCGS) in accordance with the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

The physical changes to the plant and to the manner in which the plant is operated in the proposed revisions add conservatism to the current requirements in the Technical Specifications. No new or different kind of accident is created by the proposed change.

3. The operation of the Hope Creek Generating Station (HCGS) in accordance with the proposed change does not involve a significant reduction in a margin of safety.

The proposed revision, by maintaining a higher (more conservative) Emergency Diesel Generator Day Tank level, will result in an increase in margins 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: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: April 25, 1994

Description of amendment request: The proposed amendment would eliminate the requirement from the Hope Creek technical specifications to perform Type C leak rate tests in accordance with 10 CFR 50, Appendix J, of identified containment isolation valves that penetrate the primary containment and terminate below the minimum water level in the suppression chamber (torus). The valves would still be subject to testing in accordance with the American Society of Mechanical Engineers Boiler and Pressure Vessel Code and Type A leak rate tests (Integrated Leak Rate Test) of the primary containment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Containment Isolation Valves (CIVs) for which Appendix J, Type C leak rate testing will no longer be performed are all on lines which penetrate the Torus and terminate below the Torus minimum water level. Since the Torus is designed and operated to be filled with water during and following any postulated Design Basis Accident, the CIVs will remain water sealed during these conditions.

Type C testing of individual CIVs per the requirements of 10CFR50 Appendix J is not

necessary since no potential containment bypass leakage path exists due to the water seal and closed system piping. The CIVs will, however, continue to be tested pursuant to the applicable requirements of Section XI of the American Society of Mechanical Engineers Boiler and Pressure Vessel (ASME B&PV) Code.

In addition, the elimination of 10CFR50 Appendix J, Type C testing for the subject CIVs will not affect the overall leak-tight integrity of the Primary Reactor Containment, which will be demonstrated during 10CFR50 Appendix J Type A Integrated Leak Rate Testing as described in the Hope Creek Generating Station Updated Final Safety Analysis Report (HCGS UFSAR) Section 6.2.6.1.

Consequently, radiological releases and their consequences due to leakage of the subject CIVs will be minimized and within the existing plant licensing basis.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposal does not involve any hardware or logic changes, nor does it alter the way in which any plant systems operate. Post-accident Containment isolation features, boundaries and system interfaces are not affected by the changes. Therefore, there are no new possibilities or types of accidents considered.

3. Will not involve a significant reduction in a margin of safety.

The proposed elimination of 10CFR50 Appendix J, Type C testing for certain CIVs in lines which penetrate the Torus and terminate below the minimum water level will not adversely affect the margins of safety associated with the plant's licensing bases.

The water seal provided by the Torus, in conjunction with the closed system piping, precludes post-accident bypass leakage. Individual CIVs will be tested in accordance with the ASME B&PV Code Section XI - Division 1, Article IWV-3000, as required. 10CFR50 Appendix J, Type A testing will ensure that the overall Containment leakage rate is consistent with the plant's licensing bases. In addition, any leakage associated with the subject CIVs will have little radiological significance since it will involve liquid releases (i.e., minimum fission products). CIV seat leakage will be confined within the closed system piping downstream of the CIVs. Existing Containment isolation features, boundaries and system interfaces are not affected by the changes.

Since the CIVs and the systems they serve are all located in the Reactor Building, any leakage (e.g., packing gland leakage) which escapes the confines of the closed system piping, will be contained within the Reactor Building. The Reactor Building is a radiologically controlled area which is served by the Filtration, Recirculation, and Ventilation System. This assures that all radioactive releases to the environment are within the existing plant licensing bases. The elimination of Type C testing for the subject isolation valves will not affect the existing radiological release evaluations currently described in the HCGS-UFSAR.

The proposed Amendment will not affect the functional capability of any plant safety-related structures, systems or components nor will it result in any relaxation of existing plant licensing bases.

In addition, the implementation of the proposed Amendment will result in a reduction of radiological exposure to plant personnel. Therefore, the proposed revision will not reduce 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: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: 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: March 28, 1994

Description of amendment request: The proposed amendment would revise Technical Specification 3/4.3.2, Table 3.3-4, Item 7b, Sustained Degraded Voltage for Salem Generating Station Units 1 and 2. The amendment proposes to change the Sustained Degraded Voltage Trip Setpoint from greater than or equal to 91.6% of bus voltage for less than or equal to 13 seconds to greater than or equal to 94.6% of bus voltage for less than or equal to 13 seconds, and the Allowable Value for Sustained Degraded Voltage from greater than or equal to 91% of bus voltage for less than or equal to 15 seconds to greater than or equal to 94% of bus voltage for less than or equal to 15 seconds.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident or malfunction of equipment important to safety previously evaluated.

The proposed amendment will increase the minimum voltage available at the vital buses and maintain vital loads within their voltage ratings under degraded voltage conditions.

The change to the Sustained Degraded Voltage Trip Setpoint also considered the minimum bus recovery voltage following a transient that would reset the undervoltage relay to prevent unnecessary transfers to the emergency diesel generators. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated in the UFSAR.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed amendment to the Sustained Degraded Voltage Trip Setpoint ensures a higher minimum voltage is available to all vital loads during any electrical transient, and is sufficient to operate these loads within their voltage rating. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

The proposed amendment will increase the minimum voltage available at the vital buses and maintain vital loads within their voltage ratings. This ensures that the minimum voltage for any vital load will continue to be available including under degraded voltage conditions. Calculations have determined that a Sustained Degraded Voltage Trip Setpoint of greater than or equal to 94.6% of bus voltage for less than or equal to 13 seconds is the optimum setpoint with an Allowable Value of greater than or equal to 94% of bus voltage for less than or equal to 15 seconds to meet the current design requirements. These values provide sufficient margin based on the minimum voltage of 93.2% required to ensure that vital loads will operate within their designed voltage range. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, and Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: April 13, 1994

Description of amendment request: The proposed changes revise the Quality Assurance audit frequencies in the Hope Creek and Salem Unit Nos. 1

and 2 Technical Specifications. These revisions will permit a biennial audit frequency with a 25% extension to the frequency and transfer subsequent control over the audit program 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. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The likelihood that an accident will occur is neither increased or decreased by the proposed Technical Specification changes which affect review and audit frequencies. The proposed changes will not impact the function or method of operation of plant equipment. Thus, there is not a significant increase in the probability of a previously analyzed accident due to the changes. Also, the consequences of a malfunction of equipment important to safety previously evaluated in the UFSAR is not increased by the changes.

The proposed changes affect review and audit frequencies. As such, the proposed changes have no impact on accident initiators or plant equipment, and thus, do not affect the probabilities or consequences of an accident.

The audit program verifies that functions and methods of plant operation have not been altered or degraded. This verification process will continue, but on a more flexible basis. The proposed changes will not alter the function or diminish the quality of the audits. Frequency may only be decreased for those programs which demonstrate acceptable performance. The changes provide added flexibility in scheduling audits and facilitate resource allocation to areas with perceived weaknesses. In this regard, the proposed changes offer an opportunity for possible decreases in the likelihood that an accident would occur.

Therefore, we conclude that the proposed changes do not significantly increase the probabilities or consequences of an accident.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve changes to the physical plant or operations. Since program audits do not contribute to accident initiation, changes related to audit functions cannot produce a new accident scenario or produce a new type of equipment malfunction. Also, the [changes do] not alter any existing accident scenarios. The proposed changes do not affect equipment or its operation, and, thus, do not create the possibility of a new or different kind of accident.

The proposed changes revise the audit frequency to biennial and permit a 25% extension to this frequency. However, audit frequency may only be decreased for those programs exhibiting acceptable performance. The 25% extension is a provision to provide added flexibility in scheduling audits and is not applicable to the audits of the Facility Emergency and Security Plans.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

3. Will not involve a significant reduction in a margin of safety.

The proposed changes concerning conduct of reviews and audits do not directly affect plant equipment or operation. Safety limits and limiting safety system settings are not affected.

The proposed changes will not alter the function or diminish the quality of the reviews and audits. For the audit program, the changes propose a biennial audit frequency and a subsequent transfer of control over the audit program to the Updated Final Safety Analysis Report. This will not result in a loss of regulatory control. 10 CFR 50.54(a)(3) requires that changes to the quality assurance description report which reduce commitments be submitted to the NRC prior to implementation. In addition, the audit frequency may only be decreased for those programs which demonstrate acceptable performance. The changes provide added flexibility in scheduling audits and facilitate resource allocation to areas with perceived weaknesses. The proposed changes should result in a more effective audit program that will contribute to an improvement in plant safety.

Therefore, use of the proposed Technical Specification changes would not involve any 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: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079 (Salem Generating Station, Units 1 and 2) and Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070 (Hope Creek Generating Station)

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: May 3, 1994

Description of amendment request: The proposed amendments would modify the Technical Specification (TS) for Combustible Gas Control (3/4.6.4.1) by changing the surveillance frequency for performing the channel functional test to once-per-quarter and the channel calibration to once-per-refueling. Also, the TS for the Auxiliary Feedwater System (3/4.7.1.2) would be changed to reduce the surveillance frequency for performing pump operability tests to once-per-quarter on a staggered test basis. These changes are consistent with the provisions of Generic Letter 93-05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements For Testing During Power Operation."

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 analyzed.

The proposed changes to the surveillance requirements for the hydrogen analyzers and the Auxiliary Feedwater pumps are consistent with the intent of Generic Letter 93-05, Line-Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operation, and NUREG-1366, Improvements to Technical Specification Surveillance Requirements. The proposed changes will modify surveillance frequency for both the hydrogen analyzers and the Auxiliary Feedwater Pumps. Changing the surveillance frequency for the hydrogen analyzers and the Auxiliary Feedwater pumps does not affect the probability of occurrence or the consequences of accidents identified in the UFSAR. No accident precursors are being generated by the proposed increase in surveillance frequency. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of a previously analyzed accident.

2. Create the possibility of a new or different kind of accident.

The proposed changes to the surveillance requirements for the hydrogen analyzers and the Auxiliary Feedwater pumps are consistent with Generic Letter 93-05 and NUREG-1366. There are no modifications or changes in operating conditions associated with the proposed changes. Therefore, the proposed changes will not increase the possibility of a new or different kind of accident from any accident previously identified.

3. Involve a significant reduction in a margin of safety.

The Technical Specification operability requirements for the hydrogen analyzers and the Auxiliary Feedwater pumps are not being changed. Surveillance testing will still be performed on a routine frequency. The proposed frequency will be capable of performing its intended function and ensuring a consistent degree of reliability. Therefore, the changes to the surveillance frequencies 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

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: September 29, 1993 (TS 333)

Description of amendment request: The proposed amendment would increase the amount of Boron-10 required to be available in the Standby Liquid Control System (SLCS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The Standby Liquid Control System (SLCS) is designed to make the reactor subcritical from rated power to a cold shutdown at any time in core life with the control rods remaining withdrawn in the rated power pattern. The increase in the amount of Boron-10 that is required to be stored in the SLCS Solution Tank does not affect the precursors for any accident or transient analyzed in Chapter 14 of the BFN Final Safety Analysis Report (FSAR). Since there is no change to an accident precursor, there is no increase in the probability of any accident previously evaluated.

The increase in the amount of Boron-10 required to be stored in the SLCS Solution Tank restores the ability of the SLCS to maintain the Boron concentration required to ensure cold shutdown for future anticipated core configurations. The minimum concentration of natural Boron in the reactor vessel required to achieve cold shutdown for the currently anticipated future core configurations is 660 ppm. The 660 ppm concentration was recommended by General Electric in Service Information Letter (SIL) No. 325, June 1980.

The increase in the amount of Boron-10 required to be stored in the SLCS Solution Tank restores the ability of the SLCS to maintain the Boron concentration required to ensure cold shutdown for future anticipated core configurations. The increased Boron-10 storage requirements does not represent a change to the designed Boron concentration capability of the SLCS. Since this change will ensure the ability of the SLCS to mitigate the consequences of an accident for future anticipated core designs, the change does not involve a significant increase in the consequences of any accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The increase in the amount of Boron-10 required to be stored in the SLCS Solution Tank does not affect the function or operation of any other system. The proposed change does not introduce any new modes of operation or modify existing equipment design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The SLCS shutdown margin is determined for each core configuration by using the BWR simulator code to calculate the core multiplication for the cold, xenon-free, all-rods-out condition at the exposure point of maximum cold reactivity. The resulting k-effective is subtracted from the critical k-effective of 1.0 to obtain the SLCS shutdown margin. Increasing the amount of Boron-10 stored in the SLCS Solution Tank increases the SLCS shutdown margin. Therefore, the proposed amendment results in an increased margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET llH, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: September 30, 1993 (TS 312)

Description of amendment request: The proposed amendment removes Technical Specification requirements for scram discharge volume air header pressure trip switches in the Reactor Protection System (RPS) for the Browns Ferry Nuclear Plant (BFN) Unit 2. The amendment also clarifies the description of the RPS scram discharge volume high water level bypass in the Technical Specifications for BFN Units 1, 2, and 3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The Unit 2 scram pilot air header pressure trip switches perform the same function as the high water level switches in the scram discharge instrument volume. They automatically initiate control rod insertion (scram) in the event that degraded air conditions are detected in the BWR control air supply system. Since the scram pilot air header pressure trip function is to ensure that the Control Rod Drive (CRD) System is available to mitigate the consequence of an accident or transient, and the removal of the scram pilot air header pressure e trip switches scram function does not effect the precursors for any accident or transient analyzed in Chapter 14 of the BFN Final Safety Analysis Report (FSAR), there is no increase in the probability of any accident previously evaluated.

The scram system has been analyzed, based on a plant-specific maximum inleakage, and the removal of the scram pilot air header pressure trip switches scram function would still result in a successful scram, provided that the CRD leakage rate and the water level instrumentation response characteristics remain within the success criteria region. Administrative controls and periodic measurements of the CRD and scram discharge system performance ensure acceptable response time delays and stall flow rates. Since the scram function would be successfully performed, the removal of the scram pilot air header pressure trip switches scram function does not involve a significant increase in the consequences of any accident previously evaluated.

The clarification of the description of the scram discharge volume high water level bypass in the Reactor Protection System does not reflect a modification to plant equipment, maintenance activities, or operating instructions. The revised description does not effect the precursors for any accident or transient analyzed in Chapter 14 of the BFN FSAR or equipment used in the mitigation of these accidents or transients. Therefore, there is no increase in the probability of any accident previously evaluated nor an increase in the consequences of any accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The design criteria for the scram system is contained in the generic Safety Evaluation Report (SER), which was transmitted by NRC

letter to All BWR Licensees, dated December 9, 1980, BWR Scram Discharge System. Section 4.2.4.1 of the generic SER states that the CRD system shall be analyzed based on a plant-specific maximum inleakage to ensure that the system function is not lost prior to initiation of automatic scram. This analysis has been performed and it was concluded that the removal of the scram pilot air header pressure trip switches scram function would still allow a successful scram, provided that the CRD leakage rate and the water level instrumentation response characteristics remain within the success criteria region. Administrative controls and periodic measurements of the CRD and scram discharge system performance ensure acceptable response time delays and stall flow rates.

The overall scram system design is in conformance with the generic SER. No new system failure modes are created as a result of removing the scram pilot air header pressure trip switches scram function since, assuming the maximum CRD inleakage due to a degraded air supply system, redundant and diverse level switches will initiate a successful scram prior to this function becoming disabled. The removal of the scram pilot air header pressure trip switches scram function does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The clarification of the description of the scram discharge volume high water level bypass in the Reactor Protection System does not reflect a modification to plant equipment, maintenance activities, or operating instructions. No new external threats, system interactions, release pathways, or equipment failure modes are created. Therefore, the clarification of this description does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The water level in the scram discharge instrument volume is monitored by redundant Magnetrol and heated reference resistive temperature devices (RTD) level switches. Since the level switches are redundant and diverse, redundancy and diversity in the instrumentation that initiates the scram signal is maintained even with the removal of the scram pilot air header pressure trip switches scram function.

The scram system has been analyzed, based on a plant-specific maximum inleakage, and the removal of the scram pilot air header pressure trip switches scram function would still result in a successful scram, provided that the CRD leakage rate and the water level instrumentation response characteristics remain within the success criteria region. Since the scram system would successfully operate to mitigate the consequences of accidents and transients previously analyzed, the proposed amendment does not involve a significant reduction in the margin of safety.

The clarification of the description of the scram discharge volume high water level bypass in the Reactor Protection System does not reflect a modification to plant equipment, maintenance activities, or operating instructions. There is no change to the licensing or design basis of the Reactor Protection System. Therefore, the revised description does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority (TVA), Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: April 4, 1994 (TS322, Revision 1)

Description of amendment request: The proposed amendment supersedes an amendment request dated March 25, 1993. Similar to the March 25, 1993, proposal, the revised amendment request for the Browns Ferry Nuclear Plant (BFN), Units 1, 2, and 3, continues to seek elimination of Technical Specifications (TS) for the reactor scram and main steam line isolation functions associated with the main steam line radiation monitors (MSLRMs). Additionally the revised amendment request proposes elimination of TS for the remaining isolation functions associated with the MSLRMs as well. The remaining isolation functions include main steam line drain valve closure, reactor recirculation loop sample valve closure, and main condenser mechanical vacuum pump (MVP) trip and isolation.

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 does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence of previously evaluated accidents is based on initial conditions and assumptions which are not dependent directly or indirectly on the functions of the Main Steam Line Radiation Monitors (MSLRMs). Elimination of the MSLRM scram and isolation functions does not affect the operation of the other Reactor Protection System or Primary Containment Isolation System functions required to mitigate a Rod Drop Accident (RDA). Also, eliminating the MSLRM functions does not affect the Control Rod Drive System and, hence, cannot increase the probability of RDA. The proposed change does not involve any increase in the probability of an [any] previously evaluated accident.

There is no significant increase in the consequences of any previously evaluated accident. Elimination of the MSLRM reactor scram and isolation functions could potentially increase the amount of radioactivity released following an RDA. However, the potential increase in release from those previously determined is not significant. Both the NEDO-31400 analysis and the additional BFN dose calculations determined that the resulting doses (See Table B [of this request]) remain well below the limits of Standard Review Plan (SRP) 15.4.9 and 10 CFR 100.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change deletes the reactor scram and isolation functions of the MSLRMs. The sole purpose of these functions is to assist in mitigating the consequences of an RDA, a previously analyzed event. This event is terminated by a high flux scram.

The NEDO-31400 RDA analysis without the MSLRM scram and MSIV [Main Steam Isolation Valve] closure functions has been reviewed and accepted by the NRC. An RDA without the MSLRM MVP isolation function has been previously reviewed by the NRC as documented in Section 14.6.2 of the Updated Final Safety Analysis Report (UFSAR). An RDA without the MSLRM recirculation sample line isolation coupled with a sample line break is no different than that if the normal RWCU [Reactor Water Cleanup] [system] sample path is in service (see Section III.C) [of this request]. However, TVA has evaluated the consequences of this event and determined the MSLRM sample line isolation function is not required to maintain radioactive releases within the acceptable limits.

The NEDO-31400 RDA analysis and the additional BFN offsite dose calculations show that the elimination of the MSLRM functions does not create the possibility of a new or different kind of

accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

A reliability assessment of the elimination of the MSLRM scram function on reactivity control failure frequency and core damage frequency was performed as part of the NEDO-31400 analysis. The results of the NEDO-31400 analysis indicated a negligible increase in reactivity control failure frequency associated with deletion of the MSLRM scram function. However, this increase is offset by a reduction in the frequency of transient initiating events (inadvertent scrams). This reduction in

transient initiating events represents a net reduction in core damage frequency of 0.3 percent.

BFN TS Bases 3.2 states that the MSLRMs are provided to detect gross fuel failures as in an RDA and provide main steam isolation valve closure to maintain radiological releases below the 10 CFR 100 limits. The BFN offsite dose calculations and the NRC's Safety Evaluation Report approving the NEDO-31400 RDA analysis document that the potential radiological release consequences following an RDA without the MSLRMs reactor scram and isolation functions are still well within the 10 CFR 100 limits. Thus, this change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET llH, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: May 16, 1994 (TS 93-18)

Description of amendment request: The proposed change would revise Surveillance Requirement 4.8.1.1.1.b to reflect installation of common station service transformers with auto load tap changers and the resulting change to the alignment of this portion of the distribution system. The proposed amendment would replace the terms "normal" and "alternate" with "unit generator supported" and "preferred power (GDC 17)," respectively, circuits that must be demonstrated operable.

Basis for proposed no significant hazards consideration determination: Asrequired by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) changeand has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The description clarification for the circuits in TS 4.8.1.1.1.b does not change any TS requirement and will not alter plant functions or components as a result of normal alignment to the common station service transformers (CSSTs). By implementing normal CSST alignment to unit power, SQN has reduced the required transfers to obtain alignment to the preferred power circuit under accident conditions. The verifications provided by TS Surveillance 4.8.1.1.1.b will continue to ensure the capability of this transfer during occasional use of the unit station service transformer (USST) for maintenance or repair activities. The accidents described in Chapter 15 of the SQN Updated Final Safety Analysis Report assume the unit power supply to be from the USST circuit that requires transfer to the CSST after turbine trip. This analysis is bounding for normal alignment to the CSST that does not require a transfer. These changes minimize the impact of malfunctions because transfers will not be required as often. The consequences of an accident are therefore not increased by this change. The proposed unit power alignment to the CSSTs has always been used for unit start-up; and since no plant functions are changed as a result of normal alignment to the CSSTs, other than a lower potential for transfers, the probability of an accident is not increased.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The TS 4.8.1.1.1.b clarification does not change plant functions and only provides a more appropriate description of the circuits involved in the transfer function. The transfer from the USST circuit to the CSST circuit will still be available when SQN is using the USST circuit, but the need for these transfers will be reduced by normal alignment of unit power to the preferred CSST circuit. These changes will not create a new or different kind of accident because the plant functions remain unchanged and only the CSST alignment for normal unit power and circuit descriptions is altered. This CSST alignment has always been used for unit start-up and is being expanded to apply to normal power operation in addition to start-up and accident conditions.

3. Involve a significant reduction in a margin of safety.

The clarification for the unit power circuit descriptions does not alter the intent of requirements for this surveillance. Plant functions and setpoints remain unchanged for automatic transfers from the USST circuit to the CSST circuit. This circuit description change provides a clearer explanation of how the transfer functions. The margin of safety has not been altered for unit power alignment to the USST or CSST, and this change will support SQN's use of the CSST for the normal unit power circuit. Therefore, these changes do not involve a significant reduction in a margin of safety.

The NRC has reviewed the licensee's analysis and, based on thisreview, 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: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: December 6, 1993

Description of amendment request: The proposed amendment would remove the requirement to perform jet pump integrity and operability surveillances in the idle loop during operation with one recirculation pump. It also provides consistency between the Bases and Section 4.6.F on jet pump surveillance requirements, and includes some administrative changes within the Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Removing the surveillance requirement to examine the jet pump flow patterns within the idle loop during single loop operation does not increase the probability or consequences of an accident previously evaluated. The probability of loss of the ability of such a jet pump to maintain a refloodable volume of two thirds core height is not increased. The stresses undergone without forced recirculation flow are very small and therefore a jet pump within an idle recirc loop should not physically degrade during this time. The ability of the core standby cooling systems to provide their intended function is not degraded by removal of this surveillance requirement; therefore the consequences of the recirculation line break accident are not increased.

This change will remove a surveillance requirement that has been determined to be unnecessary based upon the operating conditions during single recirculation loop operation. Other surveillance requirements within the technical specifications adequately determine jet pump operability when stresses exist which could cause a jet pump failure to occur. The change will not affect any plant hardware, plant design, safety limit settings, or plant system operation, and therefore does not modify or add any initiating parameters that would significantly increase the probability or consequences of any previously analyzed accident.

As discussed above, there is no increase in the probability of a jet pump failing and

being undetectable with the proposed technical specification surveillances. Therefore, there is no increase in the possibility of not being able to maintain a floodable volume of two thirds core height during the design basis LOCA [loss-of-coolant accident]. As a result, there is no reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Walter R. Butler

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.

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of application for amendment: January 14, 1994

Brief description of amendment request: The proposed amendment would revise the technical specifications (TSs) by removing component lists from the TSs in accordance with NRC Generic Letter (GL) 91-08 and by removing the schedule for withdrawal of reactor vessel material specimen capsules from the TSs in accordance with GL 91-01.

Date of individual notice in **Federal Register:** May 23, 1994 (59 FR 26675)

Expiration date of individual notice: June 22, 1994

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2 Benton County, Washington

Date of application for amendment: December 6, 1993, supplemented by letter May 6, 1994

Brief description of amendment request: The proposed amendment would revise Technical Specifications (TS) 3/4.4.2 and 3/4.5.1 to require main steam system and automatic depressurization system safety/relief valve (SRV) surveillance testing within 12 hours after steam pressure and flow have been found to be adequate to do the testing. Also, TS Table 4.3.7.5-1 would be revised to require SRV position indicator surveillance testing within 12 hours after steam pressure and flow have been found to be adequate to do the testing.

Date of individual notice in **Federal Register:** May 13, 1994 (59 FR 25131)

Expiration date of individual notice: June 13, 1994

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2 Benton County, Washington

Date of application for amendment: May 5, 1994

Brief description of amendment request: The proposed amendment would change the plant operating license to rename three primary containment isolation check valves listed in the technical specifications. The licensee is making an administrative change to rename valve PI-EFC-X29d to make its number consistent with other similar valves in the technical specifications. The licensee is renaming excess flow check valves PI-EFCX-72f and PI-EFCX-73e because they are replacing them with swing check valves that have a different numbering nomenclature.

Date of individual notice in **Federal Register:** May 12, 1994 (59 FR 24762)

Expiration date of individual notice: June 13, 1994

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

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: January 20, 1994

Brief description of amendments: The amendments increase the departure from nucleate boiling ratio limit from 1.24 to 1.30 to accommodate the uncertainties in core inlet flow distribution. The amendments also add the analytical method supplement entitled "System 80™ Inlet Flow Distribution" to the list of methods used to determine core operating limits.

Date of issuance: May 26, 1994
Effective date: May 26, 1994
Amendment Nos.: 76, 62 and 48
Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** March 16, 1994 (59 FR 12358) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 26, 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: April 1, 1993
Brief description of amendments: The amendments make administrative, editorial, and format changes to the Operating Licenses. These changes include the deletion or incorporation, as appropriate, of all handwritten or "pasted-up" changes and the removal of all previous license conditions that have been completed to the satisfaction of the Commission. The changes and reformatting result in the Operating Licenses containing only those license conditions that are currently applicable.
Date of issuance: May 20, 1993
Effective date: As of the date of issuance to be implemented within 30 days.
Amendment Nos.: 189 and 166
Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Facility Operating Licenses.
Date of initial notice in **Federal Register:** May 12, 1993 (58 FR 28052) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated May 20, 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: February 9, 1994
Brief description of amendment: This amendment changes the Technical Specifications and the License. These changes consist of revised wording for the License, clarifying wording to aid operators in selecting the correct pressure/temperature curve during startup and shutdown operations, and removal of certain obsolete mechanical snubber acceptance criteria.
Date of issuance: May 16, 1994
Effective date: May 16, 1994
Amendment No.: 153
Facility Operating License No. DPR-35: Amendment revised the Technical Specifications and License.
Date of initial notice in **Federal Register:** March 16, 1994 (59 FR 12359) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 1994. No significant hazards consideration comments received: No
Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: March 1, 1993
Brief description of amendment: The amendment revises the Technical Specifications to provide specific actions to take if primary containment leakage limits are exceeded and cannot be restored when reactor coolant temperature is greater than 200° F.
Date of issuance: May 26, 1994
Effective date: May 26, 1994
Amendment No. 60
Facility Operating License No. NPF-58. This amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** March 30, 1994 (59 FR 14896) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 26, 1994. No significant hazards consideration comments received: No
Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: January 17, 1994
Brief description of amendment: The amendment removes Technical Specification 3/4.4.12, "Failed Fuel Rods" and its associated Bases Section 3/4.4.12.
Date of Issuance: May 17, 1994Effective date: As of the date of issuance to be implemented within 30 days.
Amendment No.: 171
Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** February 16, 1994 (59 FR 7687) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated May 17, 1994.No significant hazards consideration comments received: No.
Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: March 19, 1993
Brief description of amendment: The amendment changed Technical Specification 4.18.6 and Table 4.18-2 to make the requirements for C-3 reports on steam generator tube inspections consistent with the Babcock & Wilcox Standard Technical Specifications.Date of issuance: May 19, 1994Effective date: May 19, 1994
Amendment No.: 172
Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 21, 1993 (58 FR 39049) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1994.No significant hazards consideration comments received: No
Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

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: September 3, 1993
Brief description of amendments: These amendments eliminate the reliance on the five "cranking" diesel generators by replacing the motor driver on one of the standby steam generator feedwater pumps with a dedicated diesel driver.
Date of issuance: May 20, 1994
Effective date: May 20, 1994
Amendment Nos. 164 and 158Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** October 13, 1993 (58 FR 52985) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated

May 20, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: November 30, 1993

Brief description of amendment: The amendment revises the plant Technical Specifications (TS) to remove the protective and maximum allowable setpoint limits for axial power imbalance and the trip setpoint for nuclear overpower based on reactor coolant system (RCS) flow (flux-to-flow) from the TS and relocate them to the existing TMI-1 Core Operating Limits Report (COLR).

Date of Issuance: May 23, 1994

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 184

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 19, 1994 (59 FR 2867). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 23, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: March 3, 1994

Brief description of amendment: The amendment revises the technical specifications in accordance with the guidance provided by Generic Letter 93-08, "Relocation of Technical Specification Tables of Instrument Response Time Limits."

Date of issuance: May 19, 1994

Effective date: May 19, 1994

Amendment No.: 73

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 16, 1994 (59 FR 12380) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1994.No significant hazards consideration comments received. No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

IES Utilities Inc., Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: January 21, 1994

Brief description of amendment: The amendment revised the Technical Specifications by changing the name of one operator and one of the owners of the Duane Arnold Energy Center from Iowa Electric Light and Power Company to IES Utilities Inc. The title of the position responsible for the management of the Nuclear Division has also been changed to Vice President, Nuclear from Manager-Nuclear Division. One blank page was deleted and several other editorial changes were made. Pages 1 through 4 of the Facility Operating License were revised to reflect the corporate name change and a spelling error.

Date of issuance: May 13, 1994

Effective date: May 13, 1994

Amendment No.: 198

Facility Operating License No. DPR-49. Amendment revised the license and Technical Specifications.

Date of initial notice in **Federal Register:** March 2, 1994 (59 FR 10008) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 13, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

IES Utilities Inc., Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: December 22, 1993

Brief description of amendment: The amendment revised the Technical Specifications by correcting several typographical and administrative errors.

Date of issuance: May 18, 1994

Effective date: May 18, 1994

Amendment No.: 199

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 2, 1994 (59 FR 10008) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 18, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: April 14, 1994, as supplementedApril 20, 1994.

Brief description of amendment: The amendment revises the Technical Specifications (TS) to change the laboratory testing protocol for the charcoal absorbers for the Control Room Emergency Ventilation System (TS 3.7.6.1), the Enclosure Building Filtration System (TS 3.6.5.1) and the Storage Pool Ventilation System (TS 3.9.15).

Date of issuance: May 23, 1994

Effective date: As of the date of issuance to be implemented within30 days.

Amendment No.: 175

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes (59 FR 23085, May 4, 1994) That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by June 3, 1994, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated May 23, 1994.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County,Minnesota

Date of application for amendments: February 14, 1994

Brief description of amendments: The amendments revise Technical Specifications to reflect the new

configuration for the Unit 1 480V safeguards bus arrangement (two 480V safeguards buses fed by each 4160V safeguards bus). These changes make the specifications the same for both units since the configuration for the two units will become the same at the completion of the current outage.

Date of issuance: May 17, 1994

Effective date: May 17, 1994

Amendment Nos.: 110 & 103

Facility Operating License Nos. DPR-42 and DPR-60. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 30, 1994 (59 FR 14892) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 17, 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.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: January 6, 1993

Brief description of amendment: The amendment revised the Technical Specifications (TS) to incorporate the following changes:

(1) The residual heat removal (RHR) pump flow calibration frequency (specified in TS Table 4.1-1) was changed to accommodate operation on a 24-month cycle.

(2)The RHR loop isolation valve automatic isolation and interlock testing frequency (specified in TS Table 4.1-3) was changed to accommodate operation on a 24-month cycle.

(3)The RHR system leakage testing frequency (specified in TS Section 4.4.I.4) was changed to accommodate operation on a 24-month cycle.

(4)The recirculation pump testing frequency (specified in TS Section 4.5.B.1.a) was changed to accommodate operation on a 24-month cycle.

(5)The accumulator check valve operability testing frequency (specified in TS Section 4.5.B.2.b) was changed to accommodate operation on a 24-month cycle.

(6)The safety injection (SI)/RHR check valve gross leakage testing frequency (specified in TS Section 4.5.B.2.c) was changed to accommodate operation on a 24-month cycle.

These changes followed the guidance provided in Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle," as applicable.

In addition, the gross leakage surveillance requirements for certain SI/RHR system check valves (specified in TS Section 4.5.B.2.d) was changed to implement requirements as set forth in NRC generic letter, dated February 23, 1980, regarding testing of low pressure injection (LPI)/RHR check valves. Therefore, Item A.5 of the February 11, 1980, Confirmatory Order is considered rescinded.

Date of issuance: May 20, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 148

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 17, 1993 (58 FR 8777) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 20, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: October 18, 1993, and suplement dated March 7, 1994

Brief description of amendment: This amendment revised TS 3/4.3.2 and associated Bases to increase surveillance test intervals and add out-of-service times for isolation actuation instrumentation. The changes are in accordance with General Electric Company's Licensing Topical Reports which have been previously reviewed and approved by the NRC staff.

Date of issuance: May 25, 1994

Effective date: As of date of issuance and shall be implemented within 60 days of the date of issuance.

Amendment No.: 70

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 8, 1993 (58 FR 64615) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 25, 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: October 26, 1993 and supplemented by letter dated December 14, 1993.

Brief description of amendment: The amendment request revised the MINIMUM CHANNELS OPERABLE requirement for suppression pool water temperature instruments, Accident Monitoring ACTION STATEMENTS, and removes ACTIONS and Surveillance Requirements for suppression chamber temperature and level instruments.

Date of issuance: May 25, 1994

Effective date: May 25, 1994

Amendment No.: 71

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 22, 1993 (58 FR 67861) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 25, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.

Date of amendments request: October 14, 1993

Brief description of amendments: The requested changes incorporate changes allowing longer surveillance test intervals (STIs) and allowed outage times (AOTs) for the reactor trip system (RTS) and engineered safety features actuation system (ESFAS) instrumentation into the Technical Specifications. The proposed changes also revise certain RTS/ESFAS functions, minimum channels operable, channel calibration, and channel functional test requirements to ensure they are in concert with the Westinghouse Standard Technical Specifications and WCAP-10271, "Evaluation of Surveillance Frequencies and Out-of-Service Times for Reactor Protection Instrumentation Systems."

Date of issuance: May 16, 1994

Effective date: May 16, 1994

Amendment Nos.: 107 and 99

Facility Operating License Nos. NPF-2 and NPF-8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** April 13, 1994 (57 FR 17605)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 16, 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

Tennessee Valley Authority, Docket Nos. 50-259 and 50-296, Browns Ferry Nuclear Plant, Units 1 and 3, Limestone County, Alabama

Dates of application for amendments: April 6, 1992 (TS 308), and September 28, 1992 (TS 326)

Brief description of amendments: The amendments change the Technical Specifications (TS) to add Automatic Depressurization System (ADS) high drywell pressure bypass timer requirements, revise the ADS timer trip level setting, increase the number of ADS valves required to be operable for startup, and revise the limiting conditions for operation with inoperable ADS valves. The ADS bases have also been revised for consistency with these TS changes.

Date of issuance: May 19, 1994

Effective date: May 19, 1994

Amendment Nos.: 205 and 178

Facility Operating License Nos. DPR-33 and DPR-68: Amendments revised the Technical Specifications.

Dates of initial notice in **Federal Register:** May 27, 1992 (57 FR 22269) and November 25, 1992 (57 FR 55593).The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1994.No significant hazards consideration comments received: None

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: February 9, 1994; supplemented April 13, 1994 (TS 93-21)

Brief description of amendments: The amendments change Technical Specification Table 3.3-11 to reflect the addition of ionization fire detectors to Fire Zones 184, 185, 186, and 187.

Date of issuance: May 23, 1994

Effective date: May 23, 1994

Amendment Nos.: 181 and 173

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** March 16, 1994 (59 FR 12369) The Commission's related evaluation of the amendments are contained in a Safety Evaluation dated May 23, 1994. No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: October 1, 1993; supplemented March 29, 1994 (TS 93-09)

Brief description of amendments: The amendments revise the setpoints and time delays for the Auxiliary Feedwater loss of power and 6.9 kv shutdown board loss-of-voltage and degraded-voltage instrumentation. In addition, the description, total number of channels, channels to trip, minimum channels operable, actions, trip setpoints, allowable values, channel checks, and channel functional test requirements for loss-of-power instrumentation have been revised.

Date of issuance: May 24, 1994

Effective date: May 24, 1994

Amendment Nos.: 182 and 174

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** February 2, 1994 (59 FR 4947) The Commission's related evaluation of the amendments are contained in a Safety Evaluation dated May 24, 1994.No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: March 30, 1994

Brief description of amendments: The proposed amendments revise the technical specifications by adding an alternative method for verifying that the emergency diesel generator fuel oil meets requirements.

Date of issuance: May 13, 1994

Effective date: May 13, 1994, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 1 - Amendment No. 24; Unit 2 - Amendment No. 10

Facility Operating License Nos. NPF-87 and NPF-89. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 13, 1994 (59 FR 17606) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 13, 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.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: February 25, 1994

Brief description of amendments: The amendments revise the surveillance frequency of the nozzles in the Quench Spray and Recirculation Spray Systems from 5 to 10 years. The change is in accordance with NRC Generic Letter 93-05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements at Power Operation," dated September 27, 1993.

Date of issuance: May 16, 1994

Effective date: May 16, 1994

Amendment Nos.: 182 and 163

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 13, 1994 (59 FR 17608) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 16, 1994No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: October 4, 1993

Brief description of amendments: These amendments revise the NA-1&2 Technical Specifications requirements to allow the use of ZIRLO material for fuel cladding.

Date of issuance: May 26, 1994

Effective date: May 26, 1994

Amendment Nos.: 183 and 164

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 27, 1993 (58 FR 57859) The Commission's related evaluation of the amendments is

contained in a Safety Evaluation dated May 26, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: February 25, 1994

Brief description of amendments: The amendments revise the surveillance frequency of the nozzles in the containment spray and recirculation spray systems from 5 to 10 years.

Date of issuance: May 20, 1994

Effective date: May 20, 1994

Amendment Nos. 191 and 191

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 13, 1994 (59 FR 17608) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 20, 1991.No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Notice Of Issuance Of Amendments To Facility Operating Licenses And Final Determination Of No Significant Hazards Consideration And Opportunity For A Hearing (Exigent Public Announcement Or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By July 8, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible

effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Commonwealth Edison Company, Docket No. STN 50-457, Braidwood Station, Unit No. 2, Will County, Illinois

Date of application for amendment: April 21, 1994

Brief description of amendment: The amendment effects a one-time only change to Technical Specification (TS) Surveillance Requirement 4.7.1.1 by adding a note which relieves Braidwood, Unit 2, from compliance with the provisions of TS 4.0.4 until initial entry into Mode 2. This will permit Braidwood, Unit 2, to reach Mode 3 to reset Main Steam Safety Valves (MSSVs) and proceed with a startup. The amendment is applicable only until entry into Mode 2 following forced outage A2F27.

Date of issuance: May 16, 1994

Effective date: May 16, 1994

Amendment No.: 51

Facility Operating License No. NPF-77. This amendment revised the Technical Specifications. Public comments requested as to proposed no siginificant hazards consideration: Yes. The NRC published a public notice of the proposed amendment, issued a proposed finding of no significant hazards consideration and requested that any comments on the proposed no significant hazards consideration be provided to the staff by the close of business on May 12, 1994. The notice was published in the Joliet News Herald and the Morris Daily Herald on May 9, 1994. No comments have been received.

The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the state of Illinois and final no significant hazards consideration determination are contained in a Safety Evaluation dated May 16, 1994.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

Local Public Document Room location: Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481

NRC Project Director: James E. Dyer

Dated at Rockville, Maryland, this 1st day of June 1994.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Acting Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–13765 Filed 6–7–94; 8:45 am]

Billing Code 7590–01–F

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

The Cleveland Electric Illuminating Company, et al.; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 61 to Facility Operating License No. NPF–58 issued to The Cleveland Electric Illuminating Company, et al. (the licensee), which revised the Technical Specifications for operation of the Perry Nuclear Power Plant, Unit 1, located in Lake County, Ohio. The amendment is effective as of the date of issuance.

The amendment revised the Technical Specifications to permit operation of the plant with only a single recirculation loop in operation. Several editorial changes were also made.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 8, 1992 (57 FR 30275). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (58 FR 65197).

For further details with respect to the action see (1) the application for amendment dated June 28, 1991, (2) Amendment No. 61 to License No. NPF–58, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 2nd day of June 1994.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Senior Project Manager, Project Directorate III–3, Division of Reactor Projects III, IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–13866 Filed 6–7–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—John J. Lane (202) 942–8800.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Rule 144A Information Request From Intermediaries—File No. 270–342

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission ("Commission") has requested extension of approval to collect information from approximately 35 intermediaries about participants in the market for securities eligible for resale under Rule 144A.

The staff estimates that the information collection will result in approximately 10 responses per respondent at an estimated .75 burden hours per response for a total burden of 262.5 hours.

General comments regarding the estimated burden hours should be directed to the OMB Clearance Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and OMB Clearance Officer for the Securities and Exchange Commission, Office of Management and Budget, room 3201, New Executive Office Building, Washington, DC 20503 (Project No. 3235–0407).

Dated: June 1, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–13877 Filed 6–7–94; 8:45 am]

BILLING CODE 8010–01–M

Rule Under Review by Office of Management and Budget

Agency Clearance Officer: John J. Lane (202) 942–8800.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

New Proposed Rule

Proposed Rule 17f–6—File No. 270–392

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval proposed rule 17f–6 under the Investment Company Act of 1940.

The rule would permit registered management investment companies to use futures commission merchants ("FCMs") and commodity clearing organizations as custodians of their assets in connection with futures contracts and commodity options regulated under the Commodity Exchange Act ("CEA").

It is estimated that 2,614 total respondents (2,200 investment companies, 335 adviser/delegates, and 79 FCMs) may expend an estimated 17,937 total burden hours meeting the rule's requirements during the first year following the adoption of proposed rule 17f–6.

Direct general comments to the OMB Clearance Officer for the Securities and Exchange Commission at the address stated below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and OMB Clearance Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Building, Washington, DC 20543.

Dated: May 18, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–13879 Filed 6–7–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Application for Unlisted Trading Privileges in Two Over-the-Counter Issues and To Withdraw Unlisted Privileges in Two Over-the-Counter Issues

June 2, 1994.

On May 26, 1994, the Chicago Stock Exchange, Inc. ("CHX"), submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7–12503 ...	TLAB .	Tellabs Incorporated. Common Stock. No par value.
7–12504 ...	PWRS	Powersoft Corporation. Common Stock. $.00167 par value.

The above-referenced issues are being applied for as replacements for the following securities, which form a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The CHX also applied to withdraw UTP pursuant to section 12(f)(4) of the Act for the following issues:

File No.	Symbol	Issuer
7–12505 ..	INNN .	Interactive Network.

File No.	Symbol	Issuer
7–12506 ..	BSBL .	Common Stock. No par value. Score Board. Common Stock. $.01 par value.

Replacement issues are being requested due to lack of trading activity.

Comments

Interested persons are invited to submit, on or before June 23, 1994, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP as well as the withdrawal of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension or withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–13878 Filed 6–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34144; File No. SR–NASD–94–30]

June 1, 1994.

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to an Interim Extension of the OTC Bulletin Board® Service Through September 1, 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 May 24, 1994, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal.

I. Self-Regulatory organization's Statement of the Terms of Substance of the Proposed Rule Change

On June 1, 1990, the NASD, through a subsidiary corporation, initiated operation of the OTC Bulletin Board Service ("OTCBB Service" or "Service") in accord with the Commission's approval of File No. SR–NASD–88–19, as amended.[1] The OTCBB Service provides a real-time quotation medium that NASD member firms can elect to use to enter, update, and retrieve quotation information (including unpriced indications of interest) for securities traded over-the-counter that are neither listed on The Nasdaq Stock Market℠ nor on a primary national securities exchange (collectively referred to as "OTC Equities").[2] Essentially, the Service supports NASD members' market making in OTC Equities through authorized Nasdaq Workstation units. Real-time access to quotation information captured in the Service is available to subscribers of Level 2/3 Nasdaq service as well as subscribers of vendor-sponsored services that now carry OTCBB Service data. The Service is currently operating under interim approval that expires on June 1, 1994.[3]

The NASD hereby files this proposed rule change, pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder, to obtain authorization for an interim extension of the Service through September 1, 1994. During this interval, there will be no material change in the OTCBB Service's operational features, absent Commission approval of a corresponding Rule 19b–4 filing.

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

1. Purpose

The purpose of this filing is to ensure continuity in the operation of the OTCBB Service while the Commission considers an earlier NASD rule filing (File No. SR–NASD–92–7) that requested permanent approval of the Service. For the month ending April 30, 1994, the Service reflected the market making positions of 392 NASD member firms displaying quotations/indications of interest in approximately 4,836 OTC Equities.

During the proposed extension, foreign securities and American Depository Receipts (collectively, "foreign/ADR issues") will remain subject to the twice-daily, update limitation that traces back to the Commission's original approval of the OTCBB Service's operation. As a result, all priced bids/offers displayed in the Service for foreign/ADR issues will remain indicative.

In conjunction with the start-up of the Service, in 1990, the NASD implemented a filing requirement (under section 4 of Schedule H to the NASD By-Laws) and review procedures to verify member firms' compliance with Rule 15c2–11 under the Act. During the proposed extension, this review process will continue to be an important component of the NASD's oversight of broker-dealers' market making in OTC Equities. The NASD also expects to work closely with the Commission staff in developing further enhancements to the Service to fulfill the market structure requirements mandated by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, particularly section 17B of the Act.[4] The NASD notes that

[1] Securities and Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124 (May 8, 1990).

[2] With the Commission's recent approval of File No. SR–NASD–93–24, the universe of securities eligible for quotation in the OTCBB now includes certain equities listed on regional stock exchanges that do not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape Association. Securities Exchange Act Release No. 33507 (January 24, 1994), 59 FR 4300 (order approving File No. SR–NASD–93–24).

[3] Securities Exchange Act Release No. 33839 (March 31, 1994), 59 FR 16667

[4] On November 24, 1992, the NASD filed an application with the Commission for interim designation of the Service as an automated quotation system pursuant to section 17B(b) of the Act. On December 30, 1992, the Commission granted Qualifying Electronic Quotation System "(QEQS") status for the Service for purposes of certain penny stock rules that became effective on January 1, 1993. On August 26, 1993, the Commission granted the NASD's request for an extension of QEQS status until such time as the

implementation of the Reform Act entails Commission rulemaking in several areas, including the development of mechanisms for gathering and disseminating reliable quotation/transaction information for "penny stocks."

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with sections 11A(a)(1), 15A(b)(6) and (11), and section 17B of the Act. Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting operational enhancements to the securities markets. Basically, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden distribution of market information, and foster competition among market participants. Section 15A(b)(6) requires, among other things, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors. Subsection (11) thereunder authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes of producing fair and informative quotations, preventing misleading quotations, and promoting orderly procedures for collecting and disseminating quotations. Finally, section 17B contains Congressional findings and directives respecting the collection and distribution of quotation information on low-priced equity securities that are neither Nasdaq nor exchange-listed.

The NASD believes that extension of the Service through September 1, 1994, is fully consistent with the foregoing provisions of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the 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.

OTCBB meets the statutory requirements of section 17B(b)(2). Finally, on May 13, 1994, the NASD filed an application the Commission for permanent designation of the Service as an automated quotations system for penny stocks pursuant to section 17B(b).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register** to avoid any interruption of the Service. The current authorization for the Service extends through June 1, 1994. Hence it is imperative that the Commission approve the instant filing on or before that date. Otherwise, the NASD will be required to suspend operation of the Service pending Commission action on the proposed extension.

The NASD believes that accelerated approval is appropriate to ensure continuity in the Service's operation pending a determination on permanent status for the Service, as requested in File No. SR–NASD–92–7. Continued operation of the Service will ensure the availability of an electronic quotation medium to support member firms' market making in approximately 4,836 OTC Equities and the widespread dissemination of quotation information on these securities. The Service's operation also expedites price discovery and facilitates the execution of customer orders at the best available price. From a regulatory standpoint, the NASD's capture of quotation data from participating market makers supplements the price and volume data reported by member firms pursuant to section 2 of Schedule H to the NASD By-Laws.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by June 29, 1994.

V. Commission's Findings and Order Granting Accelerated Approval

The Commission finds that approval of the proposed rule change is consistent with the Act and the rules and regulations thereunder, and, in particular, with the requirements of section 15A(b)(11) of the Act, which provides that the rules of the NASD relating to quotations must be designed to produce fair and informative quotations, prevent fictitious or misleading quotations, and promote orderly procedures for collecting, distributing, and publishing quotations.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of the filing thereof. Accelerated approval of the NASD's proposal is appropriate to ensure continuity in the Service's operation as an electronic quotation medium that supports NASD members' market making in these securities and that facilitates price discovery and the execution of customers' orders at best available price. Additionally, continued operation of the Service will materially assist the NASD's surveillance of its members trading in OTC Equities that are eligible and quoted in the Service, and in non-Tape B securities that are listed on regional exchanges and quoted in the OTCBB by NASD members.

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 interim period through September 1, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 94–13880 Filed 6–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34146; File No. SR–NASD–93–75]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Referral of Matters by Arbitrators for Disciplinary Investigation

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 16, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association")

filed with the Securities and Exchange Commission ("SEC" or "Commission"), and amended on May 25, 1994,[1] the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NSAD is proposing to amend section 5 of the Code of Arbitration Procedure ("Code")[2] to specify that arbitrators, at the conclusion of a proceeding, may refer matters arising or discovered during the course of an arbitration proceeding for disciplinary investigation. Below is the text of the proposed rule change. Proposed new language is italicized.

Code of Arbitration Procedure

Non-Waiver of Association Objects and Purposes

Sec. 5. The submission of any matter to arbitration under this Code shall in no way limit or preclude any right, action or determination by the Association which it would otherwise be authorized to adopt, administer or enforce. *If any matter comes to the attention of an arbitrator during and in connection with the arbitrator's participation in a proceeding, either from the record of the proceeding or from material or communications related to the proceeding, that the arbitrator has reason to believe may constitute a violation of the Association's rules or the federal securities laws, the arbitrator may initiate a referral of the matter to the Association for disciplinary investigation; provided, however, that any such referral should only be initiated by an arbitrator after the matter before him has been settled or otherwise disposed of, or after an award finally disposing of the matter has been rendered pursuant to section 41 of the Code.*

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 place specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The NASD is proposing to amend section 5 of the Code of Arbitration Procedure to specify that arbitrators, at the conclusion of a proceeding, may refer to disciplinary investigation matters which come to their attention during the course of an arbitration proceeding.

The NASD believes that potential violations uncovered during arbitration hearings should be investigated by the NASD as part of its comprehensive regulatory program. The NASD is aware, however, that while customers who suffer a financial loss as a result of misconduct by their registered representative may bring arbitration actions, they often do not pursue formal complaints with a self-regulatory organization ("SRO") necessary to trigger an investigation of the potential violation. Further, while the filing of an arbitration complaint will alert an SRO to the existence of a potential violation,[3] because customer complaints in arbitration often do not allege or disclose sufficient information to indicate obvious misconduct on the part of a respondent, they may not trigger a disciplinary investigation. Indeed, in such cases, violations of the securities laws or the NASD's rules are not apparent until an arbitration hearing occurs and the parties testify and introduce evidence about the relevant events. Thus, in some cases, the NASD never is made aware of securities law violations or violations of the NASD's rules, notwithstanding the fact that the financial injury to the customer resulting from the violations is the subject of an arbitration proceeding.

The NASD also has observed that arbitrators seldom refer for disciplinary investigation matters which come to their attention during the course of an arbitration proceeding. Because the NASD believes that arbitration matters, and the evidentiary material related to or produced in such matters, constitute a valuable source of information concerning potential violations of the NASD's rules and the federal securities laws, bringing such information to the attention of the Association's regulatory staff should improve the efficacy of the NASD's regulatory function. Accordingly, the NASD believes that specifying a mechanism in the Code for arbitrators to bring such information to the attention of the NASD's regulatory staff for investigation will serve the public interest by ensuring that potential violations of the NASD's rules and the federal securities laws are not overlooked.

In addition, the NASD believes that it is important for arbitrators to understand that the arbitration process is for the resolution of disputes between the securities industry and others, and that there is also a regulatory apparatus separate from the arbitration process which is designed to address misconduct which affects the public interest and the integrity of the financial markets. Thus, to the extent arbitrators are aware that they may refer matters, in addition to or in lieu of awarding punitive damages as part of awards,[4] the fairness of the arbitration process will be enhanced.

The proposed amendment to section 5 specifies that if any matter comes to the attention of an arbitrator during the course of a proceeding the arbitrator may initiate a referral of the matter to the Association for disciplinary investigation. The proposed amendment also specifies, however, that any such referral should be initiated by an arbitrator only after final disposition of the matter through settlement or award. Although the NASD is not setting forth a specific procedure for such referrals, the NASD contemplates that arbitrators will direct referrals to the Association through the Arbitration Department staff and the Director of Arbitration.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6)[5] of the Act is that specifying a mechanism in the Code for arbitrators to bring information concerning potential violations of the Association's rules and the federal securities laws to the attention of the NASD's regulatory staff for investigation will serve the public

[1] Amendment No. 1 amended to NASD's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

[2] NASD Manual, Code of Arbitration Procedure, part I, section 5, (CCH) ¶3705.

[3] The filing of a customer-initiated arbitration complaint against an associated person alleging damages of $10,000 or more triggers a requirement of the member or associated person to amend the associated person's Form U–4 or U–5, as appropriate. Information supplied pursuant to such an amendment will be entered into the Central Registration Depository and will also be forwarded to the appropriate NASD District office for preliminary investigation.

[4] The NASD, in connection with this rule filing, is not expressing any official position with respect to the ability of arbitrators to award punitive damages.

[5] 15 U.S.C. 78*o*–3.

interest by ensuring that such potential violations are not overlooked.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission 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 any 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 File No. SR–NASD–94–75 and should be submitted by June 29, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 94–13876 Filed 6–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34145; File No. SR-NASD–94–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the New N•PROVE System for Price Improvement and Execution of Small Orders

June 1, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] Notice is hereby given that on March 28, 1994,[2] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing a rule change regarding the operations of the Nasdaq Primary Retail Order View and Execution System ("N•PROVE"), a new system for execution and price improvement of small-sized customer orders. The "Rules of Operation and Procedures for the N•PROVE Service" will replace in its entirety the "Rules of Practice and Procedures for the Small Order Execution System" ("SOES Rules"), which the NASD proposes to withdraw simultaneously with the new system becoming operational.

The NASD is also proposing conforming modifications to the NASD manual, including the Rules of Practice and Procedure for the Automated Confirmation Transaction Service ("ACT Rules") and Schedule D to the NASD By-Laws (and any other places in the manual that refer to SOES) to delete references to SOES and/or the SOES Rules and to replace those references with N•PROVE and/or the N•PROVE Rules, as appropriate. These references may be found in the ACT Rules, Section (c)(2); in Schedule D, Part V, Section (1)(f), Section (7)(a), Section (7)(c), Section (8)(c), and Section (9); and Schedule D, Part XI, Section (2)(e)(1). Below is the text of the proposed rule change.

Rules of Operation and Procedures for the N•PROVE System

(1) Definitions

The terms used in this Section shall have the same meaning as those defined in the Association's By-Laws and Rules of Fair Practice, unless otherwise specified.

a. The term The Nasdaq Primary Retail Order View and Execution System ("N•PROVE") shall mean the small order delivery and execution system owned and operated by The Nasdaq Stock Market, Inc. (a wholly owned subsidiary of the National Association of Securities Dealers, Inc.) which enables N•PROVE participants to execute agency transactions of limited size in equity securities listed on The Nasdaq Stock Market; to have reports of the transactions automatically forwarded through the Automated Confirmation Transaction service ("ACT") to the trade reporting system for dissemination to the public; to "lock in" those trades by sending both sides to the National Securities Clearing Corporation ("NSCC") for clearance and settlement; and to provide N•PROVE participants with sufficient monitoring and updating capability to participate in an automated order delivery and execution environment. The N•PROVE service also offers a facility for storing and executing agency limit orders and an opportunity for improving prices that investors receive on market and limit orders.

b. The term "N•PROVE participant" shall mean either a market maker or order entry firm registered for participation in N•PROVE.

c. The term "N•PROVE eligible security" shall mean any Nasdaq SmallCap or Nasdaq National Market equity security; the term "active N•PROVE security" shall mean an N•PROVE eligible security in which at least one N•PROVE market maker is currently active with an open quote.

d. The term "open quote" shall mean a market maker's quotation price and size in an eligible security against which orders may be executed through the N•PROVE system during normal market hours, as specified by the NASD. A market maker has a "closed quote" when it has not updated its quotation in Nasdaq or its exposure limit in N•PROVE.

e. The term "N•PROVE market maker" shall mean a member of the Association that is registered as a Nasdaq market maker pursuant to the requirements of Schedule D to the NASD By-Laws and as a market maker in one or more N•PROVE eligible securities. An "active N•PROVE market maker" is a market maker that has an open quote in an N•PROVE eligible security.

f. The term "N•PROVE order entry firm" shall mean a member of the Association that is registered as an order entry firm for participating in N•PROVE which permits the firm to enter agency orders of limited size for delivery to and execution against N•PROVE market makers.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The NASD initially filed the proposed rule change on March 4, 1994. On March 28, 1994, the NASD filed Amendment No. 1, which expands and clarifies the description of the system.

g. The term "agency order" shall mean an order from a public customer that is entered by the N•PROVE order entry firm on an agency basis. It shall also include, for purposes of these rules:

(1) an order entered into N•PROVE on a principal basis by an N•PROVE order entry firm that is not a market maker in the N•PROVE security, in N•PROVE or otherwise, where the N•PROVE order entry firm has contemporaneously received an order from a customer and executes the transaction on a riskless principal basis; and

(2) an order entered by a market maker in the security for the account of a public customer if the order is preferenced to the entering market maker (i.e., self-preferenced).

An order will not be considered an agency order if it is for any account of a person associated with any member firm or any account controlled by such an associated person. An order will not be considered an agency order if it is for any account of a member of the "immediate family" (as that term is defined in the NASD Free-Riding and Withholding Interpretation, Article III, Section 1 of the Rules of Fair Practice) of an associated person who has physical access to a terminal capable of entering orders into N•PROVE.

h. The term "preferenced order" shall mean an order entered into N•PROVE and directed to a particular market maker. Each market maker has the ability to select order entry firms from which it will accept preferenced orders.

i. The term "unpreferenced order" shall mean an order entered into N•PROVE and not directed to any particular market maker or a preferenced order that has been directed to a market maker that has not identified the order entry firm as one from which it will accept preferencing.

j. The term "locked and crossed market" shall have the same meaning as defined in Part V of Schedule D to the NASD By-Laws.

k. The term "maximum order size" shall mean the maximum size of individual orders for a security that may be entered into or executed through N•PROVE. The maximum order size for each security shall be published from time to time by the Association. In establishing the maximum order size for each Nasdaq National Market security, the Association will give consideration to the average daily non-block volume, bid price, and number of market makers for each security. Maximum order size for Nasdaq National Market securities shall be 200, 500 or 1,000 shares, depending upon the trading characteristics of the securities.[a] Maximum order size for Nasdaq SmallCap securities shall be 500 shares. These sizes may be adjusted on an issue by issue basis, depending upon trading characteristics of the issue as determined by the Association.

l. The term "exposure limit" shall mean the number of shares of an N•PROVE eligible security specified by an N•PROVE market maker that it is willing to have executed for its account by unpreferenced orders entered into N•PROVE on either side of the market.

m. The term "minimum exposure limit" for a security shall mean the aggregate number of shares of the security equal two times the maximum order size for that security, unless the automated quotation update facility is utilized by the N•PROVE market maker.

n. The term "automated quotation update facility" shall mean the facility in the N•PROVE system that allows the system to automatically refresh a market maker's quotation in any security that the market maker designates when the market maker's exposure limit has been exhausted. The facility will update both the bid and offer side of the quote using a quotation interval designated by the market maker. When the automated quotation update facility is utilized, the market maker's required minimum exposure limit may be established to equal the maximum order size for the security.

o. The term "Automated Confirmation Transaction service" ("Act"), for purposes of the N•PROVE rules, shall mean the automated system owned and operated by The Nasdaq Stock Market, Inc. which accommodates trade reporting of transactions executed through N•PROVE and submits locked-in trades to clearing.

(2) N•PROVE Participant Registration

a. All members participating in N•PROVE shall register and be authorized as N•PROVE market makers and/or order entry firms. Registration as an N•PROVE participant shall be conditioned upon the member's initial and continuing compliance with the following requirements: (1) Membership in, or access arrangement with, a clearing agency registered with the Securities and Exchange Commission which maintains facilities through which N•PROVE compared trades may be settled; (2) registration as a market maker (if applicable) in Nasdaq pursuant to Schedule D of the NASD By-Laws and compliance with all applicable rules and operating procedures of the Association and the Securities and Exchange Commission; (3) maintenance of the physical security of the equipment located on the premises of the member to prevent the unauthorized entry of orders or other data into N•PROVE or Nasdaq; and (4) acceptance and settlement of each trade that is executed through the facilities of the N•PROVE service, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified N•PROVE trade by the clearing member on the regularly scheduled settlement date.

b. Upon effectiveness of the member's registration to participate in N•PROVE, participants may commence activity within N•PROVE for entry and/or execution of orders, as applicable, and their obligations as established in sections 4–10 will commence.

c. Pursuant to Schedule D to the NASD By-Laws, participation as an N•PROVE market maker is required for any Nasdaq market maker registered to make a market in a Nasdaq National Market security. A market maker in a Nasdaq SmallCap security may withdraw from and reenter N•PROVE at any time, and without limitations, during the operating hours of the service.

d. Each N•PROVE participant shall be under a continuing obligation to inform the Association of noncompliance with any of the registration requirements set forth above.

(3) Operating Hours of N•PROVE

The operating hours of N•PROVE will the normal market hours specified for The Nasdaq Stock Market.

(4) Participant Obligations in N•PROVE

a. Market Makers

1. An N•PROVE market maker shall commence participation in N•PROVE by initially contacting the Market Operation Center to obtain authorization for market making in particular Nasdaq securities and identifying those terminals on which the N•PROVE trade information is to be displayed. Thereafter, on-line registration on a security-by-security basis is permissible, consistent with the requirements of Schedule D to the NASD By-Laws.

2. Participation as an N•PROVE market maker obligates the firm, upon presentation or preferenced or unpreferenced orders through the service, to execute those orders; provided however, that for unpreferenced orders, the N•PROVE market maker shall have an opportunity[b] consistent with SEC Rule 11Ac1–1 to decline the order; if no action is taken the order will be automatically executed against the market maker. The market maker may decline to execute the unpreferenced N•PROVE order only if the market maker has executed an order (or is in the process of executing an order) in the security and has updated its quotation (or is in the process of updating its quotation) for the security. If a market maker rejects the N•PROVE order, it will be displayed to all other market makers at the inside quotation simultaneously and executed against the market maker that accepts the order, or if no market maker accepts the order, the next market maker in rotation that has not rejected the order will receive the execution. If all market makers reject the order because they have had an execution (or are in the process of effecting a trade) and have updated their quotations (or are in the process of updating their quotations), the order will be delivered to the first market maker at the new inside quote on Nasdaq and that market maker will not be able to reject that order. N•PROVE market makers will also not be permitted to reject orders preferenced to the firm pursuant to a preferencing arrangement acknowledged by the market maker. The system will transmit

[a] The applicable maximum order size for each Nasdaq National Market security is determined generally by the following criteria:

i. a 1,000 share maximum order size shall apply to Nasdaq National Market securities with an average daily non-block volume of 3,000 shares or more a day, a bid price of less than or equal to $100, and three or more market makers;

ii. a 500 share maximum order size shall apply to Nasdaq National Market securities with an average daily non-block volume of 1,000 shares or more a day, a bid price of less than or equal to $150, and two or more market makers; and

iii. a 200 share maximum order size shall apply to Nasdaq National Market securities with an average daily non-block volume of less than 1,000 shares a day, a bid price of less than or equal to $250, and that have two or more market makers.

[b] This period of time shall initially be established as 15 seconds, but may be modified upon appropriate notification to N•PROVE participants.

to the market maker on the Nasdaq Workstation screen and printer, if requested, or through a computer interface, as applicable, an execution report generated following each execution.

3. An N•PROVE market maker that improves the best bid or offer in Nasdaq is eligible to receive all unpreferenced orders entered into N•PROVE (for a specific period of time or number of executions as established by the NASD[c]) so long as the market maker manually accepts the orders prior to automatic execution of the orders.

4. For each security in which a market maker is registered, the market maker shall enter into N•PROVE an exposure limit. For a Nasdaq National Market security, that limit may be any amount equal to or larger than the minimum exposure limit. If no exposure limit is entered for a Nasdaq National Market security, the firm's exposure limit will be the minimum exposure limit.

5. An N•PROVE market maker may elect to use the automated quotation update facility in one or more securities in which it is registered. The facility will refresh the market maker's quotation automatically by a quotation interval designated by the market maker, once its exposure limit in the security had been exhausted. The facility will refresh the market maker's quotation in both the bid and offer side of the market by the interval designated and will reestablish the market maker's displayed size and the minimum exposure limit. If the market maker elects to utilize the automated quotation update feature, it may establish an exposure limit equal to the maximum order size for the security regardless of the minimum exposure limit.

6. At any time a locked or crossed market exists for a Nasdaq National Market security, a market maker with a quotation for that security in Nasdaq that is causing the locked or crossed market will have orders delivered by N•PROVE for that market maker to execute irrespective of any preference indicated by the order entry firm.

7 For each security in which a market maker is registered, the market maker may not enter orders on an agency basis into N•PROVE, unless a locked or crossed market exists for that security. This prohibition against use of N•PROVE does not obviate the market maker's duty to give its agency orders best execution in the prevailing market, according to the Board of Governor's Interpretation on Executions of Retail Transactions, Article III, Section 1 of the NASD Rules of Fair Practice.

8. The market maker may terminate its obligation by keyboard withdrawal from N•PROVE at any time. However, the market maker has the specific obligation to monitor its status in N•PROVE to assure that a withdrawal has in fact occurred. Any transaction occurring prior to the effectiveness of the withdrawal shall remain the responsibility of the market maker. In the case of a Nasdaq SmallCap security, a market maker whose exposure limit is exhausted will be deemed to have withdrawn from N•PROVE and may reenter at any time. In the case of a Nasdaq National Market security, a market maker whose exposure limit is exhausted will have a closed quote in N•PROVE and will be permitted a standard grace period within which to take action to restore its exposure limit. A market maker that fails to renew its exposure limit in a Nasdaq National Market security within the allotted time will be deemed to have withdrawn as a market maker. Except as provided in subsection (9) below, a market maker that withdraws from a Nasdaq National Market security may not re-register in N•PROVE as a market maker in that security for twenty (20) business days.

9. Notwithstanding the provisions of subsection (8) above, (i) a market maker that obtains an excused withdrawal pursuant to Part V of Schedule D to the NASD By-Laws prior to withdrawing from N•PROVE may reenter N•PROVE according to the conditions of its withdrawal; and (ii) a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency, and is thereby withdrawn from participation in ACT and N•PROVE for Nasdaq National Market securities, may reenter N•PROVE after a clearing arrangement has been reestablished and the market maker has complied with ACT participant requirements. Provided however, that if the Association finds that the ACT market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Schedule D and these rules.

10. In the event that a malfunction in the market maker's equipment occurs rendering on-line communications with the N•PROVE service inoperable, the N•PROVE market maker is obligated to immediately contact the Market Operations Center by telephone to request withdrawal from N•PROVE. For Nasdaq National Market securities, such request must be made pursuant to the requirements of Part V, Schedule D to the NASD By-Laws. If withdrawal is granted, Market Operations personnel will enter the withdrawal notification into N•PROVE from a supervisory terminal. Such manual intervention, however, will take a certain period of time for completion and the N•PROVE market maker will continue to be obligated for any transaction executed prior to the effectiveness of its withdrawal.

b. N•PROVE Order Enter Firms

1. Agency orders may be entered in N•PROVE by the N•PROVE order entry firm through either its Nasdaq Workstation or computer interface. The system will transmit to the order entry firm on the Nasdaq Workstation screen and printer, if requested, or through a computer interface, as applicable, an execution report generated following each execution.

2. N•PROVE will accept both market and limit agency order for execution. Agency orders may be preferenced to a specific N•PROVE market maker or may be unpreferenced, thereby resulting in execution in rotation against N•PROVE market makers. If an order is preferenced to a market maker by an order entry firm from which it has not agreed to accept preferencing, the order will be executed on an unpreferenced basis.

3. Only agency orders no larger than the maximum order size may be entered by an N•PROVE order entry firm into N•PROVE for execution against an N•PROVE market maker. Agency orders in excess of the maximum order size may not be divided into smaller parts for purposes of meeting the size requirements for orders entered into N•PROVE. All orders based on a single investment decision that are entered by an N•PROVE order entry firm for accounts under the control of associated persons or public customers, whether acting alone or in concert with other associated persons or public customers, will be deemed to constitute a single order and will be aggregated for determining compliance with the maximum order size limits. Orders entered by the N•PROVE order entry firm within any five-minute period in accounts controlled by associated persons or public customers, acting alone or in concert with other associated persons or public customers, will be presumed to be based on a single investment decision. An associated person or customer will be deemed to control an account if the account is a personal account; the person exercises discretion over the account; the person has been granted a power of attorney over the account; or the account is the account of an immediate family member as that term is defined in the Board of Governors Interpretation on Free-Riding and Withholding, Article III, Section 1 of the NASD Rules of Fair Practice.

4. No order will be considered an agency order from a public customer if it is for any account of a person associated with any member firm or any account controlled by such an associated person. No order will be considered any agency order from a public customer if it is for any account of a member of the "immediate family" (as that term is defined in the NASD Free-Riding and Withholding Interpretation, Article III, Section 1 of the Rules of Fair Practice) of an associated person who has physical access to a terminal capable of entering orders into N•PROVE.

5. No member or person associated with a member shall utilize N•PROVE for the execution of agency orders in a security in which the member is a Nasdaq market maker but is not an N•PROVE market maker.

6. No short sales may be entered into N•PROVE.

(5) Execution of NΔPROVE Orders

a. Orders in Nasdaq equity securities entered into N•PROVE may be preferenced or unpreferenced. Preferenced orders will be delivered to the designated market maker. Except as provided in subparagraph (c) below, unpreferenced orders will be delivered to market makers at the current inside bid or offer in rotation. Odd-lot orders (orders of less than 100 shares) will be automatically executed in N•PROVE and execution reports will be delivered to the order entry firm and the market maker.

b. Limit orders may be entered into N•PROVE. A limit order priced at the Nasdaq

[c] The parameters for market makers receiving priority in the rotation when they have created an improved inside market have been initially established as five minutes or five executions (whichever occurs first) after one or more market makers have changed their quote to equal the improved price. The NASD may modify these parameters upon notification to members.

inside market when the order is delivered to an N•PROVE market maker will be handled as a market order. Limit orders priced outside the Nasdaq inside market will be stored in the N•PROVE limit order file, and when the inside market equals or betters the limit price, the order will be handled as a market order. Limit orders priced better than the inside market upon entry will establish the price at which subsequent incoming market orders on the other side of market may be priced and executed (e.g., a sell order priced between the best bid and offer would improve the price of an incoming buy order). Market makers will receive notification of the existence of a limit order priced better than the inside market on their quote retrieval screens; provided however, notification of the existence of a preferenced limit order will only be delivered to the designated market maker. A limit order priced better than the inside market in Nasdaq may also be matched and executed against an incoming market or limit order, on the other side of the market, without the participation of a market maker.

c. Market orders may be entered into N•PROVE. A market order will be delivered to a market maker for execution at the current inside market (buy orders will be executed at the best offer and sell orders at the best bid). If a limit order previously has been entered into N•PROVE at a price superior to the best bid or offer, the incoming market order will be repriced to match the limit order price and will be displayed for 15 seconds to market makers at the inside quote. That order will either be executed by a market maker or will be matched and executed against the limit order. All market orders entered into N•PROVE will be executed in compliance with market maker obligations as established in subsection (4).

(6) Clearance and Settlement

All transactions executed in N•PROVE shall be transmitted to the National Securities Clearing Corporation to be cleared and settled through a registered clearing agency using a continuous net settlement system.

(7) Obligation to Honor System Trades

If an N•PROVE participant, or clearing member acting on its behalf, is reported by N•PROVE to clearing at the close of any trading day, or shown by the activity reports generated by N•PROVE as constituting a side of an N•PROVE trade, such N•PROVE participant, or clearing member acting on its behalf, shall honor such trade on the scheduled setttlement date.

(8) Compliance With Procedures and Rules

Failure of an N•PROVE participant or person associated with an N•PROVE participant to comply with any of the rules or requirements of N•PROVE may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Article III, Section 1 of the Rules of Fair Practice. No member shall effect an N•PROVE transaction for the account of a customer, or for its own account, indirectly or through the offices of a third party, for the purpose of avoiding the application of these rules. Members are precluded from doing indirectly what is directly prohibited by these rules. All entries in N•PROVE shall be made in accordance with the procedures and requirements set forth in the N•PROVE User Guide. Failure by an N•PROVE participant to comply with any of the rules or requirements applicable to N•PROVE shall subject such N•PROVE participant to censure, fine, suspension or revocation of its registration as an N•PROVE market maker and/or order entry firm or any other fitting penalty under the Rules of Fair Practices of the Association.

(9) Termination of AΔPROVE Service

The Association may upon notice, terminate N•PROVE service to a participant in the event that a participant fails to abide by any of the rules or operating procedures of the N•PROVE service or the Association, or fails to pay promptly for services rendered.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD is proposing rules of operation and procedures for a new service for the delivery, handling and execution of investors' small-sized agency orders. The "N•PROVE" service, operated by The Nasdaq Stock Market, Inc., will provide automated executions of investors' small agency orders in Nasdaq equity securities, and will offer new opportunities for price improvement of market orders. The new service will also heighten protections for investors' limit orders while enhancing the ability of market makers to monitor and maintain competitive quotations accessible to investors participating in an automated execution environment.

N•PROVE has been developed to improve the communication and handling of small investor orders so they will receive a prompt, cost effective execution at the best price available in the marketplace at any particular point in time. N•PROVE will facilitate delivery and execution of small-sized investor orders in Nasdaq equities to market makers participating in N•PROVE. Participation is required for all market makers registered in Nasdaq National Market securities but is voluntary with respect to Nasdaq SmallCap issues. Orders entered into the service may be preferenced to a particular market maker that agrees to accept preferencing or neutrally routed on an unpreferenced basis to the appropriate market maker at the inside quotation (best bid or offer) in the Nasdaq market. As discussed in more detail below, the N•PROVE service will deliver orders to market makers for execution and has been designed with default execution parameters if the market maker does not manually accept the order within a 15-second time frame. N•PROVE will also, consistent with the Commission's quote rule, Rule 11Ac1–1, permit market makers to decline to execute unpreferenced orders if the market maker has effected, or is in the process of effecting, an execution in the security and has updated (or is in the process of updating) its quote in Nasdaq. When such a decline takes place, the order is passed on to other market makers in the issue for prompt execution.

Significantly, N•PROVE will provide an interactive limit order processing capability that will facilitate price improvement for incoming market (or limit) orders and price protection for limit orders. The limit order file will store priced orders in time priority as they enter the system and will deliver the orders for execution as the inside market reaches the limit price. Where limit orders residing in N•PROVE are at prices superior to the best bid or offer, subsequent incoming market orders will be priced for execution at the limit order price and will either be executed at the improved price by a market maker or will be matched and executed against the limit order without the participation of a market maker.

N•PROVE has been developed to respond more effectively to the respective needs of three constituencies—individual investors seeking timely execution of small market orders at the best available price; individual investors seeking a different price over that readily available in the market by using limit orders; and market makers needing a cost effective alternative to the negotiation and manual processing of small investor orders. Accordingly, N•PROVE will provide what each party needs—a reliable, optimally priced execution for the customer with opportunities for price improvement together with a cost effective, automated execution system with trade reporting and locked-in trades that obviates the need for

individual order negotiation and processing.

N•PROVE will replace the Small Order Execution System ("SOES"), which does not offer the opportunity for price improvement of customer orders or afford market makers the opportunity to interact with orders in a manner consistent with their firm quote obligations. The new N•PROVE service constructively responds to concerns that automatic, quote-based execution systems do not provide sufficient opportunities for price improvement. N•PROVE's enhanced processing of limit orders and market orders will significantly expand public customers' abilities to achieve price improvement—an important benefit identified in the SEC's recent *Market 2000* study.[3] N•PROVE's price improvement features will significantly expand the ability of member firms to achieve a better-priced execution for their small customer orders and will enhance the protections offered to limit orders priced between the spread.

Additionally, the new N•PROVE service will enable market makers to manage risk effectively. The NASD is concerned that the lack of opportunity for a market maker to respond to an order as it is presented through the existing SOES system seriously interferes with participants' ability to manage risk and undermines market makers' control of their capital and trading positions. By enabling market makers to accept or reject orders (if they are in the process of trading or have already traded and are updating their quote), the N•PROVE service permits market makers to engage in effective risk management while providing price discovery in an automated execution environment. N•PROVE has been designed as an order delivery system with default execution parameters to ensure the continuation of market depth, liquidity, and price discovery mechanisms in the Nasdaq market. The new delivery and execution functionality will more accurately reflect market makers' affirmative obligations to provide liquidity to the market, while not depriving market makers of the exceptions from the firmness requirements contained in Rule 11Ac1–1, the Commission's firm quote rule.

1. System Operations

The new N•PROVE system will feature the following operations:

- Enhanced market making functionality.

The order processing functions in N•PROVE will provide market makers with several options for handling incoming orders. The market maker may either accept the order immediately or allow the system to execute the order automatically after a short time period (15 seconds). In addition, the market maker may reject the order if it has effected a trade (or is in the process of executing a transaction in the security) and has updated its quote (or is in the process of updating its quote). This procedure allows dealers to more effectively monitor and react to market movements, to timely update their quotations following the execution of N•PROVE and other orders, or to reject an N•PROVE order if they are in the process of trading or have already traded at that price. As the SEC acknowledges in Rule 11Ac1–1, it is appropriate to give market makers an opportunity after an execution to adjust their quotations to reflect new information or in consideration of their inventory position.

Order entry firms have two alternatives when entering orders in Nasdaq stocks into N•PROVE—they may preference the order to a particular market maker (with whom they have established a preferencing arrangement through the system) or they may enter an unpreferenced order into N•PROVE.[4] A preferenced order will be delivered to the designated market maker who may manually execute the order or let the system automatically execute the order after 15 seconds. Once a market maker agrees to accept preferencing from an order entry firm, the market maker effectively waives the ability to reject an order, although the market maker may use the 15-second time period following receipt of the preferenced order to update its quotation so that a second order will not be presented for execution at the same quote.[5]

An unpreferenced order will be routed to the market maker at the inside bid or offer that is next in line for an N•PROVE execution. The market maker may manually execute the trade or allow the system to automatically execute the trade after 15 seconds. If the market maker has effected a trade (or is in the process of executing a trade in that security) and has updated its quotation (or is in the process of updating), it may reject the N•PROVE unpreferenced order. When, consistent with the requirements of Rule 11Ac1–1, an order is rejected by the first market maker in rotation, the order will automatically be displayed to all remaining market makers at the inside quote. All of these market makers will have the opportunity to execute the order during a 15 second period. If no market maker manually accepts the order, it will be automatically executed against the first market maker in rotation. In the unlikely event that all of these market makers reject the order pursuant to a valid exception from Rule 11Ac1–1, the order will be executed automatically by the first market maker in rotation quoting at the new inside market. As the system only allows a few seconds for each of these steps, every N•PROVE order is assured a timely execution, usually within 15 seconds of it being delivered to the first market maker. Once the execution has been accomplished, whether on a preferenced or unpreferenced basis, the order entry firm and market maker will each receive an execution report on their N•PROVE message area on the Nasdaq Workstation.

An additional feature in N•PROVE allows market makers to receive additional order flow if they establish a new quotation that betters the current inside quote in the Nasdaq market. When a market maker improves its bid or offer to better the inside bid or offer, it is placed first in rotation to receive N•PROVE unpreferenced orders. When other market makers adjust their quotes to match the new inside quote, the initial market maker at that quote will be able to maintain its priority status, receiving all unpreferenced orders regardless of the delivery mechanisms that usually send orders to the market makers at the inside quote in rotation, if the initial market maker manually accepts each order. For a short period (initially established as five minutes or five executions, whichever comes first), all unpreferenced orders will be routed to the market maker first in rotation, until such time as that market maker rejects an order, allows the system to automatically execute an order, or a new inside has been established. When any of these events occur, the usual order delivery routines will commerce.

- Price improvement and limit order protection.

The operation of the N•PROVE system facilities price improvement of incoming N•PROVE market orders while providing price protection for

[3] *Market 2000; An Examination of Current Equity Market Developments;* Division of Market Regulation, SEC (January 1994).

[4] Odd-lot orders (orders of less than 100 shares) entered into N•PROVE will be executed automatically at the best bid or offer in Nasdaq and market makers will receive execution reports rather than orders.

[5] Preferencing arrangements are common throughout the securities industry and reflect agreements to accept order flow for execution from specific order entry firms. Accordingly, a preferenced order may not be rejected.

limit orders placed in between the spread in Nasdaq.[6] Price improvement could occur whenever a limit order between the spread was placed in the system. All market makers in the issue will be alerted when such a limit order has been entered between the spread to permit the market maker immediate access to the order for execution.[7] If the limit order remains open, the next incoming market order on the opposite side of the market (e.g., the limit order is to sell stock and the market order is to buy stock) would automatically "pass over" or read the limit order file to see if there are any orders residing in the limit order file at prices superior to the best bid or offer in the Nasdaq marketplace. If limit orders at a superior price exist, then the market order will be displayed on the screen at that superior price, rather than at the inside bid or offer, as the case may be. In that event, all market makers at the inside quotation would have the opportunity for 15 seconds to execute the market order at the superior limit price. If no market maker elected to execute the order at that improved price, the system would execute the orders against each other at the limit price. Thus, Nasdaq market makers would retain the ability to interact with orders and improve market prices through the system while providing customers that place limit orders between the spread price protection and the possibility of an execution within seconds of a market order entering the system. A limit order priced better than the inside Nasdaq market continues to set the price for incoming market orders until it is executed, whether as a match against a market order (or another limit order priced in between the spread), or as an execution from a market maker. Thus customers placing market orders receive price improvement and customers placing limit orders will be assured that N•PROVE executions will not occur at prices inferior to their limit prices.

For example, if the inside market on a Nasdaq security is 20—20¼ and a limit order to buy at 20⅛ is entered, the next incoming sell order will be priced at 20⅛ and will be displayed to the market makers at the inside quote. If the market order is executed by a market maker at 20⅛, that customer receives ⅛ point more than the current best quoted price, and each subsequent incoming market order is priced at the limit order price until the limit and market orders execute against each other or the limit order is executed independently by a market maker. If no market maker manually accepts an improved market order trade, the two investor orders are matched against each other at a price of 20⅛.

2. Scope

The requirements of the N•PROVE service would mirror those currently in place for the SOES system, with the modifications described above to facilitate price improvement and risk management features.[8] The following changes have also been proposed: (1) To establish a maximum order size for the most liquid tier of N•PROVE securities at 1,000 shares; (2) to modify the handling of preferenced orders when the market is locked or crossed and (3) to prohibit short sales in the system.

The current maximum order size for SOES is 500 shares; the NASD believes that with the risk management features of the new service implemented, it is appropriate to allow the entry of agency orders up to 1,000 shares. Market makers in the most liquid tier of Nasdaq securities are currently required to post size in their quotations of 1,000 shares, and the ability to execute such sizes in N•PROVE will facilitate executions of agency orders in compliance with a market maker's firm quote obligations.

When markets in a Nasdaq security are locked or crossed, the new delivery mechanisms of N•PROVE will facilitate quick resolution of the condition by sending each incoming N•PROVE order to the market maker locking or crossing the market, whether the orders are preferenced to that market maker or not. The automated default executions will continue to occur until the market maker updates its quotation, depletes its exposure limits, or rejects a trade (and updates its quote). In this regard, possible receipt of multiple executions will encourage the market maker to respond quickly to correct the aberrant quote condition.[9]

Finally, one of the N•PROVE rules prohibits the entry of short sales into the service. The SEC approved this restriction in the SOES system for a one year pilot period[10] because of experience with excessive short-term trading occurring in SOES. In its approval for the "interim" SOES rules, the SEC stated that prohibiting short selling through SOES was a means reasonably designed to reduce the costs to market makers and investors that result from active intra-day trading activity through SOES. Having identified the costs associated with intra-day trading, the Commission went on to say that any burden placed on short sellers was outweighed by the benefits of potentially narrower spreads and enhanced liquidity in Nasdaq securities. Further, the SEC took into consideration the fact that short sales among typical retail investors are infrequent and broker/dealers rarely execute short sales through an automated system such as SOES. Accordingly, the Commission believed that prohibiting the execution of short sales through SOES was an effective means of limiting intra-day trading with little concomitant effect on retail investors.

The NASD believes that the N•PROVE service, while offering enhanced facilities for market makers to handle exposure to transactions such as short sales by enabling them to reject trades if they have already traded, still provides an automated execution environment that may be susceptible to active intra-day traders. While the N•PROVE service does provide a 15 second period for a market maker to react to an N•PROVE order, that time period is sufficiently short that there remains a risk of destabilizing short term trading through the service. Having identified and analyzed the costs associated with active intra-day trading scenarios using the SOES system, the NASD believes that prohibiting short sales in N•PROVE is an appropriate action as it prohibits a narrow, generally non-retail type of trading activity from an automated execution system, rather

[6] The system also includes a matching and/or price improvement feature for limit orders entered in between the spread. For example, if the inside bid and offer were 20—20½, and two limit orders were entered to buy and sell at 20¼, the system would allow the orders to match against each other within 15 seconds. If two limit orders crossed each other in between the inside spread (i.e., a buy order priced at 20⅜ and a sell order priced at 20⅛), the orders would be matched after 15 seconds and the price averaged between the orders (each would receive 20¼).

[7] If the limit order is preferenced to a single market maker, only that market maker would receive the limit order alert. The incoming market orders would still receive the benefits of price improvement, however, regardless of preferencing.

[8] The current SOES limit order file has also been modified (as discussed above) to permit limit orders to interact with market orders and to narrow the time frame for matching orders within the file from the current five minute period to 15 seconds.

[9] Additional modifications in the N•PROVE rules pertain to regulatory controls over what is considered an agency order eligible for entry into the system. For example, the new rules state that: "No order will be considered an agency order from a public customer if it is for any account of a person associated with any member firm or any account controlled by such an associated person. No order will be considered an agency order from a public customer if it is for any account of a member of the "immediate family" (as that term is defined in the NASD Free-Riding and Withholding Interpretation, Article III, Section 1 of the Rules of Fair Practice) of an associated person who has physical access to a terminal capable of entering orders into N•PROVE." *See* Section 5(b)(4) of the proposed N•PROVE Rules.

[10] Securities Exchange Act Release No. 33377 (Dec. 23, 1993), 58 FR 69419 (Dec. 30, 1993).

than limiting a type of investor or active trader from the system. The NASD concurs with the Commission that limiting short sales in an automated execution environment is a means reasonably designed to assure continued market maker participation and liquidity in the market. It is appropriate to exclude discernable trading practices that impose excessive risks and costs on market makers and jeopardize market quality. Accordingly, the NASD believes that prohibiting short sales in N•PROVE is necessary and appropriate and consistent with requirements of the Act.

The new N•PROVE service addresses the concerns that customers cannot achieve price improvement in quote-based execution systems and that market makers cannot effectively manage risk in an automated execution environment. By allowing market makers to see orders prior to their execution, N•PROVE is facilitating risk management; by alerting members to the existence of a limit order between the spread and using that limit price to establish the new market price, N•PROVE is facilitating price improvement in an automated facility. The NASD believes the proposed rule change is consistent with sections 15A(b)(6), 15A(b)(9), 15A(b)(11), and 11A(a)(1)(C) of the Act. 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 15A(b)(9) requires that rules of an Association not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Section 15A(B)(11) requires the NASD to formulate rules governing the quality of fair and informative quotations. Section 11A(a)(1)(C) finds that it is in the public interest to, among other things, assure economically efficient execution of securities transactions. The fundamental purpose of N•PROVE is to assist investors in achieving prompt, efficient executions of their small orders and to provide an opportunity for price improvement within an automated execution environment. The integrity and efficiency of Nasdaq for public investors and market-making participants is critical and the NASD believes that N•PROVE will provide benefits to both consistencies. The design of N•PROVE is not anti-competitive as it treats all unpreferenced orders uniformly; to the extent that preferenced orders are distinguished, by entering into preferencing arrangements with known customers, market maker's effectively waive the protections offered by the system. N•PROVE may also enhance the quality of quotations in the Nasdaq marketplace as market makers participating in the service may be encouraged to narrow the spread and improve the best inter-dealer quotations in Nasdaq in order to be first in priority and continue to receive unpreferenced order flow through N•PROVE.

The new proposals are also fully consistent with the significant national market system objectives contained in Section 11A of the Act. The facilities of N•PROVE would advance these objectives by offering efficient execution of investors' small orders, by maintaining market maker participation through the automated delivery of orders with the ability to reject those orders if trades have already occurred, and by offering the opportunity for price improvement to N•PROVE orders. The system's functionality will more accurately reflect market makers' affirmative obligations to provide liquidity to the market, without depriving market makers of legitimate exceptions from the firmness requirements contained in Rule 11Ac1–1.

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 purposes of the Act. When fashioning a rule proposal for SEC review, an SRO is not required to find the least anti-competitive means to achieve a desired result, but the SRO and the SEC must determine that the means chosen are necessary or appropriate to achieve the objectives of the Act. In its recent approval of the interim modifications to the SOES system, the SEC found that it may be appropriate to exclude discernable trading practices that impose excessive risks and costs on market makers and jeopardize market quality. The NASD concurs with this evaluation and accordingly, has proposed some of the same restrictions in N•PROVE. The design of N•PROVE is not anti-competitive as it treats all unpreferenced orders uniformly; to the extent that preferenced orders are distinguished, by entering into preferencing arrangements with known customers, market maker's effectively waive the protections offered by the system. Accordingly, the NASD believes that the new proposals are fully consistent with the requirements 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

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. The Commission specifically requests that commenters address the handling of limit and market orders. The proposal includes the opportunity for price improvement for limit and market orders. Limit orders entered in N•PROVE priced away from the inside market will reside in a limit order file. If another limit order on the opposite side of the market is entered that either matches or crosses the first limit order, the two limit orders will be matched for execution (at either the matching price or, when two limit orders cross, at the average price). If a market order on the opposite side of the market is entered in N•PROVE, it will be repriced to match an existing limit order if the limit order provides price improvement over the current inside market. Under either scenario, however, prior to execution, the system will allow a 15-second period within which a market maker in the security can execute one side of the match at the improved price. While the proposal will provide both orders the opportunity for price improvement, it could also result in one public order that otherwise would have been

executed at the improved price to remain unexecuted.

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 file number SR–NASD–94–13 and should be submitted by June 29, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–13881 Filed 6–7–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Acceptance of Noise Exposure Maps and Request for Review of Noise Compatibility Program for Lake Tahoe Airport, South Lake Tahoe, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by city of South Lake Tahoe, California, for Lake Tahoe Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are incompliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Lake Tahoe Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before November 14, 1994.

[11] 17 CFR 200.30–3(a)(12) (1993).

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is May 18, 1994. The public comment period ends July 17, 1994.

FOR FURTHER INFORMATION CONTACT: Joseph R. Rodriguez, Planning/Programming Supervisor, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, room 210, Burlingame, California 94010–1303, Telephone: (415) 876–2805. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Lake Tahoe Airport are in compliance with applicable requirements of part 150, effective May 18, 1994. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before November 14, 1994. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The City of South Lake Tahoe, submitted to the FAA on September 24, 1992 noise exposure maps, descriptions and other documentation which were produced during the preparation of the Noise Compatibility Program, Lake Tahoe Airport, California, dated September 1992. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of South Lake Tahoe. The specific maps under consideration are Figure 3.3.1, "Predicted 1991 CNEL Contours", and Figure 3.3.2, "Predicted 1996 CNEL contours", in the submission. The FAA has determined that these maps for Lake Tahoe Airport are in compliance with applicable requirements.

This determination is effective on May 18, 1994. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Lake Tahoe Airport, also effective on May 18, 1994. Preliminary review of the

submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program.

The formal review period, limited by law to a maximum of 180 days, will be completed on or before November 14, 1994. The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, AWP-600, 15000 Aviation Blvd., Hawthorne, CA 90261, Mail Address: P.O. Box 92007, World Way Postal Center, Los Angeles, CA 90009-2007

Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, room 210, Burlingame, California 94010-1303

Mr. Richard D. French, AAE, Airport Director, City of South Lake Tahoe, Lake Tahoe Airport, 1901 Airport Road, suite 100, South Lake Tahoe, California 96150-7004

Questions may be directed to the individual named above under the heading, FOR FURTHER INFORMATION CONTACT.

Issued in Hawthorne, California on May 18, 1994.

Robert C. Bloem,

Acting Manager, Airports Division, AWP-600.

[FR Doc. 94-13915 Filed 6-7-94; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-94-22]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR ch. I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 28, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on June 2, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27178.
Petitioner: Continental Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.358.
Description of Relief Sought/ Disposition: To permit Continental Airlines to extend the December 31, 1995, compliance date permitted in Exemption No. 5256 for installation of required windshear equipment in its aircraft in order to develop, certificate, and implement predictive windshear devices in lieu of installing existing reactive systems.

Docket No.: 27617.
Petitioner: American Airsport Association.
Sections of the FAR Affected: 14 CFR 103.1 (a), (b), and (e).
Description of Relief Sought/ Disposition: To permit American Airsport Association to operate powered, two-placed ultralight vehicles for instructional purposes that weigh less than 500 pounds, have a fuel capacity not exceeding 10 U.S. gallons, are not capable of more than 90 miles per hour at full power in level flight, and have a power-off stall speed of 40 miles per hour or less.

Docket No.: 27674.
Petitioner: IBM Flight Operations.
Sections of the FAR Affected: 14 CFR parts 43, 91, and 145.
Description of Relief Sought: To allow IBM Flight Operations to use electronically printed, computer generated signatures and stamp numbers on required documents for maintenance managers, chief inspectors, designated inspectors, maintenance technicians, avionics inspectors, avionics technicians, and aircraft commanders.

Docket No.: 27725.
Petitioner: Mr. Smiley E. Johnson.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought: To permit Mr. Johnson to serve as a pilot in part 121 air carrier operations after his 60th birthday.

[FR Doc. 94-13917 Filed 6-7-94; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee: Air Carrier/General Aviation Maintenance Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of change in task assigned to the Aviation Rulemaking Advisory Committee, Parts Approval Action Team-Phase 3 Working Group.

SUMMARY: Notice is given of a change in the task assigned to the Parts Approval Action Team—Phase 3 Working Group of the FAA Aviation Rulemaking Advisory Committee (ARAC). This

notice informs the public of the activities of the ARAC on air carrier/general aviation maintenance issues.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick J. Leonelli, Assistant Executive Director for Air Carrier/General Aviation Maintenance Issues, Flight Standards Service (AFS–300), 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267–3546; fax: (202) 267–5230.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991; and 58 FR 9230, February 19, 1993). One area of the ARAC deals with air carrier/general aviation maintenance issues. These issues involve mechanic certification and approved training schools as outlined in parts 65 and 147 and the maintenance standards for parts 23, 25, 27, 29, 31, 33, and 35 aircraft engines, propellers, and their component parts and parallel provisions in parts 21, 43, 91, 121, 135, and 137 of the Federal Aviation Regulations. The Parts Approval Action Team—Phase 3 Working Group will forward recommendations to the ARAC, which will determine whether to forward them to the FAA.

After reevaluating the task originally assigned to ARAC, the FAA has determined that it would be appropriate to redefine the task as follows:

Develop an interim plan for evaluating the acceptability of aircraft parts existing within present civil inventories that lack acceptable documentation. Develop such advisory circulars, notices, NPRM's, or other documents, as deemed appropriate, to accomplish this task. Develop a plan to ensure that in the future aircraft parts are properly documented.

If the ARAC determines that a Notice of Proposed Rulemaking (NPRM), an Advisory Circular (AC), or both would be appropriate, those documents are to be submitted to the FAA in the format prescribed. The working group should make recommendations to the ARAC in the following manner.

Reports

(a) Recommend a work plan for completion of the task, including the rationale supporting the plan, for consideration at the meeting of the ARAC to consider air carrier/general aviation maintenance issues held following publication of this notice;

(b) Give a detailed conceptual presentation on the proposed recommendation to the ARAC before proceeding with the work stated in item (c) below;

(c) If considered appropriate, develop NPRM(s) proposing the revised rules for undocumented parts with supporting economic and other required analyses, advisory and guidance material, and any other collateral documents the working group determines to be needed. Present these recommendations to the ARAC for further consideration and disposition; and

(d) Give a status report on the task at each meeting of the ARAC held to consider air carrier/general maintenance issues.

The Parts Approval Action—Phase 3 Working Group will be comprised of experts from those organizations having an interest in the tasks assigned. A working group member need not necessarily be a representative of one of the organizations of the ARAC. Individuals who have expertise in the subject matter and wish to become a member of the working group should write the person listed under the caption, **FOR FURTHER INFORMATION CONTACT,** expressing that desire, describing their interest in the task, and the expertise they would bring to the working group. Each request will be reviewed by the ARAC Assistant Chair for Air Carrier/General Aviation Maintenance Issues and the chair of the working group, and the individual will be advised if the request can be granted.

The Secretary of Transportation has determined that the formation and use of the ARAC are necessary and in the public interest, in connection with the performance of duties of the FAA. Meetings of the ARAC to consider air carrier/general aviation maintenance issues will be open to the public, except as authorized by Section 10(d) of the Federal Advisory Committee Act. Meetings of the Parts Approval Action Team—Phase 3 Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on June 1, 1994.

Frederick J. Leonelli,

Assistant Executive Director for Air Carrier/General, Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–13916 Filed 6–7–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Butler and Carter Counties, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Butler and Carter Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Neumann, Federal Highway Administration, P.O. Box 1787, Jefferson City, MO 65102, Telephone Number 314–636–7104; or Mr. Bob Sfreddo, Design Engineer, Missouri Highway and Transportation Department, P.O. Box 270, Jefferson City, MO 65102, Telephone Number 314–751–2876.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Highway and Transportation Department (MHTD), will prepare an environmental impact statement (EIS) on a proposal to improve Missouri Route 60 in Butler and Carter Counties, Missouri.

1. The proposed improvement would reconstruct approximately 67.6 kilometers (42 miles) of Route 60 between Poplar Bluff and Van Buren, including a new interchange at U.S. Route 67. Improvements to the corridor are needed to provide for existing and projected traffic demand.

2. Alternatives under consideration include: (1) A "no build" option, (2) mass transit and transportation system management, (3) improvement of the existing two-lane roadway to four lanes, (4) constructing a four-lane, limited-access highway on a new location, and (5) constructing a four-lane, fully controlled access highway on a new location.

3. To date, preliminary information has been issued to local officials and other interested parties. The scoping process will be initiated with Federal, State, and local agencies. Formal agency and public scoping meetings will be held in Elsinore and Poplar Bluff in June or July of 1994.

In addition, a public hearing will be held. Public notice will be given in advance of the date and time of each meeting. The draft EIS will be available prior to the public hearing for public review and comment. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Any comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the Missouri Highway and Transportation Department at the addresses provided above.

Issued on: May 20, 1994.

Donald Neumann,

Program Review Engineer, Jefferson City.

[FR Doc. 94–13829 Filed 6–7–94; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Howell, Shannon, and Carter Counties, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Howell, Shannon, and Carter Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Neumann, Federal Highway Administration, P.O. Box 1787, Jefferson City, MO 65102, Telephone Number 314–636–7104; or Mr. Bob Sfreddo, Design Engineer, Missouri Highway and Transportation Department, P.O. Box 270, Jefferson City, MO 65102, Telephone Number 314–751–2876.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Highway and Transportation Department (MHTD), will prepare an environmental impact statement (EIS) for a location study along Route 60 in Howell, Shannon, and Carter Counties, Missouri.

1. The proposed location study begins at Route U east of Willow Springs, in Howell County, and continues approximately 88.5 kilometers (55 miles) to a point approximately 2.4 kilometers (1.5 miles) west of Van Buren, in Carter County. Improvements are considered necessary to improve safety, to improve access in the three-county region, and to increase capacity.

2. Alternatives under consideration include improving the existing highway, widening the existing highway, and constructing a new four-lane highway. A "no build" option, as well as mass transit and transportation system management options also are being considered.

3. To date, preliminary information has been issued to local officials and other interested parties. The scoping process will be initiated with Federal, State, and local agencies. Formal agency and public scoping meetings will be held in about June of 1994. A public hearing will likely be held in the fall of 1995. Public notice will be given in advance of the date and time of each meeting. The draft EIS will be available prior to the public hearing for public review and comment. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Any comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the Missouri Highway and Transportation Department at the addresses provided above.

Issued on May 6, 1994.

Donald Neumann,

Program Review Engineer, Jefferson City.

[FR Doc. 94–13828 Filed 6–7–94; 8:45 am]

BILLING CODE 4910–22–M

Maritime Administration

Approval of Applicant as Trustee

Notice is hereby given that American National Bank and Trust Company, with offices at 101 East Fifth Street, St. Paul, Minnesota, has been approved as Trustee pursuant to Public Law 100–710 and 46 CFR part 221.

Dated: June 2, 1994.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 94–13920 Filed 6–7–94; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee for Cooperative Studies, Health Services Research and Development and Rehabilitation Research and Development; Meeting

In Accordance with Public Law 92–463, the Department of Veterans Affairs gives notice of a meeting of the Rehabilitation Research and Development Scientific Review and Evaluation Board Sub-Committee of the Advisory Committee for Cooperative Studies, Health Services, and Rehabilitation Research and Development. This meeting will convene at the Vista International Hotel, 1400 "M" Street NW, Washington, DC July 12 through July 15, 1994. The session on July 12, 1994, is scheduled to begin at 6:30 p.m. and end at 10:30 p.m. The sessions on July 13, 14, 15, 1994, are scheduled to begin at 8 a.m. and end at 5 p.m. The purpose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public (to the seating capacity of the room) for the July 12 session for the discussion of administrative matters, the general status of the program, and the administrative details of the review process. On July 13–15, 1994 the meeting is closed during which the Board will be reviewing research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, the similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 522b(c)(6), and (c)(9)(B) and the determination of the Secretary of the Department of Veterans Affairs under section 10(d) of Public Law 92–463 as amended by section 5(c) of Public Law 94–409.

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Ms. Victoria Mongiardo, Program Analyst, Rehabilitation Research and Development Service, Department of Veterans Affairs, 103 South Gay Street, Baltimore, Maryland 21202 (Phone: 410–962–2563) at least five days before the meeting.

Dated: May 16, 1994.

Heyard Bannister,

Committee Management Officer.

[FR Doc. 94–13874 Filed 6–7–94; 8:45 am]

BILLING CODE 8320–01–M

Special Medical Advisory Group (SMAG); Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Special Medical Advisory Group (SMAG) has been renewed for a period beginning November 17, 1993, through November 17, 1995.

Dated: May 31, 1994.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–13873 Filed 6–7–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 109
Wednesday, June 8, 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 a.m., Monday, June 13, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 3, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–14010 Filed 6–6–94; 9:13 am]

BILLING CODE 6210–01–P

Corrections

Federal Register
Vol. 59, No. 109
Wednesday, June 8, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

Correction

In notice document 94-11589 beginning on page 24683 in the issue of Thursday, May 12, 1994 is corrected to read as follows:

On page 24684, in the table, in the column headed "Period to be reviewed", insert "04/01/93-03/31/94" on the sixth and the ninth line from the bottom.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP94-554-000]

Williams Natural Gas Co.; Request Under Blanket Authorization

Correction

In notice document 94-12840 appearing on page 27273 in the issue of Thursday, May 26, 1994, the docket number is corrected as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7048

[AK-932-4210-06; AA-17986]

Partial Revocation of Executive Order No. 3406 Dated February 13, 1921; Alaska

Correction

In rule document 94-11565 appearing on page 24649 in the issue of Thursday, May 12, 1994 is corrected to read as follows:

On page 24649, in the second column, in the sixth line from the bottom, in the land description, "24" should read "14".

BILLING CODE 1505-01-D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2609

RIN 1212-AA64

Debt Collection by Administrative Offset

Correction

In proposed rule document 94-12426 beginning on page 26467 in the issue of Friday, May 20, 1994, make the following correction:

On page 26467, in the third column, under SUPPLEMENTARY INFORMATION, in the first full paragraph, in the seventh line, "FHWA" should read "U.S.C."

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34080; File No. SR-DGOC-94-02]

Self-Regulatory Organizations; Delta Government Options Corp.; Filing of Proposed Rule Change Modifying Exercise Settlement Date and Buy-In Procedures

Correction

In notice document 94-12748 beginning on page 27087 in the issue of Wednesday, May 25, 1994 is corrected to read as follows:

On page 27087, in the third column, before the first full paragraph, insert the date "May 18, 1994".

BILLING CODE 1505-01-D

Federal Register

Wednesday
June 8, 1994

Part II

Department of Education

National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for fiscal years 1994–1995 for the Knowledge Dissemination and Utilization Program.

SUMMARY: The Secretary announces funding priorities for the Knowledge Dissemination and Utilization (D&U) Program under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1994–1995. The Secretary takes this action to ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and others is utilized fully to improve the lives of individuals with disabilities and their families.

EFFECTIVE DATE: These priorities takes effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: David Esquith, U.S. Department of Education, 400 Maryland Avenue SW., room 3424, Switzer Building, Washington, DC 20202–2601. Telephone: (202) 205–8801.

SUPPLEMENTARY INFORMATION: This notice contains six priorities under the D&U program. These priorities would train persons with rights and duties under the Americans with Disabilities Act (ADA). The six priority areas are: (1) Independent living centers; (2) family organizations; (3) school districts; (4) State and local ADA coordinators and policymakers; (5) Hispanics with rights and duties under the ADA whose proficiency in English is limited; and (6) standards for accessible design.

Authority for the D&U program of NIDRR is contained in sections 202 and 204(a) and 204(b)(6) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations.

These priorities support the National Education Goals. National Education Goal 6 provides that by the year 2000 every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Under the regulations for this program (see 34 CFR 355.32), the Secretary may establish research priorities by reserving funds to support particular research activities.

NIDRR is in the process of developing a revised long-range plan. The priorities in this notice are consistent with the long-range planning process.

On April 6, 1994 the Secretary published a notice of proposed priorities in the **Federal Register** at (59 FR 16486). The Department of Education received 18 letters commenting on the proposed priorities. Modifications were made to the priorities as a result of those comments. The comments, and the Secretary's responses to them, are discussed in an appendix to this notice.

Note: This notice of final priorities does *not* solicit applications. A notice inviting applications under these competition is published in a separate notice in this issue of the **Federal Register**.

General

Unless indicated otherwise in the priority, the following requirements apply to the training projects:

Applicants for the training projects must identify the target groups and organizations that will be selected for training as specified in each of the priorities and describe in detail how the project will schedule and provide training during national, regional, State, or local conferences and meetings of the selected organizations. Applicants must demonstrate knowledge of the extent to which the target groups and organizations have received prior training on the ADA.

Applicants for training projects must describe how the project will provide persons with all types of disabilities an equal opportunity to receive training. Applicants for training projects must describe how the project will utilize a variety of training methods and deliver training in formats and styles that are accessible to individuals with a range of sensory, communication, cognitive, and learning disabilities.

Applicants for training projects must describe the training materials that the project will develop as well as identify existing training materials that the project will use.

Applicants must establish a timetable for beginning training activities and demonstrate that key staff and facilities will be available in order to achieve a comprehensive nationwide program within the period of the project.

Applicants for the training projects who propose to use subcontractors must demonstrate that it is cost-effective and describe how the applicant will directly supervise the subcontractors (see 34 CFR 75.701).

The training project must consult with each of NIDRR's regional Disability and Business Technical Assistance Centers (DBTACs) during the development of its schedule of training activities. To the maximum extent feasible, the training project must conduct its training activities in collaboration with each of the DBTACs.

The training project (except Priority 6: Standards for Accessible Design) must develop two schedules of regional training activities. The first schedule of training activities must be finalized and training must begin within six months after the award of the grant. The second schedule must be finalized within eighteen months after the award of the grant. The training project must carry out its training activities as equitably as possible across and within each region of the country.

The training project must have a staff with expertise on the ADA and training and carry out its training activities using those staff persons.

The training project must include individuals with disabilities or their family members or representatives to the maximum extent possible in all phases of the project's activities.

The training project must submit final drafts of the training materials it produces to NIDRR for review of their legal sufficiency. (NIDRR estimates it will take between two and four weeks to review materials for legal sufficiency depending upon their length and complexity.) The training project must submit monthly status reports on its training activities through NIDRR's ADA Technical Assistance Coordination Contract to NIDRR. Each training project must submit its final report to the National Rehabilitation Information Center clearinghouse.

The training project must cooperate with other Federal agencies that provide technical assistance and training on the ADA, such as the Equal Employment Opportunity Commission (EEOC), the Department of Justice (DOJ), and the Architectural and Transportation Barriers Compliance Board (ATBCB).

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary will fund under this program only applications that meet these absolute priorities:

Priorities—Americans With Disabilities Act Training Projects

Background

Public Law 101–336, the Americans with Disabilities Act (ADA), which was

enacted on July 26, 1990, prohibits discrimination against individuals with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications. In 1991 NIDRR established an ADA technical assistance program made up of ten regional Disability and Business Technical Assistance Centers (DBTACs—previously, Disability and Business Accommodation Centers), two national training projects, three materials development projects, and an ADA technical assistance coordination contract. The two national training projects addressed the needs of persons affiliated with independent living centers and peer and family networks. These training projects, which were awarded for three years, will complete their activities in fiscal year (FY) 1994.

For FY 1994, Congress provided NIDRR with additional funding, which it directed be used "for training activities related to the implementation of the Americans with Disabilities Act" (1994 Senate Appropriations Committee Report, p. 207). In accordance with this congressional directive, NIDRR proposes to establish six new training projects that will be supported by the additional funding that Congress provided as well as by existing NIDRR funds. The training projects will enhance the capacity of those with rights and duties under the ADA to facilitate its implementation.

NIDRR has consulted with a range of relevant Federal agencies, including, but not limited to, DOJ, EEOC, the Architectural and Transportation Barriers Compliance Board (ATBCB), the Department of Transportation, and the National Council on Disability, as well as representatives from disability organizations, to develop responsive and meaningful training projects that will complement the planned efforts of other public and private agencies. These priorities were developed on the basis of these consultations and relevant information from NIDRR projects, including the ADA technical assistance projects. NIDRR intends to continue to coordinate activities under this program with other Federal agencies and with other public and private initiatives to implement the ADA.

Priority 1: ADA Training for Independent Living Centers

Background

The more than 400 Independent Living Centers (ILCs) in the United States emphasize consumer control and peer services. These ILCs have a strong incentive to promote the successful implementation of the ADA. ILCs serve as resources not only to individuals with disabilities in their communities, but also to individuals and entities with responsibilities under the Act.

Preliminary results from a survey conducted by the Independent Living Research Utilization Program (ILRU) of persons associated with ILCs from around the country indicate that knowledge concerning specific sections of the ADA is not high, even among persons who have a direct interest in effective ADA implementation. Initial analysis of these data suggests that a lack of training opportunities and high turnover among the staff who are trained are factors in the current level of knowledge of persons associated with ILCs.

Some ILCs have had opportunities to participate in ADA training activities sponsored by Federal agencies, and many ILCs have developed into sophisticated community resources on the ADA. Training projects for the ILCs have generally taken the form of an ILC sending a representative to attend an intensive ADA training session over a number of days. This approach has some limitations in terms of impact due to the high turnover of ILC staff and multiple or shifting work responsibilities in the ILC.

Other ILCs, due in large part to their size or location, have not had ADA training opportunities sponsored by Federal agencies. This group of ILCs is the primary target audience for this training project. The secondary target group for the training project is composed of those ILCs who have lost their ADA-trained staff person. The project is intended to enable both of these groups of ILCs to become experts on the ADA so that their staff, associates and volunteers can answer technical questions, advise individuals on their rights or responsibilities, make referrals, increase awareness of the ADA in their community, and conduct ADA training activities for covered entities in their community.

Priority

An ADA training project for ILCs shall—

- Identify and select for training ILCs that have either not received training from a NIDRR, EEOC, or DOJ ADA project, or lost their staff representative who was trained by a NIDRR, EEOC, or DOJ project;
- Develop a strategy and schedule for training as many of these ILCs as possible using a variety of approaches, including, but not limited to, on-site training, national, regional, State, and local meetings, teleconferences, and audioconferences;
- Utilizing existing federally-approved materials to the maximum extent appropriate, develop an array of training materials and activities that vary in length and content in order to accommodate the information and scheduling needs of selected organizations;
- Provide training to staff, associates, and volunteers from each selected ILC in order to enable them to answer technical questions on the ADA, advise individuals or entities on their rights or responsibilities, make referrals, increase awareness of the ADA in their community, and conduct ADA training activities for covered entities in their community;
- To the maximum extent possible, utilize as trainers those individuals with disabilities who are from the same approximate area of the country as the selected ILC and who have been trained as trainers on the ADA by a NIDRR, EEOC, or DOJ technical assistance or training project; and
- For the length of the project, provide selected ILCs with quarterly ADA information updates, before and after training, regarding legal and policy developments.

Priority 2: ADA Training for Family Organizations

Background

The National Rehabilitation Information Center (NARIC) publishes a National Directory of Information Sources on Disability that includes information on many (but not all) organizations serving the disability community. According to the NARIC staff who are updating this directory, there are a minimum of 411 organizations providing information or direct services to individuals with disabilities and their families. These organizations disseminate information through national, State, and local conferences, as well as publications such as newsletters and brochures. They also provide training, using a variety of means and settings, to their professional staff as well as to their membership.

According to representatives of disability organizations, the extent to which national disability organizations, as well as their State and local affiliate organizations, have provided training or information to their members about the ADA varies according to the primary mission of the organization (e.g., provision of services or advocacy), resources available to the organization, and the interest of the membership and its leaders. As a result, knowledge about

the ADA among these organizations can vary widely from one organization to another as well as from one affiliate to another within the same organization.

The purpose of this priority is to provide training on the ADA to persons who are members or staff of disability organizations that provide services and information primarily to individuals with disabilities and their families by utilizing the existing training and information systems of these organizations.

Priority

An ADA training project for family organizations shall—

- Placing special emphasis on those organizations that have had limited access to ADA training and information, identify and select for training a range of disability organizations that provide services and information primarily to individuals with disabilities and their families, including those organizations focused on developmental, cognitive, emotional, physical, or sensory disabilities;
- Develop a strategy and schedule for training the membership and staff of these organizations using a variety of approaches including, but not limited to, on-site training, national, regional, State, and local meetings, teleconferences, and audioconferences;
- Utilizing existing Federally approved materials to the maximum extent appropriate, develop an array of training materials and activities that vary in length and content in order to accommodate the information and scheduling needs of selected organizations;
- Provide training to the membership and staff of selected organizations on the provisions of the ADA and the resources available to them to facilitate the implementation of the ADA;
- To the maximum extent possible, utilize as trainers those individuals with disabilities who have been trained as trainers on the ADA by a NIDRR, EEOC, or DOJ technical assistance or training project; and
- For the length of the project, provide selected organizations with quarterly ADA information updates, before and after training, regarding legal and policy developments.

Priority 3: ADA Training for School Districts

Background

There are 15,173 regular school districts in the United States according to the U.S. Department of Education National Center for Education Statistics 1993 Digest of Education Statistics in the United States). These school districts are covered under Title II of the ADA. Title II of the ADA prohibits discrimination on the basis of disability in all services, programs, and activities of State and local governments. The Office for Civil Rights within the U.S. Department of Education (OCR/ED) has been designated to enforce Title II in public elementary and secondary educational systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools) and public libraries.

Title II covers three major categories of programs or activities: employment; activities involving general public contact as part of an entity's ongoing operation (e.g., telephone contacts, office walk-ins, interviews, and public use of the facilities); and activities or programs directly administered by the entity for program beneficiaries and participants (e.g., programs that provide State or local government services or benefits).

School districts that have received Federal funds have been covered by Section 504 of the Rehabilitation Act since 1973. Title II is patterned after Section 504, and many school districts need information and training to understand not only their responsibilities under the ADA, but also the relationship of Section 504 to the ADA. OCR/ED and NIDRR cooperated in producing a self-evaluation guide for school districts that includes information addressing the relationship between Section 504 and the ADA.

One of the primary purposes of this training project will be to assist school districts to conduct their self-evaluations with this new self-evaluation guide and implement their plans to comply with the ADA. As part of this process, the project will enable trainees to understand not only their responsibilities under the ADA, but also the relationship of Section 504 to the ADA. The project will place special emphasis on school districts where a majority of the students are from minority backgrounds because of their limited access to outside training opportunities. The project will train selected educational organizations whose members have responsibility for complying with the ADA in school districts (e.g., superintendents, principals, special education directors, school boards, etc.), as well as staff from selected individual school districts.

Applicants may receive an outline of the guide by contacting David Esquith at (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

Priority

An ADA training project for school districts shall—

- Placing special emphasis on school districts where a majority of the students are from minority backgrounds, identify and select for direct training a range of school districts, equitably distributed throughout the country, including those from urban, rural, and suburban areas;
- Identify and select for training the membership and staff of educational organizations whose members have responsibility for complying with the ADA in school districts;
- Develop a strategy and a schedule for directly training school districts as well as the members and staff of selected organizations using a variety of approaches including, but not limited to, on-site training, national, regional, State, and local meetings, teleconferences, and audioconferences;
- Utilizing the OCR/ED self-evaluation guide and other existing federally-approved materials to the maximum extent appropriate, develop an array of training materials and activities that vary in length and content in order to accommodate the information and scheduling needs of selected school districts and organizations;
- Provide training to selected school districts and organizations on updating or conducting self-evaluations using the new guide, understanding the responsibilities of school districts under the ADA, implementing changes to comply with the ADA, and the resources available to them to facilitate the implementation of the ADA;
- To the maximum extent possible, utilize as trainers those individuals with disabilities who have been trained as trainers on the ADA by NIDRR, EEOC, or DOJ technical assistance or training project;
- For the length of the project, provide selected school districts and organizations with quarterly ADA information updates, before and after training, regarding legal and policy developments; and
- Coordinate training activities with the regional offices of OCR/ED.

Priority 4: ADA Training for State and Local ADA Coordinators and Policymakers

Background

Governors, mayors, city managers, city planners, county boards, agency directors, and other State and local

government officials bear responsibility for ensuring compliance with Title II of the ADA. In addition, § 35.107 of the ADA regulations (28 CFR part 35) requires that a public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with the ADA, including investigation of any complaint alleging its noncompliance or alleging any prohibited actions. Such persons are frequently identified as "ADA Coordinators" by State or local governments. According to the most recent (1987) report of the U.S. Census Bureau, there are approximately 7,665 counties, municipalities, and townships that have 50 or more full-time employees.

Title II requires public entities to evaluate their current services, policies, and practices to identify and correct any that are not consistent with the requirements of Title II. State and local ADA Coordinators and government policymakers are responsible for ensuring that the self-evaluations are carried out. To ensure that these self-evaluations are appropriately carried out and the necessary changes made, State and local ADA Coordinators and government policymakers need information and training about the requirements of the ADA and policy developments in the field.

Priority

An ADA training project for State and local ADA coordinators and policymakers shall—

- Identify and select for direct training State and local ADA coordinators and government policymakers from every Federal Region of the country, including those from urban, rural, and suburban areas, and ensuring the broad representation of local governments where a majority of the citizens are from minority backgrounds;
- Identify and select for training organizations whose members are policymakers in State and local government with responsibilities for complying with the ADA;
- Develop a strategy and a schedule for directly training State and local ADA coordinators and policymakers as well as the membership and staff of selected organizations using a variety of approaches including, but not limited to, on-site training, national, regional, State, and local meetings, teleconferences, and audioconferences;
- Utilizing existing federally-approved materials to the maximum extent appropriate, develop an array of training materials and activities that vary in length and content in order to accommodate the information and scheduling needs of selected coordinators and organizations;
- Provide training to selected State and local ADA coordinators, policymakers and members of organizations on the responsibilities of State and local governments under Title II of the ADA and in order to assist State and local governments to undertake their self-evaluation plans and make the changes needed to comply with the ADA;
- To the maximum extent possible, utilize as trainers those individuals with disabilities who have been trained as trainers by a NIDRR, EEOC, or DOJ technical assistance or training project;
- For the length of the project provide selected coordinators, policymakers and organizations with quarterly ADA information updates, before and after training, regarding legal and policy developments.

Priority 5: ADA Training for Hispanics With Rights and Duties Under the ADA Whose Proficiency in English Is Limited

Background

The Hispanic population in the U.S. totals approximately 22 million people, or 9.0 percent of the population. By the year 2010, the Hispanic population is expected to become the second- largest racial/ethnic group (National Council of La Raza Census Information Center, Hispanic Population Factsheet, November 1993).

There are approximately 3,343,000 persons of Hispanic origin with a disability. In other words, one out of every fifteen Americans with a disability is Hispanic (McNeil, Americans with Disabilities: 1991–1992, Current Population Reports, U.S. Bureau of the Census, 1993).

In 1990, 17.4 million persons reported that they spoke Spanish at home. Of these persons, 8.3 million persons, or 50.8 percent, reported that they do not speak English "very well" (U.S. Census Bureau, Language Spoken at Home and Ability to Speak English for U.S. Regions and States, 1993).

Hispanics with disabilities whose proficiency in English is limited, as well as Hispanic business owners and service providers whose proficiency in English is limited, need to understand the requirements of the ADA. Federal agencies have made a number of their ADA publications available in Spanish, and NIDRR has piloted an effort with its Region 6 Southwest DBTAC to provide training and technical assistance to persons in the Spanish-speaking community. This pilot project has included the publication of additional documents in Spanish as well as efforts to provide popular Hispanic media with information about the ADA that is sensitive to cultural norms regarding disability. While these efforts have made certain ADA materials and technical assistance available to persons whose proficiency in English is limited, more needs to be done.

Reaching a target population that is broadly dispersed and as diverse as Hispanics whose proficiency in English is limited is particularly challenging. The Hispanic population includes people from different cultural backgrounds and different countries and regions of the world, such as Mexico (63.6 percent), Puerto Rico (10.6 percent), Cuba (4.7 percent), and Central and South America (14.0 percent) (National Council of La Raza Census Information Center, Hispanic Population Factsheet, November 1993). For the purposes of this priority, "Hispanics whose proficiency in English is limited" includes all persons from those countries and regions listed above who do not speak English very well, if at all.

In order to reach as wide an audience as possible a training project must collaborate with Hispanic organizations that currently provide training and information to their members. It must also utilize TV, radio, and print media that are popular in the targeted Hispanic community. Applicants for this project must demonstrate Spanish fluency, knowledge, cultural understanding, and experience in providing training and technical assistance to Hispanic organizations and individuals. Applicants must recruit Hispanic community leaders to participate as trainees in the project. Applicants must also include a substantial number of Hispanic individuals with disabilities in all phases of the project's activities.

Priority

An ADA training project for Hispanics with right or duties under the ADA whose proficiency in English is limited shall—

- Identify and select for training organizations that provide services and information to Hispanics with rights and duties under the ADA whose proficiency in English is limited;
- Develop a strategy and a schedule for training the members and staff of selected organizations using a variety of approaches including, but not limited to, on-site training, national, regional, State, and local meetings, teleconferences, and audioconferences;
- Utilizing existing federally-approved materials to the maximum extent appropriate, develop an array of

training materials and activities that vary in length and content in order to accommodate the information and scheduling needs of selected organizations;

- Provide training to the members and staff of selected organizations on the provisions of the ADA and the resources available to them to facilitate the implementation of the ADA;
- To the maximum extent possible, utilize as trainers those individuals with disabilities who have been trained as trainers on the ADA by a NIDRR, EEOC, or DOJ technical assistance or training project;
- For the length of the project, provide selected organizations with quarterly ADA information updates, before and after training, regarding legal and policy developments; and
- Provide information about the ADA and technical assistance resources in areas with high concentrations of persons who are Spanish-speaking utilizing popular mass media such as local Hispanic TV and radio programming as well as Spanish print media.

Priority 6: ADA Training on Standards for Accessible Design

Background

Titles II and III of the ADA require that new governmental and commercial facilities be built in an accessible manner and require that, when existing governmental or commercial facilities are renovated or otherwise altered, the alterations be made in an accessible manner. In their regulations implementing Titles II and III of the ADA, the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT) adopted Standards for Accessible Design for purposes of enforcing the ADA's non-discrimination requirements in the built environment. For commercial facilities and public transportation facilities, they adopted the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG), developed by the Architectural and Transportation Barriers Compliance Board. For government facilities other than transportation facilities covered by DOT, DOJ currently permits the use of either the Uniform Federal Accessibility Standards or ADAAG as the "Standards for Accessible Design."

These Standards must be followed in new construction and alteration projects. They also serve as a guide for public accommodations undertaking to remove barriers in inaccessible existing facilities, as required under Title III. These Standards are complex and made up of scoping and technical provisions that contain many discrete requirements and necessitate referencing other technical provisions in order to make an element or space accessible.

NIDRR proposes a project to develop a series of audio/visual and complementary training materials on the Standards for Accessible Design that can be used across the country at the local level. Local organizations whose members include individuals with disabilities, business owners, building managers, employers, government agency officials, city planners, architects, designers, or other relevant parties need access to reliable materials that explain the ADA Standards. NIDRR proposes to develop this series of materials in short discrete segments that could be used in meetings normally scheduled by professional or business organizations such as local chapters of the American Institute of Architects, local Chambers of Commerce, and other groups. These materials could also be used by the DBTACs in carrying out ADA training activities.

Applicants must demonstrate knowledge, understanding, and experience in the following areas: In-depth knowledge of the ADA Standards for Accessible Design; thorough understanding of the rationale(s) underlying the Standards; understanding of the ways in which individuals with disabilities use, or are unable to use, the built environment; experience in the development and dissemination of educational videos; and experience in using innovative and engaging video techniques such as animation and fade-ins or transformations from actual scenes to diagrammatic or conceptual material. Samples of an applicant's recent relevant work, including the use of animation or other innovative video techniques and the development of training materials related to the ADA Standards or training materials on accessible design, must be submitted with the application.

Based on the estimated size of the award that will be published in the notice inviting applications, applicants may propose to cover some, but not all of the topics. Applicants must propose an order of production of the videos and identify the topics that will be addressed in each video. Applicants must justify their order of production, based on the importance of the topic. Applicants must propose to group topics on each of the videos and explain the rationale for the groupings.

Priority

An ADA training project on the ADA Standards for Accessible Design shall—

- Develop, test, and disseminate a series of short, broadcast quality videos and complementary training materials that address the technical and scoping requirements of the ADA Standards for Accessible Design. These materials shall cover *as many of the following topics as possible* (emphasis added) as set out in the current Standards as well as new provisions that will be adopted: New construction; additions, alterations, and path of travel; historic buildings; parking and passenger loading zones; exterior accessible routes and curb ramps; drinking fountains; telephones and TDDs; ramps and stairs; platform lifts; entrances and exits (areas of rescue assistance); doors and gates; building lobbies and corridors (interior accessible routes); elevators; rooms and spaces; assembly areas; toilet rooms and bathrooms; bathtubs and showers; dressing and fitting rooms; signage; alarms; detectable warnings; automated teller machines; restaurants and cafeterias; medical care facilities; mercantile facilities; libraries; hotels, motels, inns, boarding houses, dormitories, and similar places; homeless shelters, halfway houses, transient group homes, and similar social services establishments; bus stops; fixed transportation facilities, bus and train terminals and stations; and airports. The project shall address the requirements of the standards from a Universal Design perspective;
- Illustrate how people with disabilities use the built environment and the rationale that underlies specific technical and scoping provisions of the Standards and how discrete provisions in the Standards fit together with each other to ensure accessibility;
- Use innovative techniques, including animation, fade-ins or transformations to transition from footage showing a person using a space or element to footage showing design layouts and diagrams from the Standards relevant to that kind of space or element;
- Utilizing, as much as possible, materials that have been developed by Federal agencies, develop readily reproducible complementary training materials in conjunction with each video to supplement the video materials and to provide guidance on using the videos effectively;
- Identify organizations whose members include individuals with disabilities, business owners, building managers, employers, government agency officials, city planners,

architects, designers, and other relevant parties who would be an appropriate audience for the videos;

- Develop and implement a plan to disseminate the videos and complementary training materials to selected organizations;
- Produce the first video and complementary training material of the series within six months of the grant award;
- Coordinate with the Department of Justice, the Access Board, and the Department of Transportation in the development and dissemination of the videos and complementary training materials;
- Ensure that the training videos and complementary training material are available in formats that accommodate persons with hearing impairments and vision impairments;
- Provide four one-inch NCSC standard fully mixed and open captioned edited master video tapes, including two master tapes and two safety dub tapes suitable for duplication, and four copies on VHS cassettes of each videotape produced, along with four reproducible copies of each set of complementary training materials to NIDRR for use by the Federal government.

Applicable Program Regulations: 34 CFR parts 350 and 355.

Program Authority: 29 U.S.C. 760–762.

Dated: June 3, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

(Catalog of Federal Domestic Assistance Number 84.133D, Knowledge Dissemination and Utilization Program)

Appendix—Analysis of Comments and Changes

The Department received 18 letters in response to the notice of proposed priorities. This Appendix contains an analysis of the comments and of the changes in the priorities since the publication of the notice of proposed priorities. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

Priority 1: ADA Training for Independent Living Centers

Comment: One commenter suggested requiring ILC personnel to disseminate information on the ADA to American Indian rehabilitation organizations and tribal councils on reservations and Alaska Native villages.

Discussion: The priority does not specify the activities of any ILC that receives training from this project. The Background statement to Priority 1 states that the project is intended to enable ILCs "to become experts on the ADA so that their staff, associates and volunteers can answer technical questions, advise individuals on their rights or responsibilities, make referrals, increase awareness of the ADA in their community, and conduct ADA training activities for covered entities in their community." The Secretary believes that specifying the follow-up activities that an ILC undertakes once it has received ADA training from this training project is outside the scope of the priority and should be left to the discretion of the ILC. However, the Secretary expects that any ILC that receives training from this project and that is part of a community that includes American Indians and Alaska Natives will disseminate information on the ADA to these individuals.

Changes: None.

Comment: One commenter suggested requiring training to be directed to key personnel who would be less inclined to leave the organization in order to address the issue of staff turnover.

Discussion: In order to address the issue of staff turnover, the priority requires the training project to train a number of persons affiliated with an ILC, including staff, associates, and volunteers. The Secretary does not believe it is feasible to identify which staff are less likely to leave an ILC.

Changes: None.

Priority 2: ADA Training for Family Organizations

Comment: One commenter was concerned about the Background statement reference to The National Rehabilitation Information Centers's Directory of Information Sources on Disability because the directory does not provide information on organizations that provide rehabilitation services on reservations and to Alaska Natives.

Discussion: The reference to the Directory of Information Sources was intended solely to illustrate the approximate number of organizations providing information or direct services to individuals with disabilities and their families. The Secretary wishes to clarify that this reference does not place any limit on the organizations that an applicant may propose to include in their application.

Changes: The Background statement has been revised to indicate that the Directory includes many (but not all) organizations serving the disability community.

Comment: Four commenters suggested that Parent Training and Information programs (PTIs) be included in the list of target audiences for the training.

Discussion: The Secretary recognizes that PTIs are a potential target audience for the training. The Secretary points out that the priority does not include the name of any organization or program. The Secretary does not believe it is appropriate to identify one program or organization by name in the priority

Changes: None.

Comment: One commenter suggested that the priority be revised to include national meetings as potential training forums.

Discussion: The general requirements for all the training projects indicate that the projects will schedule and provide training during national, regional, State and local meetings. The Secretary agrees that national meetings should be included in the specific requirement regarding training forums in order to be consistent.

Changes: The specific requirement on training forums (in this priority as well as Priorities 1, 3, 4, and 5) have been revised to include national meetings.

Comment: One commenter was concerned about placing special emphasis on those organizations that have had limited access to ADA training and information. The commenter indicated that members of family organizations who have received some training or information on the ADA may have a need for further training or information.

Discussion: The Secretary agrees that members of family organizations have a need for continuing ADA training and information. The Secretary believes that the requirement cited above does not prohibit applicants from proposing to include organizations that have had some ADA training as well as those that have had no training or access to ADA information.

Changes: None.

Comment: One commenter suggested that conventional training methods (e.g., lecture) are not effective with members of family organizations and should be discouraged in favor of experiential approaches.

Discussion: The Secretary believes that all the training projects must tailor their methods to the learning styles of their audiences. The Secretary points out that applicants for all of the projects must describe how the project will utilize a variety of training methods. The Secretary believes that applicants should be given the discretion to propose the training methods that they think would be most effective.

Changes: None.

Comment: One commenter suggested that selection criteria for Priority 2 be revised to require that the grantee be an organization that has made a commitment as an institution to the principles embodied in the ADA, has established a presence in all regions of the country, and represents the interests of people with a full range of disabilities.

Discussion: The Secretary does not believe that additional selection criteria are necessary in order to ensure that the grantee for the family organization training project accomplishes the purposes of the project.

Changes: None.

Priority 3: ADA Training for School Districts

Comment: One commenter stated that postsecondary vocational educational institutions need training and information to understand the relationship between the ADA and Section 504 and that many of these institutions are not part of school districts. The commenter suggested expanding Priority 3 to include postsecondary vocational technical institutions that are not part of school districts.

Discussion: The Secretary agrees that postsecondary vocational technical institutions need ADA training and information, and NIDRR will consider issuing an ADA-related research priority regarding adult education programs. The Secretary believes that expanding this training project to include educational institutions that are not a part of school districts is outside the scope of this project.

Changes: None.

Comment: One commenter noted the reference to the OCR/ED guide and asked about its status.

Discussion: The OCR/ED guide is in the final stages of production at this time. The Secretary recognizes that applicants for this training project will want as much information as possible about the content of the guide. Upon request, NIDRR will make an outline of the guide available to all interested parties.

Changes: The background statement of the priority has been amended to inform interested parties how to obtain a copy of an outline of the guide.

Comment: One commenter suggested providing ADA training to BIA- funded schools on reservations.

Discussion: The Secretary believes that applicants should be given the discretion to propose the school districts that will be selected for training.

Changes: None.

Priority 4: ADA Training for State and Local ADA Coordinators and Policymakers

Comment: One commenter suggested providing ADA training to American Indians and Alaska Native Councils.

Discussion: The Secretary believes that applicants should be given the discretion to propose the State and local ADA coordinators and policymakers that will be selected for training.

Changes: None.

Comment: One commenter was concerned that the requirement to identify and select State and local ADA coordinators implied that not all State and local ADA coordinators and policymakers would participate in the training project. The commenter suggested requiring the project to impose a registration fee for all training attendees or scheduling the training over an extended period of time until as many officials as possible would have participated in the training project.

Discussion: The Secretary recognizes that strategies such as charging a reasonable registration fee and acquiring matching funds from cooperating agencies are permissible means for a project to increase its number of trainees. The Secretary believes that applicants should have the discretion to propose such strategies and elects not to dictate the strategies to be used.

The Secretary also recognizes that for this training project, as well as for the other training projects, the size and the length of the award will limit the project's ability to train all of the potential target audience.

Changes: None.

Comments: One commenter suggested that the training project form an association of ADA Coordinators and policymakers in order to promote the sharing of information and uniform policies at the local and State level.

Discussion: The Secretary believes that the formation of an association of ADA Coordinators and policymakers is outside of the scope of this priority.

Changes: None.

Priority 5: ADA Training for Hispanics With Rights and Duties Under the ADA Whose Proficiency in English Is Limited

Comment: One commenter suggested expanding the priority to include ADA training for American Indians, Alaska Natives, and Pacific Islanders in their native languages.

Discussion: The Secretary believes that expanding the priority to include ADA training for American Indians, Alaska Natives, and Pacific Islanders is outside the scope of this priority.

Changes: None.

Comment: One commenter suggested recruiting and training Hispanic community leaders in order to encourage participation in the training projects.

Discussion: The Secretary agrees that the participation of community leaders in the project is an important variable. that should be required in the priority.

Changes: The Background statement to the priority has been revised to require applicants to recruit Hispanic community leaders to participate as trainees in the project.

Comment: One commenter suggested requiring applicants' decision-making personnel to be Hispanic individuals with disabilities.

Discussion: The Secretary agrees that Hispanic individuals with disabilities should be extensively involved in the training project. The Secretary points out that the Background statement includes a requirement that applicants must include a substantial number of Hispanic individuals with disabilities in all phases of the project's activities. The Secretary does not believe that any further requirements are necessary.

Changes: None.

Priority 6: ADA Training on Standards for Accessible Design

Comment: One commenter suggested that the proposed priority limits the training materials to video tape and precludes the use of other media (e.g., CD ROM) that may be attractive to some potential users.

Discussion: The Secretary believes that producing the training materials in video tape will result in the widest possible distribution of the information. The priority gives applicants the discretion to propose producing the training materials in other media in addition to video tape.

Changes: None.

Comment: One commenter suggested requiring the project to coordinate with the Access Board in addition to the Department of Justice and the Department of Transportation.

Discussion: The Secretary agrees that coordination with the Access Board would be beneficial.

Changes: The priority has been revised to require the project coordinate with the Access Board in addition to the Department of Justice and the Department of Transportation.

Comment: One commenter suggested requiring that the video tapes and training materials be designed in a culturally appropriate manner and relevant to reservations, villages, and islands, and disseminated to tribal council members and leaders of

American Indians, Alaska Natives, and Pacific Islanders.

Discussion: The Secretary believes that the video tapes and training materials should be relevant to as wide an audience as possible. The Secretary believes that applicants should be given the discretion to propose the details of their dissemination plan for the video tapes and training materials.

Changes: None.

Comment: One commenter was concerned that individuals with cognitive disabilities are not adequately addressed in the Standards for Accessible Design (i.e., the Uniform Federal Accessibility Standards or the ADAAG), and, as a result, the project's video tapes and training materials would convey the misconception that covered entities had to fulfill their accessibility obligations under the ADA to persons with cognitive disabilities by meeting the Standards for Accessible Design. The commenter suggested that any training materials developed on the Standards for Accessible Design include a focus on issues of cognitive accessibility and give special attention to demonstrating how to make governmental and commercial facilities accessible to people with cognitive disabilities.

Discussion: The purpose of Priority 6 is to produce video tapes and training materials that will increase understanding of the current Standards for Accessible Design. The responsibility for establishing standards for accessibility rests with the DOJ and the DOT. When the DOJ and the DOT issue additional design standards regarding individuals with cognitive disabilities, the Disability and Business Technical Assistance Centers (DBTACs) will provide training and technical assistance to covered entities on the additional standards.

Changes: None.

Comment: One commenter suggested presenting the Standards for Accessible Design in terms that are relevant and appropriate for the target audiences listed in the priority.

Discussion: The Secretary recognizes the importance and difficulty inherent in producing technical training materials for a diverse audience. The training project applications will be reviewed to determine to what degree the training content of each application is comprehensive and at an appropriate level as well as likely to be effective (see 34 CFR 350.34(c)). The Secretary does not believe that any further requirements are necessary.

Changes: None.

Comment: One commenter indicated that all of the technical and scoping requirements are intricately related to each other, and that to omit one or more would jeopardize the complete understanding of the rationale underlying the Standards.

Discussion: The Secretary recognizes the problems associated with omitting one or more of the topics in the Standards for Accessible Design. However, the Secretary believes that the estimated size of the award necessitates providing applicants with the option of proposing to cover some, but not all, of the topics.

Changes: None.

General Comments:

Comment: One commenter expressed a concern regarding the requirement that appears in the Priorities 1 through 5 that the training projects "To the maximum extent possible, utilize as trainers those individuals with disabilities who have been trained as trainers on the ADA by a NIDRR, EEOC, or DOJ technical assistance or training project." The commenter expressed the concern that this requirement would preclude qualified, non-disabled individuals from participating as trainers in the projects.

Discussion: The Secretary wishes to clarify that the requirement does not preclude the participation of qualified nondisabled individuals as trainers. The requirement is intended solely to maximize the participation of qualified individuals with disabilities.

Changes: None.

Comment: One commenter recommended deleting the requirement cited above regarding the use of individuals as trainers who have been trained on the ADA by NIDRR, EEOC, or DOJ from the School Districts (Priority 3) and State and Local ADA Coordinators and Policymakers (Priority 4). The commenter indicated that these two training projects are highly specialized and cover material not likely to have been addressed in the training provided to individuals trained by NIDRR, EEOC, or DOJ.

Discussion: The Secretary recognizes the complexities of the two referenced training projects. The Secretary believes that some of the individuals who have been trained by NIDRR, EEOC and DOJ can serve as trainers in these projects, and expects applicants to exercise appropriate discretion in selecting qualified individuals.

Changes: None.

Comment: One commenter was concerned that the training projects would not impact Indian people with disabilities and their families who live off reservations. The commenter suggested including American Indians and Native Alaskans as a special population in each priority.

Discussion: The Secretary recognizes that there are many individuals from minority backgrounds, including American Indians and Native Alaskans, who need training on the ADA. The Rehabilitation Act Amendments of 1992 require that each applicant for a project under this competition must demonstrate in its application how it will address the needs of individuals from minority backgrounds who have disabilities. The Secretary believes that applicants should be given the discretion to identify their training audience, including those individuals from minority backgrounds who will receive training from the project.

Changes: None.

Comment: One commenter pointed out that the general requirement on training schedules is inconsistent with the purpose and video tape production schedule requirements of Priority 6: Standards for Accessible Design. The commenter suggested excepting Priority 6 from the general requirement on training schedules.

Discussion: The Secretary agrees that an exception from the general requirement on training schedules should be made for Priority 6.

Changes: The general requirement on training schedules has been amended to exclude Priority 6.

Comment: One commenter suggested that, for planning purposes, the final priority include a statement regarding the length of time NIDRR will take to review final draft materials for legal sufficiency.

Discussion: The length of time needed to review material for legal sufficiency will depend significantly upon the length and complexity of the material. The Secretary agrees that an estimate of the time it will take NIDRR to review material for legal sufficiency would assist projects in developing their materials production and training schedules.

Changes: The general requirements section has been amended to indicate that NIDRR estimates it will take between two and four weeks to review materials for legal sufficiency depending upon their length and complexity.

Comment: One commenter suggested requiring each project to have an evaluative research function, and a second commenter, addressing the training needs of American Indians and Alaska Natives, questioned how the training projects will measure the trainers' effectiveness and the impact of the training in the community, reservations, and villages.

Discussion: The Secretary agrees that each of the training projects should have a strong evaluation component. The evaluation plan selection criteria for these training projects are set forth at 34 CFR 350.34 (e). The Secretary does not believe that any further requirements are necessary.

Changes: None.

Comment: One commenter suggested that NIDRR fund a national State-by-State assessment of the implementation of the ADA.

Discussion: The Secretary believes that understanding the impact of the ADA is an important research topic. However, the Congress has instructed NIDRR to support additional training to facilitate the implementation of the ADA. These priorities are in response to that directive.

Changes: None.

Comment: Four commenters recommended revising or omitting the general requirement that the training projects may not rely primarily on subcontractors to carry out training activities. These commenters indicated that the limitation on subcontracting would limit the cost-effectiveness of the training projects' efforts. In addition, one commenter indicated that this limitation was inconsistent with the requirement that the training projects, to the maximum extent possible, utilize as trainers those individuals with disabilities who have been trained as trainers on the ADA by a NIDRR, EEOC, or DOJ technical assistance or training project.

Discussion: The Secretary recognizes that under some circumstances subcontracting is a cost-effective strategy. However, experience has shown that an over-reliance on subcontracting may contribute to quality control problems. In order to reconcile the cost-effectiveness and quality control issues, the Secretary agrees to permit subcontracting when an applicant demonstrates that it is cost-effective and describes how the applicant will directly supervise the subcontractor.

The Secretary believes that this change will resolve any potential conflict regarding the requirement to use individuals who have been trained as trainers on the ADA by a NIDRR, EEOC, or DOJ technical assistance or training projects.

Changes: The general requirement regarding subcontracting has been revised to require applicants who propose to use subcontractors to demonstrate that it is cost-effective and describe how the applicant will directly supervise the subcontractor (see 34 CFR 75.701).

Comment: Four commenters recommended revising the general requirements that the training projects must: (1) Consult with each of NIDRR's DBTACs during the development of its schedule of training activities, and, (2) to the maximum extent feasible, conduct its training activities in collaboration with each of the DBTACs. The commenters felt that the consultation and collaboration requirements would be too demanding logistically.

Discussion: The Secretary recognizes the logistical demands that these requirements place on the training projects as well as the DBTACs. However, experience has shown that such requirements are necessary in order to ensure appropriate collaboration between the DBTACs and the training projects. In order to assist the training projects to address the logistical demands that collaboration will create, each of the DBTACs has designated a staff person who will serve as a training coordinator. This DBTAC staff person will serve as the single point of contact for the training projects and will consult with the training project on scheduling and coordinate collaborative training efforts. The Secretary believes that the benefits of increased collaboration outweigh the additional logistical demands placed on the training projects and the DBTACs.

Changes: None.

Comment: Three commenters recommended requiring the training projects to share information and materials. The commenters suggested requiring the training projects for school districts and family organizations to share relevant materials and information. In addition, one of these commenters suggested requiring that the training project for Hispanics collaborate with the other training projects as well as the DBTACs.

Discussion: The Secretary agrees that sharing of information and materials between all of the ADA technical assistance projects is important. NIDRR's Technical Assistance Coordination contractor is responsible for promoting this sharing of information and materials through Project Directors' meetings and regular communication on an electronic bulletin board. Experience has shown that no further requirements are necessary in order to promote the sharing of information and materials among all ADA technical assistance projects.

Changes: None.

Comment: One commenter suggested revising the general requirement that applicants must describe the training materials that the project will develop as well as identify existing training materials that the project will use. The commenter suggested that applicants should demonstrate their knowledge of and use of training materials developed by NIDRR ADA projects.

Discussion: The Secretary believes that training materials developed by NIDRR ADA projects may compose a part of the training materials that applicants identify in response to this requirement. However, the Secretary believes that applicants should have the discretion to identify the materials that they propose to use in the project.

Changes: None.

Comment: One commenter suggested that applicants be required to demonstrate that a substantial number of individuals with disabilities or family members, as appropriate, be involved in all aspects of the training project.

Discussion: All of the training projects must comply with the general requirement that individuals with disabilities or family members or representatives must include individuals with disabilities or their families to the maximum extent possible in all phases of the project's activities. The Secretary does not believe any further requirements are necessary.

Changes: None.

Comment: One commenter suggested requiring applicants to show prior experience with coordinating and providing national training on the ADA.

Discussion: The training project applications will be reviewed to determine to what degree the principal investigator and other key staff have adequate training and/or experience and demonstrate appropriate potential to conduct the training (see 34 CFR 350.34(d)). The Secretary does not believe that any further requirements are necessary.

Changes: None.

Comment: One commenter was concerned that the establishment of the training projects may give the impression that NIDRR does not have full confidence in the DBTACs.

Discussion: The Secretary believes that there is a need for additional training projects. The Secretary wishes to clarify that he has full confidence in the DBTACs.

Changes: None.

Comment: One commenter suggested requiring that applicants for Priorities 1–5 develop strategies to address the issue of staff turnover among the organizations and programs that receive training.

Discussion: The Secretary recognizes that staff turnover is an important issue. The Secretary believes that the projects'

model of training a number of individuals (members and staff) of the target organizations will minimize the phenomenon of staff turnover by providing training to more than one key person. The Secretary does not believe that any further requirements are feasible in light of the estimated size of the awards for the projects.

Changes: None.

Comment: One commenter suggested clarifying the projects' responsibilities to evaluate the impact of their training efforts.

Discussion: The Secretary agrees that evaluating the outcomes of the projects is important. The training project applications will be reviewed to determine to what degree there is a mechanism to evaluate the project's results (see 34 CFR 350.34(e)). In addition, NIDRR is considering supporting an external evaluation of the training projects. The Secretary does not believe that any further requirements are necessary.

Changes: None.

Comment: One commenter was concerned that individuals with certain disabilities would be overlooked in the outreach and training activities of all of the training projects. The commenter indicated that the general requirement regarding delivering training in formats and styles that are accessible to individuals with a range of sensory, communication, cognitive, and learning disabilities was not sufficient to ensure equal opportunity for persons with all types of disabilities. The commenter suggested adding a requirement that the projects must include persons with all types of disabilities in their training.

A second commenter, addressing the ILC training project, was concerned that the ILC training project would not include individuals with mental retardation and other cognitive disabilities.

Discussion: The Secretary agrees that persons with all types of disabilities should be provided with an equal opportunity to receive training by the projects. The Secretary believes that further clarification in the general requirements is necessary.

Changes: The general requirements for the training projects have been revised to require that applicants describe how the training projects will provide persons with all types of disabilities an equal opportunity to receive training.

Comment: One commenter suggested requiring the training projects for school districts and State and local ADA coordinators and policymakers to address building partnerships between individuals with disabilities and covered entities.

Discussion: The Secretary believes that building partnerships between individuals with disabilities and Title II entities is desirable. The Secretary believes that an applicant for either of these projects could propose to include partnership building in their training. However, the Secretary believes that applicants should be provided with discretion to propose the content of their training.

Changes: None.

Comment: One commenter suggested two additional priorities for training projects. The commenter suggested one project to train State code official responsible for enforcing State accessibility law, and a second project to impart information about disability rights at all levels of the educational system.

Discussion: The Secretary believes that both of these suggestions would contribute to the successful implementation of the ADA. NIDRR will consider these suggestions when developing future technical assistance and training projects.

Changes: None.

Comment: Two commenters suggested that the notice clarify that non-profit organizations and for-profit organizations are eligible to apply for the training projects.

Discussion: The Notice inviting applications for these projects states that parties eligible to apply for grants under this program are public and private nonprofit and for-profit agencies and organizations, including institutions of higher education and Indian tribes and tribal organizations.

Changes: None.

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Part III

Department of Education

Notice Inviting Applications for New Awards Under the Knowledge Dissemination and Utilization Program for Fiscal Year 1994

DEPARTMENT OF EDUCATION

[CFDA No. 84.133D]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under the Knowledge Dissemination and Utilization Program for Fiscal Year (FY) 1994

Note to Applicants: This notice is a complete application package. The notice contains information, application forms, and instructions needed to apply for a grant under this competitions. The final priorities for the Knowledge Dissemination and Utilization program are published in this issue of the **Federal Register**. This consolidated application package includes the closing date, estimated funding, and application forms necessary to apply for an award under this program's competition. Potential applicants should consult the statement of the final priorities published in this issue to ascertain the substantive requirements for their applications.

The estimated funding level in this notice does not bind the Department of Education to make awards or to any specific number of awards or funding levels.

Note: The Rehabilitation Act Amendments of 1992 require that each applicant for a project under this competition must demonstrate in its application how it will address the needs of individuals from minority backgrounds who have disabilities.

APPLICATION NOTICE FOR FISCAL YEAR 1994—KNOWLEDGE DISSEMINATION AND UTILIZATION PROGRAM, CFDA NO. 84.133D

ADA training project funding priority	Deadline for transmittal of applications	Estimated number of awards	Estimated size of awards (per year)	Project period (months)
Independent Living Centers	07/22/94	1	$250,000	36
Family Organizations	07/22/94	1	250,000	36
School Districts	07/22/94	1	250,000	36
State and Local ADA Coordinators and Policymakers	07/22/94	1	250,000	36
Hispanics Whose Proficiency in English is Limited	07/22/94	1	250,000	36
Standards for Accessible Design	07/22/94	1	250,000	36

Before your application can be reviewed, it must include this description. Applications for which this information is not received will not be reviewed.

Successful applicants that provide services to individuals with disabilities will be required to advise these individuals, or as appropriate, the parents, family guardians, advocates, or authorized representatives of these individuals, of the availability and purposes of the State Client Assistance Program (CAP), including information on means of seeking assistance under such programs. A list of State CAPs will be provided to successful applicants when they are notified of their award.

This notice supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

If you need further information about these requirements, please contact David Esquith at (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 78, 80, 81, 82, 85, 86;

(b) The regulations for this program in 34 CFR parts 350 and 355; and

(c) The notice of final priorities as published elsewhere in this issue of the **Federal Register**.

Purpose of Program

The Knowledge Dissemination and Utilization is designed to support activities that will ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and from other sources is fully utilized to improve the lives of individuals with disabilities and their families.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications under this program.

(a) *Potential Impact of Outcomes:* Importance of Program (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The proposed activity relates to the announced priority;

(2) The research is likely to produce new and useful information (research activities only);

(3) The need and target population are adequately defined;

(4) The outcomes are likely to benefit the defined target populations;

(5) The training needs are clearly defined (training activities only);

(6) The training methods and developed subject matter are likely to meet the defined need (training activities only); and

(7) The need for information exists (utilization activities only).

(b) *Potential Impact of Outcomes:* Dissemination/Utilization (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The research results are likely to become available to others working in the field (research activities only);

(2) The means to disseminate and promote utilization by others are defined;

(3) The training methods and content are to be packaged for dissemination and use by others (training activities only); and

(4) The utilization approach is likely to address the defined need (utilization activities only).

(c) *Probability of Achieving Proposed Outcomes; Program/Project Design* (Weight 5.0). The Secretary reviews each application to determine to what degree—

(1) The objectives of the project(s) are clearly stated;

(2) The hypothesis is sound and based on evidence (research activities only);

(3) The project design/methodology is likely to achieve the objectives;

(4) The measurement methodology and analysis is sound;

(5) The conceptual model (if used) is sound (development/demonstration activities only);

(6) The sample populations are correct and significant (research and development/demonstration activities only);

(7) The human subjects are sufficiently protected (research and

development/demonstration activities only);

(8) The device(s) or model system is to be developed in an appropriate environment;

(9) The training content is comprehensive and at an appropriate level (training activities only);

(10) The training methods are likely to be effective (training activities only);

(11) The new materials (if developed) are likely to be of high quality and uniqueness (training activities only);

(12) The target populations are linked to the project (utilization activities only); and

(13) The format of the dissemination medium is the best to achieve the desired result (utilization activities only).

(d) *Probability of Achieving Proposed Outcomes:* Key Personnel (Weight 4.0). The Secretary reviews each application to determine to what degree—

(1) The principal investigator and other key staff have adequate training and/or experience and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;

(2) The principal investigator and other key staff are familiar with pertinent literature and/or methods;

(3) All required disciplines are effectively covered;

(4) Commitments of staff time are adequate for the project; and

(5) The applicant is likely, as part of its nondiscriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(e) *Probability of Achieving Proposed Outcomes; Evaluation Plan* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) There is a mechanism to evaluate plans, progress and results;

(2) The evaluation methods and objectives are likely to produce data that are quantifiable; and

(3) The evaluation results, where relevant, are likely to be assessed in a service setting.

(f) *Program/Project Management: Plan of Operation* (Weight 2.0). The Secretary reviews each application to determine to what degree—

(1) There is an effective plan of operation that insures proper and efficient administration of the project(s);

(2) The applicant's planned use of its resources and personnel is likely to achieve each objective;

(3) Collaboration between institutions, if proposed, is likely to be effective; and

(4) There is a clear description of how the applicant will include eligible project participants who have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(g) *Program/Project Management: Adequacy of Resources* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The facilities planned for use are adequate;

(2) The equipment and supplies planned for use are adequate; and

(3) The commitment of the applicant to provide administrative support and adequate facilities is evident.

(h) *Program/Project Management: (Budget and Cost Effectiveness* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The budget for the project(s) is adequate to support the activities;

(2) The costs are reasonable in relation to the objectives of the project(s); and

(3) The budget for subcontracts (if required) is detailed and appropriate.

Eligible Applicants

Parties eligible to apply for grants under this program are public and private nonprofit and for-profit agencies and organizations, including institutions of higher education and Indian tribes and tribal organizations.

Program Authority: 29 U.S.C. 761a and 762.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, DC time] on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

PART I—Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions

PART II—Budget Form—Non-Construction Programs (Standard Form 424A) and instructions

PART III—Application Narrative

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non—Non Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Workplace Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form ED 80–0014) and instructions.

(**Note:** ED Form ED–80–0014 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application

and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition in the notice published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dianne Villines, U.S. Department of Education, room 3417 Switzer Building, 400 Maryland Avenue, SW., Washington, DC 20202–2704. Telephone: (202) 205–9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

Program Authority: 29 U.S.C. 760–762.

Dated: June 3, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should Be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What Is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application.

Applicants in the FIR, AND Innovation grants programs should limit indirect charges to the organization's approved rate. If the organization does not have an approved rate, the application should include an estimated actual rate.

6. Can Profitmaking Businesses Apply For Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply For Grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs.

8. Can NIDRR Staff Advise Me Whether My Project is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How Do I Assure That My Application Will Be Referred to the Most Appropriate Panel For Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including the title of the priority to which they are responding.

10. How Soon After Submitting My Application Can I Find Out If It Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR To Find Out If My Application Is Being Funded?

No! When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If My Application Is Successful, Can I Assume I Will Get the Requested Budget Amount In Subsequent Years?

No. Those budget projections are necessary and helpful for planning purposes. However, a complete budget and budget justification must be submitted for each year of the project and there will be negotiations on the budget each year.

13. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:
Application ☐ Construction ☐ Non-Construction
Preapplication ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (give city, county, state, and zip code):

Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):
☐☐ – ☐☐☐☐☐☐☐

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify) _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.)

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0027, Washington, D.C. 20503.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3),

Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:	13. Type of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Federal Use Only:

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

[FR Doc. 94-13931 Filed 6-7-94; 8:45 am]
BILLING CODE 4000-01-C

Federal Register

Wednesday
June 8, 1994

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 7, et al.
Federal Acquisition Regulation; Inherently Governmental Functions; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7, 10, and 37

[FAR Case 92–51]

Federal Acquisition Regulation, Inherently Governmental Functions

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing changes to the Federal Acquisition Regulation (FAR) to implement Office of Federal Procurement Policy (OFPP) Letter 92–1, Inherently Governmental Functions. This rule provides a definition of, and internal Government responsibilities and procedures relating to, inherently Governmental functions. This regulatory action was subject to Office of Management and Budget review pursuant to Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted to the address shown below on or before August 8, 1994 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., room 4037, Washington, DC 20405.

Please cite FAR case 92–51 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0168 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR case 92–51.

SUPPLEMENTARY INFORMATION:

A. Background

The OFPP published its proposed policy letter, for public comment, in the **Federal Register** at 56 FR 65279, December 16, 1991. OFPP evaluated public comments and published the final policy letter at 57 FR 45096 in the **Federal Register** at 57 45096, September 30, 1992. This proposed rule implements the policy letter in the FAR.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies only to internal Government operations. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 92–51), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose record keeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 7, 10, and 37

Government procurement.

Dated: June 1, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 7, 10, and 37 be amended as set forth below:

1. The authority citation for 48 CFR parts 7, 10, and 37 continues to read as follows:

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

PART 7—ACQUISITION PLANNING

2. Section 7.000 is amended in paragraph (b) by removing the word "and"; in paragraph (c) by removing the period at the end of the sentence and inserting in its place "; and"; and by adding paragraph (d) to read as follows:

7.000 Scope of part.

* * * * *

(d) Determining whether functions are inherently governmental.

3. Section 7.103 is amended in paragraph (i) by removing "; and" and inserting a period in its place; and adding paragraph (m) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(m) Ensuring that no purchase request is initiated or contract entered into that would result in the performance of an inherently governmental function by a contractor and that all contracts are adequately managed so as to ensure effective official control over contract performance.

4. Section 7.105 is amended by redesignating paragraphs (b)(9) through (b)(19) as (b)(10) through (b)(20), respectively, and adding a new paragraph (b)(9) to read as follows:

7.105 Content of written acquisition plans.

* * * * *

(b) * * *

(9) *Inherently governmental functions.* Address the consideration given to OFPP Policy Letter 92–1 (see subpart 7.5).

* * * * *

5. Subpart 7.5 is added to read as follows:

Subpart 7.5—Inherently Governmental Functions

Sec.

7.500 Scope of subpart.
7.501 Definition.
7.502 Applicability.
7.503 Policy.

Subpart 7.5—Inherently Governmental Functions

7.500 Scope of subpart.

The purpose of this subpart is to prescribe policies and procedures to ensure that inherently governmental functions are not performed by contractors. It implements the policies of Office of Federal Procurement Policy (OFPP) Policy Letter 92–1, Inherently Governmental Functions.

7.501 Definition.

Inherently governmental function means, as a matter of policy, a function that is so intimately related to the public interest as to mandate performance by Government employees. This definition is a policy determination, not a legal determination. An inherently governmental function includes activities that require either the exercise of discretion in applying Government authority, or the making of value judgments in making decisions for the Government. Governmental functions normally fall into two categories: the act of governing, *i.e.*, the discretionary exercise of Government authority, and monetary transactions and entitlements.

(a) An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to—

(1) Bind the United States to take or not to take some action by contract, policy, regulation, authorization, order or otherwise;

(2) Determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

(3) Significantly affect the life, liberty, or property of private persons;

(4) Commission, appoint, direct, or control officers or employees of the United States; or

(5) Exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of Federal funds.

(b) Inherently governmental functions do no normally include gathering information for or providing advice, opinions, recommendations, or ideas to Government officials. They also do not include functions that are primarily ministerial and internal in nature, such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical services. The list of commercial activities included in the attachment to Office of Management and Budget (OMB) Circular No. A–76 is an authoritative, nonexclusive list of functions which are not inherently governmental functions.

7.502 Applicability.

The requirements of this subpart apply to all contracts for services. The subpart does not apply to services obtained through either personnel appointments or advisory committees.

7.503 Policy.

(a) Contracts shall not be used for the performance of inherently governmental functions.

(b) Agency decisions which determine whether a function is or is not an inherently governmental function may be reviewed and modified by appropriate Office of Management and Budget officials.

(c) The following is a list of examples of functions considered to be inherently governmental functions or which shall be treated as such. This list is not all inclusive:

(1) The direct conduct of criminal investigations.

(2) The control of prosecutions and performance of adjudicatory functions (other than those relating to arbitration or other methods of alternative dispute resolution).

(3) The command of military forces, especially the leadership of military personnel who are members of the combat, combat support or combat service support role.

(4) The conduct of foreign relations and the determination of foreign policy.

(5) The determination of agency policy, such as determining the content and application of regulations, among other things.

(6) The determination of Federal program priorities for budget requests.

(7) The direction and control of Federal employees.

(8) The direction and control of intelligence and counter-intelligence operations.

(9) The selection or non-selection of individuals for Federal Government employment, including the interviewing of individuals for employment.

(10) The approval of position descriptions and performance standards for Federal employees.

(11) The determination of what Government property is to be disposed of and on what terms (although an agency may give contractors authority to dispose of property at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency).

(12) In Federal procurement activities with respect to prime contracts—

(i) Determining what supplies or services are to be acquired by the Government (although an agency may give contractors authority to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency);

(ii) Participating as a voting member on any source selection boards;

(iii) Approval of any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;

(iv) Awarding contracts;

(v) Administering contracts (including ordering changes in contract performance or contract quantities, taking action based on evaluations of contractor performance, and accepting or rejecting contractor products or services);

(vi) Terminating contracts;

(vii) Determining whether contract costs are reasonable, allocable, and allowable; and

(viii) Participating as a voting member on performance evaluation boards.

(13) The approval of agency responses to Freedom of Information Act requests (other than routine responses that, because of statute, regulation, or agency policy, do not require the exercise of judgment in determining whether documents are to be released or withheld), and the approval of agency responses to the administrative appeals of denials of Freedom of Information Act requests.

(14) The conduct of administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or eligibility to participate in Government programs.

(15) The approval of Federal licensing actions and inspections.

(16) The determination of budget policy, guidance, and strategy.

(17) The collection, control, and disbursement of fees, royalties, duties, fines, taxes and other public funds, unless authorized by statute, such as 31 U.S.C. 952 (relating to private collection contractors) and 31 U.S.C. 3718 (relating to private attorney collection services), but not including—

(i) Collection of fees, fines, penalties, costs or other charges from visitors to or patrons of mess halls, post or base exchange concessions, national parks, and similar entities or activities, or from other persons, where the amount to be collected is easily calculated or predetermined and the funds collected can be easily controlled using standard case management techniques; and

(ii) Routine voucher and invoice examination.

(18) The control of the treasury accounts.

(19) The administration of public trusts.

(20) The development of Congressional testimony, responses to Congressional correspondence, or agency responses to audit reports from the Inspector General, the General Accounting Office, or other Federal Audit entity.

(d) Certain services and actions that are not considered to be inherently governmental functions may approach being in that category because of the nature of the function, the manner in which the contractor performs the contract or the manner in which the Government administers contractor performance. The following is a list of examples of functions generally considered not to be inherently governmental functions. This list is not all inclusive:

(1) Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.

(2) Services that involve or relate to reorganization and planning activities.

(3) Services that involve or relate to analyses, feasibility studies, and strategy options to be used by agency personnel in developing policy.

(4) Services that involve or relate to the development of regulations.

(5) Services that involve or relate to the evaluation of another contractor's performance.

(6) Services in support of acquisition planning.

(7) Contractors providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors).

(8) Contractors providing technical evaluation of contract proposals.

(9) Contractors providing assistance in the development of statements of work.

(10) Contractors providing support in preparing responses to Freedom of Information Act requests.

(11) Contractors working in any situation that permits or might permit them to gain access to confidential business information and/or any other sensitive information (other than situations covered by the Defense Industrial Security Program described in 4.402(b)).

(12) Contractors providing information regarding agency policies or regulations, such as attending conferences on behalf of an agency, conducting community relations campaigns, or conducting agency training courses.

(13) Contractors participating in any situation where it might be assumed that they are agency employees or representatives.

(14) Contractors participating as technical advisors to a source selection board or participating as voting or nonvoting members of a source evaluation board.

(15) Contractors serving as arbitrators or providing alternative methods of dispute resolution.

(16) Contractors constructing buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.

(17) Contractors providing inspection services.

(18) Contractors providing legal advice and interpretations of regulations and statutes to Government officials.

(19) Contractors providing special non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.

(e) Agency implementation shall include procedures requiring the agency head or designated requirements official to provide the contracting officer, concurrent with transmittal of the statement of work (or any modification thereof), a written determination that none of the functions to be performed are inherently governmental. This assessment should place emphasis on the degree to which conditions and facts restrict the discretionary authority, decision-making responsibility, or accountability of Government officials using contractor services or work products. Disagreements regarding the determination will be resolved in accordance with agency procedures before issuance of a solicitation.

PART 10—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

6. Section 10.002 is amended by adding paragraph (f) to read as follows:

10.002 Policy.

* * * * *

(f) In drafting purchase descriptions for service contracts, agency requiring activities shall ensure that inherently governmental functions (see subpart 7.5) are not assigned to a contractor. These purchase descriptions shall (1) reserve final determination for Government officials; (2) require proper identification of contractor personnel who attend meetings, answer Government telephones, or work in situations where their actions could be construed as acts of Government officials unless, in the judgment of the agency, no harm can come from failing to identify themselves; and (3) require suitable marking of all documents or reports produced by contractors.

PART 37—SERVICE CONTRACTING

7. Section 37.102 is revised to read as follows:

37.102 Policy.

(a) Agencies shall generally rely on the private sector for commercial services (see OMB Circular No. A–76, Performance of Commercial Activities and subpart 7.3).

(b) Agencies shall not award a contract for the performance of an inherently governmental function (see subpart 7.5).

(c) Non-personal service contracts are proper under general contracting authority.

8. Section 37.113 is added to read as follows:

37.113 Special acquisition requirements.

(a) Contracts for services which require the contractor to provide advice, opinions, recommendations, ideas, reports, analyses, or other work products have the potential for influencing the authority, accountability and responsibilities of Government officials. These contracts require special management attention to ensure that they do not result in performance of inherently governmental functions by the contractor and that Government officials properly exercise their authority.

(b) Agency must ensure that a sufficient number of qualified Government employees are assigned to oversee contractor activities, especially those that involve support of Government policy or decision making. During performance of service contracts, the functions being performed shall not be changed or expanded to become inherently governmental.

(c) Agencies must ensure that a greater scrutiny and an appropriate enhanced degree of management oversight is exercised when contracting for functions that are not inherently governmental but closely support the performance of inherently governmental functions (7.503(c)).

(d) Agencies must ensure that all contractor personnel attending meetings, answering Government telephones, and working in other situations where their contractor status is not obvious to third parties are required to identify themselves as such to avoid creating an impression in the minds of members of the public or Congress that they are Government officials, unless, in the judgment of the agency, no harm can come from failing to identify themselves. They must also ensure that all documents or reports produced by contractors are suitably marked as contractor products or that contractor participation is appropriately disclosed.

[FR Doc. 94–13894 Filed 6–7–94; 8:45 am]

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federal register

Wednesday
June 8, 1994

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations; Notice of Meetings; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN: 1018-AA24

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations; Notice of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposed in an earlier document to establish annual hunting regulations for certain migratory game birds. This supplementary document describes proposed changes and provides additional information that will facilitate establishment of the 1994–95 hunting regulations. This document also announces the meetings of the Service Migratory Bird Regulations Committee.

DATES: The Service Migratory Bird Regulations Committee will meet to consider and develop proposed regulations for early seasons on June 21, 22, and 23, and for late seasons on August 2, 3, and 4. Public hearings on proposed early- and late-season frameworks will be held at 9:00 a.m. on June 23 and August 4, 1994, respectively. The comment period for proposed migratory bird hunting-season frameworks for Alaska, Hawaii, Puerto Rico, the Virgin Islands, and other early seasons will end on July 21, 1994; and for late-season proposals will end on August 29, 1994.

ADDRESSES: Meetings of the Service Migratory Bird Regulations Committee will be held in room 200 of the U.S. Fish and Wildlife Service's ARLSQ Building, 4401 N. Fairfax Drive, Arlington, Virginia. Public hearings will be held in the Auditorium of the Department of the Interior Building, 1849 C Street, NW., Washington, DC. Written comments on the proposals and notice of intention to participate in either hearing should be sent to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, ARLSQ Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1994

On April 7, 1994, the Service published in the **Federal Register** (59 FR 16762) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. This document is the second in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. Comment periods on this second document are specified above under **DATES**. Early-season frameworks will be proposed in late June and late-season frameworks in early August. Final regulatory frameworks for early seasons are scheduled for publication on or about August 16, 1994, and those for late seasons on or about September 23, 1994.

On June 23, 1994, a public hearing will be held in Washington, DC, to review the status of migratory shore and upland game birds and recommended hunting regulations for these species and other early seasons.

On August 4, 1994, a public hearing will be held in Washington, DC, to review the status of waterfowl and recommended hunting regulations for regular waterfowl seasons, and other species and seasons not previously discussed at the June 23 public hearing.

Announcement of Service Regulations Committee Meetings for Early-Season Regulations

The meeting on June 21 is to review information on the 1994 status of migratory game birds and to develop 1994–95 migratory game bird regulations recommendations. The June 22 meeting is to ensure that the Service's regulation recommendations are developed with the benefit of full consultation on the issues.

In accordance with Departmental policy regarding meetings of the Service Regulations Committee that are attended by any person outside the Department, these meetings will be open to public observation. Members of the public may submit to the Director written comments on the matters discussed.

Announcement of Flyway Council Meetings

Service representatives will be present at the following meetings of Flyway Councils:

Atlantic Flyway—July 28–29, St. Michaels, Maryland (Harbor Town Resort)

Mississippi Flyway—July 28–29, Memphis, Tennessee (Peabody Hotel)

Central Flyway—July 28–29, Crested Butte, Colorado (Crested Mountain Village-Conference Center)

Pacific Flyway—July 29, Reno, Nevada (Peppermill Hotel)

Although agendas are not yet available, these meetings usually commence at 8:30 to 9 a.m. on the days indicated.

Review of Public Comments

This supplemental rulemaking describes changes which have been recommended based on the preliminary proposals published on April 7, 1994, in the **Federal Register**. Only those recommendations that would require either new proposals or substantial modification of the preliminary proposals to facilitate effective public participation are included herein. Those that support or oppose but do not recommend alternatives to the preliminary proposals are not included, but will be considered later in the regulations-development process. The Service will publish responses to proposals, written comments, and public-hearing testimony when final frameworks are developed, at which time additional data about the status of affected species will be available.

The Service seeks additional information and comments on the recommendations contained in this supplemental proposed rule. These recommendations and all associated comments will be considered during development of the final frameworks.

New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the April 7, 1994, **Federal Register**.

1. Ducks.

The categories used to discuss issues related to duck harvest management are as follows: (A) General Harvest Strategy, (B) Framework Dates, (C) Season Length, (D) Closed Seasons, (E) Bag Limits, (F) Zones and Split Seasons, and (G) Special Seasons/Species Management. Only those categories containing substantial recommendations are included below.

B. Framework Dates

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the season framework dates of the Saturday nearest October 1 to January 20 be established

as a basic regulation and not fluctuate annually.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that Iowa be permitted to hold a portion of their regular duck season in September to increase harvest opportunity on blue-winged teal.

E. Bag Limits

The Central Flyway Council requested that the Service review its policy for the use of the point-system bag limit option that requires that it be no more liberal than the conventional bag limit.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council requested that the Service review its current point-system bag-limit policy. They feel that at least 1 more bird should be allowed in the point system than in the conventional bag limit.

The Pacific Flyway Council recommended that the Service: (1) review its current point-system policy, (2) work with both Pacific and Central Flyway Technical Committees to interpret available data, and (3) consider all available new information, and evaluate the point system against other bag-limit systems.

G. Special Seasons/Species Management

i. Canvasback.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that an open season for canvasbacks be allowed in the Mississippi Flyway with a 1-bird daily bag limit throughout the regular duck season beginning in 1994, contingent upon breeding population and habitat conditions.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that an open season for canvasbacks of at least 10 days be allowed with a 1-bird daily bag limit beginning in 1994, contingent upon breeding population and habitat conditions.

ii. September Teal Seasons.

The Central Flyway Council recommended that September teal season shooting hours begin one-half hour before sunrise to sunset without further evaluation for all non-production Central Flyway States.

The Central Flyway Council recommended that the Service review the guidelines for establishing a September teal season for any new requests for seasons.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that Michigan be permitted to hold an experimental September teal season in southeast portions of the State.

The Lower-Region Regulations Committee of the Mississippi Flyway Council requested that September teal season shooting hours beginning 1/2-hour before sunrise be made operational and that no further evaluation of shooting hours be required.

4. Canada Geese.

A. Special Seasons

The Atlantic Flyway Council recommended that West Virginia be permitted to initiate a 3-year experimental resident Canada goose season between September 1–10.

The Atlantic Flyway Council made the following recommendations to modify zones to hunt resident Canada geese in September:

In Maryland, expand its hunt zone to include Worcester, Wicomico, Somerset, Dorchester, and that portion of Talbot and Caroline Counties east of U.S. Route 50 and south of Maryland Route 404 during 1994–96.

In North Carolina, include that portion of the State east of Interstate 95 except in the Counties of Bertie, Beaufort, Camden, Chowan, Currituck, Dare, Gates, Hartford, Hyde, Northhampton (east of I-95), Pamlico, Pasquotank, Perquimans, Tyrrel, and Washington, where migrant Canada geese are expected to occur prior to the end of September.

In northwestern Pennsylvania, expand its Northwest zone to include Allegheny, Armstrong, Beaver, Cambria, Greene, Fayette, Indiana, Lawrence, Somerset, Venango, Washington, and Westmoreland Counties, during 1994–96.

In southeastern Pennsylvania, amend its current zone to include 4 additional counties.

In Virginia, amend its current zone to include 26 additional counties, including portions of the Shenandoah Valley, the central piedmont, the coastal plain, and the eastern shore.

The Upper-Region Regulations Committee of the Mississippi Flyway Council made the following recommendations pertaining to special Canada goose seasons:

In Indiana, expand the September-season hunting area to Statewide with a September 1–15 framework. The proposed changes would not be experimental.

In Michigan, extend the seasons in the northern Lower Peninsula and Upper Peninsula for 2 additional years and expand the zone in the Upper Peninsula to approximately the eastern half of the Peninsula; change the season length in the southern part of the Lower Peninsula from 10 to 15 days (September 1–15) for 3 years and include the southern portions of Tuscola and Huron Counties. The proposed changes would be experimental.

In Minnesota, expand the Fergus Falls/Alexandria Zone and extend the framework for the 10-day season to September 1–16 for 3 years. The proposed changes would be experimental.

In Ohio, expand the September-season hunting area to Statewide with a September 1–15 framework. The proposed changes would not be experimental.

In Wisconsin, enlarge the size of the Southeastern Wisconsin Zone and continue as a special season with a September 1–13 framework. The proposed changes would not be experimental.

The Lower-Region Regulations Committee of the Mississippi Flyway Council requested that the Service closely monitor all Canada goose seasons, and fully analyze data from existing special or experimental seasons before expanding seasons that cumulatively might increase harvest of the Southern James Bay Population. Also, current special seasons should adhere to present criteria designed by the Service.

The Lower-Region Regulations Committee of the Mississippi Flyway Council also requested a 3-year experimental 10-day September Canada goose season be permitted in the eastern portion of Tennessee.

B. Regular Seasons

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the early-season frameworks provide for the opening of regular goose seasons in Wisconsin and the Upper Peninsula of Michigan as early as September 24.

The Lower-Region Regulations Committee of the Mississippi Flyway Council requested that the Service closely monitor all Canada goose seasons, and fully analyze data from existing special or experimental seasons before expanding seasons that cumulatively might increase harvest of the Southern James Bay Population of Canada geese.

The Pacific Flyway Council seeks a limited resumption of cackling Canada goose hunting throughout their range and recommends that the Service provide an expedited review of their recommended changes in cackling

Canada goose regulations for impacts on Aleutian Canada geese under the Section 7 Consultation process.

6. Brant.

The Upper-Region Regulations Committee of the Mississippi Flyway Council requested that the daily bag limit for brant be reduced to 2 birds to better conform with units in other flyways.

7. Snow and Ross's (Light) Geese.

The Central Flyway Council recommended that the framework closing date for light geese be changed from the Saturday nearest "February 15" to "February 28" for all Central Flyway States.

14. Woodcock.

The Lower-Region Regulations Committee of the Mississippi Flyway Council requested that Tennessee be allowed to divide the State into 2 zones (East and West) for woodcock hunting.

16. Mourning Doves.

The Central Flyway Council recommends that Texas be allowed an increase in the number of segments from 2 to 3 in 2 of the 3 mourning dove hunting zones now offered to Texas.

17. White-winged and White-tipped Doves.

The Central Flyway Council proposes an increase in the 12-dove aggregate daily bag limit to allow 6 instead of 2 white-winged doves as now permitted in Cameron, Hidalgo, Starr, and Willacy Counties of Texas during the regular mourning dove season.

18. Alaska.

The Pacific Flyway Council recommended that Alaska be allowed no more than 1 Canada goose in the daily bag for Unit 9E and the western portions of Unit 18.

The Pacific Flyway Council recommended that the Statewide closure on cackling Canada geese be removed.

The Pacific Flyway Council recommended removal of restrictive bag limits for white-fronted geese in Units 1–9 and 14–18 in Alaska. The goose limit will be 6 daily and 12 in possession, of which no more than 4 daily and 8 in possession could be any combination of Canada or white-fronted geese.

Public Comment Invited

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and therefore desires to obtain for consideration the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. All relevant comments received during the comment period will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)," filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

As in the past, hunting regulations this year will be designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species. Consultations are presently under way to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. It is possible that the findings from the consultations, which will be included in a biological opinion, may cause modification of some regulatory measures proposed in this document. Any modifications will be reflected in the final frameworks. The Service's biological opinions resulting from its consultation under section 7 are considered public documents and are available for public inspection in the Division of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

Regulatory Flexibility Act; Executive Order (E.O.) 12866 and the Paperwork Reduction Act

In the **Federal Register** dated April 7 1994 (59 FR 16762), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing an Analysis of Regulatory Effects and an updated Final Regulatory Impact Analysis, under the Regulatory Flexibility Act (5 U.S.C. 601 et seq), and publication of a summary of the latter. This information is included in the present document by reference. This action was not subject to review by the Office of Management and Budget under E.O. 12866. This rule does not contain any information collection requiring approval by the Office of Management and Budget under 44 U.S.C. 3504.

Authorship

The primary author of this proposed rule is Robert J. Blohm, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1994–95 hunting season are authorized under the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711); the Fish and Wildlife Improvement Act (November 8, 1978), as amended, (16 U.S.C. 712); and the Fish and Wildlife

Act of 1956 (August 8, 1956), as amended, (16 U.S.C. 742 a–d and e–j).

Dated: May 23, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–13926 Filed 6–7–94; 8:45 am]

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Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 352

Sunscreen Drug Products for Over-the-Counter Human Use; Proposed Amendment to the Tentative Final Monograph; Reopening of Comment Period; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 352

[Docket No. 78N–0038]

RIN 0905–AA06

Sunscreen Drug Products for Over-the-Counter Human Use; Proposed Amendment to the Tentative Final Monograph; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the tentative final monograph for over-the-counter (OTC) sunscreen drug products (58 FR 28194, May 12, 1993) to include only the 15 active ingredients for which United States Pharmacopeia (U.S.P.) monographs currently exist or for which interest in developing U.S.P. monographs has been expressed. This proposal is part of the ongoing review of OTC drug products conducted by FDA. FDA is reopening the comment period until August 22, 1994 to give interested parties an opportunity to comment on the proposed amendment to the tentative final monograph.

DATES: Written comments or objections by August 22, 1994; writen comments on the agency's economic impact determination by August 22, 1994.

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

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of May 12, 1993 (58 FR 28194), FDA published a notice of proposed rulemaking, in the form of a tentative final monograph, for OTC sunscreen drug products. In proposed § 352.10 (21 CFR 352.10) of the May 12, 1993, tentative final monograph (58 FR 28194 at 28295), the agency proposed the following ingredients in Category I (i.e., generally recognized as safe and effective):

(1) Aminobenzoic acid,
(2) Cinoxate,
(3) Diethanolamine methoxycinnamate,
(4) Digalloyl trioleate,
(5) Dioxybenzone,
(6) Ethyl 4-[bis(hydroxypropyl)] aminobenzoate,
(7) Glyceryl aminobenzoate,
(8) Homosalate,
(9) Lawsone with dihydroxyacetone,
(10) Menthyl anthranilate,
(11) Octocrylene,
(12) Octyl methoxycinnamate,
(13) Octyl salicylate,
(14) Oxybenzone,
(15) Padimate O,
(16) Phenylbenzimidazole sulfonic acid,
(17) Red petrolatum,
(18) Sulisobenzone,
(19) Titanium dioxide,
(20) Trolamine salicylate.

The agency also stated that, in order for a sunscreen ingredient to be included in the final monograph, it would be necessary for the ingredient to be adequately characterized and for these standards to be published in an official compendium (58 FR 28194 at 28284). The agency noted that only a few Category I sunscreen active ingredients are standardized and characterized for quality and purity and are included in official compendia (i.e., aminobenzoic acid, cinoxate, dioxybenzone, oxybenzone, and titanium dioxide). The agency suggested that interested parties should develop with the U.S.P. appropriate standards for the quality and purity of sunscreen active ingredients that are not already included in official compendia (i.e., diethanolamine methoxycinnamate, digalloyl trioleate, ethyl 4-[bis(hydroxypropyl)] aminobenzoate, glyceryl aminobenzoate, homosalate, lawsone with dihydroxyacetone, menthyl anthranilate, octocrylene, octyl methoxycinnamate, octyl salicylate, phenylbenzimidazole sulfonic acid, red petrolatum, sulisobenzone, and trolamine salicylate). The agency pointed out that if such standards are not established, ingredients without available public standards would not be included in the final monograph.

In letters dated January 13, 1994 (Ref. 1), the agency reminded two manufacturers associations (representing many OTC drug and cosmetic manufacturers of sunscreen-containing drug products) that all sunscreens ingredients must have a U.S.P. monograph before being included in the final monograph for OTC sunscreen drug products. FDA encouraged the associations to work with the U.S.P. in establishing the necessary monographs. Stating that the agency believes that some of the proposed Category I ingredients are no longer used for formulating sunscreen drug products, the agency questioned whether manufacturers would be working to establish U.S.P. standards for these ingredients. The agency asked for comment regarding which ingredients companies would be working to establish U.S.P. monographs.

The associations replied jointly in a letter dated February 15, 1994 (Ref. 2). The letter stated that, in addition to the five ingredients FDA listed as having established U.S.P. monographs, a sixth ingredient, padimate O, also has a U.S.P. monograph. The letter further stated that industry members currently intend to work with U.S.P. to develop compendial monographs for the following nine ingredients:

(1) Diethanolamine,
(2) Octocrylene,
(3) Octyl methoxycinnamate,
(4) Octyl salicylate,
(5) Homosalate,
(6) Menthyl anthranilate,
(7) Phenylbenzimidazole sulfonic acid,
(8) Sulisobenzone,
(9) Trolamine salicylate.

No interest was expressed in the remaining ingredients (i.e., digalloyl trioleate, ethyl 4-[bis(hydroxypropyl)] aminobenzoate, glyceryl aminobenzoate, lawsone with dihydroxyacetone, and red petrolatum).

References

(1) Letters from W. E. Gilbertson, FDA, to J. D. Cope, Nonprescription Drug Manufacturers Association, and E. E. Kavanaugh, Cosmetic, Toiletry and Fragrance Association, Comments No. LET110 and LET111, respectively, in Docket No. 78N–0038, Dockets Management Branch.

(2) Letter from E. E. Kavanaugh, Cosmetic, Toiletry and Fragrance Association, and J. D. Cope, Nonprescription Drug Manufacturers Association, to W. E. Gilbertson, FDA, Comment No. C301, in Docket No. 78N–0038, Dockets Management Branch.

II. The Agency's Tentative Conclusions

Based upon the apparent lack of interest in establishing U.S.P. monographs for digalloyl trioleate, ethyl 4-[bis(hydroxypropyl)] aminobenzoate, glyceryl aminobenzoate, lawsone with dihydroxyacetone, and red petrolatum, the agency tentatively concludes that these ingredients will not be included in the final monograph for OTC sunscreen drug products and should be deleted from the tentative final monograph. Therefore, the agency is amending the tentative final monograph for OTC sunscreen drug products to remove these five ingredients. The agency is also withdrawing the warnings and directions proposed in §§ 352.52(c)(2)

and 352.52(d)(3) for lawsone with dihydroxyacetone.

FDA has examined the impacts of the amendment of the tentative final monograph under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this amendment of the tentative final monograph is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the amendment of the tentative final monograph is not a significant regulatory action as defined by the Executive Order and, thus, is not subject to review under the Executive Order. The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency is not aware of any currently marketed sunscreen drug products that contain any of the ingredients being withdrawn from the monograph. Accordingly, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The agency is reopening the comment period until August 22, 1994 to allow interested persons the opportunity to comment specifically on the proposal in this document to include only the 15 active ingredients listed. The agency is also inviting public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC sunscreen drug products. Types of impact may include, but are not limited to, costs associated with reformulating, relabeling, or repackaging. Comments regarding the impact of this rulemaking on OTC sunscreen drug products should be accompanied by appropriate documentation. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) 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.

Interested persons may, on or before August 22, 1994, submit to the Dockets Management Branch (address above) written comments or objections regarding this proposal. Written comments on the agency's economic impact determination may be submitted on or before August 22, 1994. Three copies of all comments or objections are to be submitted, except that individuals may submit one copy. Comments and objections are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments and objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 352

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 352 (as proposed in the **Federal Register** of May 12, 1993 (58 FR 28194)), be amended as follows:

PART 352—SUNSCREEN DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 352 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

§ 352.10 [Amended]

2. Section 352.10 Sunscreen active ingredients is amended by removing paragraphs (d), (f), (g), (i), and (q) and reserving them.

§ 352.20 [Amended]

3. Section 352.20 Permitted combinations of active ingredients is amended by removing paragraphs (a)(2)(iv), (a)(2)(vi), (a)(2)(vii), (a)(2)(ix), and (a)(2)(xvii) and reserving them.

§ 352.52 [Amended]

4. Section 352.52 Labeling of sunscreen drug products is amended by removing paragraphs (c)(2) and (d)(3) and reserving them.

Dated: May 18, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–13933 Filed 6–7–94; 8:45 am]

BILLING CODE 4160–01–F

federal register

Wednesday
June 8, 1994

Part VII

Department of Transportation

Research and Special Programs Administration

Pipeline Safety Summit; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Pipeline Safety Summit

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: The Research and Special Programs Administration (RSPA) invites representatives of industry, state and local government, other interested groups, and the public to a Pipeline Safety Summit. The purpose of this open meeting is to assist RSPA in developing a public/private agenda that establishes priorities for pipeline safety initiatives and identifies the next steps needed to make them a reality. The Summit will identify how to leverage available resources to optimize public safety and environmental protection. This effort will explore new and revised policies, procedures, and possible legislation utilizing strengthened partnerships.

DATE AND LOCATION: The Pipeline Safety Summit will be held on June 20, 1994, from 9 a.m. until 5 p.m., at the Radisson Hotel, 128 Frontage Road (Newark Airport), Newark, New Jersey, telephone (202) 690–5500.

FOR FURTHER INFORMATION CONTACT: Cheryl Whetsel, RSPA, U.S. Department of Transportation, room 8321, 400 7th Street, SW., Washington, DC 20590, telephone (202) 366–4431, FAX (202) 366–7431. To pre-register for the Summit, contact Ms. Whetsel by June 15. On-site registration will begin at 7:30 a.m. on June 20.

SUPPLEMENTARY INFORMATION: On March 23, 1994, an interstate natural gas transmission pipeline, operated by Texas Eastern Gas Pipeline Company, exploded in Edison, NJ. Preliminary examination indicated evidence of previously inflicted excavation damage to the pipeline. While the incident resulted in only one fatality (a heart attack), it raised important questions about the safety of pipelines. Following the accident, Department of Transportation Secretary Federico Peña proposed significant changes to the federal pipeline safety program for both the short and the long terms.

Secretary Peña also announced that the Department would convene a Pipeline Safety Summit, calling together experts to assess the current state of the nation's pipeline system. The Summit will include four panel discussions: allaying public concerns about pipeline safety, using existing and evolving technologies to maximize pipeline safety, calculating the cost of pipeline safety, and creating effective partnerships for reducing pipeline risk. Limited time will be available at the end of the day for the audience to ask questions of the panelists.

To help ensure that all concerned voices are heard, RSPA invites interested persons to submit brief 2–3 page issue papers in advance for distribution at the June 20 Summit. To reduce reproduction costs, please keep these papers concise and targeted on issues relevant to enhancing pipeline safety and reducing the risk to the environment associated with pipeline transportation.

Papers should arrive at the address noted above by June 15, 1994, to be distributed at the Summit. RSPA will also accept papers until July 20 for inclusion as appendices in the final report of the Summit proceedings.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety

[FR Doc. 94–13834 Filed 6–7–94; 8:45 am]

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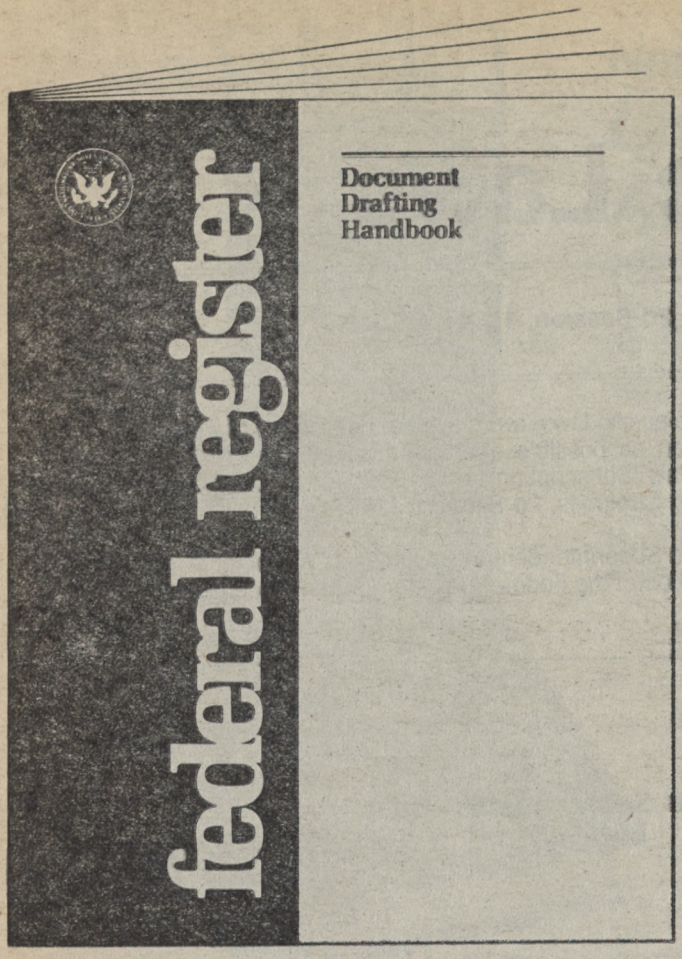

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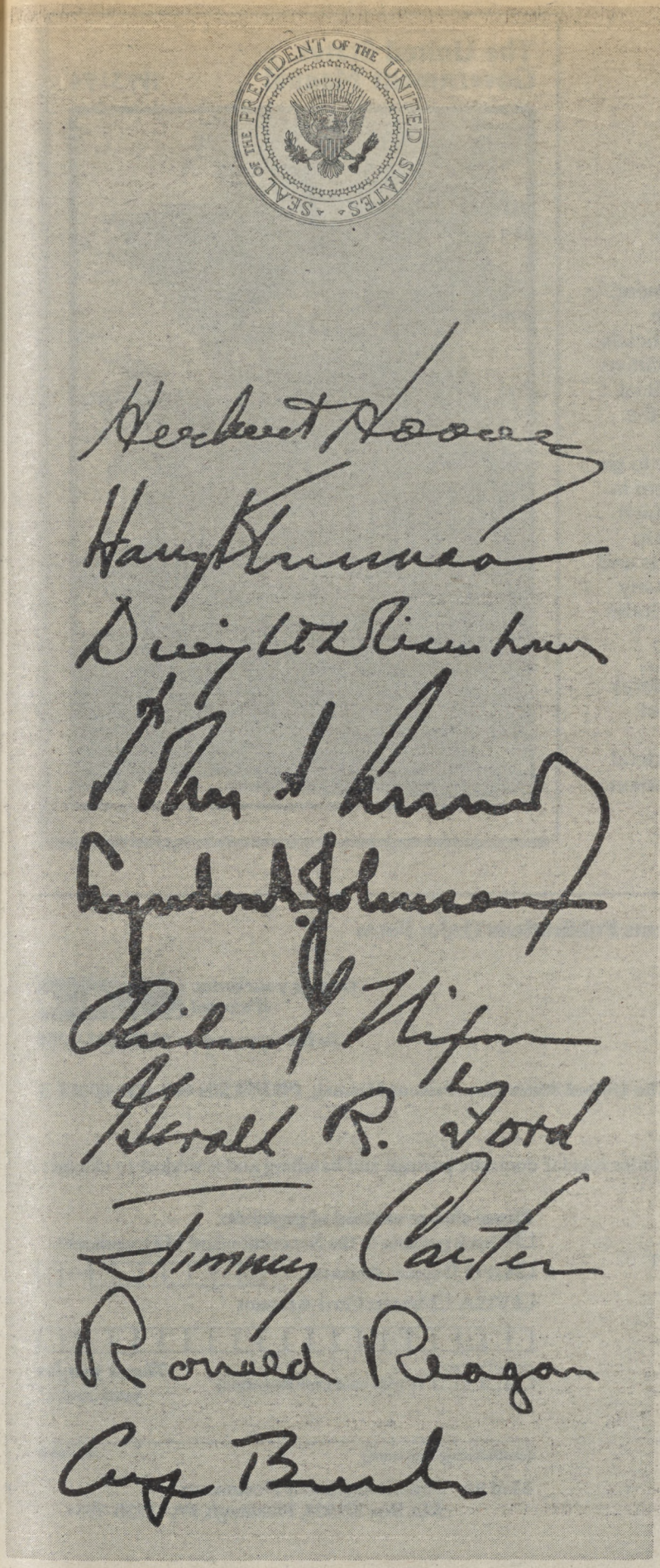

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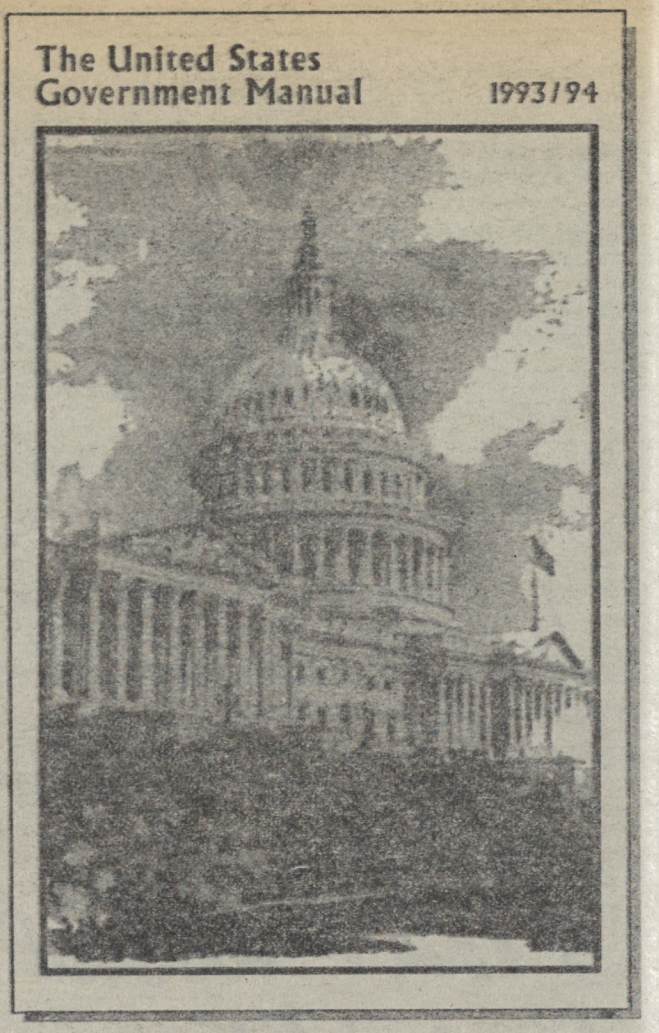

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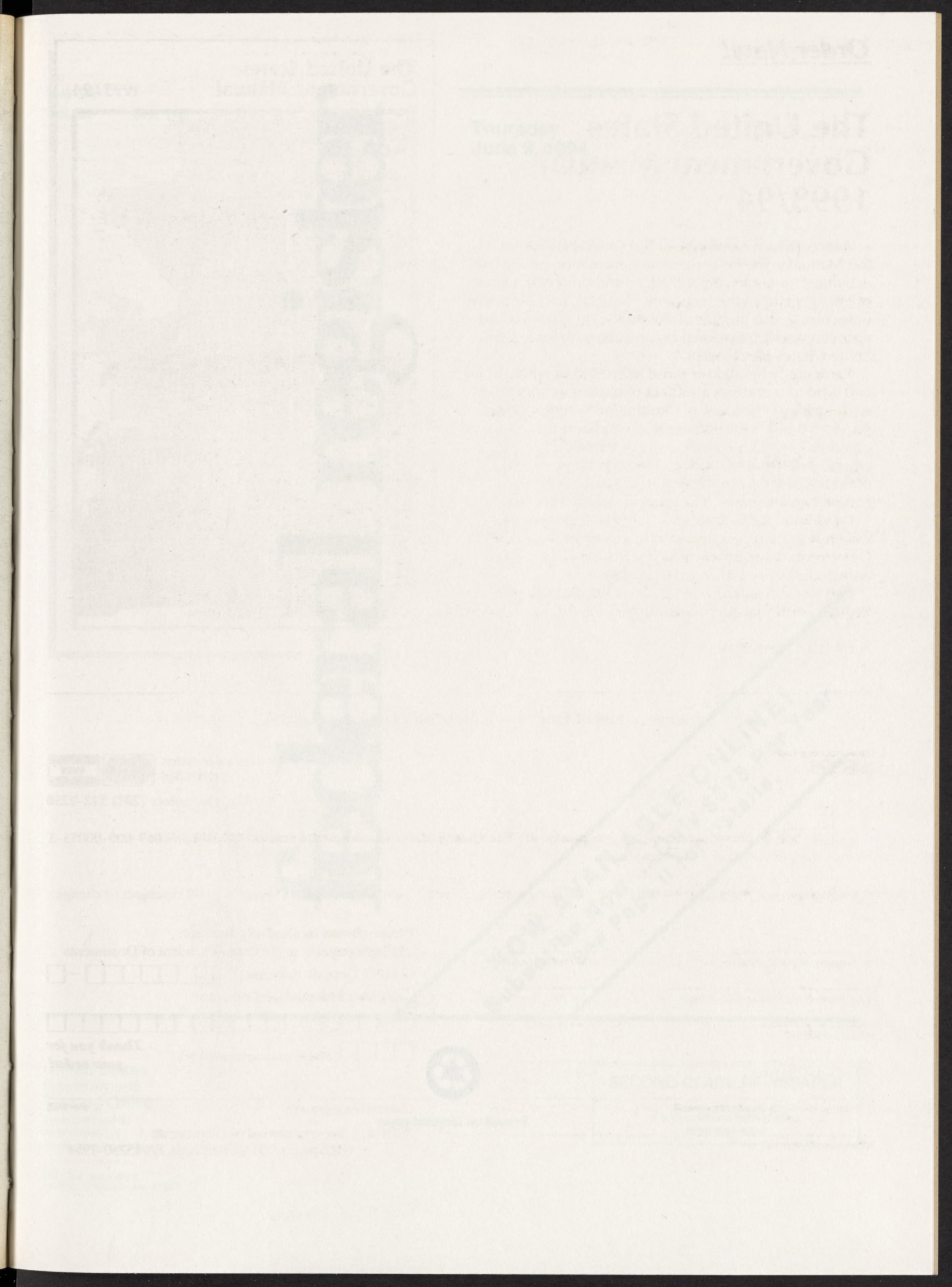



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