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For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 6706 of July 15, 1994

Captive Nations Week, 1994

By the President of the United States of America

A Proclamation

This year marks the 35th commemoration of "Captive Nations Week," our national expression of support for the people of the world who continue to suffer the yoke of oppressive governments. Freedom has made great strides in recent years, thanks to the quiet heroism of countless men and women. Yet far too many members of the human family still live in the shadows, shackled and intimidated in regimes of fear, and we must keep faith with them.

For over 200 years, this Nation has worked to realize the vision of freedom articulated by our founders, and before them by thinkers throughout the ages. Our commitment to the eternally-unfolding meaning and spirit of liberty expresses not only our most cherished values, but also our best hope for long-term international stability.

Freedom is a work in process. The people of the former Soviet bloc are making the arduous transition to free societies and free markets, and we will endeavor to support them as best we can. Less outwardly dramatic, but no less moving, are the democratic transitions that have taken place in Asia, Africa, and Latin America, and there too, we will do what we can.

But great numbers of men and women are still not free. Authoritarianism still wields an iron grip over the lives of millions. And in this new time we are confronted by the alarming specter of racial, ethnic, and religious animosities and violence. It is thus all the more reason for us to recommit ourselves to the work of promoting respect for universal human rights and for political freedom for people of all races, creeds, and nationalities the world over.

The Congress, by Joint Resolution approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week in July of each year as "Captive Nations Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim July 17 through July 23, 1994, as Captive Nations Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities, and in so doing to rededicate ourselves to the principles of freedom and justice on which this Nation was founded and by which we will endure.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of July, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 94-17794
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Rules and Regulations

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

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

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150–AF03

Revision of Fee Schedules; 100% Fee Recovery, FY 1994

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement Public Law 101–508, enacted November 5, 1990, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1994 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1994 is approximately $513 million.

EFFECTIVE DATE: August 19, 1994.

ADDRESSES: Copies of comments received and the agency workpapers that support these final changes to 10 CFR Parts 170 and 171 may be examined at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–415–6213.

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I. Background.
II. Responses to Comments.
III. Final Action—Changes Included In The Final Rule.
IV. Section-by-Section Analysis.
V. Environmental Impact: Categorical Exclusion.
VI. Paperwork Reduction Act Statement.
VII. Regulatory Analysis.
VIII. Regulatory Flexibility Analysis.
IX. Backfit Analysis.

I. Background

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), enacted November 5, 1990, requires that the NRC recover approximately 100 percent of its budget authority less the amount appropriated from the Department of Energy (DOE) administered NWF for FYs 1991 through 1995 by assessing fees. OBRA–90 was amended in 1993 to extend the NRC's 100 percent fee recovery requirement through 1998.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established in 10 CFR Part 170 under the authority of the Independent Offices Appropriation Act (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. The services provided by the NRC for which these fees are assessed include the review of applications for the issuance of new licenses or approvals, amendments to or renewal of licenses or approvals, and inspections of licensed activities. Second, annual fees, established in 10 CFR Part 171 under the authority of OBRA–90, recover generic and other regulatory costs not recovered through 10 CFR Part 170 fees.

Subsequent to enactment of OBRA–90, the NRC published six final fee rules after evaluation of public comments. On July 10, 1991 (56 FR 31472), the NRC published a final rule in the **Federal Register** that established the Part 170 professional hourly rate and the materials licensing and inspection fees, as well as the Part 171 annual fees, to be assessed to recover approximately 100 percent of the FY 1991 budget. In addition to establishing the FY 1991 fees, the final rule established the underlying basis and methodology for determining both the 10 CFR Part 170 hourly rate and fees and the 10 CFR Part 171 annual fees. The FY 1991 rule was challenged in Federal court by several parties. The U.S. Court of Appeals for the District of Columbia Circuit rendered its decision on those challenges on March 16, 1993, in *Allied-Signal v. NRC*, remanding two issues to the NRC for further consideration (988 F.2d 146 (D.C. Cir. 1993)). The court decision was also extended to cover the FY 1992 fee rule by court order dated April 30, 1993.

On April 17, 1992 (57 FR 13625), the NRC published in the **Federal Register** two limited changes to 10 CFR Parts 170 and 171. The limited changes became effective May 18, 1992. The limited change to 10 CFR Part 170 allowed the NRC to bill quarterly for those license fees that were previously billed every six months. The limited change to 10 CFR Part 171 lowered in some cases the maximum annual fee of $1,800 assessed a materials licensee who qualifies as a small entity under the NRC's size standards. A lower tier small entity fee of $400 per licensed category was established for small business and non-profit organizations with gross annual receipts of less than $250,000 and small governmental jurisdictions with a population of less than 20,000.

On July 23, 1992 (57 FR 32691), and July 20, 1993 (58 FR 38666), the NRC published final rules in the **Federal Register** that established the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1992 and FY 1993 respectively. The basic methodology used in the FY 1992 and FY 1993 final rules was unchanged from that used to calculate the 10 CFR Part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR Part 170, and the 10 CFR Part 171 annual fees in the final rule published July 10, 1991 (56 FR 31472). The methodology for assessing low-level waste (LLW) costs was changed in FY 1993 in response to the judicial decision mentioned earlier. This change was explained in detail in the FY 1993 final rule published July 20, 1993 (58 FR 38669–72). In brief, the NRC created two groups—large waste generators and small waste generators. Licensees within each group are charged a uniform flat fee.

On March 17, 1994 (59 FR 12539), the NRC reinstated the annual fee exemption for nonprofit educational institutions after notice and comment. In response to the March 16, 1993, judicial decision, the exemption had been eliminated in the final rule published by NRC on July 20, 1993 (58 FR 38666).

The American College of Nuclear Physicians and the Society of Nuclear Medicine filed a Petition for Rulemaking which included a request that the Commission exempt medical licensees from fees for services provided

in nonprofit institutions. The Commission denied that request on March 17, 1994 (59 FR 12555).

Section 2903(c) of the Energy Policy Act of 1992 required the NRC to undertake a broad review of its annual fee policies under Section 6101(c) of OBRA–90, solicit public comment on the need for policy changes, and recommend changes in existing law to the Congress that the NRC found were needed to prevent the placement of an unfair burden on certain NRC licensees. To comply with the Energy Policy Act requirements, the NRC reviewed more than 500 public comments submitted in response to the request for comment published in the **Federal Register** on April 19, 1993 (58 FR 21116), and sent its report to Congress on February 23, 1994. A copy of this report has been placed in the Public Document Room.

On May 10, 1994 (59 FR 24065), the NRC published its proposed rule for FY 1994 establishing the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1994, less the appropriation received from the NWF. The basic approach, policies, and methodology used in the proposed rule were unchanged from those used to calculate the 10 CFR part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR part 170, and the 10 CFR part 171 annual fees set forth in the final rules published July 10, 1991 (56 FR 31477), July 23, 1992 (57 FR 322691), and July 20, 1993 (58 FR 38666), with the following exceptions: (1) The Commission has reinstated the annual fee exemption for nonprofit educational institutions; and (2) in this final rule, the NRC has directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. Resources for these activities had previously been included in overhead, but are now assigned directly to the class of licensees that they support. Because this direct assignment results in a reduction of overhead costs allocated to each FTE, the cost per FTE is about 3 percent less than it would have been without the additional direct assignment.

On May 19, 1994 (59 FR 26097) the NRC amended its fee regulations in 10 CFR part 171 to establish revised FY 1991 and FY 1992 surcharges for NRC licensees. The revised surcharges reflect the revised method of allocating low-level waste (LLW) costs adopted by the Commission in the FY 1993 final fee rule published July 20, 1993 (58 FR 38666). Refunds/credits totalling $2.2 million will be given to certain NRC materials licensees as a result of the revised surcharges for FY 1991 and FY 1992.

II. Responses to Comments

The NRC received thirty-three comments on the proposed rule. Although the comment period ended on June 9, 1994, the NRC has reviewed and evaluated all comments received. Copies of all comment letters received are available for inspection in the NRC Public Document room, 2120 L Street, NW (lower level) Washington, DC.

Many of the comments were similar in nature. For evaluation purposes, these comments have been grouped, as appropriate, and addressed as single issues in this final rule. The comments are as follows:

A. Fee Legislation

1. *Comment.* Several commenters noted that NRC had completed its report on fee policy mandated by the Energy Policy Act of 1992 and had sent a report to Congress with legislative recommendations. They expressed their agreement with the legislative recommendation in the report that OBRA–90 be amended to relax the requirement to recover 100 percent of its budget and remove certain costs from the fee base, thereby eliminating many of the burdens they deem to be inequitable. They urged the NRC to work with Congress to modify OBRA–90 to make the assessment of fees more equitable across the board.

Response. The need for legislation is beyond the scope of this rulemaking proceeding. The NRC will continue to work with Congress on fee issues.

2. *Comment.* Several commenters stated that it is very important for the NRC to control its internal costs in order for the nuclear industry to be successful in reducing overall program costs. One commenter suggested that the NRC consider staff reductions and other management improvements to reduce budget needs based on a decline in the number of materials licensees.

Another commenter commended the NRC on its willingness and ability to hold the line on, and indeed reduce, its recoverable budget for FY 1994. While noting that the proposed FY 1994 annual fees for power reactors are lower than those assessed in FY 1993, commenters from utility licensees or their representatives believe that further reductions are possible, especially in the areas where power reactor licensees are required to unfairly subsidize cost recovery for activities that benefit all licensees or for activities that are unrelated to the power reactor class of licensees. While encouraged by the recent recommendations for legislative changes made by the NRC to Congress in the report required by the Energy Policy Act of 1992, commenters recommended that NRC consider the following actions it can take now without waiting for legislative changes:

(1) Reduce costs by eliminating or deferring lower priority research and generic rulemaking activity;

(2) Reduce the amount to be collected under part 171 by increasing part 170 licensing and inspection fees;

(3) Raise the lower tier small entity fee; and

(4) Use an annual escalation, e.g., CPI or some equivalent index, of small entity fee limits which have stayed at $400 and $1,800 since they were set two years ago.

Response. The NRC is working to improve the internal efficiency and effectiveness of its program as a means of controlling operating costs and, therefore, keeping fees billed to licensees as low as practicable. Economies have been achieved through the elimination of the NRC's uranium recovery field office in Denver, Colorado and consolidating the agency's two smallest regional offices—Regions IV and V. The NRC is tightening its financial operations by increasing the effectiveness and efficiency of its program financing. As a result of these efforts, the NRC proposed and Congress approved a $12.7 million recision (reduction) to the original appropriation enacted for FY 1994. Therefore, the total amount to be recovered from fees from all classes of licensees in FY 1994 is about $6 million less than the amount to be recovered in FY 1993.

The Chief Financial Officers Act (CFO) requires that the NRC conduct a biennial review of fees and other charges imposed by the Agency for its services and revise these charges to reflect the costs incurred in providing those services. The 10 CFR Part 170 licensing and inspection fees were increased significantly for some materials licenses in FY 1993 as a result of the first CFO biennial review. The 10 CFR Part 170 fees for FY 1995 will be revised to reflect the results of the second CFO review.

On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule changing its size standards. This rule increased the receipts-based SBA size standards due to inflation. The NRC is considering proposing amendments to the NRC size standards that would reflect the SBA action. Any amendments to the NRC size standards will be submitted to SBA

for approval and published in the Federal Register for public notice and comment as required by the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Pub. L. 102–366). The NRC will reexamine the annual fees assessed for small entities once the NRC completes its evaluation of the NRC size standards, which is expected to be done in FY 1995.

The NRC in this final FY 1994 fee rule is continuing a maximum annual fee of $1,800 and $400 per licensed category, respectively, for those licensees who can qualify as small entities under NRC size standards. The impact of the fees for FY 1994 on small entities has been evaluated in the Regulatory Flexibility Analysis (see Appendix A of this final rule). The small entity subsidy in this final fee rule has been calculated on that basis.

B. Fee Methodology

1. Hourly Rate

Comment. Several commenters indicated that the hourly rate of $133 is excessive and cannot be justified. These commenters noted that the rate is considerably higher than the typical industry charge-out rate for direct employees and equals or exceeds the hourly charges for senior consultants at major national consulting organizations. Other commenters supported the proposed removal of costs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste from overhead and their direct assignment to the reactor and materials programs. Commenters stated that this is an improvement in that it better defines the beneficiaries of certain regulatory activities and more equitably allocates the fees for services provided.

Response. As indicated in previous final rules, the NRC professional hourly rate is established to recover approximately 100 percent of the agency's Congressionally approved budget, less the appropriation from the NWF, as required by OBRA–90. Both the method and budgeted costs used by the NRC in the development of the hourly rate of $133 for FY 1994 are discussed in detail in Part III, Section-by-Section Analysis, for § 170.20 of the proposed rule (59 FR 24069; May 10, 1994) and the same section of this final rule. For example, Table II shows the direct FTEs (full time equivalents) by major program for FY 1994 and Table III shows the budgeted costs (salaries and benefits, administrative support, travel and other G&A contractual support) that must be recovered through fees assessed for the hours expended by the direct FTEs. As indicated in the proposed rule and supported by the commenters, the NRC has directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. Resources for these activities had previously been included in overhead but are now directly assigned to the class of licensees they support. This change results in the increase in the hourly rate being less than it would have been otherwise. Given the increase in the costs to be recovered through the hourly rate, including increases in the cost of doing business (e.g., inflation), it is necessary to increase the 1994 hourly rate by less than one percent to recover 100 percent of the budget as required by OBRA–90. The specific details regarding the budget for FY 1994 are documented in the NRC's publication "Budget Estimates, Fiscal Year 1994" (NUREG–1100, Volume 9). Copies of NUREG–1100, Vol. 9 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20555–0001.

2. Fees Based on Other Factors

Comment. As in FYs 1991–1993, commenters indicated that NRC should assess fees based on the amount or type of material possessed, the number of radioactive sources, the sales generated by the licensed location, the competitive condition of certain markets and the effect of fees on domestic and foreign competition.

Response. The issues of basing fees on the amount of material possessed, the frequency of use of the material, the size of the facilities, and market competitive positions, was addressed by the NRC in previous rules and in the Regulatory Flexibility Analysis in Appendix A to the final rule published July 10, 1991 (56 FR 31511–31513). The NRC did not adopt that approach because it would require licensees to submit large amounts of new data and would require additional NRC staff to evaluate the data submitted and to develop and administer even more complex fee schedules. The NRC continues to believe that uniformly allocating the generic and other regulatory costs to the specific licensee within a class to determine the amount of the annual fee is a fair, equitable, and practical way to recover those costs and that establishing reduced annual fees based on gross receipts (size) is the most appropriate approach to minimize the impact on small entities. Therefore, NRC finds no basis for altering its approach at this time. This approach was upheld by the D.C. Circuit in its March 16, 1993, decision in *Allied-Signal.*

3. High-Level Waste

Comment. One commenter stated that the Department of Energy (DOE) should pay, through user fees, for NRC's costs related to DOE's high-level waste (HLW) activities at Yucca Mountain.

Response. All of NRC's direct costs related to the disposal of civilian high-level waste in DOE's geologic repository are paid for with funds appropriated from the Nuclear Waste Fund (NWF). For FY 1994, the budgeted amount appropriated to the NRC from the NWF is about $22 million. The amount appropriated from the NWF is subtracted from the total NRC appropriation, and is therefore not included in the fee base. This is shown in Table I. Thus, no NRC fees are assessed to recover the direct HLW costs.

C. Specific Fee Issues—Part 170

1. Fees for Special Projects.

Comment. Several commenters supported the proposed change in 10 CFR part 170 special project fees whereby the definition would be revised to indicate that 10 CFR part 170 fees will not be assessed for certain reports submitted to the NRC. Rather, commenters point out these costs are more appropriately assessed as 10 CFR part 171 annual fees because the related activities are in support of generic efforts such as development of regulatory guidance applicable to a class of licensees. One commenter, while supporting the proposed change, stated that the terms "alternate method", "reanalysis", and "unreviewed safety issue" are imprecise and should be further defined or explained. Another commenter requested that the NRC reinstate a fee ceiling for topical report reviews. The commenter indicated that a fee ceiling would encourage the submittal of topical reports and contribute to the advance of the state-of-the-art in the nuclear industry and resultant improvement in nuclear plant safety.

Response. The NRC has revised the definition of special projects as

provided in § 170.3 of the regulations to indicate that 10 CFR part 170 fees will not be assessed for certain requests/reports. Based on a commenter's suggestion, the terms "alternate method", "reanalysis", and "unreviewed safety issue" have been further explained in section IV, Section-by-Section Analysis.

The NRC indicated in the FY 1991 final fee rule that it had decided to eliminate the ceiling for topical report reviews based on the 100 percent recovery requirement and congressional guidance that each licensee or applicant pay the full costs of all identifiable regulatory services received from the NRC. Further, the NRC costs for topical reports reviews vary significantly depending on the particular topical report reviewed. This makes it impractical to establish an equitable ceiling or flat fee (56 FR 31478; July 10, 1991). Recently, the Commission revisited this issue as part of its review of fee policy that was required by EPA–92. The policy of assessing 10 CFR part 170 fees, without a ceiling, for the review and approval of topical reports was reconfirmed. For these reasons, the NRC is not establishing a fee ceiling for topical reports in this final rule.

2. Fees for Reciprocity

Comment. The NRC charges Agreement State licensees who provide services in non-Agreement States, "reciprocity fees". A few commenters indicated that they were opposed to the fees for reciprocity, particularly the proposed fees for revisions to information submitted on the NRC Form-241 filed by 10 CFR 150.20 general licensees. They stated that fees are an unnecessary burden and suggested that the NRC reconsider its decision to increase the current fees and add additional charges for reciprocity licensees. They stated that these costs would have to be included in proposals for work in non-Agreement States and that, as small firms, they could not absorb such costs and remain competitive with larger firms offering similar services. One commenter suggested that the fee for revisions to NRC Form 241 be established at $25 to $50 per revision rather than $200 as proposed. Commenters questioned whether the establishment of the reciprocity fees is an effort to restrict survey activities to the home-State of the company because the additional costs do not make it feasible to even consider bidding for projects out of the state. Commenters claimed that this allows larger, wealthier companies the opportunity to bid for and secure out-of-state work. Other commenters supported the reciprocity fees, including the proposed fees for revisions. They encouraged NRC to assess fees for services provided specific classes of licensees and to reduce the costs classified as overhead.

Response. The NRC is adopting the approach contained in the proposed rule as this is consistent with the Congressional mandate that, to the extent practicable, a class of licensees bear the costs of providing regulatory services to them. Other approaches suggested by commenters would have the effect of shifting the costs of reviewing revisions to Form 241 to other classes of licensees. Agreement State licensees requesting reciprocity for activities conducted in non-Agreement States or in offshore waters are subject to 10 CFR 150.20. The first time within a calendar year that an Agreement State licensee conducts activities in non-Agreement States or in offshore waters, it must file a completed NRC Form 241. Revisions to the initial NRC Form 241 are filed for review and authorization when persons using the 10 CFR part 150.20 general license either add locations of work, use different radioactive material or perform additional work activities in a non-Agreement State. Information submitted to the NRC by the 10 CFR 150.20 general licensee that clarifies or deletes specific locations or work sites, work site contacts, or dates of work is considered by the NRC to be a clarification, not a revision. Changes in the equipment to be used under the 10 CFR 150.20 general license do not require a revision if there is no change in (1) activity to be conducted, (2) the radioactive material to be used, and (3) if the Agreement State license authorizes the new equipment.

The fee of $700 for the initial filing of Form-241 is the same as that assessed in FY 1993. The fee of $200 for revisions to the Form-241 has been added to this final rule. The reciprocity fees established by the NRC are not intended to restrict companies from doing work in non-Agreement States. The fees will allow the NRC to recover the costs it expends in reviewing initial applications and revisions filed by 10 CFR part 150.20 general licensees. That is, the fee is intended to recover the cost of identifiable services to a specific applicant in accordance with OBRA–90 and the IOAA. Fee Category 16 of 10 CFR part 170.31 has been revised to add a fee of $200 for each revision filed by Agreement State licensees. The revision fee will be due at the time the applicant files a revision to information submitted on the initial Form-241 with the NRC.

3. Fees for Irradiators

Comment. One commenter indicated that underwater irradiators should not be placed, for fee purposes, in fee Categories 3F and 3G, the same category as "panoramic" or "cell" type irradiators, because the amount of regulation pertaining to unshielded source irradiators is much greater than that which applies to underwater irradiators. The commenter believes the license should be classified as Category 3E, a self-shielded irradiator. The commenter states that the relative complexity of the two designs dictates that this be the case. Therefore, licensing, inspection, and other NRC activities dealing with underwater irradiators must consume much less time and effort compared to their "cell" or "panoramic" counterparts.

Response. The Commission will continue to place underwater irradiators in fee Categories 3F and 3G. Although the sources are not removed from their shielding for irradiator purposes, underwater irradiators are not self-shielded as are the small irradiators in fee Category 3E. The underwater irradiators are large irradiators and possession limits of thousands of curies are authorized in the license. As a result, more regulatory effort is required to regulate underwater irradiators than is required to regulate the small irridiators in fee Category 3E. For example, the provisions of 10 CFR part 36 apply the same requirements to both the underwater irradiators where the source is not exposed for irradiation and the exposed source irradiators. The average cost of conducting license reviews and performing inspection of the underwater irradiators where the source remains shielded during irradiation are similar to the costs for irradiators where the source is exposed during irradiation.

D. Specific Fee Issues—Part 171

1. Exemption From Fees for State-Owned Reactors.

Comment. Several commenters supported the proposed exemption from annual fees for State-owned research reactors. These commenters indicated that the reactors are used primarily for educational training and academic research purposes and contribute significantly to the national research effort and thereby provide significant externalized benefits to society.

Response. The NRC, in this final rule, will amend both §§ 170.11(a) and 171.11(a)(2) to provide that State-owned research reactors used primarily for educational training and academic research purposes will be exempt from

fees. The proposed rule would have amended only 10 CFR part 171. The NRC believes that both of these changes are consistent with the legislative intent of the Energy Policy Act of 1992 that government-owned research reactors be exempt from fees if they meet the technical design criteria of the exemption and are used primarily for educational training and academic research purposes.

2. Annual Fee for Uranium Recovery Facilities

Comment. While supporting the NRC's proposed first-time assessment of a $1.5 million annual fee to the Department of Energy (DOE) for Uranium Mill Tailing Control Act (UMTCA) activities, several commenters strongly objected to the proposed annual fees for uranium recovery licensees. They agree that the NRC should be reimbursed by the collection of reasonable fees commensurate with services provided but indicated that the proposed fees are not equitable or reasonable and have not been implemented in a fair and equitable manner. They believe that the Class I fees for mill licensees are entirely disproportionate to the degree of NRC's involvement with the uranium recovery sites. Commenters indicated that the large increases in fees for FY 1994 (approximately $36,000 per mill) demonstrate again the inconsistent and fluctuating nature of the NRC fee system. These licensees asserted that they have no means of anticipating or budgeting for the fees and therefore large increases are unacceptable. One commenter stated that the NRC's argument that the fees have increased because the initial licensing of Envirocare's 11.e(2) facility is complete is irrelevant and without merit because Envirocare's license is a Class 4D byproduct disposal facility and not a uranium recovery license. Commenters note that while the amount to be recovered from uranium recovery licenses was $465,000 for FY 1993, the amount to be recovered for FY 1994 increased to $2.1 million—a 350 percent increase. Commenters state that regulatory services to the industry have not increased from FY 1993 to FY 1994. Commenters find this situation particularly troubling as they believe the costs for uranium recovery facilities should have decreased with the closure of the Uranium Recovery Field Office (URFO) in Denver, Colorado, which was described by NRC "as a cost reduction measure to uranium recovery licensees".

One commenter argues that the annual fee of $8,700 for a Category 4D license is not justified when one considers the fee of $94,300 for a mill license, a difference of $85,600. The commenter states that this disparity is so great that it cannot be explained as anything short of arbitrary and capricious. The commenter asserted that to be equitable, Category 4D licenses should be assessed the same fees as a mill in fee Category 2.A.(1), Class I, because commercial byproduct disposal sites are analogous to uranium recovery tailings impoundments and essentially require the same regulatory oversight.

One commenter was concerned that the new fees collected from DOE will not be used to decrease the fees placed on other uranium recovery licensees.

Response. Contrary to the commenter's claim, the total budget authority to be recovered through fees from Title II uranium recovery licensees has decreased over the past two years. The following table shows the NRC budget authority for Title II uranium recovery licensees for FY 1992, FY 1993, and FY 1994.

Title II facilities	Dollars in thousands		
	FY 1992	FY 1993	FY 1994
Total Budget Authority ..	$3,668	$3,065	$2,839
Less 10 CFR Part 170 Fees	−1,700	−2,600	−2,200
Total Annual Fees .	1,968	465	639

As shown above, the NRC total budget authority for commercial uranium recovery licensees has steadily decreased from $3,668,000 in FY 1992 to $2,839,000 in FY 1994, a 23 percent decrease since FY 1992. However, because of the relatively large collection of 10 CFR Part 170 fees in FY 1993 as a result of the NRC licensing review efforts associated with the Envirocare license application, the FY 1993 amount of $465,000 to be collected through annual fees is $174,000 less than the FY 1994 annual fee amount of $639,000. In FY 1993, the NRC estimated that approximately $2.6 million would be collected from 10 CFR 170 fees, including fees for the major review work for the Envirocare 11.e(2) license. The Envirocare license was issued on November 19, 1993. Therefore, the 10 CFR Part 170 fees estimated to be collected in FY 1994 have decreased.

Another reason for the increase in FY 1994 annual fees for commercial uranium recovery licensees is a reduction in the number of licensees. In FY 1993 there were 14 uranium recovery licensees subject to annual fees, compared with 12 licensees in FY 1994. This is a decrease of 2 licensees (or 14 percent). Because costs are allocated to a class of licensees, any terminations that occur within the class will raise the annual fees for the remaining licensees within that class in order for the NRC to collect approximately 100 percent of its budget in fees. The generic and other regulatory costs allocated to a class of licensees under 10 CFR Part 171 are not dependent on the number of licensees in a class.

While the total amount of annual fees to be recovered from all uranium recovery licensees, commercial (Title II) and DOE (Title I) is $2.1 million in FY 1994, $1.5 million of this amount is for DOE Uranium Mill Tailing Control Act (UMTRCA) activities. The $1.5 million related to DOE UMTRCA activities is being paid by DOE in FY 1994, leaving the $0.6 million to be paid by the commercial Title II facilities. The budget for DOE UMTRCA activities does not affect commercial uranium recovery license fees in FY 1994, nor did it affect their fees prior to FY 1994. As noted by the commenters, DOE is being assessed a $1.5 million annual fee in FY 1994 (10 CFR 171.16(d), fee Category 18b). For FYs 1991–1993, the costs for DOE UMTRCA activities were assessed to operating power reactors as a surcharge because DOE was not an NRC licensee (10 CFR 171.15(c)(2)). In FY 1994, the costs for UMTRCA activities were moved from the power reactor class of licensees to the uranium recovery class because as of September 21, 1993, DOE became a general licensee of the NRC (10 CFR 40.27) because post-reclamation closure of the Spook, Wyoming site had been achieved. As a result, DOE will be billed for the costs ($1.5 million in FY 1994) associated with NRC's UMTRCA review and all activities associated with the facilities assigned to DOE under UMTRCA.

The statement made by a commenter that fees collected from DOE will not be used to decrease NRC's license fees is not correct. The $1.5 million to be collected from DOE will not be assessed to operating power reactors who have paid these costs since FY 1991. Therefore, the fees for operating power reactors will decrease as a result of the reallocation of costs.

Based on the comments regarding the annual fee for licenses authorizing the disposal of 11e.(2) byproduct material, the NRC has reexamined its allocation of the budget for Title II uranium recovery activities. Based on this reexamination and the comments

received, the NRC has concluded that the part of the budgeted costs for the uranium recovery class of licensees should be allocated to licenses that authorize receipt and disposal of 11e.(2) byproduct material, because some of these budgeted resources are used to regulate these licensees. Thus, the $639,000 to be recovered in annual fees will be recovered from fee category 2.A.(2) Class I facilities, Class II facilities and Other facilities, plus licenses authorizing disposal of 11e.(2) byproduct material. Additionally, the Commission has determined that for licenses issued for the primary purpose of disposal of 11e.(2) byproduct material (e.g., the license issued to Envirocare in FY 1994) the annual fee should be 90 percent of the fee for a Class I mill. This is based on a determination that an estimated 90 percent of the budget for regulating Class I mills is related to the mill tailings and the remaining 10 percent to the processing of the ore. Therefore, since essentially the same regulations apply to the mill tailings generated by a Class I mill and the 11e.(2) byproduct material received by a licensee whose primary purpose is to dispose of 11e.(2) byproduct material, the annual fee for a licensee whose primary purpose is the disposal of 11e.(2) byproduct material should be the same as that portion (90 percent) of the annual fee for a Class I facility that is related to the mill tailings. The annual fee for non-operating mills that accept 11e.(2) byproduct material for disposal in tailings piles created by mill operations will not be changed, because such disposal is incidental to the existing tailings that were generated prior to elimination of the mill's authority to operate and the Commission's policy is not to assess an annual fee to non-operating facilities. As a result of the above changes the base annual fee for a Class I facility will be reduced from $94,300 to $74,500 for FY 1994. The annual fee for licenses with the primary purpose of disposal of 11e.(2) byproduct material will be $67,000.

3. Annual Fee for Fuel Facilities

a. *Comment.* Two commenters objected to the proposed reclassification of General Atomics' (GA) special nuclear material license from one subclass to another. Commenters indicated that such a reclassification, with the attendant increase in annual fees, would have the further effect of forcing GA to shut down the manufacture of a limited number of TRIGA research reactor fuel elements, thereby eliminating any U.S. source for this type of reactor fuel. Commenters argued that the licensee is not a "fuel facility" in the same sense as other fee Category 1.A.(1) licensees, in that all of the licensees in fee Category 1.A.(1) are large suppliers of light water reactor fuel to the commercial power industry or the U.S. Navy. Commenters stated that reclassifying the license is inconsistent with the NRC's stated underlying basis of charging a class of licensees for NRC costs attributable to that class of licensees particularly when one considers, for comparison purposes, the special nuclear material (SNM) throughput, facility size, employment numbers, complexity of processes, chemical/physical forms of SNM, and number of process steps. Commenters therefore concluded that the GA license should not be reclassified.

General Atomics, whose license is to be reclassified, commented that after three years of being classified as a fee Category 1.A.(2) licensee, there is no justification for suddenly reclassifying the license as a fee Category 1.A.(1) fuel facility, because there has been no change of any kind in the activities or licensing status since 1991 that would warrant reclassification of the facility. GA also contends that it is unfair to reclassify the license after the beginning of the fiscal year and to impose more than an eight-fold increase in the fee associated with the new category without the licensee having the opportunity to take licensing action to avoid the fee. GA states that when the initial rule for 100 percent recovery was published in FY 1991, the NRC recognized that many licensees might wish to avoid or minimize the fees by terminating or modifying their licenses, and for that reason provided a 30-day period before the effective date of the rule for a licensee to file a request to terminate the license or request a possession-only license and thereby avoid paying the annual fee. GA also stated that imposition of the proposed fee would force them to significantly raise its unit fuel prices to recover the eight-fold fee increase and that many of its customers for research reactor fuel are typically low-budget research facilities such as university research reactors, many of which are operated by nonprofit educational institutions.

Response. The NRC established fuel facilities as a separate class of licensees in FY 1991. Within the class, there are four subclasses of licensees described in 10 CFR 171.16(d): high-enriched uranium (HEU) fuel fabrication, low-enriched uranium (LEU) fuel fabrication, all other materials licenses authorizing critical quantities of special nuclear material, and UF_6 converters. One of the questions raised by the commenters is whether GA license SNM–696 should be placed in the LEU fuel fabrication facility subclass (fee category 1.A.(1)) or the other facility subclass authorizing critical quantities of special nuclear material (fee category 1.A.(2)). Fee Category 1.A.(1) of 10 CFR 171.16(d) is intended to cover those licenses that authorize the possession and use of uranium 235 or plutonium for fuel fabrication activities. In the proposed rule for FY 1994, the NRC concluded that license SNM–696, held by GA, would be reclassified from fee Category 1.A.(2) (all other materials licenses authorizing critical quantities of special nuclear material) to fee Category 1.A.(1) (a low-enriched fuel fabrication facility). This reclassification is based on the fact that (1) the license authorizes the possession and use of uranium 235 for fuel fabrication activities and (2) GA manufactures TRIGA research reactor fuel elements using low-enriched fuel. As a result, the proper classification for license SNM–696 is fee category 1.A.(1) (low-enriched fuel fabrication). In the past, this license was improperly categorized by NRC and as a result, General Atomics was assessed substantially lower fees over the past three years than it should have been. Rather than continue using an incorrect fee classification for this license, now that the NRC is aware of its administrative error, this final rule places the license in its proper fee category. The NRC recently addressed a similar classification issue in response to a Babcock and Wilcox (B&W) request that their LEU fuel fabrication facility be reclassified from fee category 1.A.(1) (LEU facility) to fee category 1.A.(2) (all other materials licenses authorizing critical quantities of special nuclear material). On January 7, 1994, the NRC denied this request for reasons similar to those stated above for the General Atomics license.

The other question raised by the commenter is whether the fee for the GA license should be the same as the other LEU fuel fabrication licenses because their fuel and process is different. That is, would assessing GA the same fee as other LEU fuel fabrication licensees represent a disproportionate allocation of costs to GA. B&W has also raised similar questions relative to their LEU facility. The NRC is considering B&W's request for a partial exemption from annual fees under 10 CFR 171.11(d). This request is currently under review. Some of the comments received concerning the GA fuel facility are similar to the arguments presented by B&W for an exemption. GA states that "Reclassifying GA as a Category 1.A.(1)

licensee is inconsistent with the NRC's stated underlying basis of 'charging a class of licensees for NRC costs attributable to that class of licensees.' It asserts that by any measure of comparison, e.g., SNM * * * complexity of processes, chemical/physical forms of SNM, number of process steps, etc., GA's licensed activities are nowhere close to being in the same class as the licensees listed in Category 1.A.(1). GA's * * * licensed processes are simple small batch-wise operations, there are no processes involving solutions or powders (the fuel is a uranium-zirconium metal alloy), * * *"

The NRC believes that consideration of GA's comment as a request for an exemption under 10 CFR 171.11(d) is appropriate and supported by *Allied-Signal* v. *NRC*. The Court there indicated that they saw no reason to require the Commission to address rare situations in the rule itself, especially since 10 CFR Part 171 provides for exemptions in unusual circumstances. Therefore, the NRC intends to treat the unusual circumstances discussed in GA's comments as an exemption request, which it will address in the near future. The Commission notes, however, that the exemption determination will not be based on factors associated with size, ability to pay, or other economic factors. As stated in the decision to reinstate the exemption from annual fees for non-profit educational institutions, ability to pay is not a basis for an exemption (59 FR 12539). The NRC also addressed these issues in the Regulatory Flexibility Analysis in Appendix A to the final rule published July 10, 1991 (56 FR 31511). The Commission indicated these generally are not factors it will consider in setting fees and finds no basis for altering its approach at this time.

Given the questions raised by B&W, GA, and other fuel facilities regarding exemptions from fees and proper fee category classification, the NRC plans to reexamine the fuel facility subclass categorizations. Any restructuring that results from this reexamination will be included in the proposed FY 1995 fee rule for notice and comment.

The NRC adopts General Atomics' suggestion that the NRC consider a waiver of the FY 1994 annual fees if, within the 30-day period after the NRC acts on their exemption request, it notifies the NRC in writing, in accordance with 10 CFR 70.38, that it wishes to relinquish the portion of their license permitting fabrication of fuel elements or to obtain a POL. In order to be considered for the waiver of the FY 1994 annual fee, General Atomics must permanently cease fuel fabrication activities within the 30-day period after NRC acts on the exemption request.

With respect to the argument that reclassifying the license is inconsistent with the NRC's stated underlying basis of "charging a class of licensees for NRC costs attributable to that class of licensees", costs for providing an identifiable service related to a specific application, license or approval are recovered under the fee regulations in 10 CFR Part 170. For generic and other regulatory costs not recovered under 10 CFR 170, the NRC, in compliance with the requirements of OBRA–90, has allocated these costs to major classes of licensees. The law permits, and the NRC has established, a schedule of annual charges in 10 CFR Part 171 that assesses different annual charges to different licensees or classes of licensees. To the extent practicable, and where necessary for a more fair and equitable allocation of costs, a major class of licensees is divided into subclasses. Within a class or subclass of licensees, the costs are uniformly allocated to each licensee in the class or subclass based on the premise that there is no significant difference in the generic and other regulatory services provided to each licensee within a class or subclass. This approach and principle are used for all classes of licensees (57 FR 32693; July 23, 1992). The Commission has carefully reviewed the costs allocated to the LEU fuel fabrication subclass and concluded that the budgeted costs have been properly assigned to those licensees within the subclass.

b. *Comment.* Commenters also objected to the increases in annual fees for Category 1.A.(1) (low-enriched fuel facilities) and Category 1.A.(2), (other materials licenses authorizing critical quantities of special nuclear material). Commenters indicated that the base fee for low-enriched fuel facilities has increased from about $700,000 in FY 1991 to $1.4 million in FY 1994, while Category 1.A.(2) increased from about $175,000 to $304,000 (including surcharge). These increases, commenters claimed, place an undue hardship on the profitable operation of these facilities and are grossly out of proportion to any warranted increase in the effort expended by the NRC in regulating these classes of licensees. One commenter stated that the NRC's practice of retroactively revising annual fees causes major corporate budgeting problems, especially when large increases between the originally invoiced quarterly payments and actual annual fees are the result.

Response. The amount of the NRC's fees are based on the budget authority for a class of licensees and do not consider impact on a company's profitability. The NRC budgeted costs for this class of licensees have increased because the NRC budgeted and the Congress appropriated greater resources to regulate the safety and safeguards of fuel facilities. Under the 100 percent recovery statute of OBRA–90, charging this class of licensees fees that fail to recover the full budgeted amount, would mean that other licensees must pay additional fees which provide no benefit to them. NRC promulgates its final rules as early as it can subject to certain time-sensitive constraints: the NRC must receive a Congressionally approved budget, calculate the numerous fees in question, issue a proposed rule for comment, evaluate the comments, and issue a final fee rule.

c. *Comment.* One commenter, Allied-Signal (A–S), believed that the costs allocated to the UF_6 conversion subclass should be divided equally between two licensees rather than one, even though the second licensee has a possession only license (POL). A–S argued that the NRC has not provided a rational basis for exempting that licensee from the annual fee. A–S noted the NRC's policy that it is the existence of a license, not operations, that determines allocation of costs for recovery through the annual fee. A–S believes that a licensee that has a license to operate but does not do so is no different from a licensee that has operated, stops doing so, and holds a POL. A–S believes that, in each case, the NRC's regulations are equally applicable and the licensee benefits from them. A–S pointed out that it is the only entity in the U.S. engaging in UF_6 conversion operations and although it has attempted to pass the cost of fees on to its customers, it has not been able to do so on a broad-scale basis. A–S claimed that the proposed fee would raise its costs by 6 cents per pound and that winning bids from Canadian and European UF_6 converters are decided by as little as 1 cent per pound of UF_6.

A–S also argued that the UF_6 conversion license should be removed from the fuel facility class of licensees and included in the uranium recovery class because the operations of the UF_6 converter are more similar to those of a uranium mill than to a fuel facility. Additionally, there is now only one UF_6 converter in the U.S. and a subcategory of one does not accurately reflect the relevant amount of NRC's resources devoted to the license and for that reason is inappropriate. Therefore, according to Allied-Signal, the annual fee is not fairly and equitably allocated as required by OBRA–90, and does not bear a reasonable relationship to the

cost of providing regulatory services, also required by the statute. A–S, therefore, believes the resulting fee for UF_6 converters is disproportionately higher than that charged to licensees in the uranium recovery category and disproportionately close to what is assessed to operating reactors.

Response. The NRC has a long-standing policy of not assessing annual fees to those licensees who have indicated to the NRC that they wish to amend their license to permanently withdraw authority to operate and have been issued a possession only license (POL) (51 FR 33228; September 18, 1986). In FY 1991, the NRC reconsidered and reaffirmed its policy that licensees with POLs would not be subject to the annual fees when it initially established fees to recover 100 percent of its budget authority under OBRA–90 (56 FR 14873; April 12, 1991). Recently, the Commission revisited this issue as part of its fee policy review required by EPA–92, and affirmed its decision to continue the policy of not assessing annual fees to licensees when the license is amended to authorize possession only or decommissioning. This is consistent with the concept that those who benefit from a license that authorizes operation or use of material should pay annual fees. Therefore, consistent with agency policy included in the past fee rules, and the FY 1994 proposed fee rule, the NRC will not assess FY 1994 annual fees to Sequoyah Fuels Corporation, previously a UF_6 converter but now is not authorized to operate as a UF_6 converter.

However, the NRC recognizes that its fee rule including this policy could result in a disproportionate allocation of costs to a licensee in unusual situations. Exemptions for such unusual circumstances are provided for in 10 CFR 171.11(d) and are supported by *Allied-Signal v. NRC.* The NRC concludes that the issues raised by Allied-Signal regarding a disproportionate allocation of the budgeted costs to them, as a result of the elimination of Sequoyah Fuels from the fee base, falls within the confines of an unusual situation. Therefore, the NRC will consider Allied-Signal's comments regarding NRC's allocation of costs to them as an exemption request under 10 CFR 171.11(d). The Commission will issue a decision on this exemption request in the near future.

As indicated in the response in item 3(a), the NRC recognized that there will be adverse impacts on licensees as a result of implementing OBRA–90. The NRC has concluded after notice and comment rulemaking that it would not be appropriate to consider licensees' ability to pass through costs in establishing its fee schedules, an approach now recommended by Allied-Signal. As stated in the decision to reinstate the exemption from annual fees for nonprofit educational institutions, ability to pay is not a basis for an exemption (59 FR 12539). No one sought judicial review of that decision.

The Commission disagrees with Allied-Signal's suggestion that it be placed in the uranium recovery fee category rather than that reserved for fuel facilities, where it is currently located. The NRC includes the regulatory costs for UF_6 conversion facilities in the fuel facility class of licensees. In developing the FY 1994 annual fees the NRC followed the established budget structure. This permitted the NRC to more readily identify and allocate generic and other regulatory costs to a class of licensees, and allowed the NRC to explain and to show the origin of these costs upon public examination of the record.

Although the UF_6 conversion facilities are included in the same class as fuel fabrication facilities for budgeting purposes, the annual fee is based on the NRC's costs attributable to the UF_6 conversion facility subclass of licensees. For example, generic safety and safeguards and other regulatory costs are included in the budgeted costs for the fuel facilities class of licensees. However, none of the safeguards costs are included in the annual fee for the UF_6 conversion facility subclass since none of these costs are attributable to this subclass. Thus, the costs included in the annual fee for the UF_6 subclass of licensees are those budgeted costs attributable to the subclass. These costs, and the resulting annual fee, would be the same independent of where they are included in the budget. Therefore, even if the UF_6 conversion facilities are more akin to uranium recovery facilities, the budgeted costs attributable to them result in a different annual fee.

The NRC further notes that the NRC's costs of promulgating regulations for a type of licensee do not necessarily decrease when the number of licenses in a class goes down. Whether a class of licensees is comprised of one licensee or one hundred, generic safety concerns may well remain the same, and the same research and regulations are necessary. This is what distinguishes the annual fee from the 10 CFR Part 170 fees, which are charged to recapture costs for specific services such as inspections and license amendments. By its very nature the annual fee is levied to recover the costs of providing services, such as the development of new regulations, that cannot be attributed to a specific licensee.

The NRC does recognize the strain this policy unavoidably places on licensees who become, as Allied-Signal has, the single licensee in their class or subclass. The NRC will be reviewing this problem along with others associated with classification of fuel facilities. Any changes resulting from this review will be included in the FY 1995 proposed rule for notice and public comment.

4. Fees for Independent Spent Fuel Storage Installations

Comment. One commenter, while noting that the willingness and ability of the NRC to hold the line on, and indeed reduce, the recoverable budget for FY 1994 is commendable, questioned the increase in fees from $136,200 to $363,500 for Independent Spent Fuel Storage Installations. As a minimum, the commenter believes NRC should identify the additional resources to be expended in this area.

Response. The reasons for the increased fees for independent spent fuel storage licensees are two-fold. First, the budgeted amount necessary to regulate spent fuel activities which is recovered through 10 CFR Part 170 and 171 fees increased to provide regulatory oversight for the increased number of facilities and to accomplish necessary rulemaking activities for spent fuel facilities. Additionally, as the licensing of these facilities are completed, the amount of fees from 10 CFR Part 170 decreased resulting in an increased amount of the budget that must be recovered from 10 CFR Part 171.

5. Proration of Annual Fees

Comment. Several commenters concurred with the proposed proration provisions and permitting a waiver of annual fees for those who either filed for termination of their license prior to October 1, 1993, or permanently ceased licensed activities by September 30, 1993 but had not yet received necessary NRC approvals before the end of the fiscal year.

Response. The NRC has amended 10 CFR 171.17 to revise the proration provision for reactors and add a proration provision for materials licenses. The proration provisions are effective for FY 1994. The NRC proposed to prorate the annual fees for materials licenses upgraded or downgraded during the fiscal year. However, based on lack of sufficient data at this time on upgrades and downgrades of licenses and the administrative burden to implement this part of the proposed proration provision

for FY 1994, the NRC will prorate the annual fees only for those licenses for which a termination request or a request for a POL has been filed during the fiscal year and for new licenses issued during the fiscal year. This issue will be revisited in a future rulemaking.

E. Other Issues

1. Impact of Fees on Licensees

Comment. Several commenters expressed concern about the impact of fees, particularly on the practice of nuclear medicine. Some commenters indicated that the increase in annual fees may indirectly limit access to critical radiological care, particularly for small, rural, medical practices. They suggest that the fees be reduced or that NRC freeze the annual license fee for a five-year period in order for them to stay in business.

Response. The NRC is concerned about the impact of its fees but has concluded that significant changes can only come about through the enactment of legislation. The Commission is satisfied that the fee schedule being promulgated for FY 1994 satisfies all statutory obligations. The Commission recently considered the effect of fees on the medical community and decided that it would not provide the significant fee relief requested by the medical commenters (59 FR 12555; March 17, 1994).

2. Deferral of Fees for Standardized Plants and Early Site Reviews

Comment. One commenter urged NRC to reestablish the NRC's previous fee deferral policy for review of standardized plant designs and early site reviews indicating that fee deferral for review of the standardized designs is essential to encourage the development of such designs.

Response. The Commission decided in the FY 1991 final fee rule that the costs for standardized reactor design reviews, whether for domestic or foreign applicants, should be assessed under 10 CFR Part 170 to those filing an application with the NRC for approval or certification of a standardized design (56 FR 31478; July 10, 1991). Recently, the Commission revisited this issue as part of its review of fee policy required by the EPA–92 and reconfirmed its FY 1991 decision. The NRC continues to believe the costs of these reviews should be assessed to advanced reactor applicants. The NRC finds no compelling justification for singling out these classes of applications for special treatment and shifting additional costs to operating power reactors or other NRC licensees.

3. Revise 10 CFR 171.13 Notice

Comment. One commenter pointed out that 10 CFR 171.13 states that the NRC will publish a notice concerning the annual fee in the **Federal Register** during the first quarter of each fiscal year and that for the past four years the NRC has not met the requirement stated in the regulation. The commenter suggests that the NRC publish the proposed annual fee and professional hourly rate as early as possible within NRC's fiscal year to facilitate licensees' budget and planning processes.

Response. The NRC agrees with the commenter and acknowledges the realities of the situation that the proposed rule has been published during the third quarter of each of the past four fiscal years. The intent of the NRC is to publish the proposed rule as quickly as is practicable but realizes and agrees that it is unlikely that publication will occur during the first quarter of the fiscal year. To permit appropriate notice and comments, however, 10 CFR 171.13 will not be revised in this final rule but will be revised in a future rulemaking.

III. Final Action—Changes Included in the Final Rule

The NRC is amending its licensing, inspection, and annual fees for FY 1994. OBRA–90 requires that the NRC recover approximately 100 percent of its FY 1994 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF, by assessing licensing, inspection, and annual fees.

For FY 1994, the NRC's budget authority was originally $547.7 million. The Commission, in its effort to streamline operations, proposed a $12.7 million rescission to its original appropriation for FY 1994. Congress approved this NRC-proposed reduction. This resulted in a revised budget authority of $535.0 million. Approximately $22.0 million of the revised budget was appropriated from the NWF. Therefore, OBRA–90 requires that the NRC collect approximately $513.0 million in FY 1994 through 10 CFR part 170 licensing and inspection fees and 10 CFR part 171 annual fees. This amount to be recovered for FY 1994 is about $6 million less than the total amount to be recovered for FY 1993. The NRC estimates that approximately $120.1 million will be recovered in FY 1994 from the fees assessed under 10 CFR part 170. The remaining $392.9 million will be recovered through the 10 CFR part 171 annual fees established for FY 1994.

The NRC has not changed the basic approach, policies, or methodology for calculating the 10 CFR part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR part 170, and the 10 CFR part 171 annual fees set forth in the final rules published July 10, 1991 (56 FR 31472), July 23, 1992 (57 FR 32691), and July 20, 1993 (58 FR 38666), with the following exceptions: (1) The Commission has reinstated the annual fee exemption for nonprofit educational institutions and (2) in this final rule, the NRC has directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. Resources for these activities had previously been included in overhead but are now assigned directly to the class of licenses that they support. As a result of this direct assignment, the cost per direct FTE is about 3 percent less than it would have been without the additional direct assignment.

Under this final rule, fees for most materials and fuel cycle licensees will increase because—

(1) The NRC professional rate has increased slightly from $132/hr to $133/hr;

(2) The NRC has directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. Resources for these activities had previously been included in overhead, but are now assigned directly to the class of licensees that they support;

(3) The number of licenses in some classes has decreased as compared to FY 1993 due to license termination or consolidation, resulting in fewer licensees to pay for the costs of regulatory activities not recovered under 10 CFR Part 170; and

(4) The budget for some classes of licensees has increased.

The NRC contemplates that any fees to be collected as a result of this final rule will be assessed on an expedited basis to ensure collection of the required fees by September 30, 1994, as stipulated in OBRA–90. Therefore, as in FY 1991, FY 1992, and FY 1993, the fees will become effective 30 days after publication of the final rule. The NRC will send a bill for the amount of the annual fee to the licensee or certificate, registration, or approval holder upon publication of the final rule. Payment is

due on the effective date of the FY 1994 rule.

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services

Five amendments have been made to Part 170. These amendments do not change the underlying basis for the regulation—that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. The revisions also comply with the guidance in the Conference Committee Report on OBRA–90 that fees assessed under the Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of all identifiable regulatory services each applicant or licensee receives.

First, the agency-wide professional hourly rate, which is used to determine the Part 170 fees, is increased from $132 per hour to $133 per hour ($231,216 per direct FTE). The rate is based on the FY 1994 direct FTEs and that portion of the FY 1994 budget that does not constitute direct program support (contractual services costs) and is not recovered through the appropriation from the NWF. As indicated earlier, the decrease in the FY 1994 budget as compared to the FY 1993 budget is primarily for direct program support, which is not included in the hourly rate. Thus, the reduction in the budget has limited impact on the hourly rate but will show up as a direct reduction to the amount allocated to the various classes of licensees.

Second, the current Part 170 licensing and inspection fees in §§ 170.21 and 170.31 for all applicants and licensees are revised to reflect the very small increase in the hourly rate.

Third, the definition of special projects as provided in § 170.3 of the regulations is revised as a result of (1) the NRC's experience in implementing the 100 percent fee recovery program during the past three years and (2) the NRC's most recent fee policy review, required by the Energy Policy Act of 1992. The NRC believes that the costs for some requests or reports being filed with NRC are more appropriately captured in the 10 CFR Part 171 annual fees rather than assessing specific fees under 10 CFR Part 170. These reports, although submitted by a specific organization, support NRC's development of generic guidance and regulations (e.g., rules, regulatory guides, and policy statements), and resolution of safety issues applicable to a class of licensees, such as those addressed in generic letters. Therefore, the applicable definition in § 170.3 and the footnotes in §§ 170.21 and 170.31 are revised to indicate that 10 CFR Part 170 fees will not be assessed for requests/reports which have been submitted to the NRC:

(1) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter or does not involve an unreviewed safety issue;

(2) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist the NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(3) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

The terms "alternate method", "reanalysis" and "unreviewed safety issue" are explained in more detail in Section IV, Section-By-Section Analysis.

Fourth, § 170.11(a) is amended to establish an exemption from fees for State-owned research reactors if they meet the technical design criteria for the exemption and are research reactors used primarily for educational training and academic research purposes.

Fifth, Fee Category 2 is amended by establishing two additional fee categories, 2.A.(2) and 2.A.(3), which cover licenses authorizing receipt and disposal of Section 11e.(2) byproduct material as defined by the Atomic Energy Act. The current 2.A. category has been amended to read 2.A.(1). The current 4.D. fee category has been eliminated. This action recognizes that: (1) Source material licenses are issued to cover these licensed activities and therefore they are more appropriately placed in the source material category; and (2) that a further distinction should be made between those licenses whose primary purpose is to authorize receipt and disposal of 11e.(2) material requiring the establishment of a new tailings pile and those licenses authorizing the receipt and disposal of 11e.(2) material incidental to tailings piles created by mill operations.

In addition, Category 16 of § 170.31, reciprocity, is amended to include a fee to recover the NRC's costs of reviewing revisions to the initial NRC Form 241 filed by 10 CFR 150.20 general licensees. Agreement State licensees requesting reciprocity for activities conducted in non-Agreement States or in offshore waters are subject to 10 CFR 150.20. The first time within a calendar year that an Agreement State licensee conducts activities in non-Agreement States or in offshore waters, it must file a completed NRC Form 241. Revisions to the initial NRC Form 241 are filed for review and authorization when persons using the 10 CFR Part 150.20 general license either add locations of work, use different radioactive material or perform additional work activities in a non-Agreement State.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Operating Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by NRC

Six amendments have been made to 10 CFR Part 171. First, § 171.11(a)(2) is amended to provide that State-owned research reactors used primarily for educational training and academic research purposes will be exempt from the annual fee. The NRC believes that this change is consistent with the legislative intent of the Energy Policy Act of 1992 that government-owned research reactors be exempt from annual fees if they meet the technical design criteria for the exemption and are used primarily for educational training and academic research purposes.

Second, §§ 171.15 and 171.16 are amended to revise the annual fees for FY 1994 to recover approximately 100 percent of the FY 1994 budget authority, less fees collected under 10 CFR Part 170 and funds appropriated from the NWF.

Third, fee Category 2 of § 171.16(d) is amended by establishing two new fee categories, 2.A.(3) and 2.A.(4), relating to the disposal of 11e.(2) byproduct material as defined by the Atomic Energy Act. The current fee Category 4.D. has been eliminated. This action recognizes that (1) part of the budgeted costs for the uranium recovery class of licensees should be allocated to source material licenses that authorize receipt and disposal of 11e.(2) material because some of these budgeted resources are used to regulate these licensees and (2) a further distinction should be made between those licenses whose primary purpose is to authorize receipt and disposal of 11e.(2) byproduct material requiring the establishment of a new mill tailings pile and those non-operating mills that accept 11e.(2) byproduct material for disposal incidental to tailings piles created by mill operations.

In addition, fee Category 18 of § 171.16(d) is amended to assess fees to the Department of Energy (DOE) for its

general license in 10 CFR 40.27. The general license fulfills a requirement of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) (Public Law 95–604) that the perpetual custodian of reclaimed uranium mill tailings piles be licensed by the NRC. The general license provided for in the regulation covers only post-reclamation closure custody and site surveillance. Based on NRC's acceptance of DOE's Long Term Surveillance Plan for the Spook, Wyoming, site on September 21, 1993, the site is now subject to the general license in 10 CFR 40.27. Because DOE now holds an NRC license, it is subject to annual fees. The NRC had previously indicated its intent to bill DOE for UMTRCA costs once post-closure was achieved and the sites were licensed by the Government (56 FR 31481; July 10, 1991). As a result, DOE will be billed for the costs associated with NRC's UMTRCA review of all activities associated with the facilities assigned to DOE under UMTRCA. As with other licensees, the annual fee for this class of licensees (DOE UMTRCA facilities) will recover the generic and other regulatory costs not recovered through 10 CFR Part 170 fees. Because DOE, as a Federal agency, cannot be assessed Part 170 fees under the Independent Offices Appropriation Act of 1952 (IOAA), the result is that NRC will assess annual fees to DOE for the total costs of DOE UMTRCA activities.

Fourth, 10 CFR 171.17 is amended to add a proration provision for materials licenses and to revise the proration provision for reactors. The annual fee for materials licensees is prorated based on applications filed after October 1 of the fiscal year to terminate a license or obtain a POL. Those materials licensees who file applications between October 1 and March 31 of the fiscal year to terminate the license or obtain a POL will be assessed one-half the annual fee stated in § 171.16(d) for the affected fee category(ies). Those materials licensees filing applications on or after April 1 of the fiscal year to terminate a license or obtain a POL will be assessed the full annual fee for that fiscal year. Those licensees who file for termination or POL must also permanently cease operations of relevant licensed activities during the periods mentioned for the fees to be reduced. Similarly, materials licensees who were issued new licenses during the fiscal year will be charged a prorated annual fee based on the date of issuance of the new license. New materials licenses issued during the period October 1 through March 31 will be assessed one-half of the annual fee stated in § 171.16(d) for the applicable fee category(ies) for that fiscal year. New licenses issued on or after April 1 will not be assessed an annual fee for that fiscal year.

The proration provision in § 171.17 applicable to reactors is amended to provide that, for licensees who have requested an amendment to withdraw operating authority permanently during the FY, the annual fee will be prorated based on the number of days during the FY the operating license was in effect before either the possession only license was issued or the license was terminated.

Fifth, Footnote 1 of 10 CFR 171.16(d) is amended to provide for a waiver of the FY 1994 annual fees for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1993, and permanently ceased licensed activities entirely by September 30, 1993. All other licensees and approval holders who held a license or approval on October 1, 1993, are subject to FY 1994 annual fees. This change is in recognition of the fact that since the final FY 1993 rule was published in July 1993, licensees have continued to file requests for termination of their licenses or certificates with the NRC. Other licensees have either called or written to the NRC since the FY 1993 final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible. However, the NRC was unable to respond and take action on all of the requests before the end of the fiscal year on September 30, 1993. Similar situations existed after the FY 1991 and FY 1992 rules were published, and in those cases NRC provided an exemption from the requirement that the annual fee is waived only where a license is terminated before October 1 of each fiscal year.

Sixth, § 171.19 is amended to credit the quarterly partial payments already made by certain licensees in FY 1994 either toward their total annual fee to be assessed or to make refunds, if necessary.

The 10 CFR part 171 annual fees have been determined using the same method used to determine the FY 1991, FY 1992, and FY 1993 annual fees. The amounts to be collected through annual fees in the amendments to 10 CFR part 171 are based on the increased professional hourly rate. The amendments to 10 CFR part 171 do not change the underlying basis for 10 CFR part 171; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The changes are consistent with the Congressional guidance in the Conference Committee Report on OBRA–90, which states that the "conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensee to such class" and the "conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee" (136 Cong. Rec., at H12692–93).

During the past three years, many licensees have indicated that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer needed the license. In responding to licensees about this matter, the NRC has stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes once again that annual fees will be assessed based on whether a licensee holds a valid license with the NRC that authorizes possession and use of radioactive material. To remove any uncertainties regarding agency policy on this issue, the NRC amended 10 CFR 171.16, footnotes 1 and 7 on July 20, 1993 (58 FR 38666).

C. FY 1994 Budgeted Costs

The FY 1994 budgeted costs, by major activity, that will be recovered through 10 CFR parts 170 and 171 fees are shown in Table I.

TABLE I.— RECOVERY OF NRC'S FY 1994 BUDGET AUTHORITY

[Dollars in millions]

Recovery method	Estimated amount
Nuclear Waste Fund	$22.0
Part 170 (license and inspection fees)	120.1
Other receipts	.1
Part 171 (annual fees):	
Power Reactors	302.1
Nonpower Reactors	.4
Fuel Facilities	16.8
Spent Fuel Storage	2.2
Uranium Recovery	2.1
Transportation	4.0

TABLE I.— RECOVERY OF NRC'S FY 1994 BUDGET AUTHORITY—Continued

[Dollars in millions]

Recovery method	Estimated amount
Material Users	[1] 38.6
Subtotal Part 171	366.2
Costs remaining to be recovered not identified above	26.6
Total	535.0

[1] Includes $6.3 million that will not be recovered from small materials licensees because of the reduced small entity fees.

The $26.6 million identified for those activities which are not identified as either 10 CFR parts 170 or 171 or the NWF in Table I are distributed among the classes of licensees as follows:

$24.4 million to operating power reactors;

$.7 million to fuel facilities; and

$1.5 million to other materials licensees.

In addition, approximately $6.3 million must be collected as a result of continuing the $1,800 maximum fee for small entities and the lower tier small entity fee of $400 for certain licensees. In order for the NRC to recover 100 percent of its FY 1994 budget authority in accordance with OBRA–90, the NRC will recover $5.3 million of the $6.3 million from operating power reactors and the remaining $1.0 million from other nonreactor entities that do not meet NRC small entity size standards.

This distribution results in an additional charge (surcharge) of approximately $273,000 per operating power reactor; $55,770 for each HEU, LEU, UF_6, and each other fuel facility license; $1,670 for each materials license in a category that generates a significant amount of low level waste; and $170 for other materials licenses. When added to the base annual fee of approximately $2.8 million per reactor, this will result in an annual fee of approximately $3.1 million per operating power reactor. The total fuel facility annual fee will be between approximately $1.2 million and $3.2 million. The total annual fee for materials licenses will vary depending on the fee category(ies) assigned to the license.

The additional charges not directly or solely attributable to a specific class of NRC licensees and costs not recovered from all NRC licensees on the basis of previous Commission policy decisions will be recovered from the designated classes of licensees previously identified. A further discussion and breakdown of the specific costs by major classes of licensees are shown in section IV of this final rule.

IV. Section-by-Section Analysis

The following analysis of those sections that are affected under this final rule provides additional explanatory information. All references are to title 10, chapter I, Code of Federal Regulations.

Part 170

Section 170.3 Definitions

This section is amended to revise the definition of special projects. This change is based on NRC's experience during the past three years in implementing the 100 percent fee recovery program and the fee policy review required by the Energy Policy Act of 1992. The NRC believes that the costs for some requests or reports being filed with NRC are more appropriately captured in the 10 CFR part 171 annual fees instead of assessing specific fees under 10 CFR part 170. Therefore, the definition in § 170.3, as well as the footnotes in §§ 170.21 and 170.31, are amended to indicate that 10 CFR part 170 fees will not be assessed for requests/reports which have been submitted to the NRC:

1. In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

2. In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist the NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

3. As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

The terms "alternate method", "reanalysis", and "unreviewed safety issue" as used in item 1 are further explained as follows:

"Alternate method" is a method that deviates significantly (i.e., more than necessary for plant-specific or generic program development) from the method proposed in the Generic Letter or NRC Bulletin;

"Reanalysis" is an analysis of an alternate method but not a review of changes to a method which is consistent with that proposed by the Generic Letter or Bulletin. These types of "consistent" changes could be revisions submitted pursuant to an NRC staff request for additional information or modification, or changes necessary for plant-specific or generic implementation; and

"Unreviewed safety issue" is a safety issue unrelated to the safety issue identified in the generic communication that arises from proposal of an alternate method and will require reanalysis by the NRC staff.

Section 170.11 Exemptions

Paragraph (a)(9) of this section is established to provide an exemption from fees for State-owned research reactors that meet certain technical design criteria and are used primarily for educational training and academic research purposes. Currently, Federal agencies are exempt from payment of 10 CFR part 170 fees under the Independent Offices Appropriation Act (IOAA). The proposed rule would have amended only 10 CFR part 171. The NRC believes however, that this change to 10 CFR part 170 is consistent with the legislative intent of the Energy Policy Act of 1992 that government-owned research reactors be exempt from fees if they meet the technical design criteria for the exemption and are used primarily for educational training and academic research purposes. There is currently one research reactor, owned by the Rhode Island Atomic Energy Commission, that will be exempt under this amendment to § 170.11.

Section 170.20 Average Cost Per Professional Staff Hour

This section is amended to reflect an agency-wide, professional staff-hour rate based on FY 1994 budgeted costs. Accordingly, the NRC professional staff-hour rate for FY 1994 for all fee categories that are based on full cost is $133 per hour, or $231,216 per direct FTE. The rate is based on the FY 1994 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF. The rate is calculated using the identical method established for FY 1991, FY 1992, and FY 1993. As noted earlier, in this final rule, the NRC has directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards and the Advisory Committee on Nuclear Waste. The method is as follows:

1. All direct FTEs are identified in Table II by major program. For FY 1994 the NRC has traced additional direct effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee

on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. The budgeted costs for these activities had previously been included in overhead but are now being directly assigned to the class of licensees that they support.

TABLE II.—ALLOCATION OF DIRECT FTES BY MAJOR PROGRAM

Major program	No. of direct FTEs [1]
Reactor Safety and Safeguards Regulation	1,034.4
Reactor Safety Research	111.3
Nuclear Material and Low Level Waste Safety and Safeguards Regulation	352.5
Reactor Special and Independent Reviews, Investigations, and Enforcement	111.7
Nuclear Material Management and Support	19.0
Total direct FTE	[2] 1,628.9

[1] FTE (full-time equivalent) is one person working for a full year. Regional employees are counted in the office of the program each supports.

[2] In FY 1994, 1,628.9 FTEs of the total 3,223 FTEs are considered to be in direct support of NRC non-NWF programs. The remaining 1,594.1 FTEs are considered overhead and general and administrative.

2. NRC FY 1994 budgeted costs are allocated, in Table III, to the following four major categories:

(a) Salaries and benefits.

(b) Administrative support.

(c) Travel.

(d) Program support.

3. Direct program support, which is the use of contract or other services in support of the line organization's direct program, is excluded because these costs are charged directly through the various categories of fees.

4. All other costs (i.e., Salaries and Benefits, Travel, Administrative Support, and Program Support contracts/services for G&A activities) represent "in-house" costs and are to be collected by allocating them uniformly over the total number of direct FTEs.

Using this method, which was described in the final rules published July 10, 1991 (56 FR 31472), July 23, 1992 (57 FR 32691), and July 20, 1993 (58 FR 38666), and excluding direct Program Support funds, allocating the remaining $376.6 million uniformly to the direct FTEs (1,628.9) results in a rate of $231,216 per FTE for FY 1994. The Direct FTE Hourly Rate is $133 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing $376.6 million by the number of direct FTEs (1,628.9 FTE) and the number of productive hours in one year (1744 hours) as indicated in OMB Circular A-76, "Performance of Commercial Activities."

TABLE III.—FY 1994 BUDGET AUTHORITY BY MAJOR CATEGORY

[Dollars in millions]

Salaries and benefits	$259.5
Administrative support	86.7
Travel	15.9
Total nonprogram support obligations	362.1
Program support	150.9
Total Budget Authority	513.0
Less direct program support and offsetting receipts	136.4
Budget Allocated to Direct FTE	376.6
Professional Hourly Rate	133

Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Reference Design Approvals, Special Projects, Inspections and Import and Export Licenses.

The licensing and inspection fees in this section, which are based on full-cost recovery, are revised to reflect the FY 1994 budgeted costs and to recover costs incurred by the NRC in providing licensing and inspection services to indentifiable recipients. The fees asssessed for services provided under the schedule are based on the professional hourly rate as shown in § 170.20 and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of this rule will be assessed at the FY 1994 rate shown in § 170.20. Although the amounts of the import and export licensing fees in § 170.21, facility Category K, have not changed from FY 1993 as a result of the very small increase in the hourly rate from $132 per hour to $133 per hour, they are being published for purposes of convenience.

For those applications currently on file and pending completion, footnote 2 of § 170.21 is revised to provide that the professional hours expended up to the effective date of this rule will be assessed at the professional rates established for the rules that became effective on June 20, 1984, January 30, 1989, July 2, 1990, August 9, 1991. August 24, 1992, and August 19, 1993, as appropriate. For topical report applications currently on file which are still pending completion of the review and for which review costs have reached the applicable fee ceiling established by the July 2, 1990, rule, the costs incurred after any applicable ceiling was reached through August 8, 1991, will not be billed to the applicant. Any professional hours expended for the review of topical report applications, amendments, revisions, or supplements to a topical report on or after August 9, 1991, are assessed at the applicable rate established by § 170.20.

Section 170.31 Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections and Import and Export Licenses.

The licensing and inspection fees in this section are modified to recover the FY 1994 costs incurred by the Commission in providing licensing and inspection services to identifiable recipients. Those flat fees, which are based on the average time to review an application or conduct an inspection, are adjusted to reflect the very small increase in the professional hourly rate from $132 per hour in FY 1993 to $133 per hour in FY 1994. In many cases, the fees for FY 1994 are the same as those assessed in FY 1993.

The amounts of the licensing and inspection flat fees were rounded by applying standard rules of arithmetic so that the amounts rounded would be de minimus and convenient to the user. Fees that are greater than $1,000 are rounded to the nearest $100. Fees under $1,000 are rounded to the nearest $10.

The revised flat fees are applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D, 10.B, 15A through 15E and 16. The revised fees will be assessed for applications filed or inspections conducted on or after the effective date of this rule.

Fee Category 2 is amended by establishing two additional fee categories 2.A.(2) and 2.A.(3) which cover licenses authorizing receipt and disposal of Section 11e.(2) byproduct material as defined by the Atomic Energy Act. The current 2.A. category has been amended to read 2.A.(1). The current 4.D. fee category has been eliminated. This action recognizes that (1) source material licenses are issued to cover these licensed activities and they are more appropriately placed in the source material category and (2) that a further distinction should be made between those licenses whose primary purpose is to authorize receipt and disposal of 11e.(2) material requiring the establishment of a new tailings pile from those licenses authorizing the receipt and disposal of 11e.(2) material incidental to tailings piles created by mill operations.

Fee Category 16, reciprocity, is also amended to include a fee to recover the costs incurred by the NRC for the review of revisions to the information submitted on the initial NRC Form-241 filed by 10 CFR 150.20 general licensees

during the remainder of the calendar year. Agreement State licensees requesting reciprocity for activities conducted in non-Agreement States or in offshore waters are subject to 10 CFR 150.20. The first time within a calendar year that an Agreement State licensee conducts activities in non-Agreement States or in offshore waters, it must file a completed NRC Form 241. Revisions to the initial NRC Form 241 are filed for review and authorization when persons using the 10 CFR Part 150.20 general license either add locations of work, use different radioactive material or perform additional work activities in a non-Agreement State.

For those licensing, inspection, and review fees assessed that are based on full-cost recovery (cost for professional staff hours plus any contractual services), the revised hourly rate of $133, as shown in § 170.20, applies to those professional staff hours expended on or after the effective date of this rule.

Part 171

Section 171.11 Exemptions

Paragraph (a)(2) of this section is amended to exempt State-owned reactors used primarily for educational training and academic research purposes from annual fees. The NRC believes that this change is consistent with the legislative intent of the Energy Policy Act of 1992 that government-owned research reactors be exempt from annual fees if they meet the technical design criteria of the exemption and are used primarily for educational training and academic research purposes. There is currently one research reactor, owned by the Rhode Island Atomic Energy Commission, that will be exempt under this amendment to § 171.11.

Section 171.15 Annual Fee: Reactor Operating Licenses

The annual fees in this section are revised to reflect FY 1994 budgeted costs. Paragraphs (a), (b)(3), (c)(2), (d), and (e) are revised to comply with the requirement of OBRA–90 to recover approximately 100 percent of the NRC budget for FY 1994. Table IV shows the budgeted costs that have been allocated directly to operating power reactors as part of the base fee. They have been expressed in terms of the NRC's FY 1994 programs and program elements. The resulting total base annual fee amount for power reactors is also shown.

TABLE IV.—ALLOCATION OF NRC FY 1994 BUDGET TO POWER REACTORS' BASE FEES [1]

	Program element total		Allocated to power reactors	
	Program support ($, K)	Direct FTE	Program support ($, K)	Direct FTE
Reactor Safety and Safeguards Regulation (RSSR)				
Standard Reactor Designs	$9,531	96.3	$9,361	92.8
Reactor License Renewal	600	33.9	600	33.9
Reactor and Site Licensing	1,810	34.7	1,810	29.8
Resident Inspections	.....	207.0	.....	207.0
Region-Based Inspections	2,780	235.0	2,780	229.8
Interns (HQ and Regions)	.....	23.0	.....	23.0
Special Inspections	970	42.7	970	42.7
License Maintenance and Safety Evaluations	4,142	208.5	4,142	208.5
Plant Performance	927	52.1	927	52.1
Human Performance	4,760	54.7	4,403	51.1
Other Safety Reviews and Assistance	3,443	46.5	3,213	38.8
RSSR program total	.....	.....	$28,206	1,009.5
Reactor Safety Research (RSR)				
Standard Reactor Designs	$16,676	29.3	$16,676	29.3
Reactor Aging & License Renewal	23,273	13.7	22,573	13.6
Plant Performance	3,173	4.2	3,173	4.2
Human Reliability	4,428	7.0	4,428	7.0
Reactor Accident Analysis	20,284	26.7	20,284	26.7
Safety Issue Resolution and Regulatory Improvements	10,240	30.4	10,240	30.4
RSR program total	.....	.....	$77,374	111.2
Nuclear Material & Low Level (NMLL)				
NMLL (NMSS):				
Fuel Cycle Safety and Safeguards	$4,783	85.8	$1,494	2.8
LLW Licensing and Inspection	592	14.3	.....	1.4
Uranium Recovery Licensing and Inspection	265	14.4	21	0
Decommissioning	2,215	30.8	9	6.7
NMLL (RES):				
Environmental Policy and Decommissioning	2,410	9.0	964	3.6
NMLL program total	.....	.....	$2,488	14.5
Reactor Special and Independent Reviews, Investigations, and Enforcement				
AEOD:				
Diagnostic Evaluations	288	5.0	288	5.0
Incident Investigations	26	1.0	26	1.0
NRC Incident Response	1,854	26.0	1,854	24.0
Operational Experience Evaluation	5,447	30.0	5,447	29.0

TABLE IV.—ALLOCATION OF NRC FY 1994 BUDGET TO POWER REACTORS' BASE FEES [1]—Continued

	Program element total		Allocated to power reactors	
	Program support ($, K)	Direct FTE	Program support ($, K)	Direct FTE
Committee to Review Generic Requirements	.....	2.0	.....	2.0
AEOD Subtotal	.....	.....	$7,615	61.0
Advisory Committee on Reactor Safeguards	181	20.5	181	20.5
Office of Investigations	.....	17.0	.....	17.0
Office of Enforcement	10	7.2	10	7.0
RSIRIE program total	.....	.....	$7,806	105.5
Total base fee amount allocated to power reactors	.....	.....	.....	$402.7 (million [2])
Less estimated part 170 power reactor fees (million)	.....	.....	.....	$100.6
Part 171 base fees for operating power reactors	.....	.....	.....	$302.1 (million)

[1] Base annual fees include all costs attributable to the operating power reactor class of licensees. The base fees do not include costs allocated to power reactors for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

Based on the information in Table IV, the base annual fees that will be assessed for FY 1994 are the amounts shown in Table V below for each nuclear power operating license.

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS

Reactors	Containment type	Annual fee
Westinghouse:		
1. Beaver Valley 1	PWR Large Dry Containment	$2,805,000
2. Beaver Valley 2	..... do	2,805,000
3. Braidwood 1	..... do	2,805,000
4. Braidwood 2	..... do	2,805,000
5. Byron 1	..... do	2,805,000
6. Bryon 2	..... do	2,805,000
7. Callaway 1	..... do	2,805,000
8. Comanche Peak 1	..... do	2,805,000
9. Comanche Peak 2	..... do	2,805,000
10. Diablo Canyon 1	..... do	2,803,000
11. Diablo Canyon 2	..... do	2,803,000
12. Farley 1	..... do	2,805,000
13. Farley 2	..... do	2,805,000
14. Ginna	..... do	2,805,000
15. Haddam Neck	..... do	2,805,000
16. Harris 1	..... do	2,805,000
17. Indian Point 2	..... do	2,805,000
18. Indian Point 3	..... do	2,805,000
19. Kewaunee	..... do	2,805,000
20. Millstone 3	..... do	2,805,000
21. North Anna 1	..... do	2,805,000
22. North Anna 2	..... do	2,805,000
23. Point Beach 1	..... do	2,805,000
24. Point Beach 2	..... do	2,805,000
25. Prairie Island 1	..... do	2,805,000
26. Prairie Island 2	..... do	2,805,000
27. Robinson 2	..... do	2,805,000
28. Salem 1	..... do	2,805,000
29. Salem 2	..... do	2,805,000
30. Seabrook 1	..... do	2,805,000
31. South Texas 1	..... do	2,805,000
32. South Texas 2	..... do	2,805,000
33. Summer 1	..... do	2,805,000
34. Surry 1	..... do	2,805,000
35. Surry 2	..... do	2,805,000
36. Turkey Point 3	..... do	2,805,000
37. Turkey Point 4	..... do	2,805,000
38. Vogtle 1	..... do	2,805,000

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS—Continued

Reactors	Containment type	Annual fee
39. Vogtle 2	..... do	2,805,000
40. Wolf Creek 1	..... do	2,805,000
41. Zion 1	..... do	2,805,000
42. Zion 2	..... do	2,805,000
43. Catawba 1	PWR—Ice Condenser	2,804,000
44. Catawba 2	..... do	2,804,000
45. Cook 1	..... do	2,804,000
46. Cook 2	..... do	2,804,000
47. McGuire 1	..... do	2,804,000
48. McGuire 2	..... do	2,804,000
49. Sequoyah 1	..... do	2,804,000
50. Sequoyah 2	..... do	2,804,000
Combustion Engineering:		
1. Arkansas 2	PWR Large Dry Containment	2,804,000
2. Calvert Cliffs 1	..... do	2,804,000
3. Calvert Cliffs 2	..... do	2,804,000
4. Ft. Calhoun 1	..... do	2,804,000
5. Maine Yankee	..... do	2,804,000
6. Millstone 2	..... do	2,804,000
7. Palisades	..... do	2,804,000
8. Palo Verde 1	..... do	2,801,000
9. Palo Verde 2	..... do	2,801,000
10. Palo Verde 3	..... do	2,801,000
11. San Onofre 2	..... do	2,801,000
12. San Onofre 3	..... do	2,801,000
13. St. Lucie 1	..... do	2,804,000
14. St. Lucie 2	..... do	2,804,000
15. Waterford 3	..... do	2,804,000
Babcock & Wilcox:		
1. Arkansas 1	..... do	2,804,000
2. Crystal River 3	..... do	2,804,000
3. Davis Besse 1	..... do	2,804,000
4. Oconee 1	..... do	2,804,000
5. Oconee 2	..... do	2,804,000
6. Oconee 3	..... do	2,804,000
7. Three Mile Island 1	..... do	2,804,000
General Electric:		
1. Browns Ferry 1	Mark I	2,785,000
2. Browns Ferry 2	..... do	2,785,000
3. Browns Ferry 3	..... do	2,785,000
4. Brunswick 1	..... do	2,785,000
5. Brunswick 2	..... do	2,785,000
6. Clinton 1	Mark III	2,785,000
7. Cooper	Mark I	2,785,000
8. Dresden 2	..... do	2,785,000
9. Dresden 3	..... do	2,785,000
10. Duane Arnold	..... do	2,785,000
11. Fermi 2	..... do	2,785,000
12. Fitzpatrick	..... do	2,785,000
13. Grand Gulf 1	Mark III	2,785,000
14. Hatch 1	Mark I	2,785,000
15. Hatch 2	..... do	2,785,000
16. Hope Creek 1	..... do	2,785,000
17. LaSalle 1	Mark II	2,785,000
18. LaSalle 2	..... do	2,785,000
19. Limerick 1	..... do	2,785,000
20. Limerick 2	..... do	2,785,000
21. Millstone 1	Mark I	2,785,000
22. Monticello	..... do	2,785,000
23. Nine Mile Point 1	..... do	2,785,000
24. Nine Mile Point 2	Mark II	2,785,000
25. Oyster Creek	Mark I	2,785,000
26. Peach Bottom 2	..... do	2,785,000
27. Peach Bottom 3	..... do	2,785,000
28. Perry 1	Mark III	2,785,000
29. Pilgrim	Mark I	2,785,000
30. Quad Cities 1	..... do	2,785,000
31. Quad Cities 2	..... do	2,785,000
32. River Bend 1	Mark III	2,785,000
33. Susquehanna 1	Mark II	2,785,000
34. Susquehanna 2	..... do	2,785,000
35. Vermont Yankee	Mark I	2,785,000

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS—Continued

Reactors	Containment type	Annual fee
36. Washington Nuclear 2	Mark II	2,782,000
Other Reactor:		
1. Big Rock Point	GE Dry Containment	2,785,000

The "Other Reactor" listed in Table V was not included in the fee base because historically Big Rock Point has been granted a partial exemption from the annual fees. With respect to Big Rock Point, a smaller older reactor, the NRC hereby grants a partial exemption from the FY 1994 annual fees based on a request filed with the NRC in accordance with § 171.11. The total amount of $0.2 million to be paid by Big Rock Point has been subtracted from the total amount assessed operating reactors as a surcharge.

Paragraph (b)(3) is revised to change the fiscal year references from FY 1993 to FY 1994. Paragraph (c)(2) is amended to show the amount of the surcharge for FY 1994. This surcharge is added to the base annual fee for each operating power reactor shown in Table V. The purpose of this surcharge is to recover those NRC budgeted costs that are not directly or solely attributable to operating power reactors but nevertheless must be recovered to comply with the requirements of OBRA–90. The NRC has continued its previous policy decision to recover these costs from operating power reactors.

The FY 1994 budgeted costs related to the additional charge and the amount of the charge are calculated as follows:

[Dollars in millions]

Category of costs	FY 1994 budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. Reviews for DOE/DOD reactor projects, and West Valley Demonstration Project;	$2.4
b. International cooperative safety program and international safeguards activities; and	8.2
c. Low-level waste disposal generic activities;	6.0
2. Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based on Commission policy:	
a. Licensing and inspection activities associated with nonprofit educational institutions; and	7.8
b. Costs not recovered from Part 171 for small entities.	5.3
Subtotal budgeted costs	$29.7
Less amount to be assessed to small older reactors	.2
Total budgeted costs	$29.5

The annual additional charge is determined as follows:

$$\frac{\text{Total budgeted costs}}{\text{Total number of operating reactors}} = \frac{\$29.5 \text{ million}}{108} = \$273{,}000 \text{ per operating power reactor}$$

On the basis of this calculation, an operating power reactor, Beaver Valley 1, for example, would pay a base annual fee of $2,805,000 and an additional charge of $273,000 for a total annual fee of $3,078,000 for FY 1994.

Paragraph (d) is revised to show, in summary form, the amount of the total FY 1994 annual fee, including the surcharge, to be assessed for each major type of operating power reactor.

Paragraph (e) is revised to show the amount of the FY 1994 annual fee for nonpower (test and research) reactors. In FY 1994, $373,000 in costs are attributable to those commercial and non-exempt Federal government organizations that are licensed to operate test and research reactors. Applying these costs uniformly to those nonpower reactors subject to fees results in an annual fee of $62,200 per operating license. The Energy Policy Act establishes an exemption for certain Federally-owned research reactors that are used primarily for educational training and academic research purposes where the design of the reactor satisfies certain technical specifications set forth in the legislation. Consistent with this legislative requirement, the NRC granted an exemption from annual fees for FY 1992 and FY 1993 to the Veterans Administration Medical Center in Omaha, Nebraska, the U.S. Geological Survey for its reactor in Denver, Colorado, and the Armed Forces Radiobiological Institute in Bethesda, Maryland for its research reactor. This exemption was initially codified in the July 20, 1993 (58 FR 38695) final fee rule at § 171.11(a) and more recently in the March 17, 1994 (59 FR 12543) final rule at § 171.11(a)(2). The NRC intends to continue to grant exemptions from the annual fee to those Federally owned research and test reactors who meet the exemption criteria specified in § 171.11. The NRC is amending § 171.11(a)(2) to exempt from annual fees the research reactor owned by the Rhode Island Atomic Energy Commission.

Section 171.16 Annual fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals,

and Government agencies licensed by the NRC.

§ 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. Currently, the NRC assesses two fees for licensees that qualify as small entities under the NRC's size standards. In general, licensees with gross annual receipts of $250,000 to $3.5 million pay a maximum annual fee of $1,800 per licensed category. A second or lower-tier small entity fee of $400 is in place for licensees with gross annual receipts of less than $250,000 and small governmental jurisdictions with a population of less than 20,000. Although the amounts of the small entity fees have not changed for FY 1994, they are being published for purposes of convenience.

Paragraph (d) is revised to reflect the FY 1994 budgeted costs for materials licensees, including Government agencies, licensed by the NRC. These fees are necessary to recover the FY 1994 generic costs totalling $63.7 million that apply to fuel facilities, uranium recovery facilities, spent fuel facilities, holders of transportation certificates and QA program approvals, and other materials licensees, including holders of sealed source and device registrations.

Fee Category 2 is amended by establishing two new fee categories 2.A.(3) and 2.A.(4) relating to the disposal of Section 11e.(2) byproduct material as defined by the Atomic Energy Act. The current 4.D. category has been eliminated. This action recognizes that (1) part of the budgeted costs for the uranium recovery class of licensees should be allocated to source material licenses that authorize receipt and disposal of 11e.(2) material because some of these budgeted resources are used to regulate these licensees and (2) a further distinction should be made between those licenses whose primary purpose is to authorize disposal of 11e.(2) byproduct material requiring the establishment of a new mill tailings pile for disposal of 11e.(2) material and those non-operating mills that accept 11e.(2) byproduct material for disposal incidental to tailings piles created by mill operations.

In addition, Fee Category 18 is amended to assess fees to the Department of Energy (DOE) for use of the general license provided under 10 CFR 40.27. Currently, DOE is billed for the issuance of transportation Certificates of Compliance. The general license fulfills a requirement of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) (Public Law 95–604) that the perpetual custodian of reclaimed uranium mill tailings piles be licensed by the NRC. The § 40.27 general license covers only post-reclamation closure custody and site surveillance. In September 1993, DOE became a general licensee of the NRC because post-reclamation closure of the Spook, Wyoming site had been achieved. Because DOE now holds an NRC license, it is subject to annual fees. The NRC had previously indicated its intent in the FY 1991 final fee rule to bill DOE for UMTRCA costs once post-closure was achieved and the sites were licensed by the Government (56 FR 31481; July 10, 1991). As a result, DOE will be billed for the costs associated with NRC's UMTRCA review of all activities associated with the facilities assigned to DOE under UMTRCA. As with other licensees, the annual fee for this class of licensees (DOE UMTRCA facilities) will recover the generic and other regulatory costs not recovered through 10 CFR Part 170 fees. Because DOE, as a Federal agency, cannot be assessed Part 170 fees under the IOAA, the NRC will assess annual fees for the total costs of DOE UMTRCA activities to DOE.

Tables VI and VII show the NRC program elements and resources that are attributable to fuel facilities and materials users, respectively. The costs attributable to the uranium recovery class of licensees are those associated with uranium recovery research, licensing and inspection. For transportation, the costs are those budgeted for transportation research, licensing, and inspection. Similarly, the budgeted costs for spent fuel storage are those for spent fuel storage research, licensing, and inspection.

TABLE VI.—ALLOCATION OF NRC FY 1994 BUDGET TO FUEL FACILITY BASE FEES [1]

	Total program element		Allocated to fuel facility	
	Program support $, K	FTE	Program support $, K	FTE
NMLL (Research)				
Radiation Protection/Health Effects	$1,575	5.3	$315	1.1
Environmental Policy and Decommissioning	2,410	9.0	241	.9
NMLL (RES) program total			556	2.0
NMLL (NMSS)				
Fuel Cycle Safety and Safeguards	$4,783	85.8	$2,432	57.1
Event Evaluation	0	14.9	0	4.2
Decommissioning	2,215	30.8	309	10.5
Uranium Recovery (Dam Safety)	250	7.6	3	0
NMLL (NMSS) program total			2,744	71.8
NMLL (MSIRIE)				
Incident Response	186	6.0	0	1.0
Enforcement	10	6.8	0	1.2
NMLL MSIRIE program total			0	2.2
Total NMLL			$3,300	76.0
Total base fee amount allocated to fuel facilities (million [2])				$20.8
Less part 170 fuel facility fees (million)				4.0

TABLE VI.—ALLOCATION OF NRC FY 1994 BUDGET TO FUEL FACILITY BASE FEES [1]—Continued

	Total program element		Allocated to fuel facility	
	Program support $, K	FTE	Program support $, K	FTE
Part 171 base fees for fuel facilities (million)				$16.8

[1] Base annual fee includes all costs attributable to the fuel facility class of licensees. The base fee does not include costs allocated to fuel facilities for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

TABLE VII.—ALLOCATION OF FY 1994 BUDGET TO MATERIAL USERS' BASE FEES [1]

	Total program element		Allocated to materials users	
	Program support $, K	FTE	Program support $, K	FTE
NMLL (Research)				
Materials licensee performance	$450	1.2	$405	1.1
Materials regulatory standards	1,495	12.2	1,346	11.0
Radiation protection/health effects	1,575	5.3	1,134	3.8
Environmental policy and decommissioning	2,410	9.0	1,085	4.1
Total NMLL (RES)			3,970	20.0
NMLL (NMSS)				
Licensing/inspection of materials users	$965	109.3	$869	99.5
Event evaluation	.....	16.2	.....	11.4
Information technology	1,100	.....	89	.....
Decommissioning	2,215	30.8	1,707	12.0
Low level waste—on site disposal	592	14.3	71	2.3
Total NMLL (NMSS)			2,736	125.2
NMLL (MSIRIE)				
Analysis and evaluation of operational data	$186	6.0	$167	4.5
Office of Investigations	.....	7.0	.....	6.3
Office of Enforcement	10	6.8	9	5.0
Total NMLL Program			6,882	161.0
Base amount allocated to materials users (million [2])				$44.1
Less part 170 material users fees (million)				5.5
PART 171 base fees for material users (million)				38.6

[1] Base annual fee includes all costs attributable to the materials class of licensees. The base fee does not include costs allocated to materials licensees for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

The allocation of the NRC's $16.8 million in budgeted costs to the individual fuel facilities is based, as in FYs 1991–1993, primarily on the OBRA–90 conferees' guidance that licensees who require the greatest expenditure of NRC resources should pay the greatest annual fee. Because the two high-enriched fuel manufacturing facilities possess strategic quantities of nuclear materials, more NRC safeguards costs (e.g., physical security) are attributable to these facilities. Likewise, more of the safety licensing and inspection costs are allocated to the HEU facilities because more of these resources are used for HEU facilities as compared to other facilities. However, safety program assessment and safety event evaluation costs for fuel facilities are uniformly allocated to HEU and LEU facilities because these activities apply equally to each of the HEU and LEU facilities.

Using this approach, the base annual fee for each facility is shown below.

Type of facility	Annual fee—safeguards and safety
High enriched fuel:	
Nuclear Fuel Services	$3,176,000
Babcock and Wilcox	3,176,000
Subtotal	6,352,000
Low enriched fuel:	
Siemens Nuclear Power	$1,429,000
Babcock and Wilcox	1,429,000
General Electric	1,429,000
Westinghouse	1,429,000
Combustion Engineering (Hematite)	1,429,000
General Atomics	1,429,000
Subtotal	8,574,000
UF_6 conversion:	
Allied-Signal Corp	$1,114,000

Type of facility	Annual fee—safeguards and safety
Other fuel facilities (3 facilities at $254,000 each)	762,000
Total	16,802,000

One of Combustion Engineering's (CE) low enriched fuel facilities has not been included in the fee base because of the D.C. Circuit Court of Appeals' decision of March 16, 1993, directing the NRC to grant an exemption for FY 1991 to Combustion Engineering for one of its two facilities. As a result of the Court's decision, the NRC granted an exemption to one of CE's low enriched uranium fuel facilities for FY 1994. The NRC has therefore excluded this facility from the calculation of the FY 1994 annual fees for the low enriched fuel category.

Of the $2.1 million attributable to the uranium recovery class of licensees, about $1.5 million will be assessed to the Department of Energy (DOE) to recover the costs associated with DOE facilities under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). These costs were previously recovered from operating power reactors because DOE was not an NRC licensee prior to September 1993 and therefore could not be billed under 10 CFR Part 171. In September 1993, DOE became a general licensee of the NRC because post-reclamation closure of the Spook, Wyoming site had been achieved. Approximately 44 percent of the remaining costs of $639,000 for uranium recovery is attributable to uranium mills (Class I facilities) and facilities that dispose of 11e.(2) byproduct materials, approximately 39 percent is attributable to those solution mining licensees who do not generate uranium mill tailings (Class II facilities), and the remaining 17 percent is allocated to the other uranium recovery facilities (e.g., extraction of metals and rare earths). The resulting annual fees for each class of licensee are:

2.A.(2)—Class I facilities: $74,500
2.A.(2)—Class II facilities: $41,200
2.A.(2)—Other facilities: $36,200
2.A.(3)—11e.(2) disposal: $67,000
2.A.(4)—11e.(2) disposal incidental to existing tailings site: $8,700

The annual fees for FY 1994 for the uranium recovery class of licensees are less than the FY 1992 fees and are higher than the FY 1993 annual fees. The total amount of fees that must be recovered from uranium recovery commercial licensees has decreased by about 10 percent compared to FY 1993; however, the annual fee per facility has increased for two basic reasons. First, the amount that is expected to be recovered through part 170 fees has decreased as a result of completing the licensing of the Envirocare 11e.(2) byproduct disposal facility. This requires relatively more costs to be recovered through annual fees. The second cause of the increase is a decrease in the number of licensees in the class to be assessed annual fees for FY 1994.

For spent fuel storage licenses, the generic costs of $2.2 million have been spread uniformly among those licensees who hold specific or general licenses for receipt and storage of spent fuel at an ISFSI. This results in an annual fee of $363,500. This represents a fee increase compared to FY 1993 in order to recover the increased budget necessary to perform rulemakings and the regulatory oversight over the increased number of licensees.

To equitably and fairly allocate the $38.6 million attributable to the approximately 6,500 diverse material users and registrants, the NRC has continued to base the annual fee on the Part 170 application and inspection fees. Because the application and inspection fees are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also continues to consider the inspection frequency, which is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. In summary, the annual fee for these categories of licenses is developed as follows:

Annual Fee=(Application Fee+Inspection Fee/Inspection Priority)xConstant+(Unique Category Costs).

The constant is the multiple necessary to recover $38.6 million and is 2.6 for FY 1994. The unique costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 1994, unique costs of approximately $2.6 million were identified for the medical improvement program which is attributable to medical licensees. Materials annual fees for FY 1994 are 13 to 17 percent higher compared to the FY 1993 annual fees. There are two basic reasons for the changes in the fees from FY 1993. First, the FY 1994 budgeted amount attributable to materials licensees is about 10 percent higher than the comparable FY 1993 to reflect the cost necessary to regulate this class of licensees and the direct allocation of certain budgeted costs as opposed to including them in the hourly rate. Second, the number of licensees to be assessed annual fees in FY 1994 has decreased (from about 6,800 to about 6,500), resulting in a 4 percent increase in fees. The materials fees must be established at these levels in order to comply with the mandate of OBRA–90 to recover approximately 100 percent of the NRC's FY 1994 budget authority.

A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity using NRC Form 526.

To recover the $4.0 million attributable to the transportation class of licensees, $923,000 will be assessed to the Department of Energy (DOE) to cover all of its transportation casks under Category 18. The remaining transportation costs for generic activities ($3.1 million) are allocated to holders of approved QA plans. The annual fee for approved QA plans is $64,700 for users and fabricators and $900 for users only.

The amount or range of the FY 1994 base annual fees for all materials licensees is summarized as follows:

MATERIALS LICENSES BASE ANNUAL FEE RANGES

Category of license	Annual fees
Part 70—High enriched fuel.	$3.2 million.
Part 70—Low enriched fuel.	$1.4 million.
Part 40—UF_6 conversion.	$1.1 million.
Part 40—Uranium recovery.	$36,200 to $74,500.
Part 30—Byproduct material.	$970 to $30,900 [1].
Part 71—Transportation of radioactive material.	$900 to $64,700.
Part 72—Independent storage of spent nuclear fuel.	$363,500.

[1] Excludes the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies, which is $430,500.

Paragraph (e) is amended to establish the additional charge to be added to the base annual fees shown in paragraph (d) of this final rule. The Commission is continuing the approach used in FY 1993 so as to assess the budgeted low-level waste (LLW) costs to two broad categories of licensees (large LLW generators and small LLW generators) based on historical disposal data. This surcharge continues to be shown, for convenience, with the applicable categories in paragraph (d). Although these NRC LLW disposal regulatory activities are not directly attributable to regulation of NRC materials licensees, the costs nevertheless must be recovered

in order to comply with the requirements of OBRA–90. For FY 1994, the additional charge recovers approximately 18 percent of the NRC budgeted costs of $8.1 million relating to LLW disposal generic activities from small generators, which are comprised of materials licensees that dispose of LLW. The percentage distribution reflects the deletion of LLW disposed by Agreement State licensees. The FY 1994 budgeted costs related to the additional charge for LLW and the amount of the charge are calculated as follows:

Category of costs	FY 1994 budgeted costs ($ in millions)
1. Activities not attributable to an existing NRC licensee or class of licensee, i.e., LLW disposal generic activities	$8.1

Of the $8.1 million in budgeted costs shown above for LLW activities, 82 percent of the amount ($6.7 million) are allocated to the 120 large waste generators (reactors and fuel facilities) included in 10 CFR Part 171. This results in an additional charge of $55,600 per facility. Thus, the LLW charge will be $55,600 per HEU, LEU, UF_6 facility, and each of the other 3 fuel facilities. The remaining $1.4 million is allocated to the material licensees in categories that generate low level waste (965 licensees) as follows: $1,500 per materials license except for those in Category 17. Those licensees that generate a significant amount of low level waste for purposes of the calculation of the $1,500 surcharge are in fee Categories 1.B, 1.D, 2.C, 3.A, 3.B, 3.C, 3.L, 3.M, 3.N, 4.A, 4.B, 4.C, 5.B, 6.A, and 7.B. The surcharge for licenses in fee Category 17, which also generate and/or dispose of low level waste, is $22,800.

Of the $6.3 million not recovered from small entities, $1.0 million is allocated to fuel facilities and other materials licensees. This results in a surcharge of $170 per category for each fuel facility and materials licensee that is not eligible for the small entity fee.

On the basis of this calculation, a fuel facility (a high enriched fuel fabrication licensee, for example) pays a base annual fee of $3,176,000 and an additional charge of $55,770 for LLW activities and small entity costs. A medical center with a broad-scope program pays a base annual fee of $30,900 and an additional charge of $1,670, for a total FY 1994 annual fee of $32,570.

Section 171.17 Proration

10 CFR 171.17 is amended to add a proration provision for materials licenses and to revise the provision for reactors. The annual fee for materials licenses would be prorated based on applications filed after October 1 of the fiscal year either to terminate a license or obtain a POL. Those materials licensees who file applications between October 1 and March 31 of the fiscal year to terminate the license or obtain a POL will be assessed one-half the annual fee stated in § 171.16(d) for the affected fee category(ies). Those materials licensees who file applications on or after April 1 of the fiscal year to terminate a license or obtain a POL will be assessed the full annual fee for that fiscal year. Those licensees who file for termination or a POL must also permanently cease operations of those licensed activities during the periods mentioned for the fee to be reduced. Similarly, materials licensees who were issued new licenses during the fiscal year will be charged a prorated annual fee based on the date of issuance of the new license. New materials licenses issued during the period October 1 through March 31 will be assessed one-half of the annual fee stated in § 171.16(d) for the applicable fee categories for that fiscal year. New licenses issued on or after April 1 of the fiscal year will not be assessed the annual fee for that fiscal year.

The proration provision in § 171.17 applicable to reactors is amended to provide that for licensees who have requested a license amendment to withdraw operating authority permanently during the FY the annual fee will be prorated based on the number of days during the FY the operating license was in effect before the possession-only license was issued or the license was terminated.

Footnote 1 of 10 CFR 171.16(d) is amended to provide for waiver of the annual fees for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage only licenses before October 1, 1993, and permanently ceased licensed activities entirely by September 30, 1993. All other licensees and approval holders who held a license or approval on October 1, 1993 are subject to the FY 1994 annual fees.

Section 171.19 Payment

This section is revised to give credit for partial payments made by certain licensees in FY 1994 toward their FY 1994 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1994 will have been made by operating power reactor licensees and some materials licensees before the final rule is effective. Therefore, NRC will credit payments received for those three quarters toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly bill in order to recover the full amount of the revised annual fee or to make refunds, as necessary. As in FY 1993, payment of the annual fee is due on the effective date of the rule and interest accrues from the effective date of the rule. However, interest will be waived if payment is received within 30 days from the effective date of the rule.

During the past three years many licensees have indicated that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer needed the license. In responding to licensees about this matter, the NRC has stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. To remove any uncertainty, the NRC issued minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7 on July 20, 1993 (58 FR 38700).

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for the final regulation.

VI. Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

VII. Regulatory Analysis

With respect to 10 CFR Part 170, this final rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia, *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). The Court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) which required that for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was amended in 1993 to extend the 100 percent fee recovery requirement for NRC through 1998. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the final amount of the FY 1994 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90 and the Conference Committee Report specifically state that—

(1) The annual fees be based on the Commission's FY 1994 budget of $535.0 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

Therefore, when developing the annual fees for operating power reactors, the NRC continued to consider the various reactor vendors, the types of containment, and the location of the operating power reactors. The annual fees for fuel cycle licensees, materials licensees, and holders of certificates, registrations and approvals and for licenses issued to Government agencies take into account the type of facility or approval and the classes of the licensees.

10 CFR Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989).

10 CFR Parts 170 and 171, which established fees based on the FY 1989 budget, were also legally challenged. As a result of the Supreme Court decision in *Skinner* v. *Mid-American Pipeline Co.*, 109 S. Ct. 1726 (1989), and the denial of certiorari in *Florida Power and Light*, all of the lawsuits were withdrawn.

The NRC's FY 1991 annual fee rule was largely upheld by the D.C. Circuit Court of Appeals in *Allied-Signal* v. *NRC*, 988 F.2d 146 (D.C. Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority through the assessment of user fees. OBRA–90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1994. The final rule results in an increase in the fees charged to most licensees, and holders of certificates, registrations, and approvals, including those licensees who are classified as small entities under the Regulatory Flexibility Act. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final rule.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these final amendments do not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, Registrations, Approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 170, and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for Part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–4381, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101–576, 104 Stat. 2842, (31 U.S.C. 901).

2. In § 170.3, the definition *special projects* is revised to read as follows:

§ 170.3 Definitions.

* * * * *

Special projects means those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter. Examples of special projects include, but are not limited to, topical and other report reviews, early site reviews, waste solidification facilities, route approvals for shipment of radioactive materials, and services provided to certify licensee, vendor, or other private industry personnel as instructors for Part 55 reactor operators. As used in this part, special projects does not include requests/reports submitted to the NRC:

(1) In response to a Generic Letter or NRC Bulletin which does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(2) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(3) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

* * * * *

3. In § 170.11, a new paragraph (a)(9) is added to read as follows:

§ 170.11 Exemptions.

(a) * * *

(9) State-owned research reactors used primarily for educational training and academic research purposes. For purposes of this exemption, the term *research reactor* means a nuclear reactor that—

(i) Is licensed by the Nuclear Regulatory Commission under section 104c. of the Atomic Energy Act of 1954 (42 U.S.C. 2134(c)) for operation at a thermal power level of 10 megawatts or less; and

(ii) If so licensed for operation at a thermal power level or more than 1 megawatt, does not contain—

(A) A circulating loop through the core in which the licensee conducts fuel experiments;

(B) A liquid fuel loading; or

(C) An experimental facility in the core in excess of 16 square inches in cross-section.

* * * * *

4. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, Part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 that are based upon the full costs for the review or inspection will be calculated using a professional staff-hour rate equivalent to the sum of the average cost to the agency for a professional staff member, including salary and benefits, administrative support, travel, and certain program support. The professional staff-hour rate for the NRC based on the FY 1994 budget is $133 per hour.

5. In § 170.21, the introductory paragraph, Category J, Category K, and footnotes 1 and 2 to the table are revised and a new footnote 4 is added to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections, and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees[1] [2]
* * * * * * *	
J. Special Projects:[4]	
Approvals and preapplication/licensing activities	Full Cost.
Inspections[3]	Full Cost.
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the import and export only of components for production and utilization facilities issued pursuant to 10 CFR part 110.	
1. Application for import or export of reactors and other facilities and components which must be reviewed by the Commission and the Executive Branch, for example, actions under 10 CFR 110.40(b).	
Application-new license	$8,600
Amendment	$8,600
2. Application for import or export of reactor components and initial exports of other equipment requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8).	
Application-new license	$5,300
Amendment	$5,300
3. Application for export of components requiring foreign government assurances only.	
Application-new license	$3,300
Amendment	$3,300
4. Application for export or import of other facility components and equipment not requiring Commission review, Executive Branch review, or foreign government assurances.	
Application-new license	$1,300
Amendment	$1,300

SCHEDULE OF FACILITY FEES—Continued

[See footnotes at end of table]

Facility categories and type of fees	Fees[1] [2]
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require analysis or review.	
Amendment	$130

[1] Fees will not be charged for orders issued by the Commission pursuant to §2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g. §§50.12, 73.5) and any other sections now or hereafter in effect regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the rules that became effective on June 20, 1984, January 30, 1989, July 2, 1990, August 9, 1991, August 24, 1992, and August 19, 1993, as appropriate. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by §170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in §170.20. In no event will the total review costs be less than twice the hourly rate shown in §170.20.

* * * * * * * * *

[4] Fees will not be assessed for requests/reports submitted to the NRC:

1. In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;
2. In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or
3. As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

6. Section 170.31 is revised to read as follows:

§170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2,3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers:[4]	
Application—New license	$570.
Renewal	$680.
Amendment	$360.
Inspections	$670.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in §150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A:[4]	
Application—New license	$600.
Renewal	$430.
Amendment	$330.
Inspections	$1,200.
E. Licenses for construction and operation of a uranium enrichment facility.	
Application	$125,000.
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
2. Source material:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2,3]
A.(1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
A.(2) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e.(2) of the Atomic Energy Act for possession and disposal except those licenses subject to fees in Category 2.A.(1).	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
A.(3) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e.(2) of the Atomic Energy Act for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(1).	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Licenses which authorize only the possession, use and/or installation of source material for shielding:	
Application—New license	$230.
Renewal	$160.
Amendment	$270.
Inspections	$560.
C. All other source material licenses:	
Application—New license	$2,500.
Renewal	$1,400.
Amendment	$450.
Inspections	$2,500.
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$2,700.
Renewal	$1,700.
Amendment	$470.
Inspections	$9,800.[5]
B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$1,300.
Renewal	$2,200.
Amendment	$600.
Inspections	$3,000.[5]
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:	
Application—New license	$3,500.
Renewal	$3,000.
Amendment	$490.
Inspections	$3,400.
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:	
Application—New license	$1,300.
Renewal	$550.
Amendment	$370.
Inspections	$3,000.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application—New license	$930.
Renewal	$760.
Amendment	$330.
Inspections	$1,200.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application—New license	$1,300.
Renewal	$1,000.
Amendment	$330.
Inspections	$1,300.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application—New license	$5,300.
Renewal	$4,800.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2,3]
Amendment	$640.
Inspections	$4,100.
H. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:	
Application—New license	$2,400.
Renewal	$2,300.
Amendment	$800.
Inspections	$1,100.
I. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:	
Application—New license	$4,600.
Renewal	$2,700.
Amendment	$1,100.
Inspections	$1,000.
J. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application—New license	$2,100.
Renewal	$1,400.
Amendment	$370.
Inspections	$1,800.
K. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application—New license	$2,000.
Renewal	$1,400.
Amendment	$270.
Inspections	$1,000.
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$4,100.
Renewal	$2,200.
Amendment	$630.
Inspections	$4,700.
M. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$1,400.
Renewal	$1,500.
Amendment	$690.
Inspections	$2,200.
N. Licenses that authorize services for other licensees, except (1) licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D:	
Application—New license	$1,700.
Renewal	$2,100.
Amendment	$680.
Inspections	$2,400.
O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations:	
Application—New license	$3,800.
Renewal	$2,900.
Amendment	$690.
Inspections	$3,500.[5]
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	$570.
Renewal	$680.
Amendment	$360.
Inspections	$1,500.
4 Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
License, Renewal, Amendment	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2,3]
Inspections	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$4,000.
Renewal	$2,100.
Amendment	$430.
Inspections	$2,300.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$1,500.
Renewal	$1,100.
Amendment	$250.
Inspections	$2,800.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application—New license	$3,700.
Renewal	$3,900.
Amendment	$650.
Inspections	$3,600.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
License, Renewal, Amendment	Full Cost.
Inspections	$1,300.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application—New license	$4,500.
Renewal	$2,900.
Amendment	$700.
Inspections	$4,500.
7. Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$3,700.
Renewal	$1,200.
Amendment	$560.
Inspections	$2,300.
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$2,700.
Renewal	$3,500.
Amendment	$500.
Inspections	$8,700.
C. Other licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$1,100.
Renewal	$1,400.
Amendment	$500.
Inspections	$2,100.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application—New license	$670.
Renewal	$700.
Amendment	$480.
Inspections	$1,100.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$3,700.
Amendment—each device	$1,300.
Inspections	Full Cost.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	$1,900.
Amendment—each device	$670.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2,3]
Inspections	Full Cost.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$800.
Amendment—each source	$270.
Inspections	Full Cost.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	$400.
Amendment—each source	$130.
Inspections	Full Cost.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Evaluation of 10 CFR Part 71 quality assurance programs:	
Application—Approval	$370.
Renewal	$280.
Amendment	$320.
Inspections	Full Cost.
11. Review of standardized spent fuel facilities:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
12. Special projects:[6]	
Approvals and preapplication/licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Approvals	Full Cost.
Amendments, revisions, and supplements	Full Cost.
Reapproval	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance	Full Cost.
C. Inspections related to storage of spent fuel under §72.210 of this chapter	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR Parts 30, 40, 70, and 72 of this chapter:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
15. Import and Export licenses:	
Licenses issued pursuant to 10 CFR Part 110 of this chapter for the import and export only of special nuclear material, source material, byproduct material, heavy water, tritium, or nuclear grade graphite.	
A. Application for import or export of HEU and other materials which must be reviewed by the Commission and the Executive Branch, for example, those actions under 10 CFR 110.40(b).	
Application—New license	$8,600.
Amendment	$8,600.
B. Application for import or export of special nuclear material, heavy water, nuclear grade graphite, tritium, and source material, and initial exports of materials requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(2)–(8).	
Application—New license	$5,300.
Amendment	$5,300.
C. Application for export of routine reloads of LEU reactor fuel and exports of source material requiring foreign government assurances only.	
Application—New license	$3,300.
Amendment	$3,300.
D. Application for export or import of other materials not requiring Commission review, Executive Branch review or foreign government assurances.	
Application—New license	$1,300.
Amendment	$1,300.
E. Minor amendment of any export or import license to extend the expiration date, change domestic information or make other revisions which do not require analysis or review.	
Amendment	$130.
16. Reciprocity:	
Agreement State licensees who conduct activities in a non-Agreement State under the reciprocity provisions of 10 CFR 150.20.	
Application (initial filing of Form 241)	$700.
Renewal	N/A.
Revisions	$200.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2,3]
Inspections	Fees as specified in appropriate fee categories in this section.

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and inspections. The following guidelines apply to these charges:

(a) *Application fees*—Applications for new materials licenses and approvals; applications to reinstate expired, terminated or inactive licenses and approvals except those subject to fees assessed at full cost; and applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20, must be accompanied by the prescribed application fee for each category, except that: (1) applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category; and (2) applications for licenses under Category 1E must be accompanied by an application fee of $125,000.

(b) *License/approval/review fees*—Fees for applications for new licenses and approvals and for preapplication consultations and reviews subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12 (b), (e), and (f).

(c) *Renewal/reapproval fees*—Applications for renewal of licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that fees for applications for renewal of licenses and approvals subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(d).

(d) *Amendment/Revision Fees*—

(1) Applications for amendments to licenses and approvals and revisions to reciprocity initial applications, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment/revision fee for each license/revision affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply. For those licenses and approvals subject to full costs (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14), amendment fees are due upon notification by the Commission in accordance with § 170.12(c).

(2) An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

(3) An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

(4) Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, are not subject to fees.

(e) *Inspection fees*—Although a single inspection fee is shown in the regulation, separate charges will be assessed for each routine and nonroutine inspection performed, including inspections conducted by the NRC of Agreement State licensees who conduct activities in non-Agreement States under the reciprocity provisions of 10 CFR 150.20. Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. If a licensee holds more than one materials license at a single location, a fee equal to the highest fee category covered by the licenses will be assessed if the inspections are conducted at the same time unless the inspection fees are based on the full cost to conduct the inspection. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 plus any applicable contractual support services costs incurred. Licenses covering more than one category will be charged a fee equal to the highest fee category covered by the license. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g). See Footnote 5 for other inspection notes.

[2] Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the final rules that became effective on June 20, 1984, January 30, 1989, July 2, 1990, August 9, 1991, August 24, 1992, and August 19, 1993 rules, as appropriate. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. The minimum total review cost is twice the hourly rate shown in § 170.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses or renewal of existing licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application or renewal fee for fee Category 1C only.

[5] For a license authorizing shielded radiographic installations or manufacturing installations at more than one address, a separate fee will be assessed for inspection of each location, except that if the multiple installations are inspected during a single visit, a single inspection fee will be assessed.

[6] Fees will not be assessed for requests/reports submitted to the NRC:

1. In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter or does not involve an unreviewed safety issue;

2. In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

3. As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES, AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

7. The authority citation for Part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by Sec. 5601, Pub. L. 100–203, 101 Stat. 1330–275, as amended by Sec. 3201, Pub. L. 101–239, 103 Stat. 2132 as amended by Sec. 6101, Pub. L. 101–508, 104 Stat. 1388–298 (42 U.S.C. 2214); Sec. 301, Pub. L. 92–314, 86 Stat. 267 (42 U.S.C. 2201(w)); Sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); Sec. 2903, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2214(c)).

8. In § 171.11, paragraph (a)(2) is revised to read as follows:

§ 171.11 Exemptions.

(a) * * *

(2) Federally-owned and State-owned research reactors used primarily for educational training and academic research purposes. For purposes of this exemption, the term research reactor means a nuclear reactor that—

(i) Is licensed by the Nuclear Regulatory Commission under section 104c. of the Atomic Energy Act of 1954 (42 U.S.C. 2134(c)) for operation at a thermal power level of 10 megawatts or less; and

(ii) If so licensed for operation at a thermal power level of more than 1 megawatt, does not contain—

(A) A circulating loop through the core in which the licensee conducts fuel experiments;

(B) A liquid fuel loading; or

(C) An experimental facility in the core in excess of 16 square inches in cross-section.

* * * * *

9. In § 171.15, paragraphs (a), (b)(3), (c)(2), (d), and (e) are revised to read as follows:

§ 171.15 Annual fees: reactor operating licenses.

(a) Each person licensed to operate a power, test, or research reactor shall pay the annual fee for each unit for which the person holds an operating license at any time during the Federal FY in which the fee is due, except for those test and research reactors exempted in § 171.11 (a)(1) and (a)(2).

(b) * * *

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating Part 50 of this chapter, or operating the Incident Response Center. The base FY 1994 annual fees for each operating power reactor subject to fees under this section and which must be collected before September 30, 1994, are shown in paragraph (d) of this section.

(c) * * *

(2) The FY 1994 surcharge to be added to each operating power reactor is $273,000. This amount is calculated by dividing the total cost for these activities ($29.5 million) by the number of operating power reactors (108).

(d) The FY 1994 Part 171 annual fees for operating power reactors are as follows:

PART 171 ANNUAL FEES BY REACTOR CATEGORY[1]

[Fees in thousands]

Reactor vendor	Number	Base fee	Added charge	Total fee	Estimated collections
Babcock/Wilcox	7	$2,804	$273	$3,077	$21,539
Combustion Eng.	15	2,804	273	3,077	46,155
GE Mark I	24	2,785	273	3,058	73,392
GE Mark II	8	2,785	273	3,058	24,464
GE Mark III	4	2,785	273	3,058	12,232
Westinghouse	50	2,805	273	3,078	153,900
Totals	108				331,682

[1]Fees assessed will vary for plants west of the Rocky Mountains and for Westinghouse plants with ice condensers.

(e) The annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under Part 50 of this chapter, except for those reactors exempted from fees under § 171.11(a), are as follows:

Research reactor—$62,200

Test reactor—$62,200

* * * * *

10. In § 171.16, the introductory text of paragraph (c) and paragraphs (c)(4), (d), and (e) are revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government agencies licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1994 as follows:

	Maximum annual fee per licensed category
Small businesses and small not-for-profit organizations (gross annual receipts):	
$250,000 to $3.5 million	$1,800
Less than $250,000	400
Private practice physicians (gross annual receipts):	
$250,000 to $1.0 million	1,800
Less than $250,000	400
Small governmental jurisdictions (Including publicly supported educational institutions) (population):	
20,000 to 50,000	1,800
Less than 20,000	400
Educational institutions that are not state or publicly supported, and have 500 employees or less	1,800

* * * * *

(4) For FY 1994, the maximum annual fee (base annual fee plus surcharge) a small entity is required to pay is $1,800 for each category applicable to the license(s).

(d) The FY 1994 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are as follows:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	License No.	Docket No.	Annual fees[1, 2, 3]
1. Special nuclear material:			
A.(1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.			
High Enriched Fuel:			
Babcock and Wilcox	SNM–42	70–27	$3,176,000
Nuclear Fuel Services	SNM–124	70–143	3,176,000
Low Enriched Fuel:			
B&W Fuel Company	SNM–1168	70–1201	1,429,000
Combustion Engineering (Hematite)	SNM–33	70–36	1,429,000
General Electric Company	SNM–1097	70–1113	1,429,000
Siemens Nuclear Power	SNM–1227	70–1257	1,429,000
Westinghouse Electric Company	SNM–1107	70–1151	1,429,000
General Atomics	SNM–696	70–734	1,429,000
Surcharge			55,770
A.(2) All other special nuclear materials licenses not included in 1.A.(1) above for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form			254,000
Surcharge			55,770
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI)			363,500
Surcharge			1,670
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers			1,800
Surcharge			170
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)			2,200
Surcharge			1,670
E. Licenses for the operation of a uranium enrichment facility.			[11] N/A
2. Source material:			
A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride			1,114,000
Surcharge			55,770
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.			
Class I facilities[4]			74,500
Class II facilities[4]			41,200
Other facilities			36,200
Surcharge			170
(3) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e.(2) of the Atomic Energy Act for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4)			67,000
Surcharge			170
(4) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e.(2) of the Atomic Energy Act for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2)			8,700
Surcharge			170
B. Licenses which authorize only the possession, use and/or installation of source material for shielding			800
Surcharge			170
C. All other source material licenses			8,700
Surcharge			1,670
3. Byproduct material:			
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.			19,700
Surcharge			1,670
B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution			6,000
Surcharge			1,670
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when included on the same license			12,000
Surcharge			1,670

D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiophar- maceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when included on the same license	6,000
Surcharge	170
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	3,500
Surcharge	170
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	4,500
Surcharge	170
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	24,400
Surcharge	170
H. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter	6,800
Surcharge	170
I. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter	12,500
Surcharge	170
J. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter	6,600
Surcharge	170
K. Licenses issued pursuant to Subpart B of Part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter	6,100
Surcharge	170
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to Part 30 and 33 of this chapter for research and development that do not authorize commercial distribution	14,700
Surcharge	1,670
M. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for research and development that do not authorize commercial distribution	5,100
Surcharge	1,670
N. Licenses that authorize services for other licensees, except (1) licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D	6,000
Surcharge	1,670
O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when authorized on the same license	19,000
Surcharge	170
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	2,300
Surcharge	170
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] 130,200
Surcharge	1,670
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	16,400
Surcharge	1,670
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	7,500
Surcharge	1,670
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	12,700
Surcharge	170
B. Licenses for possession and use of byproduct material for field flooding tracer studies	15,400
Surcharge	1,670
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	15,600

Surcharge	1,670
7. Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	16,900
Surcharge	170
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [9]	30,900
Surcharge	1,670
C. Other licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [9]	5,900
Surcharge	170
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	2,100
Surcharge	170
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	9,600
Surcharge	170
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	4,900
Surcharge	170
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	2,100
Surcharge	170
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	1,000
Surcharge	170
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
Other Casks	[6] N/A
B. Approvals issued of 10 CFR Part 71 quality assurance programs..	
Users and Fabricators	64,700
Users	900
Surcharge	170
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	363,500
Surcharge	170
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR Parts 30, 40, 70, and 72	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies	430,500
Surcharge	22,970
18. Department of Energy:	
a. Certificates of Compliance	[10] 923,000
b. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	1,449,000
Surcharge	170

[1] Annual fees will be assessed based on whether a licensee held, during the fiscal year, a valid license with the NRC authorizing possession and use of radioactive material. However, the annual fee is waived for those materials licensees and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1993 and permanently ceased licensed activities entirely by September 30, 1993. Annual fees for licensees who filed for termination of a license or for a POL during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1). are not subject to the annual fees of category 1.C and 1.D for sealed sources authorized in the license and licensees paying annual fees under Category 2.A.(2) are not subject to the annual fees for Category 2.A.(4).

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of Parts 30, 40, 70, 71, or 72 of this chapter.

[3] For FYs 1995 through 1998, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] Two licenses have been issued by NRC for land disposal of special nuclear material. Once NRC issues a LLW disposal license for byproduct and source material, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, Part 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

[11] No annual fee has been established because there are currently no licensees in this particular fee category.

(e) A surcharge is added for each category for which a base annual fee is required. The surcharge consists of the following:

(1) To recover costs relating to LLW disposal generic activities, an additional charge of $55,600 has been added to fee Categories 1.A.(1), 1.A.(2) and 2.A.(1); an additional charge of $1,500 has been added to fee Categories 1.B., 1.D., 2.C., 3.A., 3.B., 3.C., 3.L., 3.M., 3.N., 4.A., 4.B., 4.C., 5.B., 6.A., and 7.B.; and an additional charge of $22,800 has been added to fee Category 17.

(2) To recoup those costs not recovered from small entities, an additional charge of $170 has been added to each fee Category, except Categories 1.E, 10.A., 11., 12., 13.A., 14., 15., and 16., since there is no annual fee for these categories. Licensees who qualify as small entities under the provisions of § 171.16(c) and who submit a completed NRC Form 526 are not subject to the $170 additional charge.

11. Section 171.17 is revised to read as follows:

§ 171.17 Proration.

Annual fees will be prorated for NRC licensees as follows:

(a) Reactors. The annual fee for reactors (power or nonpower) that are subject to fees under this part and are granted a license to operate on or after October 1 of a FY is prorated on the basis of the number of days remaining in the FY. Thereafter, the full fee is due and payable each subsequent FY. Licensees who have requested amendment to withdraw operating authority permanently during the FY will be prorated based on the number of days during the FY the license was in effect before the possession only license was issued or the license was terminated.

(b) Materials licenses (including fuel cycle licenses). The annual fee for a materials license that is subject to fees under this part and issued on or after October 1 of the FY is prorated on the basis of when the NRC issues the new license. New licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee for that FY. New licenses issued on or after April 1 of the FY will not be assessed an annual fee for that FY. Thereafter, the full fee is due and payable each subsequent FY. The annual fee will be prorated for licenses for which a termination request or a request for a POL has been received on or after October 1 of a FY on the basis of when the application for termination or POL is received by the NRC provided the licensee permanently ceased licensed activities during the specified period. Licenses for which applications for termination or POL are filed during the period October 1 through March 31 of the FY are assessed one-half the annual fee for the applicable category(ies) for that FY. Licenses for which applications for termination or POL are filed on or after April 1 of the FY are assessed the full annual fee for that FY.

12. In section 171.19, paragraphs (b) and (c) are revised to read as follows:

§ 171.19 Payment.

* * * * *

(b) For FY 1994 through FY 1998, the Commission will adjust the fourth quarterly bill for operating power reactors and certain materials licensees to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. All other licensees, or holders of a certificate, registration, or approval of a QA program will be sent a bill for the full amount of the annual fee upon publication of the final rule. Payment is due on the effective date of the final rule and interest accrues from the effective date of the final rule. However, interest will be waived if payment is received within 30 days from the effective date of the final rule.

(c) For FYs 1994 through 1998, annual fees in the amount of $100,000 or more and described in the **Federal Register** notice pursuant to § 171.13, must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. Annual fees of less than $100,000 must be paid once a year as billed by the NRC.

Dated at Rockville, Maryland, this 12th day of July, 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Appendix A to This Final Rule—Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) establishes as a principle of regulatory practice that agencies endeavor to fit regulatory and informational requirements, consistent with applicable statutes, to a scale commensurate with the businesses, organizations, and government jurisdictions to which they apply. To achieve this principle, the Act requires that agencies consider the impact of their actions on small entities. If the agency cannot certify that a rule will not significantly impact a substantial number of small entities, then a regulatory flexibility analysis is required to examine the impacts on small entities and the alternatives to minimize these impacts.

To assist in considering these impacts under the Regulatory Flexibility Act, the NRC adopted size standards for determining which NRC licensees qualify as small entities (50 FR 50241; December 9, 1985). These size standards were clarified November 6, 1991 (56 FR 56672). The NRC size standards are as follows:

(1) A small business is a business with annual receipts of $3.5 million or less except private practice physicians for which the standard is annual receipts of $1 million or less.

(2) A small organization is a not-for-profit organization which is independently owned and operated and has annual receipts of $3.5 million or less.

(3) Small governmental jurisdictions are governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.

(4) A small educational institution is one that is (i) supported by a qualifying small governmental jurisdiction, or (ii) one that is not state or publicly supported and has 500 employees or less.

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years (FY) 1991 through 1995 by assessing license and annual fees. OBRA–90 was amended in 1993 to extend the 100 percent recovery requirement for NRC through 1998. For FY 1991, the amount collected was approximately $445 million; for FY 1992, approximately $492.5 million; for FY 1993 about $518.9 million and the amount to be collected in FY 1994 is approximately $513 million.

To comply with OBRA–90, the Commission amended its fee regulations in 10 CFR Parts 170 and 171 in FY 1991 (56 FR 31472; July 10, 1991) in FY 1992, (57 FR 32691; July 23, 1992) and in FY 1993 (58 FR 38666; July 20, 1993) based on a careful evaluation of over 1,000 comments. These final rules established the methodology used by NRC in identifying and determining the fees assessed and collected in FY 1991, FY 1992, and FY 1993. The NRC has used the same methodology established in the FY 1991, FY 1992, and FY 1993 rulemakings to establish the fees to be assessed for FY 1994 with the following exceptions: (1) the Commission has reinstated the annual fee exemption for nonprofit educational institutions; and (2) in this final rule, the NRC has directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. The methodology for assessing low-level waste (LLW) costs was changed in FY 1993 based on the U.S. Court of Appeals decision dated March 16, 1993 (988 F.2d 146, (D.C. Cir. 1993)). The FY 1993 LLW allocation method has been continued in the FY 1994 final rule.

II. Impact on small entities.

The comments received on the proposed FY 1991, FY 1992, FY 1993 and FY 1994 fee rule revisions and the small entity certifications received in response to the final FY 1991, FY 1992, and FY 1993 fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily those licensed under the NRC's materials program. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees.

The Commission's fee regulations result in substantial fees being charged to those individuals, organizations, and companies that are licensed under the NRC materials program. Of these materials licensees, the NRC estimates that about 18 percent (approximately 1,300 licensees) qualify as small entities. This estimate is based on the number of small entity certifications filed in response to the FY 1991, FY 1992, and FY 1993 fee rules. In FY 1993, the NRC conducted a survey of its materials licensees. The results of this survey indicated that about 25 percent of these licensees could qualify as small entities under the current NRC size standards.

The commenters on the FY 1991, FY 1992, FY 1993, and FY 1994 proposed fee rules indicated the following results if the proposed annual fees were not modified:

—Large firms would gain an unfair competitive advantage over small entities. One commenter noted that a small well-logging company (a "Mom and Pop" type of operation) would find it difficult to absorb the annual fee, while a large corporation would find it easier. Another commenter noted that the fee increase could be more easily absorbed by a high-volume nuclear medicine clinic. A gauge licensee noted that, in the very competitive soils testing market, the annual fees would put it at an extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

—Some firms would be forced to cancel their licenses. One commenter, with receipts of less than $500,000 per year, stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Another commenter noted that the rule would force the company and many other small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

—Some companies would go out of business. One commenter noted that the proposal would put it, and several other small companies, out of business or, at the very least, make it hard to survive.

—Some companies would have budget problems. Many medical licensees commented that, in these times of slashed reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Another noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Over the past three years, approximately 2,600 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees. These comments indicate that the $3.5 million threshold for small entities is not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that the $1,800 maximum annual fee represents a relatively high percentage of gross annual receipts for these "Mom and Pop" type businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

To alleviate the continuing significant impact of the annual fees on a substantial number of small entities, the NRC considered alternatives, in accordance with the RFA. These alternatives were evaluated in the FY 1991 rule (56 FR 31472; July 10, 1991), in the FY 1992 rule (57 FR 32691; July 23, 1992), and in the FY 1993 rule (58 FR 38666; July 20, 1993). The alternatives considered by the NRC can be summarized as follows.

—Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

—Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).

—Base fees on the NRC size standards for small entities.

The NRC has reexamined the FY 1991, FY 1992, and FY 1993 evaluation of these alternatives. Based on that reexamination, the NRC continues to support the previous conclusion. That is, the NRC continues to believe that establishment of a maximum fee for small entities is the most appropriate option to reduce the impact on small entities.

The NRC established, and is continuing for FY 1994, a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic

impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. For FY 1994, the NRC will rely on the analysis previously completed that established a maximum annual fee for a small entity by comparing NRC license and inspection fees under 10 CFR Part 170 with Agreement State fees for those fee categories that are expected to contain a substantial number of small entities. Because these fees have been charged to small entities, the NRC continues to believe that these fees, or any adjustments to these fees during the past year, do not have a significant impact on them. In issuing this final rule for FY 1994, the NRC concludes that the materials license and inspection fees do not have a significant impact on a substantial number of small entities and that the maximum annual small entity fee of $1,800 be maintained to alleviate the impact of the fees on small entities.

By maintaining the maximum annual fee for small entities at $1,800, the annual fee for many small entities will be reduced while at the same time materials licensees, including small entities, pay for most of the FY 1994 costs ($33.3 million of the total $38.6 million) attributable to them. Therefore, the NRC is continuing, for FY 1994, the maximum annual fee (base annual fee plus surcharge) for certain small entities at $1,800 for each fee category covered by each license issued to a small entity. Note that the costs not recovered from small entities are allocated to other materials licensees and to operating power reactors.

While reducing the impact on many small entities, the Commission agrees that the current maximum annual fee of $1,800 for small entities, when added to the Part 170 license and inspection fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, as in FY 1992 and FY 1993, the NRC will continue the lower-tier small entity annual fee of $400 for small entities with relatively low gross annual receipts for FY 1994. This lower-tier small entity fee was established in the final rule published in the **Federal Register** on April 17, 1992 (57 FR 13625).

In establishing the annual fee for lower tier small entities, the NRC continues to retain a balance between the objectives of the RFA and OBRA–90. This balance can be measured by (1) the amount of costs attributable to small entities that is transferred to larger entities (the small entity subsidy); (2) the total annual fee small entities pay, relative to this subsidy; and (3) how much the annual fee is for a lower tier small entity. Nuclear gauge users were used to measure the reduction in fees because they represent about 40 percent of the materials licensees and most likely would include a larger percentage of lower tier small entities than would other classes of materials licensees. The Commission is continuing an annual fee of $400 for the lower tier small entities to ensure that the lower tier small entities receive a reduction (75 percent for small gauge users) substantial enough to mitigate any severe impact. Although other reduced fees would result in lower subsidies, the Commission believes that the amount of the associated annual fees, when added to the license and inspection fees, would still be considerable for small businesses and organizations with gross receipts of less than $250,000 or for governmental entities in jurisdictions with a population of less than 20,000.

III. Summary

The NRC has determined the annual fee significantly impacts a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the proposed fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of $1,800 for small entities and a lower tier small entity annual fee of $400 for small businesses and non-profit organizations with gross annual receipts of less than $250,000, and small governmental entities with a population of less than 20,000, will reduce the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the revised fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. The NRC has used the methodology and procedures developed for the FY 1991, the FY 1992, and the FY 1993 fee rules in this final rule establishing the FY 1994 fees. Therefore, the analysis and conclusions established in the FY 1991, the FY 1992, and the FY 1993 rules remain valid for this final rule for FY 1994.

[FR Doc. 94–17502 Filed 7–19–94; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–07; Amendment 39–8972; AD 94–15–01]

Airworthiness Directives; General Electric Aircraft Engines CT7 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to General Electric Aircraft Engines (GE) CT7 series turboprop engines. This action requires a one-time ultrasonic inspection of a suspect population of propeller shafts for metallurgical defects, and if necessary, replacement with a serviceable part. This amendment is prompted by a report of an inflight propeller separation due to a metallurgical defect. The actions specified in this AD are intended to prevent failure of the propeller shaft, which can result in separation of the propeller from the propeller shaft and possible damage to the aircraft.

DATES: Effective August 4, 1994.

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

Comments for inclusion in the Rules Docket must be received on or before September 19, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–07, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from General Electric Aircraft Engines, 1000 Western Avenue, Lynn, MA 01910. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Daniel Kerman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7130, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has determined that certain propeller shafts on General Electric Aircraft Engines (GE) CT7 series turboprop engines may have a metallurgical defect that could cause separation of the propeller from the propeller shaft. The FAA's investigation has revealed this population of propeller shafts may contain a metallurgical defect known as a pipe inclusion, which developed during manufacture of the shaft. This defect typically forms during the process of melting the ingot used to form the shaft and positions itself at either end of the ingot. During this phase of the manufacturing process cropping both ends of the ingot normally ensures complete removal of such defects. The FAA has determined, however, that for five heat lots of material, pipe inclusions may not have been completely removed from the material used to form the propeller shaft. The FAA has determined that suspect material was used to manufacture approximately 326 propeller shafts.

The FAA received a report of a propeller separating from a SAAB–SCANIA SF340 series aircraft inflight following severe vibration. The FAA's investigation revealed that the propeller shaft separated due to a pipe inclusion defect positioned in a high stress location of the propeller shaft. That defect initiated a crack which propagated to failure. This condition, if not corrected, could result in failure of the propeller shaft, which can result in separation of the propeller from the propeller shaft and possible damage to the aircraft.

The FAA has reviewed and approved the technical contents of GE (CT7–TP Series) Service Bulletin (SB) No. A72–350, Revision 3, dated June 9, 1994, that describes procedures for a one-time ultrasonic inspection of the propeller shaft flange outer diameter (OD) fillet radius and inner diameter (ID) bore for detection of subsurface defects. In addition, Table 3 of this SB lists by propeller gearbox serial number (S/N) a certain population of suspect propeller shafts to be identified by internal markings during a one-time borescope inspection. Those propeller shafts with markings identified as suspect in accordance with this SB must be ultrasonically inspected prior to further flight.

Since an unsafe condition has been identified that is likely to exist or develop on other GE CT7 series turboprop engines of the same type design, this airworthiness directive (AD) is being issued to prevent separation of the propeller from the propeller shaft, which could result in damage to the aircraft. This AD requires a one-time ultrasonic inspection of the propeller shaft flange OD fillet radius and ID bore on a suspect population of propeller shafts for subsurface metallurgical defects, and if necessary, replacement with a serviceable part. This inspection must be performed at the next shop visit after the effective date of this AD, or prior to October 31, 1994, whichever occurs first. The FAA has determined that the compliance end-date of October 31, 1994, will be necessary to ensure timely inspection of all propeller shafts and thus minimize the potential for additional propeller shaft failures. The actions are required to be accomplished in accordance with the service bulletin described previously.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–ANE–07." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 adding the following new airworthiness directive:

94–15–01 General Electric Aircraft Engines: Amendment 39–8972. Docket 94–ANE–07.

Applicability: General Electric Aircraft Engines (GE) Models CT7–5A2, –5A3, –7A,

-7A1, -9B, -9B1, -9B2, -9C, -9D turboprop engines, with propeller gearboxes listed by serial number in GE (CT7-TP Series) Service Bulletin (SB) No. A72-350, Revision 3, dated June 9, 1994. These engines are installed on but not limited to Construcciones Aeronauticas, SA (CASA) CN-235 series and SAAB-SCANIA SF340 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the propeller shaft, which can result in separation of the propeller from the propeller shaft and possible damage to the aircraft, accomplish the following:

(a) Perform a one-time ultrasonic inspection of the propeller shaft flange outer diameter (OD) fillet radius and inner diameter (ID) bore for subsurface metallurgical defects, and replace, if necessary, with a serviceable part, at the next shop visit after the effective date of this AD, or prior to October 31, 1994, whichever occurs first. Perform the ultrasonic inspection, and replacement, if necessary, in accordance with GE (CT7-TP Series) SB No. A72-350, Revision 3, dated June 9, 1994, on propeller shafts listed by propeller gearbox serial number (S/N) in Table 2 of that SB.

(b) Perform a one-time borescope inspection to identify all markings on the propeller shaft at the next shop visit after the effective date of this AD, or prior to October 31, 1994, whichever occurs first. Perform the borescope inspection in accordance with GE (CT7-TP Series) SB No. A72-350, Revision 3, dated June 9, 1994, on propeller shafts listed by propeller gearbox S/N in Table 3 of that SB, and before further flight, proceed as follows:

(1) For those propeller shafts that are determined to be suspect, perform a one-time ultrasonic inspection, and replace, if necessary with serviceable parts, in accordance with the Accomplishment Instructions of GE (CT7-TP Series) SB No. A72-350, Revision 3, dated June 9, 1994.

(2) For those propeller shafts that are determined not to be suspect, no further action is required.

(c) For the purpose of this AD, a shop visit is defined as the induction of the engine into the shop for maintenance, or separation of the propeller for maintenance.

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

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

(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 aircraft to a location where the requirements of this AD can be accomplished.

(f) The inspections, and replacement, if necessary, shall be done in accordance with the following service document:

Document No.	Pages	Revision	Date
GE (CT7-TP Series) SB No. A72-350	1-40	3	June 9, 1994.

Total pages: 40.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, 1000 Western Avenue, Lynn, MA 01910. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 4, 1994.

Issued in Burlington, Massachusetts, on July 8, 1994.

Michael H. Borfitz,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94-17328 Filed 7-19-94; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 93-NM-216-AD; Amendment 39-8973; AD 94-15-02]

Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD-11 series airplanes, that currently requires inspections to verify the installation of shear pins, shear pin retainers, and shear pin retainer attaching parts in the aft end of the center pylon thrust link, and repair, if necessary. That AD was prompted by a report that both shear pins that attach the aft end of the center engine pylon thrust link to the tail pylon were missing. This amendment adds inspections to verify that the shear pin retainer attaching parts are tightened within specified limits; and adds a terminating modification for those inspections. This amendment also expands the applicability of the rule to include additional airplanes. The actions specified by this AD are intended to prevent structural damage to the engine mount structure, which could lead to loss of airplane components.

DATES: Effective August 19, 1994.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin A54-31, Revision 1, dated June 3, 1993, as listed in the regulations, is approved by the Director of the Federal Register as of August 19, 1994.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin A54-31, dated September 17, 1992, as listed in the regulations, was previously approved by the Director of the Federal Register of November 2, 1992 (57 FR 47991, October 21, 1992).

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, CA 90801-1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2-98. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5324; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 92-23-03, amendment 39-8403 (57 FR 47991, October 21, 1992), which is applicable to certain McDonnell Douglas Model MD-11 series airplanes, was published in the **Federal Register** on March 17, 1994 (59 FR 12558). The action proposed to continue to require repetitive visual inspections to verify

the installation of the shear pins, the shear pin retainers, and the shear pin retainer attaching parts in the aft end of the center engine (No. 2) pylon thrust link. It also proposed (1) to add repetitive inspections to verify that the shear pin retainer attaching parts are tightened within specified limits; (2) to delete the previously provided "optional terminating action" (which consists of a one-time verification for tightness of the nuts of the four shear pin retainer attaching bolts); and (3) to require eventual replacement of the existing retainer and attaching parts with a new retainer and attaching parts, as terminating action for the currently required repetitive visual inspections and the proposed repetitive verifications of tightness.

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

One commenter supports the proposal.

The Air Transport Association (ATA) of America, on behalf of one member operator, and the manufacturer request that the proposed AD be revised to indicate that the 60-day repetitive inspection specified in paragraph (a) and (b) be required only until either the initial verification for tightness (of the shear pin retainer attaching parts), the terminating action, or an FAA-approved repair is accomplished. These commenters state that the FAA already has approved repairs applicable to paragraphs (a) and (b) of the proposal, which have consisted of the installation of new parts. New parts obviously will be tightened upon installation; therefore, reinspection of the tightness of these parts within 60 days appears to be unwarranted. The commenters request that the repetitive interval for the inspection for installation of parts be revised to 18 months in order to be consistent with the recommendations of Phase 2 of the original issue of McDonnell Douglas Alert Service Bulletin A54–71.

The FAA concurs in part with the commenter's request. Upon further consideration of the procedures specified in the referenced service bulletin, the FAA concurs that a 60-day repetitive inspection interval is not necessary in certain situations, explained as follows:

Paragraphs (a)(1) and (b)(1)(i) of the final rule apply to situations where the shear pins, shear pin retainers, and shear pin retainer attaching parts have been inspected and found to be installed. The FAA finds that inspections to verify the installation of these parts must be repeated every 60 days, so long as there is no other action accomplished that will ensure the tightness of the attaching parts. These inspections for installation may be terminated, however, when the initial verification for tightness of the shear pin retainer attaching parts is accomplished in 18 months in accordance with paragraph (c) of the rule; or when the terminating modification described in paragraph (d) is installed, if earlier than 18 months.

The FAA has revised paragraphs (a)(2) and (b)(1)(ii) of the final rule, which apply to situations where any shear pin is missing or has migrated, and any shear pin retainer or shear pin retainer attaching part is missing. In such cases, an FAA-approved repair is required to be installed; the FAA has determined that these approved repairs will be such that no further inspections for installation of parts will be necessary once the approved repair is installed. The FAA has revised these paragraphs of the final rule to reflect this determination.

Additionally, the FAA has added new paragraphs (a)(3) and (b)(1)(iii), which specify that, in situations where the shear pin retainers or shear pin retainer attaching parts are missing or loose, and the shear pin has not migrated, operators may accomplish a repair in accordance with procedures specified as "Condition II" in McDonnell Douglas Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993. Subsequent to this repair, no further inspections for installation of parts are required. These paragraphs have been added in order to provide operators with an additional repair procedure that may be used in lieu of obtaining prior FAA-approval of repairs (which was the only option provided for in the proposal).

These same commenters contend that the 15-day compliance time for the initial inspection required by proposed paragraph (b) is not warranted for certain airplanes. The commenters point out that a tightness check was accomplished on airplanes in Groups V and VI (as specified in the referenced McDonnell Douglas service bulletin) prior to delivery; therefore, an initial inspection for installation of the subject parts should not be required for these airplanes. The commenters request that, for these airplanes, only a "re-verification" for tightness be required within 18 months. Additionally, the commenters point out that an initial visual inspection for installation of parts was accomplished on airplanes in Group III and IV prior to delivery; therefore, the compliance time for initial inspection for installation of parts required by this proposed rule should be extended. The commenters suggest extending the initial compliance time to 60 days, since this is the compliance time recommended by the manufacturer in the referenced service bulletin.

The FAA concurs in part with the commenter's requests. The FAA acknowledges that it is appropriate to revise paragraph (b) of the final rule to differentiate between the requirements of the various groups of airplanes specified in the referenced service bulletin:

As for airplanes in Groups III and IV, the FAA does not concur with the commenter's request to extend the initial compliance time for the inspection for installation of parts on these airplanes. While these airplanes may have been inspected prior to delivery, and while the manufacturer's revised service bulletin recommends a repetitive inspection interval of 60 days, the FAA points out that the inspection procedures described in that service bulletin have not been mandated previously. Since the revised service bulletin was released over a year ago, there is no way to guarantee that affected airplanes have been repetitively inspected prior to the issuance of this final rule. In light of this, the FAA considers a compliance time of 15 days necessary in order to ensure that the accomplishment of what may be the first repetitive inspection for some airplanes is carried out in a timely manner. However, the FAA has revised the compliance terms of paragraph (b)(1) to provide a "grace period" for operators of airplanes that may have been visually (re-)inspected recently. The final rule now reflects a compliance time for the initial visual inspection as "within 15 days after the effective date of the AD, or prior to the accumulation of 60 days since the last visual inspection, whichever occurs later."

As for airplanes in Groups V and VI, the FAA concurs that these airplanes need not be subject to the initial inspection for installation of parts as required by paragraph (b), as long as repetitive verifications for tightness are conducted. Therefore, the FAA has revised paragraph (b) by adding a new paragraph (b)(2), which addresses these airplanes and allows them the option of either repetitively inspecting for installation of parts (as originally proposed), or conducting a verification for tightness within 18 months after the last verification was performed. If operators of these airplanes elect to perform the verification for tightness, it must be repeated every 18 months until the terminating modification is

accomplished in accordance with paragraph (d) of the rule.

These same commenters request that proposed paragraph (c) be revised to indicate that accomplishment of the verification for tightness of the shear pin retainer attaching parts terminates the requirement for the repetitive visual inspections for installation of these same parts required by paragraph (a) and (b). The FAA concurs and has revised paragraph (c) of the final rule accordingly.

These commenters also request that proposed paragraph (d) be revised to extend the compliance time for accomplishment of the terminating modification from the proposed 3 years to 5 years. The commenters consider this modification to be only an "improvement change," and operators should be allowed to install it during a convenient and regularly scheduled maintenance period in order to avoid special scheduling of airplanes and additional associated costs. The FAA does not concur. In developing the compliance time for the terminating action, the FAA considered not only the safety implications, but the manufacturer's recommendations, the availability of required modification parts, and the practical aspects of an orderly modification of the fleet. In consideration of all of these items, the FAA determined that 3 years is an appropriate interval that will coincide with regularly scheduled maintenance periods ("C" checks) for the majority of the affected operators. However, under the provisions of paragraph (f) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

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

There are approximately 94 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 42 airplanes of U.S. registry will be affected by this AD.

Accomplishment of the required inspections for installation of parts will take approximately 4 work hours per airplane, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of these requirements of this AD on U.S. operators is estimated to be $9,240, or $220 per airplane, per inspection.

Accomplishment of the required verification for tightness of the shear pin retainer attaching parts will take approximately 6 work hours per airplane, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of these requirements of this AD on U.S. operators is estimated to be $13,860, or $330 per airplane, per verification.

Accomplishment of the required terminating modification will take approximately 6 work hours per airplane, at an average labor rate of $55 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of these requirements of this AD on U.S. operators is estimated to be $13,860, or $330 per airplane.

The total cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety. Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 amendment 39–8403 (57 FR 47991, October 21, 1992), and by adding a new airworthiness directive (AD), amendment 39–8973, to read as follows:

94–15–02 McDonnell Douglas: Amendment 39–8973. Docket 93–NM–216–AD. Supersedes AD 92–23–03, Amendment 39–8403.

Applicability: Model MD–11 series airplanes; as listed in McDonnell Douglas MD–11 Alert Service Bulletin A54–31, dated September 17, 1992, and McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural damage to the engine mount structure, which could lead to loss of airplane components, accomplish the following:

(a) For airplanes listed in McDonnell Douglas MD–11 Alert Service Bulletin A54–31, dated September 17, 1992: Within 15 days after November 5, 1992 (the effective date of AD 92–23–03, amendment 39–8403), unless previously accomplished within the last 30 days, perform a visual inspection of the thrust link of the center engine forward mount to verify installation of the shear pins, the shear pin retainers, and the shear pin retainer attaching parts in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A54–31, dated September 17, 1992, or Revision 1, dated June 3, 1993.

(1) If shear pins, shear pin retainers, and shear pin retainer attaching parts are installed, repeat the visual inspection thereafter at intervals not to exceed 60 days until accomplishment of paragraph (c) or (d) of this AD.

(2) If any shear pin retainer or shear pin retainer attaching part is missing or loose, and if any shear pin has migrated, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(3) If any shear pin retainer or shear pin retainer attaching part is missing or loose, and if no shear pin has migrated, prior to further flight, repair in accordance with "Condition II" of McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1994.

(b) For airplanes listed in McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993, and not subject to the requirements of paragraph (a) of this AD, accomplish the following:

(1) For airplanes specified as Groups III and IV in that service bulletin: Within 15 days after the effective date of this AD or

prior to the accumulation of 60 days since the last visual inspection performed before the effective date of this AD in accordance McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993, or equivalent, whichever occurs later, perform a visual inspection of the thrust link of the center engine forward mount to verify installation of the shear pins, the shear pin retainers, and the shear pin retainer attaching parts in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993.

(i) If shear pins, shear pin retainers, and shear pin retainer attaching parts are installed, repeat the visual inspection thereafter at intervals not to exceed 60 days until accomplishment of paragraph (c) or (d) of this AD.

(ii) If any shear pin retainer or shear pin retainer attaching part is loose or missing, and if any shear pin has migrated, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(iii) If any shear pin retainer or shear pin retainer attaching part is loose or missing, and if no shear pin has migrated, prior to further flight, repair in accordance with "Condition II" of McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993.

(2) For airplanes specified as Groups V and VI in that service bulletin: Accomplish the procedures specified in either paragraph (b)(2)(i) or (b)(2)(ii) of this AD:

(i) Accomplish the visual inspection(s) and necessary follow-on procedures specified in paragraph (b)(1) of this AD, or

(ii) Prior to the accumulation of 18 months since the last verification for tightness of the shear pin retainer parts was accomplished, or within 6 months after the effective date of this AD, whichever occurs later, verify that the tightness of the shear pin retainer parts is within the limits specified in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993. Repeat the verification for tightness thereafter at intervals not to exceed 18 months until the accomplishment of paragraph (d) of this AD.

(c) For all airplanes, except those subject to paragraph (b)(2)(ii) of this AD: Within 18 months after the effective date of this AD, verify that the tightness of the shear pin retainer attaching parts is within the limits specified in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993. Repeat this verification thereafter at intervals not to exceed 18 months until accomplishment of paragraph (d) of this AD. Accomplishment of the verification for tightness required by this paragraph constitutes terminating action for the repetitive inspections for installation of parts required by paragraphs (a) and (b) of this AD.

(d) For all airplanes: Within 3 years after the effective date of this AD, replace the existing retainer and bolts with safety wire with a new retainer and new bolts with safety wire in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993. Accomplishment of this replacement constitutes terminating action for the repetitive actions required by paragraphs (a), (b) and (c) of this AD.

(e) Within 15 days after detecting any discrepancy during any inspection or verification action required by this AD, submit a report of the inspection results to the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; fax (310) 988–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(f) Special flight permits may be issued in accordance with sections 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.

(g) The actions shall be done in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A54–31, dated September 17, 1992; and McDonnell Douglas MD–11 Alert Service Bulletin A54–31, Revision 1, dated June 3, 1993. The incorporation by reference of the former service bulletin was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of November 2, 1992 (57 FR 47991, October 21, 1992). The incorporation by reference of the latter service bulletin was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, CA 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on August 19, 1994.

Issued in Renton, Washington, on July 11, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–17196 Filed 7–19–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 78G–0027]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Cellulose Triacetate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its food additive regulations to provide for the safe use of cellulose triacetate as an immobilizing agent for lactase for use in reducing the lactose content of milk. This action is in response to a petition filed by Vitenco, Inc.

DATES: Effective July 20, 1994; written objections and requests for a hearing by August 19, 1994.

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

FOR FURTHER INFORMATION CONTACT: F. Owen Fields, Center for Food Safety and Applied Nutrition (HFS–207), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9528.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 17, 1978 (43 FR 11266), FDA announced that a generally recognized as safe (GRAS) affirmation petition (GRASP 7G0088) had been filed by Vitenco, Inc., 594 Marett Rd., Lexington, MA 02173, requesting that lactase from *Kluyveromyces* (*Saccharomyces*) *lactis* entrapped in cellulose triacetate fibers be affirmed as GRAS for use in reducing the lactose content of milk. Subsequent to the filing of this petition, FDA affirmed, in response to a separate petition (GRASP 6G0077), that lactase enzyme from *K. lactis* is GRAS for this use (21 CFR 184.1388) (49 FR 47384 at 47387, December 4, 1984). Therefore, this document deals only with the use of cellulose triacetate as an immobilizing agent and with any potential contaminants that might be introduced into food from this use.

Although the information submitted in GRASP 7G0088 allows the agency to conclude that the use of cellulose triacetate as an immobilizing agent is safe, the petition did not establish that the critical data are generally available as required by 21 CFR 170.30(b). Consequently, the agency has evaluated

those portions of the petition that relate to cellulose triacetate as a food additive (rather than as a GRAS affirmation) petition and is issuing this decision in accordance with 21 CFR 170.38(c)(1).

I. Determination of Safety

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

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

II. Evaluation of Safety of the Petitioned Use of the Additive

The requested use of cellulose triacetate is as an immobilizing agent for the enzyme lactase in the production of reduced lactose milk. Cellulose triacetate containing physically entrapped lactase enzyme is added to milk that is to be treated; enzymatic digestion of lactose is allowed to occur; and the immobilizing agent and entrapped enzyme are then quantitatively removed from the treated milk. Data submitted by the petitioner demonstrate that when cellulose triacetate is used as an immobilizing agent, it does not affect the milk in which it is used in any way. The data in the petition also demonstrate that no detectable cellulose triacetate is present in the final product intended for human consumption. Based on these factors, FDA concludes that the ingredient itself is safe under these conditions of use.

FDA, in its evaluation of the safety of this additive, has reviewed not only the safety of the additive itself but also the safety of the chemical impurities that may be present in the additive from the manufacturing process. Residual amounts of reactants and manufacturing aids are commonly found as contaminants in chemical products, including food additives.

Methylene chloride is used as a solvent in the initial stages of manufacture of cellulose triacetate-immobilized lactase. Subsequent to the use of methylene chloride, the resultant fibers are completely dried to eliminate any remaining volatile contaminants (such as residual methylene chloride). Furthermore, before it is used in food, the product is washed several times to ensure removal of any such residual contaminants. Data submitted by the petitioner demonstrate that methylene chloride could not be detected in the final product immediately prior to its use in food at a detection limit of 0.5 parts per million (ppm).

Nevertheless, the agency has used risk assessment procedures to estimate the upper-bound risk presented by methylene chloride, a carcinogenic chemical, that may be present as an impurity in the additive. This risk evaluation has two aspects: (1) Assessment of the hypothetical worst-case exposure to the impurity from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of hypothetical worst-case human exposure.

FDA has estimated the hypothetical worst-case exposure to methylene chloride from the proposed use to be 6.0 nanograms per person per day (ng/p/day) (Ref. 1). This estimate is based on the assumption that methylene chloride is present in the additive at its detection limit, although it was not actually detected in any of the samples tested.

Using risk assessment procedures, FDA used data from the National Toxicology Program report (Ref. 2) of a bioassay on methylene chloride to calculate the potency, or unit risk, from exposure to this chemical (Ref. 3). The results of the bioassay on methylene chloride demonstrated that the material was carcinogenic for mice under the conditions of the study. The test material induced benign and malignant neoplasms in both the liver and lung of both sexes when administered by the inhalation route.

The agency also evaluated data from a second study in mice of the same strain as used in the inhalation study. In this study, methylene chloride was administered in the drinking water of the mice (Ref. 4). In this second study, there was no significant increase in the incidence of neoplasms at any site examined. However, assuming that methylene chloride would induce neoplasia at a dose just above the highest level tested in the drinking water study, a maximum potency can be estimated. This estimate is approximately the same as the potency calculated from the data of the inhalation study, providing confidence that using the inhalation study for upper bound risk assessment is not likely to underestimate any potential risk due to ingested methylene chloride (Ref. 3).

Based on a calculated hypothetical worst-case potential exposure of 6.0 ng/p/day, FDA estimates that the upper-bound limit of individual lifetime risk from the potential exposure to methylene chloride resulting from the use of cellulose triacetate as an immobilizing agent in the production of reduced lactose milk to be 4.4×10^{-11}, or approximately 4 in 100 billion (Ref. 5). Because there is no evidence to suggest, or any reason to believe, that methylene chloride will be present in the final product at the assumed level, the calculated estimate of the upper-bound limit of risk is likely to be substantially higher than any actual risk. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to methylene chloride that might result from the proposed use of cellulose triacetate as an immobilizing agent in the production of reduced lactose milk.

III. Conclusion on Safety

Having evaluated data in the petition and other relevant material, the agency concludes that the proposed use of the food additive is safe, and that the regulations in § 173.357 (21 CFR 173.357) should be amended as set forth below.

The agency has considered whether a specification is necessary to control the amount of methylene chloride in the food additive. The agency finds that a specification is not necessary for the following reasons: (1) The steps utilized in the manufacture of cellulose triacetate that are intended to remove contaminants such as methylene chloride (drying to completion and washing of the resin to remove volatile and nonvolatile components, respectively, either of which could interfere with the intended enzymatic reaction) are a necessary part of the manufacturing process. Therefore, the agency would not expect this impurity to become a component of food at other than extremely small levels; (2) when the additive is manufactured under these conditions, methylene chloride could not be demonstrated to be present in the additive at a level of detection of 0.5 ppm; and (3) the upper-bound limit of lifetime risk from exposure to this

impurity, even when calculated by using several worst-case assumptions, is extremely low, less than 4.4 in 100 billion.

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

IV. Environmental Impact

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

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before August 19, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify the particular provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

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

1. Memorandum from Gregory Cramer, Regulatory Food Chemistry Branch, to L. Lin, Direct Additives Branch, dated July 7, 1986.

2. "Technical Report on the Toxicology and Carcinogenesis Studies of Dichloromethane (Methylene Chloride) in F344/N Rats and B6C3F1 Mice," NTP Draft Report, NTP–TR–306, National Institute of Health Publication No. I 85–2562, 1985.

3. Memorandum from the Quantitative Risk Assessment Committee, dated November 15, 1985.

4. National Coffee Association, "24–Month Oncogenicity Study of Methylene Chloride in Mice—Final Report," Hazelton Laboratories America, Inc., Vienna, VA, November 30, 1983.

5. Memorandum from the Quantitative Risk Assessment Committee dated October 30, 1992.

List of Subjects in 21 CFR Part 173

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

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

2. Section 173.357 is amended in the table in paragraph (a)(2) by alphabetically adding a new entry under the headings "Substances" and "Limitations" to read as follows:

§ 173.357 Materials used as fixing agents in the immobilization of enzyme preparations.

* * * * *

(a) * * *

(2) * * *

Substances	Limitations
Cellulose triacetate	May be used as a fixing material in the immobilization of lactase for use in reducing the lactose content of milk.
* * * * * * *	

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Dated: July 13, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–17577 Filed 7–19–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Pennsylvania Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions, a proposed amendment to the Pennsylvania regulatory program (hereinafter referred to as the Pennsylvania program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment establishes a self-bonding program as an alternative to the current financial instrument options available to the permittee for posting a performance bond. The performance bond is required to be submitted and approved by the regulatory authority before the permit is issued or mining initiated.

EFFECTIVE DATE: July 20, 1994.

FOR FURTHER INFORMATION CONTACT: George J. Rieger, Acting Director, Harrisburg Field Office, Office of Surface Mining Reclamation and

Enforcement, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101. Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Pennsylvania Program

The Secretary of the Interior conditionally approved the Pennsylvania program on July 31, 1982. Background information on the Pennsylvania program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the July 30, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Submission of the Proposed Amendment

On May 11, 1993, the Pennsylvania Department of Environmental Resources (PADER) submitted to OSM the rules published in the *Pennsylvania Bulletin* 20 Pa. B. 2517 and 21 Pa. B. 5142 as an amendment (Administrative Record Number PA 823.00) to the approved regulatory program. The amendment provides a permit applicant the option to use a self-bond as a financial instrument instead of a surety or collateral bond for the performance bond required by PADER before a coal mine permit may be issued or coal mining activities conducted. The proposed amendment also allows an eligible permittee to replace an existing surety or collateral bond with a self-bond.

OSM announced receipt of the proposed amendment in the June 7, 1993, **Federal Register** (58 FR 31926), and, in the same document, opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on July 7, 1993.

By letter dated January 24, 1994 (Administrative Record No. PA 823.07), OSM provided comments to Pennsylvania on the proposed amendment. By letter dated February 17, 1994 (Administrative Record No. PA 823.09), Pennsylvania submitted responses to OSM's concerns.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 40 CFR 732.17, are the Director's findings concerning the proposed amendment. Any revisions not specifically addressed below are found to be no less stringent than SMCRA and no less effective than the Federal rules.

1. Section 86.142 Definitions

a. Adverse opinion. Pennsylvania proposes to add this definition to mean a statement by an independent certified public accountant (CPA) that the financial statements of the applicant do not present fairly the financial condition of the applicant in conformity with generally accepted accounting principles. Although there is no counterpart Federal definition, the Federal regulations at 30 CFR 800.23(b)(4)(i) require that the applicant submit a financial statement for the latest complete fiscal year accompanied by a report by an independent certified public accountant and containing the accountant's audit opinion or review opinion. If either opinion contains an adverse opinion, the self-bond application must be denied. The independent CPA's audit or review opinion is required on the accuracy of the information in the financial statement. An Environmental Protection Agency (EPA) proposed rule (52 FR 12786, April 17, 1987) in discussing a firm's financial tests states that an "adverse opinion, indicates that, in the opinion of the auditor, a firm's financial statement does not present the firm's financial position, results of operations, or changes in financial position in a manner that conforms to generally accepted accounting principles. . . ." Although the EPA discussion is not controlling on OSM, it is being used for guidance. While there is no Federal definition, the Director finds the proposed definition to be not inconsistent with the requirements of SMCRA and the Federal regulations because the application of the definition will aid Pennsylvania in applying a uniform standard in determining whether or not a self-bond application should be rejected.

b. Applicant. Pennsylvania proposes to add a definition for "applicant" to mean a permittee or an applicant for a permit who is applying to self-bond under this subchapter. There is no corresponding Federal definition for "applicant" under the self-bonding rules. However, at 30 CFR 701.5 the Federal definition of "applicant" means any person seeking a permit, permit revision, renewal, and transfer, assignment, or sale of permit rights from a regulatory authority to conduct surface coal mining and reclamation operations or, where required, seeking approval for coal exploration. Under section 86.1, the State's general definition of applicant means any person who seeks to obtain a permit from the Department to conduct coal mining activities under this chapter. Pennsylvania is proposing an additional definition of "applicant" at section 86.142 to include an existing permittee or applicant for a permit who is applying to utilize a self-bond. At first blush it appears that the two definitions conflict with each other. Upon further examination, the definition of "applicant" found at section 86.142 will not supersede the general definition of applicant found at section 86.1 because the entity defined under section 86.142 already has to be a permittee or in the process of becoming one. By its own terms, the section 86.142 definition only concerns the self-bonding regulations. Therefore, the definition of "applicant" as it is applied in the self-bonding regulations is consistent with the self-bonding regulations at 30 CFR 800.23.

c. Continuous business operations. Pennsylvania proposes to add this definition to mean operations in which the applicant has been in business and operating for at least 10 years prior to the filing of its self-bonding application unless the applicant's existence results from a reorganization, consolidation or merger involving a company with this longevity. If the applicant is a majority-owned subsidiary of a corporation, it may rely upon its parent corporation's business history, which has a 10-year business history.

The Pennsylvania definition allows applicants that were once one type of entity but that are now a different type of entity, either as a result of a merger, consolidation or a reorganization, to become self-bonded so long as one of the entities was in existence for 10 years. The Federal regulation at 30 CFR 800.23(b)(2) requires a self-bonding applicant to be in continuous operation for a period of not less than 5 years immediately preceding the self-bond application. Events beyond the control of the applicant and not affecting its continuance as an entity may be excluded. The purpose behind the Federal rule was to "show the business entity's intent and ability to remain in operation and undertake the subsequent mining and reclamation." 48 FR 36418, 36420 (August 10, 1993). Thus, it appears that Pennsylvania's use of its definition may not fulfill the purpose of the Federal rule if the new entity was not in existence for at least 5 years. However, this definition if taken in

concert with sections 86.159(b)(5), (c)(4), and (j), which are discussed below, insures as much as the 5-year continuous business operation requirement does, that the applicant will be in existence to complete the mining and the subsequent reclamation.

Section 86.159(b)(5), which requires that the applicant must have honored in the last 3 years all of its self-bonding obligations and section 86.159(b)(6), which prohibits the acceptance of an applicant whose surety bonds were canceled for nonpayment of premiums, fraud or failure to comply with the terms of the surety bond, are both indicators of a history for compliance with bonding obligations and as such are good indicators of a continuance in the future of complying with such obligations. Section 86.159(c)(4), which requires an applicant to certify that it will maintain its corporate status for at least 5 years, is more than just a statement because this certification is subject to criminal penalties for false swearing. Section 86.159(j), which requires the applicant, on a sliding scale of liability and net worth, to submit a security interest to Pennsylvania is an expression of confidence of the company that it expects to be in existence for the term of the permit and to have the security interest which was proffered to the State, released. Therefore, based on the above discussion, the Director finds that the definition of "continuous business operation" in conjunction with the above-noted sections is no less effective than 30 CFR 800.23(b)(2).

d. Current asset. Pennsylvania is proposing a new definition to mean cash or other assets which are reasonably expected to be converted to cash or sold or consumed within 1 year or within the normal operating cycle of the business. The Director finds that the proposed definition is substantively identical to and no less effective than the Federal definition of "current asset" at 30 CFR 800.23(a).

e. Current liability. The State proposes this definition to mean an obligation which is reasonably expected to be paid or liquidated within 1 year or within the normal operating cycle of the business. The Director finds that the proposed definition is substantively identical to the Federal definition of "current liabilities" at 30 CFR 800.23(a).

f. Disclaimer of opinion. The State proposes this definition to mean a statement by an independent certified public accountant (CPA) that he does not express an opinion on the financial statements of the applicant. Pursuant to section 86.159(g), an application will be rejected if a disclaimer of opinion is expressed by the CPA. There is no counterpart Federal definition for this term. However, the EPA discussed this term when it was proposing financial responsibility for owners of underground petroleum storage tanks. While EPA's discussions are not controlling on OSM's decision, it is helpful. EPA stated that a disclaimer of opinion meant that "the auditor does not express an opinion on the firm's financial statement. Auditors issue disclaimers of opinion of their examinations of a firm's financial statements have been limited in some way or if there are uncertainties regarding the firm's financial statements." 52 FR 12786 (April 17, 1987). The Director concludes that application of this definition will assist Pennsylvania in determining whether or not the applicant is a suitable candidate for self-bonding. Therefore, the Director finds this definition not inconsistent with the requirements of SMCRA and the Federal regulations.

g. Financial statement. The State is proposing a new definition to mean a formal report of the applicant's status of accounts at a particular time, prepared to show the operating results and financial condition of the applicant's business. The term includes, but is not limited to, the balance sheet, income statement, and statement of change in financial position prepared in accordance with generally accepted accounting principles. There is no counterpart Federal definition for this term. However, the State's definition follows basic accounting principles. Therefore, the Director finds the proposed definition to be not inconsistent with the requirements of SMCRA and the Federal regulations.

h. Fixed asset. The State proposes that this term includes plants and equipment, but does not include land or coal in place. Since this proposed rule is substantively identical to the Federal definition of "fixed asset," the Director finds that it is no less effective than the Federal rule.

i. Independent certified public accountant. Pennsylvania proposes this definition to mean a certified public accountant not dependent on or subject to the direct control of the applicant. There is no counterpart Federal definition.

However, the Federal regulations at 30 CFR 800.23(b)(4) require an independent certified public accountant's (CPA) audit or review opinion on the accuracy of the information in the financial statement. By letter of February 17, 1994 (Administrative Record No. 823.09), Pennsylvania stated that the purpose of the definition was to address those circumstances where the CPA was a sole practitioner whose primary client was the applicant. The Director believes the application of this definition to be an additional safeguard to Pennsylvania's self-bonding program. Therefore, the Director finds the proposed definition to be not inconsistent with the requirements of SMCRA and the Federal regulations.

j. Liability. Pennsylvania proposes to add this definition to mean an obligation to transfer assets or provide services to other entities in the future as a result of past transactions. The Director finds that the proposed definition is substantively identical to the Federal definition of "liability" at 30 CFR 800.23(a).

k. Net worth. Pennsylvania proposes to modify its definition to mean total assets minus total liabilities and is equivalent to owner's equity. The Director finds that the proposed definition is identical to the Federal definition of "net worth" at 30 CFR 800.23(a).

l. Parent corporation. Pennsylvania proposes to add this definition to mean the corporation which directly owns or controls the corporation which is the applicant. The Director finds that the proposed definition is substantively identical to the Federal definition of "parent corporation" at 30 CFR 800.23(a).

m. Self-bond. Pennsylvania proposes to revise its definition of "self-bond" to mean an indemnity agreement in a sum certain payable to the Department, executed by the permittee and by each individual and business organization capable of influencing or controlling the investment or financial practices of the permittee by virtue of his authority as an officer or ownership of all or a significant part of the permittee, and supported by agreements granting the Department a security interest in real or personal property pledged to secure performance by the permittee. The proposed State and Federal definitions of "self-bond" are similar with the additional requirements in the State's rule for indemnification by the controllers and significant owners of the self-bonded permittee, and for the pledging of real or personal property collateral to secure the self-bond. In addition, to those reasons discussed at Finding 1.c., the State's requirement for collateralized self-bonds serves to provide security for the self-bonding obligation and elevates the State's position to that of a secured creditor if there is a bankruptcy of the self-bonded permittee. Therefore, the Director finds that the State's revised definition of

"self-bond" is no less effective than the corresponding Federal requirements at 30 CFR 800.5(c).

n. Tangible net worth. Pennsylvania proposes to add this definition to mean net worth minus intangibles such as goodwill and rights to patents or royalties. The Director finds that the proposed definition is identical to and no less effective than the Federal definition of "tangible net worth" at 30 CFR 800.23(a).

o. Liquidity ratio. Pennsylvania proposes to delete this definition. Since there is no counterpart Federal definition for "liquidity ratio," the Director finds that the deletion of this definition does not render the Pennsylvania program less effective than the Federal requirements at 30 CFR 800.23

p. Quick assets. Pennsylvania proposes to delete this definition. There is no counterpart Federal definition for "quick assets." Therefore, the Director finds that the deletion of this definition does not render the Pennsylvania program less effective than the Federal requirements at 30 CFR 800.23.

q. Retained earnings. Pennsylvania proposes to delete this definition. Since there is no counterpart Federal definition for "retained earnings," the Director finds that the deletion of this definition does not render the Pennsylvania program less effective than the Federal requirements at 30 CFR 800.23.

2. Section 86.159

Pennsylvania is proposing to revise section 86.159 to establish the procedures and criteria to be used by the regulatory authority in determining whether a coal mine permittee is eligible to use self-bonding in lieu of a surety or collateral bond.

The Federal self-bonding rules at 30 CFR 800.23 establish minimum standards of financial eligibility to self-bond for States that wish to allow self-bonding. These rules also allow a regulatory authority to accept the guarantee of a qualified parent corporation for its subsidiaries. "States choosing to allow self-bonding may adopt more detailed rules that reflect the financial structures of the local industry, if necessary to provide the regulatory authority additional protection from risk of forfeiture." 48 FR 36418, 36419 (August 10, 1983).

a. Section 86.159(a). Pennsylvania proposes in paragraph (a) that the regulatory authority may accept a self-bond to cover all or part of the permittee's liabilities arising from coal mining activities. The State also proposes that an applicant which is a subsidiary may satisfy the requirements for eligibility to self-bond by relying on its parent corporation. The corresponding Federal requirements are similar with the exception of conditions added by the State to address mining activities that may not be self-bonded such as long-term facilities, acid mine drainage, and restoration of prime farmland. The Federal self-bonding rules do not limit self-bond coverage to certain mining activities. Pennsylvania stated in its May 12, 1990, *Pennsylvania Bulletin* that it was difficult to determine an applicant's financial eligibility to self-bond certain types of liabilities. The acceptance of a self-bond by a state regulatory authority is discretionary and the Director finds it is within the State's discretion to exclude certain liabilities from coverage by a self-bond. The Federal regulation at 30 CFR 773.15 prohibits a regulatory authority from issuing a permit if the permit applicant is, among other things, in violation of SMCRA or state and federal laws pertaining to air or water environmental protection. Pennsylvania's requirement that the applicant must have a positive compliance history with federal and state laws is not inconsistent with the Federal regulations. There is also no Federal counterpart that applicants must pledge collateral (see Finding 1.c.) and provide required security agreements in order for the State to allow an applicant to self-bond. However, the Director finds that these requirements are not inconsistent with the self-bonding regulations at 30 CFR 800.23.

b. Section 86.159 (b) (5), (6), and (c)(4). These sections, which have no Federal counterparts, are discussed at the Director's Finding 1.c.

c. Sections 86.159 (b) (1), (2), (c) (1), (2), (3), (5), and (6) and (f). Pennsylvania is proposing that, to be acceptable, the applicant or its parent corporation must (1) be authorized to do business in Pennsylvania, (2) designate a suitable agent to receive service of process, (3) have a history of continuous business operation, (4) meet certain financial criteria, and (5) submit financial statements of its most recent three fiscal years and any completed quarters in the current fiscal year.

The State's proposed amendment at subsection (b)(1) establishes the requirement that the applicant must be incorporated in or authorized to do business in Pennsylvania. There is no counterpart Federal regulation. However, the Director finds that the proposed rule is not inconsistent with the requirements of SMCRA and no less effective than the Federal regulations.

The State is proposing at subsection (b)(2) that the applicant designate suitable agents in Pennsylvania to receive service of suits, claims, demands and other services of process. Since this provision is substantively identical to paragraph (b)(1) of 30 CFR 800.23 of the corresponding Federal rule, the Director finds that it is no less effective than the Federal rule.

The State proposes at subsection (b)(3) that the applicant's history of continuous business operation is met if the applicant's existence is the result of a reorganization, consolidation or merger involving a company with a history of continuous business operation or the applicant is a majority-owned subsidiary of a corporation with a history of continuous business operation. The Federal regulations at 30 CFR 800.23(b) allow an applicant to qualify for a self-bond even if it did not meet the 5 years of continuous business operation, so long as its parent corporation did meet the 5-year requirement. Pennsylvania's approach, of allowing an applicant to rely on its parent's time of operation, is consistent with 30 CFR 800.23(b). For a complete discussion of the term "continuous business operation," see the Director's Finding at 1.c.

Pennsylvania's proposed subsection (c) and the Federal regulations for financial statements are similar; however, the State's proposed rule at subsection (c) requires 3 years of audited financial statements and the Federal regulations require 1 year. Both require the submittal of unaudited quarters for the current year. Both require that the audited financial statements must be accompanied by a report prepared by an independent certified public accountant (CPA) that contains the accountant's audit or review opinion of the financial statements with no adverse opinion. In addition, the State's proposed rule requires that forfeiture of the aggregate of Pennsylvania self-bonds would not affect its ability to stay in business or endanger cash flow needed for its current obligations. There are no counterpart Federal regulations for these proposed requirements; however, they have the effect of strengthening the proposed self-bonding program and are no less effective than the Federal regulations. The Director, therefore, finds that the proposed rule at subsection (c) is no less effective than the counterpart Federal regulations at 30 CFR 800.23(b)(4).

Pennsylvania is proposing at subsection (f) that the applicant for self-bonding meet one of the three following financial criteria:

(1) A current rating for its most recent bond issuance of either: AAA, AA or A as issued by Standard and Poor's Corporation; or Aaa, Aa or A as issued by Moody's Investor Services;

(2) A tangible net worth of at least 10 million, a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater; or

(3) Fixed assets in the United States of at least 20 million and a ratio of total liabilities to net worth of 2.5 times or less and a ratio of current assets to current liabilities of 1.2 times or greater.

The State's proposed rules are essentially the same as the corresponding Federal regulations at 30 CFR 800.23(b)(3) (i), (ii), and (iii). In addition to meeting one of the three basic tests, the State's proposed rules also require the applicant to have a tangible net worth that is six times its total self-bonds in Pennsylvania and that amounts to 90 percent of its total assets. This requirement is similar to a financial assurance requirement of the EPA's regulations for hazardous waste facilities (47 FR 15032, April 7, 1982). In it preamble, EPA stated that "This requirement was included to help ensure accessibility to funds in the event of bankruptcy or other default." There is no counterpart Federal requirement for these additional tangible net worth components of the basic financial tests in OSM's regulations at 30 CFR 800.23(b). However, this rule implements the Pennsylvania statute requiring the same. The rules add the assurance of the financial stability of the applicant. Therefore, the State's proposed rules at subsection (f) are no less effective than the Federal regulations at 30 CFR 800.23(b)(3) (i), (ii), and (iii).

d. Section 86.159(b)(4). Pennsylvania is proposing at subsection (b)(4) that, in the past 36 months, the applicant has not defaulted on any payments of dividend or sinking fund installments, lease rentals and reclamation fees. There are no counterpart Federal regulations. However, the Director finds that the proposed rule is not inconsistent with the requirements of SMCRA and no less effective than the Federal regulations.

e. Section 86.159(d). The Federal regulations at 30 CFR 800.23(f) allow the regulatory authority to request update information from the applicant within 90 days after the close of each fiscal year following the issuance of the self-bond or corporate guarantee. This was intended to give the regulatory authority flexibility to require additional information if it believed it was necessary. Pennsylvania has submitted a similar requirement at subsection (d) requesting some of the financial information specified in the Federal rule. Since this is discretionary on the part of the regulatory authority, the Director finds that the proposed rule is no less effective than the Federal regulations at 30 CFR 800.23(f).

f. Section 86.159(e). Pennsylvania is proposing at subsection (e) that if the applicant or the CPA submits false information the application will be disallowed and render the applicant ineligible to self-bond. In addition, this section subjects the applicant and the CPA to criminal penalties for false swearing. There is no direct Federal counterpart. However, the Federal rules envision that an applicant will answer truthfully. Therefore, the Director finds that the proposed rule is not inconsistent with the requirements of SMCRA and the Federal regulations.

g. Section 86.159(g). The State's proposed rule at subsection (g) is similar to the Federal regulations at 30 CFR 800.23(b)(4)(i) which require submittal of an accountant's audit opinion or review opinion on the financial statements with no adverse opinion. However, the State has expanded its rule at this section to disqualify an applicant on the basis of both an adverse opinion and a disclaimer opinion by an accountant. In addition, an applicant may be determined to be ineligible to self-bond on the basis of other qualifications in the opinion expressed by the CPA. The Director finds that the proposed rule is no less effective than the counterpart Federal regulations at 30 CFR 800.23(b)(4)(i).

h. Section 86.159(h). Pennsylvania is proposing at subsection (h) that the total value of outstanding plus proposed self-bonds for coal mining activities may not exceed 25 percent of the applicant's tangible net worth in the United States. This is similar to the counterpart Federal rule at 30 CFR 800.23(d). However, the Federal rule also requires for corporate guarantees that the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed self-bonds for coal mining activities shall not exceed 25 percent of the guarantor's net worth in the United States. Under the proposed Pennsylvania self-bonding rules, the parent corporation is always a party to the self-bond and is established as a co-indemnitor under the self-bond. In applying the proposed Pennsylvania rule, an applicant may rely on its parent's qualifications to be accepted under the self-bonding rules. If this is so, the parent is thus subject to the 25 percent requirements. The Director finds the proposed rule is no less effective than the counterpart Federal regulations at 30 CFR 800.23(d).

i. Section 86.159(i). Pennsylvania is proposing at subsection (i) that the period of liability under a self-bond is determined in accordance with the existing bonding regulations. Similarly, the release of a self-bond is to be governed by the existing regulations. Pennsylvania also proposes that the liability under a self-bond is terminated upon the Department's approval of alternative bonding submitted by the applicant. The Director finds the cross-references to other rules is consistent with the Federal bonding regulations at 30 CFR 800.13 and 800.40 and its replacement provision is similar to and no less effective than the counterpart Federal provision at 30 CFR 800.30.

j. Section 86.159(j). Pennsylvania's proposed rule at subsection (j) requires that part of all of the self-bond amount be collateralized by the permittee's pledge of security interests in real or personal property. There are no counterpart Federal requirements of this kind in the Federal self-bonding program. These regulations implement Pennsylvania's statute requiring the same. Unlike collateral bonds, these security interests for self-bonds are not always the full amount of the bond. The amount of collateral required by the State's proposed rules is determined on a sliding scale of liability and net worth. This collateral is in addition to all the self-bonding rules. Also, as discussed at the Director's Finding 1.c., the requirement that the applicant submit a security interest to Pennsylvania is an expression of confidence of the company that it expects to be in existence for the term of the permit and to have the security interest which was proffered to the State released. Therefore, the Director finds that the State's proposal to require full or partial collateral is no less effective than the Federal regulations.

k. Section 86.159(k) (1), (2) and (3). Proposed subsections (k)(1) through (k)(3) provide the Department with the authority to require appropriate forfeiture terms and conditions within the indemnity agreement that are in addition to the general forfeiture requirements of Pennsylvania's bonding program.

Pennsylvania proposes a subsection (k)(1) that the self-bond will be forfeited if 90 days after the Department is informed or determines that the applicant is no longer eligible to self-bond and within the 90-day period the applicant fails to submit to the Department acceptable security as provided for in subchapter F to cover its self-bonded liability. The Federal rules

at 30 CFR 800.23(g) contain a similar requirement with the statement that if the permittee fails to post an adequate substitute bond the provisions of 30 CFR 800.16(e) shall apply. Under 30 CFR 800.16(e) the operator would have to cease coal extraction and immediately begin reclamation operations. At section 86.151(h) one of the requirements is that the applicant complete the reclamation plan. At section 86.159(k)(2) liability under the self-bond is conditioned on the applicant complying with the various environmental statutes and regulations including Pennsylvania's Surface Mining Conservation and Reclamation Act. This obligation also falls upon the parent who under section 86.159(l)(2) is co-indemnitor under the self-bond. This along with the requirement that the self-bond becomes due and payable upon default is consistent with the Federal regulations at 30 CFR 800.23(e)(4), which require the applicant, parent or non-parent corporate guarantor to complete reclamation or to pay costs of reclamation. Subsection (k)(2) also requires the applicant or its parent to notify Pennsylvania if there is a material adverse change in its financial condition. The Federal regulations at 30 CFR 800.23(g) also require a similar notification concerning the change in financial condition. Therefore, the Director finds that the proposed amendment is no less effective than 30 CFR 800.23 (e)(4) and (g).

At subsection (k)(3) Pennsylvania specifies conditions that relate to performance under the mining permit and Pennsylvania mining statutes and regulations and certain commercial lending based criteria relative to the value of the underlying pledged assets. There are no counterpart Federal regulations. However, the Director finds that the proposed rules are not inconsistent with SMCRA and no less effective than the Federal regulations.

l. Section 86.159(l). Pennsylvania is proposing that the applicant be a party to the self-bond, which is consistent with the definition of self-bond at 30 CFR 800.5. In addition, at subsection (l)(2) Pennsylvania is requiring that all parent corporations be a party to the self-bond whenever its subsidiary is an applicant for a self-bond. This is different than the Federal rules at 30 CFR 800.23(e) which only require a parent to be a party to the bond when it is a parent corporation guarantor. Nonetheless, the Director finds this requirement will reduce the risk of a bond forfeiture and therefore finds it no less effective than 30 CFR 800.23(e)(1).

The Federal regulations at 30 CFR 800.23(e)(2) provide signature requirements for corporate indemnity agreements as well as authorizations and affidavits to assure a corporation is bound to the terms of the agreement. The Federal regulations require that two authorized corporate officers for the applicant as well as the parent corporation execute the agreements; whereas the State's rule does not require two signatures of all the indemnitors. In the preamble to the final self-bonding rules (48 FR 36418, August 10, 1983), OSM explained in response to a comment that "OSM does not consider it a burden on the corporation to obtain the signatures of two corporate officers on the indemnity agreement. For such an infrequent and important action, the approval of two corporate officers will better assure that the corporation and OSM are protected from possible unauthorized actions of an individual. This requirement is retained." The Federal regulations require an affidavit from the corporation(s) certifying that entering into the indemnity agreement is valid under all applicable Federal and State laws. Pennsylvania lacks this requirement for all of its indemnitors. In addition, this section of the Federal regulations also requires that the signatories provide the regulatory authority with documents that evidence their authority to bind the corporation (e.g. board of directors resolutions) and authorization for the parent corporation to enter into the indemnity agreement. Again, Pennsylvania does not require this. Even though the State requires the applicant and the parent to be co-indemnitors under the self-bond, the Director finds that the proposed rule is less effective than the Federal rule because it lacks all the requirements discussed above. Accordingly, the Director is requiring that Pennsylvania amend its program to be no less effective than 30 CFR 800.23(e)(2).

Finally, Pennsylvania at subsection 86.159(1)(3) requires each person with a beneficial interest in a partnership, joint venture or syndicate to be a party and co-indemnitor under the self-bond. This is substantively identical to the Federal requirement at 30 CFR 800.23(e)(3) and is, therefore, no less effective than the Federal regulation.

m. Section 86.159(m). Pennsylvania proposes at subsection (m) that each indemnitor under the self-bond shall be jointly and severally liable. As the proposed amendment is substantively identical to language found at 30 CFR 800.23(e)(1), the Director finds it no less effective than the Federal rule.

n. Section 86.159(n). Pennsylvania is proposing at subsection (n) the types of security interests that may be used to secure the self-bond. In addition, this section sets out the standard the Department will use in determining the acceptability of the security interest being pledged. There are no counterpart Federal regulations. However, the Director finds the proposed rule is not inconsistent with the requirements of SMCRA and no less effective than the Federal regulations.

o. Section 86.159(o). Pennsylvania is proposing at subsection (o) that during the period of the self-bond and until released in writing by the Department, the parties to the self-bond who are indemnitors may not take action which would adversely affect the Commonwealth's rights, title or interest in the security interests pledged to secure the self-bond. This proposed rule provides for default if the applicant takes action that would reduce the value of the pledged assets. There are no counterpart Federal regulations. However, this provision provides protection for Pennsylvania's security interests, hence the Director finds the proposed rule is not inconsistent with the requirements of SMCRA and no less effective than the Federal regulations.

p. Section 86.159(p). Pennsylvania proposes at section (p) that in addition to the indemnification and security required in subsection (j), the Department may require a third-party guarantee of an applicant's self-bond. A third-party guarantor shall guarantee and become surety for the performance of the parties who are indemnitors under the self-bond required by subsection (j). The guarantor must submit a perfected security interest that is acceptable to Pennsylvania. It should be noted that these third-party guarantors under the Pennsylvania program are not the same as a non-parent corporate guarantor under 30 CFR 800.23(c)(2), since the applicant and/or its parent must still meet the financial qualification regardless of any third-party guarantors. There are no counterpart Federal regulations. However, the Director finds the proposed rule is not inconsistent with the requirements of SMCRA and no less effective than the Federal regulations.

q. Section 86.159(q). Pennsylvania is proposing at subsection (q) that when the Department determines that an event of default or forfeiture under the self-bond has occurred, the determination shall also constitute a determination of the applicant's inability to self-bond. There are no counterpart Federal self-bonding regulations. However, the Director finds that the provisions of the proposed rule are not inconsistent with the bonding requirements under 30 CFR Part 800.

r. Section 86.159(r). Pennsylvania proposes at subsection (r) that, at the request of the applicant, the Department will maintain the confidentiality of the applicant's financial information and the terms and the conditions of the security interests unless it is allowed to be disclosed under other laws. There is no comparable Federal counterpart. These regulations implement Pennsylvania's statute at 52 P.S. §§ 1396.4 and 1406.6, which prohibit such disclosure. Therefore, the Director finds that the rule is not inconsistent with the requirements of SMCRA and the Federal regulations.

s. Section 86.159(s). Pennsylvania is proposing at subsection (s) that applications for a self-bond and each annual update of a self-bond shall be accompanied by a nonrefundable fee in the amount of $900. There are no counterpart Federal regulations. However, in a comparable Federal rule at 30 CFR 777.17, permit fees are allowed so long as they do not exceed the costs to the regulatory authority. Pursuant to the October 10, 1987, *Pennsylvania Bulletin*, Pennsylvania stated that the $900 fee was needed to cover the costs of reviewing and verifying the application and to obtain the services of an outside consultant to analyze the applicant's eligibility or continuing eligibility. Therefore, the Director finds that the fee is reimbursement of the costs to Pennsylvania and finds the proposed rule is not inconsistent with SMCRA and the Federal regulations.

t. Section 86.159(t). Proposed subsection (t) establishes the regulatory authority of the Department to seek remedies against a permittee or applicant apart from those specifically set forth in the proposed self-bonding rules. There are no counterpart Federal regulations. However, it is not inconsistent with SMCRA and the Federal regulations because it clarifies that the remedies under SMCRA are not the only ones available to Pennsylvania.

u. Section 86.166(b). Pennsylvania is revising this paragraph to correct the rule reference concerning release of bonds from "Part 4 of this subchapter" to "86.170–86.173 (relating to release of bonds)." The Director finds that this revision is nonsubstantive in nature and will not render the Pennsylvania program inconsistent with the requirements of SMCRA and the Federal regulations.

v. Section 86.166(c). Pennsylvania prohibited a permittee from replacing its existing bond with a self-bond. Pennsylvania is now proposing to delete this prohibition. Since the corresponding Federal rule at 30 CFR 800.30(a) allows permittees to replace existing bonds with other bonds that provide equivalent coverage, the Director finds that the revised State rule is no less effective than the Federal rule.

IV. Summary and Disposition of Comments

Public Comments

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

Agency Comments

Pursuant to 30 CFR 732.17(h)(ii)(i), the Director solicited comments from various Federal and State agencies with an actual or potential interest in the Pennsylvania program. The Department of Labor, Mine Safety and Health Administration (MSHA), commented that the proposed amendment would have no effect on MSHA operations or regulations. The Department of Agriculture, Soil Conservation Service, stated that the proposed changes would not have any significant effects on the environmental integrity of the regulations. The Department of the Interior, Bureau of Mines, and the U.S. Army Corps of Engineers responded that they had no comments.

Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.)* or the Clean Air Act (42 U.S.C. 7401 *et seq.)*. None of the revisions that Pennsylvania proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. PA 823.01). The EPA responded that it concurred with the proposed amendment.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Pennsylvania on May 11, 1993, and clarified on February 17, 1994. As discussed at Finding 2.1., the Director finds that, for the most part, the Pennsylvania program does not have a counterpart to the Federal rules at 30 CFR 800.23(e)(2). The Director is, therefore, requiring Pennsylvania to further amend its program to correct the identified deficiencies.

In accordance with 30 CFR 732.17(f)(1), the Director is also taking this opportunity to clarify in the required amendment section at 30 CFR 938.16 that, within 60 days of the publication of this final rule, Pennsylvania must either submit a proposed written amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Pennsylvania's established administrative or legislative procedures.

The Federal regulations at 30 CFR Part 938 codifying decisions concerning the Pennsylvania program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

For administrative reasons, the Director is reiterating the removal of required amendments (i), (j), and (k) as set forth in 57 FR 48733 (October 28, 1992).

Effect of the Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Pennsylvania program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Pennsylvania of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

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

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 13, 1994.

Ronald C. Recker,

Acting Assistant Director, Eastern Support Center.

For the reasons set forth in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 938—PENNSYLVANIA

1. The authority citation for Part 938 continues to read as follows:

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

2. Section 938.15 is amended by adding paragraph (bb) to read as follows:

§ 938.15 Approval of regulatory program amendments.

* * * * *

(bb) The following amendment to the Pennsylvania regulatory program, as submitted to OSM on May 11, 1993, and clarified by letter dated February 17, 1994, is approved, except as noted herein, effective July 20, 1994. Revisions to Title 25, Pennsylvania Code Sections 86.142, 86.159, and 86.166 concerning self-bonding provisions, except to the extent that Section 86.159(l)(2) does not contain all the requirements for the execution of indemnity agreements.

3. In § 938.16, paragraphs (i), (j), and (k) are removed and reserved and a new paragraph (nnn) is added to read as follows:

§ 938.16 Required regulatory program amendments.

* * * * *

(nnn) By September 19, 1994, Pennsylvania shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise section 86.159(l)(2) to require two officer signatures for each corporate indemnitor, an affidavit from the corporation(s) certifying that entering into the indemnity agreement is valid under all applicable Federal and State laws, and documents that evidence the authority of the signatories to bind the corporation and an authorization by the parent corporation to enter into the indemnity agreement.

[FR Doc. 94–17633 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–5007–9]

Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Clean Air Act, as amended in 1990 (CAA or the Act), mandated that the Environmental Protection Agency (EPA or the Agency) promulgate regulations requiring that gasoline sold in certain areas be reformulated to reduce vehicle emissions of toxic and ozone-forming compounds and that gasoline sold outside these areas would not be more polluting than it was in 1990. On February 16, 1994, EPA published the final rule establishing performance standards and compliance provisions for conventional and reformulated gasoline (RFG). This direct final rule (DFRM) makes minor corrections, clarifications, and revisions to various provisions in the final reformulated gasoline rule.

This action addresses the following issues: Work-In-Progress (WIP) baseline adjustments; JP–4 baseline adjustments; summer/winter season definition for baseline determination; complex model valid range extension for conventional gasoline baselines; valid range limits for aromatics, oxygen, benzene, and RVP; clarifications to the VOC and NO_X extrapolations in the complex model; clarifications of seasonal condition inconsistencies; and enforcement corrections/clarifications associated with the reformulated gasoline and anti-dumping regulations, as well as several technical clarifications and typographical corrections.

EFFECTIVE DATES: This rule will be effective September 19, 1994 unless notice is received by August 19, 1994 that adverse or critical comments will be submitted or that an opportunity to submit such comments at a public hearing is requested. If such comments or a request for a public hearing are received by the Agency, then EPA will publish a subsequent Federal Register notice withdrawing from this action only those items which are specifically listed in those comments or in the request for a public hearing. See **SUPPLEMENTARY INFORMATION** for further discussion on submission of public comment.

ADDRESSES: Interested parties may submit written comments (in duplicate, if possible) to Public Docket No. A–94–30, at Air Docket Section, U.S. Environmental Protection Agency, Waterside Mall, Room M–1500, 401 M Street SW., Washington, DC 20460. The Agency requests that commenters also send a copy of any comments to David Korotney at the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

Materials relevant to the reformulated gasoline final rule and this direct final rule are contained in Public Dockets A–91–02 and A–92–12, located at room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8 a.m. until 12 noon and from 1:30 p.m. until 3 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT:

David Korotney, U.S. EPA (RDSD–12), Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668–4507.

To Request Copies of this Action Contact: Delores Frank, U.S. EPA (RDSD–12), Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668–4295.

SUPPLEMENTARY INFORMATION:

Public Comments

For parties that submit adverse or critical comments, notify EPA of intentions to submit adverse comments, or request a public hearing, the Agency requests that commenters identify each of the items at issue by the specific preamble section numbers that discuss those items. For instance, adverse comments on the change to the oxygen valid range limits should include a reference to Section (Item Number) II.A.1 of the preamble. Adverse comments on any of the insubstantial errors in Section I of the preamble should include a reference to the identification code associated with each change in that section. For instance, adverse comments on the paragraph reference change in § 80.41(h)(2)(iii) should include a reference to Item Number I–A. The EPA will withdraw from this direct final action only those specific provision(s) so identified. All other provisions included in today's notice will become effective on September 19, 1994.

EPA believes that the use of a direct final rule is appropriate because the changes made are generally minor in nature and all are expected to be non-controversial. The DFRM will allow the Agency to finalize such changes in a timely manner. For instance, many of the changes contained herein clarify issues relevant to the development and auditing of individual baselines which, in general, must be submitted by either June 1, 1994 or September 1, 1994. Likewise, the reformulated gasoline program will commence on December 1, 1994. The clarifications and changes contained herein will promote successful implementation of this program.

A copy of this action is available on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS). The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PH# 919–541–5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, or 9600 baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

(M) OMS
(K) Rulemaking and Reporting
(3) Fuels
(9) Reformulated gasoline

A list of ZIP files will be shown, all of which are related to the reformulated gasoline rulemaking process. Today's action will be in the form of a ZIP file and can be identified by the following title: RFG–DFRM.ZIP. To download this file, type the following instructions and transfer according to the appropriate software on your computer:

<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp Selection or <CR> to exit: D *filename.zip*

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

The remainder of this preamble is organized into the following sections:

I. Insubstantial Errors
II. Valid Range Limits
III. Complex Model
IV. Enforcement Corrections and Clarifications
V. Summer/Winter Season
VI. Baseline Determination Adjustments
VII. Public Participation and Effective Date
VIII. Statutory Authority
IX. Administrative Designation
X. Regulatory Flexibility Analysis

I. Insubstantial Errors

The final rulemaking for the regulation of reformulated and conventional gasoline contained a number of errors, ambiguities, and misrepresentations of Agency intent which are being addressed by this direct final rule. Of these errors, many are minor in both form and effect. The minor errors do not require detailed discussions since they all have at most a negligible effect on compliance with the regulations, and require only simple corrections. Such minor errors took the form of typographical errors, grammatical errors, inadvertent omissions, and inadvertent insertions. The table below lists all the insubstantial errors that are being corrected in this direct final rule. Other errors are more substantial. The more substantial errors and the associated corrections have been discussed on an item-by-item basis in the following sections.

Identification code	Regulation reference	Correction
A	80.41(h)(2)(iii)	Correct the paragraph reference from 80.101(g) to 80.101(h).
B	80.41(j)(2)	Correct the paragraph reference from (j)(1)(i) to (j)(1).
C	80.41(m)(1)	A missing word "of" is inserted into the text.
D	80.42(c)(1)	In the table, change the valid range limits for "Oxygenate" in volume percent to valid range limits for "Oxygen" in weight percent to match the values already present.
E	80.42(a)	Correct the definition of exhaust and nonexhaust VOC from nonmethane hydrocarbons to nonmethane, nonethane hydrocarbons. All calculations and equations are correctly based on nonmethane, nonethane hydrocarbons.

Identification code	Regulation reference	Correction
F	80.42(b)(1)(ii), 80.42(b)(2)(ii), and 8042(b)(3)(ii).	Add a concluding sentence which clarifies that the use of methanol and other non-alcohol, non-ether oxygenates in reformulated gasoline is limited to vehicle testing under the Complex Model.
G	80.45(b)(3)	Correct the inadvertent omission of the first decimal place in the baseline values for exhaust VOC and NO_X in Table 3.
H	80.45(c)(1)(iv)(A)	The footnotes to Table 6 are clarified to indicate that the higher E300 limit can be no higher than 94 percent as described in paragraphs 80.45 (c)(1)(iv)(C)(*6*) and 80.45(c)(1)(iv)(D)(*6*).
I	80.45(c)(1)(iv)(B)	Change the word "and" to "and/or".
J	80.45(c)(1)(iv)(C)(11)	The paragraph references are corrected from (c)(1)(iv)(C)(*8*) and (*9*)" to "(c)(1)(iv)(C)(*9*) and (*10*)."
K	80.45(c)(1)(iv)(C)(12)	Correct the second "E300" to "ΔE300".
L	80.45(c)(1)(iv)(C)(14)	The paragraph references are corrected from "(c)(1)(iv)(C)(*11*) and (*12*)" to "(c)(1)(iv)(C)(*13*)."
M	80.45(c)(1)(iv)(D)(11)	The paragraph references are corrected from "(c)(1)(iv)(D)(*8*) and (*9*)" to "(c)(1)(iv)(D)(*9*) and (*10*)."
N	80.45(c)(1)(iv)(D)(12)	Correct "E30′ 0" to "E300".
O	80.45(c)(1)(iv)(D)(14)	The paragraph references are corrected from "(c)(1)(iv)(D)(*11*) and (*12*)" to "(c)(1)(iv)(D)(*12*) and (*13*)."
P	80.45(c)(8)(ii)	An extraneous word "for" at the end of the paragraph is removed.
Q	80.45(d)(1)(iv)(B)	Change the word "and" to "and/or".
R	80.45(e)(1)(ii)	Correct the toxic emissions baseline values in the equations which were rounded incorrectly to mimic the correct values in Table 5 of 80.45(b)(3): In Phase I, "TOXICS2%=[100%×(TOXICS2–47.58mg/mi)]/(47.58 mg/mi)" In Phase II, "TOXICS1%=[100%×(TOXICS1–86.34mg/mi)]/(86.34 mg/mi)"
S	80.45(e)(4)(iii)	A missing word "an" is inserted into the last sentence.
T	80.45(e)(5)(iv) & 80.45(e)(6)(iv)	Add a concluding sentence which clarifies that the use of methanol and other non-alcohol, non-ether oxygenates in the Complex Model is limited to augmentation through vehicle testing.
U	80.45(e)(9) & 80.45(e)(10)	Correct the variable names in the equations to mimic the variable names in the definition list: "HSVOC1" is corrected to "VOCHS1", "DIVOC1" is corrected to "VOCD11", "RLVOC1" is corrected to "VOCRL1", "RFVOC1" is corrected to "VOCRF1", "HSVOC2" is corrected to "VOCHS2", "DIVOC2" is corrected to "VOCDI2", "RLVOC2" is corrected to "VOCRL2", "RFVOC2" is corrected to "VOCRF2".
V	80.45(f)(1)	The paragraph references are corrected from "(a), (c), and (d)" to "(c), (d), and (e)".
W	80.45(f)(1) (i) & (ii)	The units for E200 and E300 are corrected from "volume percent" to "percent evaporated".
X	80.48(c)(1)	Correct the paragraph reference from "(c)(1)(iv) of this section" to "(c)(1)(iv) of this section and 80.49(d)".
Y	80.48(c)(1)(v)	Revise last sentence to clarify that the model must be re-estimated after dropping the B_i term.
Z	80.48(c)(2)(iii)	A concluding sentence is added indicating that the centered form of the Complex Model will be made available upon request.
AA	80.48(g)	Correct "the augmentation petition" to "other augmentation petitions".
AB	80.49(a)(5)(i)	The "Candidate parameter" entry is deleted from the table.
AC	80.49(b)(3)(iii)	The paragraph reference is corrected from "(b)(2)(ii) and (b)(3)" to "(b)(2)(ii)".
AD	80.59(a)	Revise last sentence to clarify that closed-loop systems and adaptive learning components are minimum requirements.
AE	80.65(d)(3)	A cross-reference to the blendstock accounting requirement in 80.102(e) is corrected.
AF	80.66(g)(1) and (g)(2)(ii)	Cross-references to 80.45, pertaining to the calculation of per-gallon values for VOC, NO_X, and toxics emissions performance reduction, are corrected.
AG	80.68(c)(8)(ii)(A) and (c)(9)(ii)(A)	Cross-references to the complex model in 80.45 are corrected.
AH	80.68(c)(9)(ii)(B)	A cross-reference to the annual toxics emissions weighting formula in 80.68(c)(9)(i)(B) is corrected.
AI	80.68(c)(10(i)	A cross-reference to the NO_X emissions reduction percentage in 80.45 is corrected.
AJ	80.69(a)(7)(ii)	A cross-reference to the applicable correlation ranges in 80.65(e)(2)(i) is corrected.
AK	80.69(b)(3)	A cross-reference to the oxygen averaging requirements in 80.67(f) is corrected.
AL	80.70(j)(11)	The spelling of Allegheny County, Pennsylvania, is corrected.
AM	80.75(j)	A cross-reference to the survey provisions in 80.41(q)(2) is corrected.
AN	80.81(h)	A cross-reference to the sampling and analysis methodology in 80.46 is corrected.
AO	80.90(b)(1)	In the equation, correct the variable "BX" to "BZ".
AP	80.90(e)(2)	The paragraph reference is corrected from "(e)(2)" to "(e)(1)".
AQ	80.91(e)(2)(iv)	In the equation only, the variable "N_{js}" is corrected to "n_{js}", the variable "n_s" is corrected to "N_s", the variable "p_j" is corrected to "p_{js}".
AR	80.91(e)(4)(i)(A)	Correct the equation to include division by 100 as follows: UV=[AV/(100-OV)] – 100

Identification code	Regulation reference	Correction
AS	80.91(e)(4)(i)(B)	Correct the equation to include division by 100 in two places: $UR=[BR-\{\Sigma(OV_i \times OR_i)\}/100]/[\{100-\Sigma OV_i\}/100]$
AT	80.91(e)(4)(ii)(A)	Correct the equation to include division by 100 as follows: $AV=UV(100-OV)/100$
AU	80.91(e)(4)(ii)(A)	Correct the definition of UV from "nonoxygenated parameter value" to "non-oxygenated parameter value".
AV	80.91(e)(4)(ii)(B)	Correct the equation to include division by 100 as follows: $BR=\{UR \times [100-\Sigma(OV_i)]+\Sigma(OV_i \times OR_i)\}/100$
AW	80.93(a)(3)(ii)	Re-word the first sentence to read "Petitions, 'showings' and other associated proof may be submitted to EPA prior to submittal of the individual baseline (per paragraphs (a)(1) and (a)(2) of this section)".
AX	80.93(c)(9)	A cross-reference to 80.93 (c)(8) is clarified.
AY	80.101(e)(3) & (f)(4)	References to California gasoline are clarified.
AZ	80.102(b)(1)	An extraneous word is deleted.
BA	80.102(e)(2)(i)	A cross-reference to 80.101(g) is added.
BB	80.102(f)(2)(i)	A typographical error is corrected.
BC	80.125(a)	A cross-reference to the reports required by 80.105 is corrected.
BD	80.128(e)(2)	A cross-reference to the assumptions pertaining to the use of RBOB in 80.69(a)(9) is corrected.
BE	80.128(e)(5)	A cross-reference to the sampling and testing rates in 80.69(a)(7) is corrected.
BF	80.128(g)(3)(iii)	A typographical error is corrected.
BG	80.129(e)	A cross-reference to the sampling and testing rates in 80.69 is corrected.

II. Valid Range Limits

The valid range limits in both the Simple and Complex Models specify the range for each fuel parameter outside of which the models cannot be used for the evaluation of emission performances. These limits ensure that the models will not be used for extremely high or low fuel parameter values which would compromise the validity of the models. Thus the valid range limits were instituted as a means toward maintaining the accuracy of the compliance calculations, and thus the integrity of the reformulated gasoline and anti-dumping programs.

The Agency made every attempt to make the valid range limits as wide as possible to provide flexibility to refiners while maintaining a focus on the need for accurate performance estimates. This was especially true for the conventional gasoline valid range limits, as EPA wanted to avoid, to the extent possible, establishing provisions which would require refiners to reformulate their conventional fuels. To provide additional flexibility, the Agency also allowed the extension of the specified valid range for the Complex Model for conventional gasoline when a refiner's individual 1990 baseline fuel exceeds the valid range in one or more fuel parameters.

Since publication of the final rule, the Agency has determined that the flexibility provided to refiners in the valid range limits requires some revision and clarification to avoid unnecessary and costly refinery modifications which have no long term environmental benefit. The changes to the regulations can be separated into two categories: changes to the specified valid range limits, and clarification of the provision for extending the valid range for individual refiner baseline fuels. Both of these topics will be described in detail below.

A. Revised Valid Range Limits

The valid range limits for the Simple and Complex Models were based on two different sets of data and were developed using different assumptions. The Simple Model valid range limits were determined following the regulatory negotiations held in 1991. The Complex Model valid range limits were based upon an examination of the sufficiency of data in the Complex Model database and the accuracy of extrapolations (See the Regulatory Impact Analysis for the final rule, Section IV.D). Because the valid range limits for the Simple and Complex Models were established independently and through different processes, the valid range limits for the two models were different from one another. Since promulgation of the final rule, the Agency has learned that the specified valid ranges may force refiners to make refinery modifications to comply with the regulations that are unwarranted under the Simple Model, and unnecessary under the Complex Model. Thus EPA is revising the valid range limits for oxygen content, RVP, aromatics content, and benzene content for the Simple Model, and oxygen content for the Complex Model.

1. Change to High End of Oxygen Valid Range

The high end of the valid range limit for oxygen in both the Simple and Complex Models was based on the maximum amount of oxygen that an oxygenated fuel was expected to lawfully contain. Of all the oxygenates that will likely be used in the reformulated gasoline program, ethanol has the highest oxygen content at 0.35 grams of oxygen per gram of ethanol. The Agency used this value as a benchmark in determining the high end of the valid range for oxygen, assuming a 10 volume percent ethanol blend. However, since promulgation of the final rule, the Agency has learned that density variations in gasoline blendstocks may result in wide variations in the oxygen content of an oxygenated fuel on a weight percent basis despite the fact that the volume percent remains fixed. For instance, blending 10 volume percent ethanol into a higher density gasoline could produce a blend with an oxygen content as low as 3.4 weight percent, while blending 10 volume percent ethanol into a lower density gasoline could produce a blend with an oxygen content as high as 4.0 weight percent.

Since the largest excise tax exemption available to refiners for the use of ethanol in gasoline blends is for oxygenated fuels that contain 10 volume percent, many ethanol blends will contain 10 volume percent ethanol. Thus it is essential that the high end of the valid range for both the Simple and Complex Models be raised to 4.0 weight percent. This change will allow fuels which are already being produced to be evaluated with the Simple and Complex Models. The change will also guarantee that no fuel oxygenated with ethanol will be excluded from the reformulated gasoline program due to an oxygen content that is outside the range of the model, as long as it complies with the

volume limits applicable in a waiver issued under section 211(f) of the Clean Air Act. Since fuels with oxygen contents of 4.0 weight percent are already being produced, the change will have no additional impact on vehicle driveability. Also, since the models continue to be accurate between 3.5 and 4.0 weight percent, and the emission standards are not being changed, this change to the high end of the valid range for oxygen content will have no adverse impact on the environment.

2. Change to Low End of RVP Valid Range in the Simple Model

The low end of the valid range for RVP in the Simple Model was based on the distribution of data used in the model's development, as well as a consideration of the needs of the reformulated gasoline and anti-dumping programs under the Simple Model. Since VOC emission reductions under the Simple Model are accomplished primarily through limits on maximum RVP levels, the valid range for RVP in the Simple Model only affects toxics compliance calculations. In promulgating the final regulations, the Agency determined that refiners had no incentive to reduce RVP below 6.6 psi for the purposes of complying with the toxics standards since reductions in fuel benzene and aromatics are much more effective in reducing emissions of toxic compounds.

In contrast to the Simple Model, the absence of RVP caps and the impact of other fuel parameters on emissions under the Complex Model will likely result in large variations in RVP levels in reformulated gasoline. RVP control will continue to be the primary mechanism through which VOC emissions are reduced because RVP is the most cost-effective fuel parameter to control, and because the RVP effect on VOC in the Complex Model is quite large. As in the Simple Model, the valid range for RVP in the Complex Model was determined from an examination of the distribution of data used in the model's development and the needs of the reformulated gasoline and anti-dumping programs. The low end of the valid range was set at 6.4 psi to accommodate large reductions in RVP while maintaining the accuracy of the Complex Model. Fuel RVPs are expected to reach this low level in Phase II of the reformulated gasoline program, and the potential exists for them to be reached in Phase I as well.

California has been developing its own program in which reformulated gasoline must meet more stringent requirements than in the federal program during the years 1996 and 1997 that the Simple Model will be in effect. Given California's more stringent requirements, the potential exists for fuel having an RVP of less than 6.6 psi to be either sold or used as a blendstock in and outside of California. With the low end of the valid range for RVP set at 6.6 psi, these California reformulated gasolines might not be certifiable as federal reformulated gasoline. Also, refiners trying to blend down tanks quickly at terminals in the spring to meet summer volatility requirements may end up with fuels that have RVPs as low as 6.4 psi.

Since the low end of the valid range for RVP under the Complex Model is 6.4 psi, the Agency has determined that the low end of the valid range for RVP under the Simple Model should likewise be 6.4 psi. The change from 6.6 psi to 6.4 psi makes the low end of the valid range for RVP consistent throughout Phase I of the federal reformulated gasoline program, and provides an additional element of flexibility for refiners to complement the already established blending and enforcement tolerances. The change should have no effect on the environment, since presumably only cleaner fuels would be allowed certification under the Simple Model. Both the Simple and Complex Models are linear with respect to RVP for all pollutants, and this linear relationship would simply be extended from 6.6 psi down to 6.4 psi.

3. Change to High End of Aromatics Valid Range in the Simple Model

It was and is the intention of the Agency to avoid, to the extent possible, establishing regulations which require refiners to reformulate their conventional fuels. The anti-dumping program is designed to ensure that a refiner's or importer's conventional gasoline stays as clean as it was in 1990, and does not require reformulation beyond those levels. Thus the valid range limits for conventional gasoline in both the Simple and Complex Models were designed to be as wide as possible while simultaneously ensuring the accuracy of the models. As an additional level of flexibility, the Agency also allowed for the extension of the valid range for conventional gasoline if a refiner's individual 1990 baseline fuel exceeded the specified valid range limits (see discussion in Section II.B. below).

Since promulgation of the final regulations for the anti-dumping program, the Agency has determined that the valid range limits in the Simple Model for aromatics, which are more restrictive than those for conventional gasoline under the Complex Model, could be widened without any detrimental impacts on either the program or on the environment. Without such a change to the regulations, refiners may be forced to make changes to their refineries by 1995 that are not necessary in 1998 when compliance under the Complex Model is mandatory. Thus the Agency is changing the high end of the valid range for aromatics under the Simple Model from 45 volume percent to 55 volume percent. This change will ensure that the Simple Model can be used for as many conventional fuels as possible to show compliance under the anti-dumping program without the need to extend the valid range. The environment will not be adversely impacted since it was the Agency's intent to allow extensions of the valid range when a refiner's 1990 baseline fuel exceeded the specified valid range limits. The change will not affect RFG compliance, since aromatics are controlled by the reformulated gasoline standards for toxics. Driveability will not be affected since fuels with aromatics levels as high as 55 volume percent currently exist in-use. Also, consistency in the high end of the valid range limits for aromatics will be maintained throughout Phase I of the program. Because the relationship between toxic emissions and fuel aromatics levels is linear in the Simple Model, the change will not result in an inaccurate application of the model to higher aromatics levels.

4. Change to Low End of Aromatics Valid Range in the Simple Model

The Agency has also determined that the low end of the valid range for aromatics in the Simple Model may not provide refiners with adequate flexibility under the reformulated gasoline program. For the Complex Model, the Agency determined that the relationships between aromatics and emissions could not be trusted at levels below 10 volume percent. However, the Agency determined that a flat-line extrapolation below 10 volume percent, in which no emission benefits or detriments result from lowering aromatics values below 10 volume percent, would provide greater flexibility without compromising the accuracy of the Complex Model equations in this range. Since promulgation of the final rule, the Agency has determined that the Complex Model approach to low values of aromatics can be appropriately applied to the Simple Model as well. Therefore, the Agency is changing the low end of the valid range for aromatics

under the Simple Model from 10 volume percent to 0 volume percent, but will not allow any emission benefits in this range. The Agency did not intend to discourage the production of fuels that had very low levels of aromatics, and were, thus, qualitatively considered to be cleaner burning. If the low end of the valid range for aromatics is left at 10 volume percent, fuels with aromatics values of less than 10 volume percent that would otherwise be complying reformulated gasolines under the Simple Model will not be certifiable, despite the fact that those same fuels may be certifiable under the Complex Model. This change is expected to be environmentally benign, as few refiners will have any incentive to reduce aromatics below 10 volume percent for reformulated gasoline under the Simple Model.

5. Change to High End of Benzene Valid Range in the Simple Model

As stated in Section II.A.3, it was and is the intention of the Agency, to the extent possible, not to establish regulations that require the reformulation of conventional gasoline under the anti-dumping program. However, the valid range limits for benzene under the Simple Model may in fact force refiners to reformulate conventional gasoline. The Agency has determined that the valid range limits in the Simple Model for benzene, which are more restrictive than those for conventional gasoline under the Complex Model, can be widened without any detrimental impacts. Without such a change to the regulations, refiners may be forced to make changes to their refineries by 1995 that are not necessary in 1998 when compliance under the Complex Model is mandatory. Thus the Agency is changing the high end of the valid range for benzene under the Simple Model from 2.5 volume percent to 4.9 volume percent. This change ensures that the Simple Model can be used for as many conventional fuels as possible to show compliance under the anti-dumping program without the need to extend the valid range. The change will not affect RFG compliance, since benzene is controlled by the reformulated gasoline standards for fuel benzene content. In like manner to raising the high end of the valid range for aromatics, consistency in the valid range limits will be maintained throughout Phase I of the program. The environment will not be adversely impacted since it was the Agency's intent to allow extensions of the valid range when a refiner's 1990 baseline fuel exceeded the specified valid range limits. As for aromatics, because the relationship between toxic emissions and fuel benzene levels is linear in the Simple Model, the change will not result in an inaccurate application of the model to higher benzene levels.

B. Extending the Valid Range for Conventional Gasoline

Under the anti-dumping provisions of the final rule, refiners use their individual 1990 baselines to determine compliance with the regulations under both the Simple and Complex Models. Depending on the compliance model being used, the values for particular fuel parameters are restricted by the valid range limits. For instance, if a refiner is using the Simple Model to comply with the anti-dumping regulations, VOC and NO_X emissions are regulated through caps on the baseline levels of sulfur, olefins, and T90, while toxic emissions are regulated through an equation giving the benzene fraction of VOC emissions. Since the benzene fraction equation contains only benzene and aromatics as independent variables, the only valid range limits that apply to refiners using the Simple Model to comply with the anti-dumping regulations are those specified in § 80.42(c)(1) for benzene and aromatics content. If, alternatively, a refiner is using the Complex Model to comply with the anti-dumping regulations, NO_X and toxics emissions are regulated through the Complex Model. Thus the valid range limits that apply to refiners using the Complex Model to comply with the anti-dumping regulations are those specified in § 80.45(f)(1)(ii) for oxygen content, sulfur content, RVP, E200, E300, aromatics content, olefins content, and benzene content.

Section 80.91(f)(2)(ii) allows a refiner to extend the conventional gasoline valid range for the Complex Model if one or more of the fuel parameter values for its individual 1990 baseline fuel falls outside of the valid range specified in § 80.45(f)(1)(ii). However, the regulations did not adequately specify the method, applicability, or limitations of such a valid range extension. As written, the regulations state that, for each baseline fuel parameter value which is outside of the Complex Model conventional gasoline valid range, the Complex Model valid range is extended only for such fuel parameters. The only stated limitation is that such an extension is applicable only to the applicable summer or winter season. The Agency has determined that this portion of the regulations is ambiguous, and requires revision.

1. Applicability of the Provision for Valid Range Extension

The Agency has only been made aware of the potential need for extension of the valid range for olefins, aromatics, and benzene. Therefore, a provision for the extension of the valid range has only been made for the high end of the specified valid range for these three fuel parameters. In each case, if the valid range limit is extended, the refiner in question must still be limited by a valid range to eliminate the possibility that the Complex Model will be used for aromatics, olefins, and/or benzene values that are very high, which might compromise the primary objective of the anti-dumping program. As specified in the final regulations, a refiner is allowed to extend the Complex Model valid range for both baseline and compliance emissions calculations, but is not directed as to the specification of any new valid range limits. Such a provision for the extension of the valid range that does not include limitations on fuel parameter values that can be evaluated with the Complex Model would defeat the purposes of specifying a valid range, and was not the Agency's intent.

The Agency has determined that the best approach to limiting the extension of the valid range is to allow target fuels to have values at least up to the baseline level. Since the baseline fuel is an "average" fuel of sorts, the Agency has also determined that refiners should be given some flexibility beyond the baseline value. For aromatics, this flexibility will be fixed at a value of 5.0 volume percent. For olefins this flexibility will be fixed at a value of 3.0 volume percent. And for benzene this flexibility will be fixed at a value of 0.5 volume percent. Thus, for example, the extended valid range limit for aromatics would be equal to the individual refiner's baseline fuel value for aromatics, plus 5.0 volume percent. A similar calculation would be necessary for extending the valid range for olefins or benzene.

The Agency has no reason to believe that provisions for the extension of the valid range for fuel parameters other than aromatics, olefins, and benzene on either the low or high ends are necessary. For instance, the Complex Model conventional gasoline valid ranges for oxygen, sulfur, aromatics, olefins, and benzene all have 0.0 as their lower limit. Thus no valid range extension would be required on the low end of the valid range for these fuel parameters. Similarly for E300, a fuel can have an E300 value of no higher than 100 percent, which is also the high

end of the specified valid range. Other limitations, such as ASTM specifications and the volatility rule, should eliminate the need for valid range extensions in other cases.

2. No-Benefit Limitation of the Provision for Valid Range Extension

The Agency continues to believe that the valid range limits specified in § 80.42(c)(1) and § 80.45(f)(1)(ii) identify the fuel parameter values beyond which the compliance models are not considered accurate. Thus the Agency has determined that any extension of the specified valid ranges for conventional gasoline should incorporate flat-line extrapolation. Under flat-line extrapolation, the compliance models provide no emissions benefit or detriment when raising the value of either aromatics or olefins above the values specified in § 80.42(c)(1) and § 80.45(f)(1)(ii). This flat-line extrapolation will apply to both the baseline fuel and any target fuels evaluated with the compliance models under the anti-dumping regulations.

3. Expanding the Applicability of the Valid Range Extension Provision to the Simple Model

This direct final rule expands the applicability of the valid range extension provision given in § 80.91(f)(2)(ii) to the Simple Model. However, as noted above, the only fuel parameters having valid range limits under the Simple Model anti-dumping regulations are aromatics and benzene content. The Simple Model valid ranges for both aromatics and benzene are being expanded to be equal to the corresponding ranges for the Complex Model, as described in sections II.A.3–5 of this rule. Thus the new valid range under the Simple Model will be 0–55 volume percent for aromatics and 0–4.9 volume percent for benzene. No valid range extension will be required for either of these fuel parameters on the low end of the valid range. Thus the only relevant valid range extensions that would be necessary for the Simple Model would be for the high end of aromatics and the high end of benzene.

III. Complex Model

The Complex Model includes separate calculations for exhaust and nonexhaust emissions. The final regulations contained errors in the model descriptions for both exhaust and nonexhaust. The errors in the exhaust portion of the Complex Model were limited to the linear extrapolation methodology, while the errors in the nonexhaust portion arose in the VOC equations themselves. Another error also arose in the calculation procedure for annual average toxics. Each of these errors and the associated corrections will be discussed in detail below.

A. Extrapolation

The exhaust portion of the Complex Model is a statistically-derived set of equations relating fuel parameters to emissions of VOC, NO_X, benzene, 1,3-butadiene, acetaldehyde, formaldehyde, and POM. The Agency determined the conditions under which these exhaust equations must be linearly extrapolated based on the ranges for each fuel parameter within which the equations were considered to be accurate. Linear extrapolation amounts to fixing the slope of the fuel parameter:emission relationship at a constant value. It is used to extend the equations beyond the limits of the data on which they are based, thereby making the reformulated gasoline and anti-dumping programs as flexible as possible.

Of the six separate models in the exhaust portion of the Complex Model, all four toxic models are linear, and thus do not require linear extrapolation. Paragraph (c)(1)(iv) of § 80.45 specifies the conditions and limitations of linear extrapolation for VOC, while § 80.45(d)(1)(iv) specifies the conditions and limitations of linear extrapolation for NO_X. The details of the linear extrapolation methodology included in these two portions of the final regulations contained a number of errors which require correction.

1. Correct Parenthetical Form of Extrapolation Equations

In paragraphs (c)(1)(iv)(B) and (d)(1)(iv)(B) of § 80.45, the linear extrapolation equations contained too many brackets in some regions of the equations, and missing parentheses in other regions. Although these inadvertent omissions and insertions did not change the mathematical nature of the equations, a literal copying of the equations into computer code would result in an error. Thus the Agency has corrected the linear extrapolation equations for both VOC and NO_X to contain the correct number of parentheses and brackets in the correct position and order.

2. Correct Missing Sulfur Term in NO_X Extrapolation Equation

A sulfur term was inadvertently left out of both the Phase I and Phase II NO_X extrapolation equations given in paragraph (d)(1)(iv)(B) of § 80.45. This missing sulfur term represents the linear extrapolation of the NO_X model with respect to sulfur for high emitters. This correction will have a negligible impact on the emission performance estimates provided by the Complex Model because the NO_X equation for high emitters is essentially linear with respect to sulfur.[1] The inclusion of the correct sulfur term in the NO_X extrapolation equation will result in the correct application of the edge target fuel to the NO_X extrapolation equations.

3. Clarify E300 Extrapolation Above 95 Percent

In the process of determining the valid range limits for the use of the Complex Model for both reformulated and conventional gasoline, the Agency determined that the emission changes estimated by the exhaust equations were not accurate above an E300 value of 95 percent. However, comments received from the refining industry indicated a need for an E300 valid range that extended up to 100 percent. The Agency concluded that, although the exhaust equation emission change estimates could not be considered accurate above an E300 level of 95 percent, allowing only a zero change in emissions above this E300 level would ensure that refiners could not receive inappropriate benefits for fuels with very high E300 levels. Therefore, the Agency allowed for flat-line extrapolations of all exhaust equations between the E300 values of 95 and 100 percent. However, some portions of the regulations that specified this allowance contained typographical errors which substantially changed the manner in which this flat-line extrapolation for E300 was to be executed. Specifically, paragraphs (c)(1)(iv)(C)(*5*), (c)(1)(iv)(D)(*5*), and (d)(1)(iv)(C)(*5*) of § 80.45 all indicated that the E300 value of the *edge* target fuel should be held constant at 95 volume percent for target fuels having an E300 value of greater than 95 volume percent. These paragraphs should not have refered to the *edge* target fuel, but rather to the *target* fuel for the purposes of determining emissions performances with the Complex Model. These three paragraphs are thus changed accordingly.

4. Correct Value of ΔARO

The regulations describing the linear extrapolation methodology for exhaust VOC and NO_X contained two other typographical errors that nevertheless were substantial in their effects. The

[1] The exhaust portion of the Complex Model includes exponential functions which alters the traditional implications of first- and second-order equations. However, the Complex Model exhaust equations can be referred to and approached as first- and second-order as described in Section IV.D.1 of the Regulatory Impact Analysis for the final rule.

first arose in paragraphs (c)(1)(iv)(C)(*9*), (c)(1)(iv)(D)(*9*), and (d)(1)(iv)(C)(*9*) of § 80.45 in the specification of the value of ΔARO. The value of ΔARO should generally be set equal to (ΔARO—18 volume percent) for any target fuel having an aromatics content of less than 18 volume percent. Thus ΔARO will be negative when the VOC or NO_X equation is linearly extrapolated with respect to aromatics at the low end of the valid range. However, for target fuels having an aromatics content of less than 10 volume percent, the VOC extrapolation should be flat-line instead of linear. In this case, ΔARO should be fixed at a value of −8 volume percent. The value in the regulations was given incorrectly as +8 volume percent.

5. Correct Specification of ΔE300

The second typographical error that requires explanation and correction involves the specification of ΔE300 in paragraphs (c)(1)(iv)(C)(*13*) and (c)(1)(iv)(D)(*13*). The first sentence in each of these two paragraphs contains two conditions that must be met for ΔE300 to be set equal to (E300—94 percent). The first condition incorrectly states that the E300 level of the target fuel must be *less* than 94 percent, when in fact the condition should state that the E300 level of the target fuel must be *greater* than 94 percent. The remainder of both of these paragraphs is correct.

6. Eliminate References to E300 in NO_X Extrapolation

Finally, the linear extrapolation methodology for NO_X in the final rule contained references to the allowable range for E300, despite the fact that the NOx equation is not extrapolated with respect to E300. Thus all references to E300 in paragraphs (d)(1)(iv)(A) and (d)(1)(iv)(B) are removed by this direct final rule. Note that, since all exhaust equations in the Complex Model are flat-line extrapolated for E300 values greater than 95 percent, the flat-line extrapolation for E300 specified in paragraph (d)(1)(iv)(C)(5) is correct (except for the changes described above).

B. Nonexhaust Model

The equations giving nonexhaust VOC as a function of RVP for the Complex Model were originally proposed in the February 1993 NPRM (58 FR 17175). No changes to those equations were intended for the final rule on reformulated gasoline. However, typographical errors arose in a number of the coefficients in the nonexhaust VOC model when they were entered into the final regulations. These errors would have a small, but not insignificant impact on the VOC emission performances provided by the Complex Model.

The errors in the nonexhaust VOC portion of the Complex Model lay in four places. The first was in the sign of the coefficient for RVP in the Phase I running loss equation for Region 1. The second was in the coefficient for RVP in the Phase II hot soak equation for Region 1. The third was in the coefficient for RVP in the Phase II refueling loss equation for Region 1. And the fourth was in the sign of the RVP coefficient for the Phase II running loss equation for Region 2. All the coefficients in the nonexhaust model have been returned to their proper values and signs by this direct final rule.

C. Annual Average Calculations

Since the averaging standards for toxics under the Complex Model are year-round standards, each refiner who is complying under an averaging scenario must determine the average year-round toxics emissions performance for the fuels that it sold during a given year. Each batch of fuel is uniquely associated with toxic emissions as estimated by the Complex Model. Thus refiners require a method for combining per batch emission performances into a single year-round value. The regulations provided two contradictory methods for combining per batch emission performances into such a single year-round value.

Paragraph (g) *et al.* of § 80.67 directs refiners to weight the emission performances by batch volume and then add them in order to determine a year-round value. In calculating emission performances with the Complex Model, fuels sold in the winter are evaluated with the winter model, while fuels sold in the summer are evaluated with the summer model. Thus this "volume-weighted" approach to determining year-round values correctly leads to an average toxic emissions value for the year.

Paragraph (e)(3) of § 80.45 incorrectly directs refiners to weight summer and winter toxic emissions by fixed values to obtain year-round averages. Under this portion of the regulations, summer batches of fuel would be individually weighted by their batch volumes to obtain average summer emission performance estimates. Likewise winter batches would be weighted by their batch volumes to obtain average winter emission performance estimates. However, the fixed weighting of summer and winter emission estimates for the purposes of determining a year-round value would not necessarily mimic a refiner's true ratio of summer to winter fuel. The fixed weightings given in paragraph (e)(3) were used to determine the performance standards, and are not relevant to determining compliance by individual refiners. Therefore, paragraph (e)(3) will be revised to refer to § 80.67(g), and paragraphs (e)(3)(i) and (e)(3)(ii) of § 80.45 will be removed.

IV. Enforcement Corrections and Clarifications

The following section contains corrections and clarifications to the enforcement portions of the final reformulated gasoline and anti-dumping regulations that were published on February 16, 1994 (59 FR 7716), and to enforcement portions of the preamble of the notice of final rulemaking.[2] The reasons for the changes are listed below.

A. Reformulated Gasoline Regulation (40 CFR Part 80, Subpart D)

1. Measurement of Reformulated Gasoline Fuel Parameters (§ 80.46)

The table of aromatic compounds in § 80.46(f)(1)(ii)(K) is being revised. The aromatic compounds listed in the final rule are those used by EPA during the development of the analytical method for the rulemaking. In this notice some compounds that no longer are available commercially have been deleted from the list, and several aromatic compounds that are found in commercial gasolines and are available commercially to make reference materials have been added to the list. Only materials of known purity or those specified as 99% pure or greater should be used as calibration standards.

The number of calibration levels should be sufficient to bracket the expected concentration of each compound. Two calibration levels were used in the initial evaluation of the test method. In the future, however, EPA probably will use five calibration levels with at least three internal standards used in the standards and samples in order to improve precision.

Initially EPA prepared standards by volume. Currently, however, EPA prepares standards, samples, and internal standards by weight. Conversion to volume percent is performed by using the density of the aromatic compound in question. Standards for gasoline that are prepared by weight are considered to be more accurate than standards that are prepared by volume.

[2] Hereinafter in Part IV of this notice (unless otherwise indicated), references to "final rule" or "final regulations" shall refer to the regulations promulgated in the February 16, 1994, notice of final rulemaking.

Neither the use of five calibration levels, nor the preparation of standards by weight, should be viewed as changes to the regulations, but rather as Agency recommendations intended to improve precision.

2. General Requirements for Refiners, Importers and Oxygenate Blenders (§ 80.65)

a. *Designation of Gasoline as Oxygenated Fuels Program Reformulated Gasoline (OPRG) or Non-OPRG.* Section 80.65(d)(2)(iii) is revised in order to clarify the categories of gasoline that may be designated as oxygenated fuels program reformulated gasoline, or OPRG. The final rule, at § 80.65(d)(2)(iii), specifies that reformulated gasoline must be designated as OPRG, or not OPRG, to provide a mechanism to ensure reformulated gasoline outside of oxygenated fuels control areas during oxygenated fuels control periods has at least the 2.0 weight percent oxygen content mandated by the Clean Air Act.[3] The final rule requires parties who meet the oxygen standard on average to meet the oxygen standard separately for gasoline not designated as OPRG. If OPRG and non-OPRG gasoline could be averaged together for oxygen purposes, the gasoline in the OPRG areas—where 2.7 weight percent oxygen is required during the oxygenated fuels control period—could be used to offset gasoline with 1.5 weight percent oxygen intended for use in non-OPRG areas.

Today's revision consists of two parts. First, the regulation is clarified to make specific that the OPRG/non-OPRG designation applies only to reformulated gasoline and not to RBOB. The final rule requires RBOB to be designated as OPRG or non-OPRG, but the OPRG designation for RBOB serves no purpose because RBOB does not become reformulated gasoline until oxygenate has been added. The final rule is unchanged regarding oxygenate blender responsibilities—oxygenate blenders who produce reformulated gasoline by combining RBOB with oxygenate are required to designate the gasoline as OPRG or non-OPRG, and to meet the oxygen standard separately for gasoline not designated as OPRG.

The second change regarding OPRG-designated gasoline is the addition of a new provision, at § 80.65(d)(2)(iii)(B), to clarify that reformulated gasoline that contains at least 2.0 weight percent oxygen may be designated as OPRG regardless of whether or not the gasoline is used in an oxygenated fuels program control area during an oxygenated fuels program control period. This change allows terminals that serve both oxygenated fuels areas and non-oxygenated fuels areas to stock a single reformulated gasoline that could be used in both areas, instead of having to stock both OPRG and non-OPRG designated reformulated gasoline. This change also allows all reformulated gasoline that meets the 2.0 weight percent oxygen per-gallon standard to be designated as OPRG, without such gasoline being restricted to use in oxygenated fuel areas during oxygenated fuel control periods.

A terminal thus could stock reformulated gasoline that contains 2.7 weight percent oxygen and, therefore, that meets the oxygenated fuels oxygen requirement, and deliver this gasoline into both OPRG and non-OPRG markets. A terminal also could stock reformulated gasoline that contains 2.0 weight percent oxygen for delivery into both OPRG and non-OPRG markets, and splash blend additional oxygenate with those batches of gasoline that are delivered into the oxygenated fuel area during the oxygenated fuel control period.[4]

This change, however, keeps intact the regulatory mechanism for ensuring non-OPRG areas receive reformulated gasoline that contains at least 2.0 weight percent oxygen. Any reformulated gasoline used outside an oxygenated fuels control area during an oxygenated fuels control period that contains less than 2.0 weight percent oxygen (and therefore must be designated as non-OPRG) must be offset with other non-OPRG reformulated gasoline that contains more than 2.0 weight percent oxygen, such that the average oxygen content of the non-OPRG gasoline is greater than or equal to the 2.1 weight percent average standard.

b. *Designation of Complex Model Gasoline as Meeting NO_X Standard on Per-Gallon or Average Basis.* Section 80.65(d)(2)(v)(B) is revised in order to clarify that refiners and importers are required to specify whether the NO_X standard is being met on a per-gallon basis or on average only for gasoline certified under the complex model. There is no separate NO_X standard under the simple model.

c. *Designation of Reformulated Gasoline Blendstock for Downstream Oxygenate Blending (RBOB).* Section 80.65(d)(2)(vi) is being revised in order to clarify that refiners and importers have three options regarding the designation of reformulated gasoline blendstock for downstream oxygenate blending (or RBOB). A refiner or importer has three options for the types of RBOB that may be produced or imported: as suitable for blending with any oxygenate, with ether only, or with a refiner- or importer-specified oxygenate type and amount. The gasoline designation requirements at § 80.65(d)(2)(vi) as promulgated in the final rule did not include the refiner- or importer-specified oxygenate option for RBOB, making this provision inconsistent with the downstream oxygenate provisions at § 80.69(a) that specifies the RBOB options and includes the refiner- or importer-specified option, and the product transfer document requirements for RBOB at § 80.77(i)(2) that includes all three options. In order to correct this inconsistency, today's revision adds the refiner- or importer-specified option to the RBOB designation requirement.

d. *Assignment of Batch Numbers.* Section 80.65(d)(3) requires refiners and importers to assign a unique number to each batch of reformulated gasoline that is produced or imported, and this section includes an example of such a batch number. The numbers contained in the example are being modified to reflect the correct number of digits for the portion of the batch number that states the EPA-assigned facility registration number (five digits) and the sequential batch number (six digits).

e. *Computer-Controlled In-Line Blending Exemption.* Section 80.65(e)(1) requires each refiner or importer to obtain test results for each batch of reformulated gasoline prior to the gasoline leaving the refinery or import facility. Refiners who produce reformulated gasoline using a computer-controlled in-line blending process in which the gasoline is blended directly to a pipeline, however, will not have the test results for the "batch" prior to the release of at least some, if not all, of the gasoline. To correct the incompatibility between this requirement and the nature of the computer-controlled in-line blending process, the § 80.65(f)(4) exemption from independent sampling and testing for refiners that produce reformulated gasoline using computer-controlled in-line blending equipment is expanded to include an exemption from the § 80.65(e)(1) requirement that refiners have test results for each batch prior to the gasoline leaving the refinery.

[3] The "oxygenated fuels control areas" are those areas where the use of oxygenated gasoline is required during the winter season pursuant to section 211(m) of the Clean Air Act, 42 U.S.C. 7545(m).

[4] Section 80.78(a)(6) prohibits adding oxygenate to reformulated gasoline, except in the case of reformulated gasoline that is designated as OPRG and is used in an oxygenated fuels program control area during an oxygenated fuels program control period.

f. *Release of Reformulated Gasoline Certified Under Simple Model as Not VOC-Controlled.* Section 80.65(e)(1) is also revised in order to clarify that reformulated gasoline certified under the simple model that is not VOC-controlled may be released from the refinery or import facility after the refiner or importer has test results for oxygen and benzene only. The final rule requires refiners and importers to have RVP test results in hand prior to release of all simple model-certified reformulated gasoline, but the RVP standard applies under the simple model only to VOC-controlled gasoline.

g. *List of Reformulated Gasoline Properties to be Established by Testing.* Section 80.65(e)(2)(i) contains a list of reformulated gasoline properties that must be established by testing. This list in the final rule includes 50% distillation (T–50) and 90% distillation (T–90) (the temperatures in degrees F at which 50% and 90% of a liquid are evaporated). This list is being revised to add terms for E200 and E300 (the percent of a liquid that are evaporated at 200 and 300 degrees F). E200 and E300 are correlated with T–50 and T–90, and may be approximated from T–50 and T–90 measurements using conversion equations. The most accurate way of determining the E200 and E–300 of gasoline, however, is using ASTM–86–90, the distillation test method specified at § 80.46(d). As a result, the list of mandatory testing is being expanded to include the E–200 and E–300 terms.

This expansion does not constitute a change from the mandatory testing requirements for reformulated gasoline, because the E200 and E300 terms are established as part of the ASTM–86–90 distillation test that already is required. The correlation ranges for E–200 and E–300, 2.5 vol% and 3.5 vol% respectively, that are included in the § 80.65(e)(2)(i) table are the reproducibility figures for these terms from the ASTM test, and are comparable to the five degrees F correlation range provided for the T–50 and T–90 terms.

h. *Reconciliation of Test Results.* Section 80.65(e)(2)(ii)(A) is being revised to clarify one option for reconciling reformulated gasoline test results from a refiner's or importer's laboratory as compared with test results from an independent laboratory. Under this option, where the refiner's or importer's test result for any parameter is not confirmed, the refiner or importer would use the result for that parameter that is the "worst case" for the refiner or importer ("best case" for the environment). Under this option in the final rule, the smaller of the two results for oxygenates is used for calculating all standards except RVP.

This option is being revised to refer to oxygenates as a class without separately naming each oxygenate. This change will keep the option from becoming dated if any new oxygenates are used in reformulated gasoline. The option also is being revised to eliminate the larger oxygenate volume assumption in the case of RVP, because RVP is a parameter that is measured directly. Any oxygenate effect on RVP will be measured in the RVP test and would not be changed by a calculation using the "worst case" oxygenate level.

i. *Attest Engagement Requirement.* Section 80.65(h) is being revised to specify that the attest engagement requirement applies to oxygenate blenders who meet the oxygen standard on average, and not to oxygenate blenders who meet the oxygen standard on a per-gallon basis. This change conforms § 80.65(h) with § 80.69(b)(4) which limits the attest engagement requirement to oxygenate blenders who average.

3. Compliance Surveys (§ 80.68)

Section 80.68(c)(13) is being revised to clarify when VOC and NO_X emissions reduction calculations must be reported to EPA by the surveyor under the gasoline quality survey requirements.[5] VOC emissions reduction calculations must be reported only for surveys during June 1 through September 15 of each year, including simple model surveys where a specified simple model VOC emissions reduction equation is cross-referenced. NO_X emission reduction calculations must be reported for all complex model surveys before January 1, 2000, and beginning on January 1, 2000 for surveys outside the period June 1 through September 15. NO_X surveys are not required during June 1 through September 15 under Phase II (beginning on January 1, 2000) because the Clean Air Act's restriction on NO_X increases is satisfied through the NO_X reductions required for VOC-controlled reformulated gasoline under Phase II. The rationale for this approach for NO_X surveys is discussed at 59 FR 7773 (February 16, 1994).

4. Covered Areas (§ 80.70)

a. *Putnam and Orange Counties, New York.* In order to correct an oversight in the final rule, § 80.70(d)(3) is being amended to include Putnam and Orange Counties, New York, as part of the New York-Northern New Jersey-Long Island-Connecticut "covered area." These counties are part of the New York City CMSA and are thus appropriately part of the New York City reformulated gasoline covered area. See 57 FR 13444 (April 16, 1992). Putnam and Orange Counties are also included in the New York City CMSA for purposes of the oxygenated fuels program requirements.

b. *Bullitt and Oldham Counties, Kentucky.* Section 80.70(j) is being amended to specify the applicable boundaries for the portions of Bullitt and Oldham Counties, Kentucky, that are nonattainment areas.

c. *Essex County, New York.* The listing of Essex County, New York, is also being amended to include a specific description of the nonattainment area.

d. *Smyth County, Virginia.* Section 80.70(j) is also being amended to delete Smyth County, Virginia, as a covered area for the reformulated gasoline program. This area was expressly excluded from coverage in the Governor's opt-in request and should not have been included in the regulatory list of covered areas.

e. *Richmond, Virginia.* An erroneous reference to the City of Richmond is also being corrected.

5. Reporting Requirements (§ 80.75)

a. *Sulfur, NO_X* and T90 Averaging Reports

Section 80.41(h)(2) of the final rule requires that refiners and importers subject to the simple model meet their 1990 baseline sulfur, olefins and T90 levels on average for the entire year. However, it does not include a requirement to report the average values of these properties to EPA. It was the Agency's intention to have these values reported and so an additional reporting requirement for sulfur, olefins and T90 is being added at § 80.75(b)(2). In addition, the RVP averaging reporting requirements are being renumbered, under § 80.75(b)(1), so that the sulfur, olefin and T90 averaging reporting requirements may be included under § 80.75(b).

b. *Oxygen Averaging Reports.* Section 80.75(f)(2)(ii)(A) is being revised to conform the categories of reformulated gasoline that must be reported separately for oxygen averaging purposes to the categories that are specified in the oxygen averaging section, at § 80.67(h)(1)(v)(A).

6. Registration Requirements (§ 80.76)

The Agency is making several revisions to the registration requirements in § 80.76(c) of the final rule. EPA is removing the requirement to indicate where off-site records are kept from the refiners', importers' and

[5] This notice is also adding the paragraph number for this provision, which was inadvertently omitted in the notice of final rulemaking.

oxygenate blenders' registration information, and instead requiring that information be submitted for each refinery, oxygenate blending facility, and in the case of importers, operations within each PADD. The registration requirement to indicate what type of gasoline each refinery or oxygenate blending facility will produce (reformulated, RBOB, conventional or blendstocks) has been removed because the Agency believes that it is not necessary for registration purposes. The Agency intended that importers would identify the independent laboratories used to comply with the independent sampling and testing requirements, but there was no specific regulatory text requiring them to do so. This notice requires each importer to provide that information to EPA for its operations in each PADD.

7. Product Transfer Documentation (§ 80.77)

a. *Minimum and/or Maximum Standards.* Section 80.77(g)(2), which requires that per-gallon minimum/maximums must be included in product transfer documents, is being revised to clarify the categories of reformulated gasoline for which these values must be specified. Paragraphs (g)(2)(iii), (g)(2)(iv)(A), and (g)(2)(iv)(B) of § 80.77 are being revised to specify that the RVP maximum and the VOC emissions performance minimum must be included only for VOC-controlled reformulated gasoline, because these standards apply only to VOC-controlled gasoline. Paragraphs (g)(2)(iv)(A) and (g)(2)(iv)(B) of § 80.77 also are being revised to specify that the NO_X minimum must be included only for reformulated gasoline certified using the complex model. There is no separate NO_X standard under the simple model.

b. *VOC-Controlled Gasoline That Contains Ethanol.* Section 80.77(g)(3) is being added to require that product transfer documents must identify any VOC-controlled reformulated gasoline that contains any ethanol as an ethanol-containing reformulated gasoline, so that downstream parties will have sufficient knowledge to avoid violation of the prohibition, at § 80.78(a)(8), against combining VOC-controlled reformulated gasoline produced using ethanol with VOC-controlled reformulated gasoline produced using any other oxygenate during the period January 1 through September 15.

c. *Complex Model Gasoline Certified Prior to 1998.* Section 80.77(h) is being revised to clarify that the product transfer document requirements related to gasoline certified using the complex model before January 1, 1998, apply to reformulated gasoline and RBOB. The final rule makes reference to "gasoline" and RBOB without specifying "reformulated gasoline," which could have caused confusion.

8. Controls and Prohibitions (Section 80.78)

Section 80.78(a)(1)(v)(B) and (a)(1)(v)(C), concerning reformulated gasoline prohibited activities, are being revised to clarify that gasoline subject to the per-gallon RVP maximum must have an RVP that is less than or equal to this standard, and that gasoline subject to the VOC and NO_X emissions reduction minimum must have emissions reductions that are greater than or equal to these standards. The final rule describes these requirements only in terms of gasoline that is "less than" or "greater than" these standards, while gasoline that equals these standards also is in compliance.

9. Enforcement Exemptions for California Gasoline (§ 80.81)

a. *Definition of California Gasoline.* The final rule was intended to extend the California enforcement exemptions to gasoline produced at refineries outside California that produce only California reformulated gasoline and federal conventional gasoline. See 59 FR 7759, col. 3 (February 16, 1994). However, the regulatory definition of "California gasoline" could be read to exclude non-California refineries producing California reformulated gasoline from the enforcement exemptions. Therefore, § 80.81(a)(2)(iii) is clarified to exclude from this definition only gasoline produced by non-California refineries that are also producing reformulated gasoline for sale in covered areas outside California.

b. *Compliance Demonstration Submittal.* Section 80.81(b)(4) requires refiners, importers, and oxygenate blenders to submit the compliance demonstration mandated by § 80.81(b)(3) by May 31, 1996 "along with reports required to be submitted under § 80.75(a)(1)." The quoted language is corrected to make clear that the compliance demonstration should accompany the report for the first quarter of 1996 due to be submitted on that date under § 80.75(a)(1)(i).

c. *Use of California Sampling and/or Testing Methodologies.* Section 80.81(h) allows refiners and importers of California gasoline to use sampling and test methods that are set forth in the California reformulated gasoline regulations, in lieu of those methods prescribed under § 80.46 for the federal reformulated gasoline program. This provision is being revised to clarify that these California-approved sampling and test methods may be used only with California gasoline, and that these methods may not be used to satisfy the sampling and testing requirements for reformulated or conventional gasoline that does not meet the definition of California gasoline.

B. Anti-Dumping Regulations (40 CFR Part 80, Subpart E)

1. Standards Applicable to Refiners and Importers (§ 80.101)

a. *Compliance Baseline Formula.* Section 80.101(f)(4) currently provides that refiners and importers who use an individual 1990 baseline, and who increase their gasoline production volume above a certain level, must calculate a compliance baseline for each averaging period. EPA has combined the separate formulas for "V_{eq}" and "CB_i" in § 80.101(f)(4) into a single, simpler formula.

In addition, EPA has specified that the denominator of the compliance baseline equation includes the volume of California gasoline. The final rule excluded the volume of California gasoline produced in 1995 and thereafter from the compliance baseline equation, but this exclusion rendered this equation invalid for refiners of California gasoline because the numerator of this equation includes gasoline produced for the California market in 1990. In order to constitute a valid comparison of the volume of gasoline produced in 1990 versus the volume produced in 1995 and thereafter, both the numerator and the denominator of the compliance baseline equation must contain the volume of gasoline produced for the California market. This approach for including California gasoline in the compliance baseline equation is equivalent to the requirement that reformulated gasoline produced for use in covered areas outside the State of California must be included in the denominator of the compliance baseline equation.

The definitions of the factors "DB_i," "CB_i," and "B_i," are clarified to bring them in conformance with the terms used in the complex model calculations under § 80.101(g).

b. *Compliance Calculations.* Section 80.101(g), entitled "Compliance Calculations," is restructured to reverse the order of the simple model calculation formula currently in § 80.101(g)(1)(i) and the formula for determining the average value for the parameter being evaluated currently in § 80.101(g)(1)(ii). This organizational change is necessary because in order to perform the simple model calculation

for exhaust benzene emissions, the refiner or importer must first determine the average value for certain parameters. In addition, and for purposes of clarity, the heading "Simple Model Calculations" is inserted as a new paragraph (i) under § 80.101(g)(1), and the heading "Complex Model Calculations" is inserted as a new paragraph (ii) under § 80.101(g)(1). These changes restructure the compliance calculations in a logical sequence that will make this section clearer for compliance purposes.

The formula definition of "SG_i" in § 80.101(g)(1)(i)(A) is amended to clarify that the specific gravity term only applies to calculations involving sulfur.

The definitions of the factors "BZ" and "AR" under § 80.101(g)(1)(i)(B), pertaining to compliance calculations for exhaust benzene emissions under the simple model, are clarified as to how these are calculated by expanding them to read "calculated per paragraph (g)(1)(i)(A) of this section."

Section 80.101(g)(1)(iii), (g)(1)(iv), and (g)(1)(v), pertaining to complex model calculations, are consolidated and simplified as a new § 80.101(g)(1)(ii).

c. *Sampling and Testing.* Section 80.101(i)(1), which concerns requirements for sampling and testing of conventional gasoline and other products to which the compliance standards apply, is being revised to delete the requirement that such sampling and testing be conducted prior to the gasoline or product leaving the refinery. This change is necessary because this requirement interferes with the ability of refiners and importers to do composite sampling and in-line blending.

2. Controls Applicable to Blendstocks (§ 80.102)

Since gasoline produced for and marketed in California is subject to that State's stringent reformulated gasoline standards, it is not necessary to include such gasoline, or applicable blendstocks used in the production of such gasoline, in EPA's blendstock tracking requirements beginning in 1995. Thus, the definitions of the volume of gasoline, "V_g" and "$V_{g,i}$," in the averaging period blendstock-to-gasoline ratio in § 80.102(d)(1)(i) and the running cumulative compliance period blendstock-to-gasoline ratio in § 80.102(d)(2)(i), respectively, are amended by adding an explicit exclusion for California gasoline. Similarly, an additional subparagraph (v) has been added under § 80.102(d)(3) to exclude applicable blendstocks used to produce California gasoline in the blendstock ratio calculations. These corrections are necessary to make clear that the volumes of California gasoline, and applicable blendstocks used to produce California gasoline are not part of the ratio calculations.[6]

3. Record Keeping Requirements (§ 80.104)

Under § 80.104(a)(2)(ix), refiners and importers are required to retain documents to demonstrate that blendstocks were transferred for other than gasoline blending purposes as a basis for excluding such blendstocks from tracking. There are various other bases specified in § 80.102(d)(3) for excluding blendstocks from tracking (e.g., exported, transferred as a feedstock) for which document support is not required in the final rule. EPA believes that the document support requirement should apply to all excluded blendstocks. Therefore, § 80.104(a)(2)(ix) is expanded to require the retention of documents which demonstrate any of the specified bases for the exclusion of blendstocks from blendstock tracking.

4. Reporting Requirements (§ 80.105)

Section 80.105(a)(2) in the final rule requires refiners and importers to report the overall volume of applicable blendstock produced or imported and transferred to others. This provision is being clarified to require separate reporting for those applicable blendstocks that are, and those that are not, excluded under § 80.102(d)(3).

C. Preamble

The preamble of the February 16, 1994, notice of final rulemaking contains two errors in the sections discussing reformulated gasoline and anti-dumping enforcement provisions. The following corrections should be noted for these sections of the preamble:

- On page 7759, in the second column, in the 12th and 13th lines of the second full paragraph, "(March 1, 1996, through February 29, 1996)" should read "(March 1, 1996, through February 28, 1998)."
- On page 7800, in the second column, in the 4th and 5th lines of the carryover paragraph, "section 211(k)(c) of the Act" should read "section 211(k) and (c) of the Act."

[6] The baseline blendstock-to-gasoline ratio does include both gasoline and blendstock produced for the California market. This baseline ratio nevertheless is a valid basis for comparison with the compliance period blendstock-to-gasoline ratios (that exclude California gasoline and blendstock) because the baseline ratio represents a refiner's or importer's actual 1990 gasoline and blendstock volumes.

V. Summer/Winter Season

Section 80.91 of the Reformulated Gasoline Final Rule (59 FR 7716) defines summer and winter data and sampling requirements as follows: paragraph (d)(1)(i)(A) states that "Data shall have been obtained for at least three months of the refiner's or importer's production of summer gasoline and at least three months of its production of winter gasoline." The regulation goes on to define a summer month as "any month during which the refiner produced any gasoline which met the federal summer gasoline volatility requirements. Winter shall be any month which could not be considered a summer month."

Several comments received by EPA since the rule was published indicate that this present definition severely restricts or eliminates the winter period in some cases, and inappropriately allocates winter data to the summer calculation. Further, the current rule inadvertently precludes the use of actual data in some calculations, even when such per batch actual data is available.

Considering that the goal of the baseline is to most accurately reflect actual 1990 gasoline composition, the rule will be modified to more correctly allocate parameter data. Provision will be made for the use of actual RVP data to define summer and winter gasoline. When such Method 1, per batch actual data is not available, summer and winter months will be redefined to better approximate the seasonal gasoline fuel parameter and emission values.

This modification to the reformulated gasoline regulation will satisfy several comments received since publication in the **Federal Register**. EPA will redefine summer and winter months, for use when Method 1 actual batch data is not available, as follows. A summer month will be redefined as any month during which more than 50 percent (by volume) of the gasoline produced by a refiner met the federal summer gasoline volatility requirements. Winter shall remain defined as any month which could not be considered a summer month. This will correct situations in which small quantities of summer volatility gasoline are produced early in the year. Originally, data from a month in which even small quantities of summer volatility fuel was produced was considered a summer month. With this modification, such months in which the majority of fuel was winter volatility would be correctly allocated as a winter data month.

Further, for any month for which both winter and summer gasoline were

produced, if actual RVP (Method 1) data are available, that data will be accurately divided between the summer and winter calculations, as appropriate. If such per batch data is not available, all data for that month would be considered either summer or winter, based on the production volumes.

When actual per batch data is used, for minimum data requirement purposes, a month is considered equivalent to 4 weeks of seasonal data. Therefore, 12 weeks of data sampling on summer volatility fuel satisfies the minimum three months of data collection required. If a refiner, such as the California refiners, still cannot provide three months of winter data, they may petition for less than minimum data, under the provisions outlined in § 80.91(d)(1)(C).

VI. Baseline Determination Adjustments

A. Work-In-Progress (WIP) Adjustment

The final reformulated gasoline rule provided criteria for allowing work-in-progress baseline adjustments (section 80.91(e)(5)). Work-in-progress (WIP) refers to one or more major capital changes or commitment(s) made by a refiner prior to or in 1990. A WIP adjustment allows a refiner to modify its baseline volume and fuel parameter values (which affect emissions) to account for the WIP. In order to obtain a WIP modification, a refiner must petition EPA and EPA must approve the petition.

As indicated in the preamble to the final rule, EPA believes that the criteria for a WIP adjustment should be fairly stringent, as the adjustment was intended only for those for whom a significant investment had already been made in order to comply with another government mandate. Additionally, a broad program of adjustments could indicate that EPA exceeded its equitable discretion under *Alabama Power*, as discussed in the Regulatory Impact Analysis (RIA) accompanying the final rule.

In the final rule, EPA required that a refiner meet each of three criteria in order to qualify for a WIP baseline adjustment. A fourth criterion was also required to minimize environmental harm due to WIP adjustments, via simple model parameter caps and emissions caps for both the simple and complex models.

Since promulgation of the final rule, EPA has re-evaluated this fourth criterion of the WIP provisions. EPA intended to allow WIP adjustments to relieve severe hardship where the adjustment did not allow emissions to increase significantly relative to the Clean Air Act baseline. The methods EPA chose to constrain WIP adjustments had inconsistent impacts depending on simple model or complex model use. The modification proposed in this Direct Final Rulemaking would ensure that the fuel parameter constraints on WIP adjustments under the simple model would be more consistent with the emissions performance constraints under the complex model. Specifically, WIP adjustments will be permitted to exceed the simple model parameter caps, but only to the extent the baseline still complies with the complex model emission caps. Without this change, a WIP adjustment would be more constrained in 1995 than would be the case in 1998, possibly requiring a refiner to make processing changes in 1995 that would not be necessary in 1998. While the emissions and parameter caps were set to minimize environmental harm due to the WIP (realizing that a WIP adjustment will actually increase baseline emissions relative to 1990) EPA believes this modification will increase compliance flexibility while maintaining the environmental goals of the program.

With regard to the effect of WIP adjustments on reformulated gasoline compliance, the simple model caps stated in the regulations apply to reformulated gasoline as well as to conventional gasoline. As stated in the final reformulated gasoline rule, when the simple model is used for compliance, the WIP-adjusted annual average baseline values for sulfur, olefins and T90 are the actual WIP-adjusted values of those parameters, provided they do not exceed the unadjusted baseline values or the simple model parameter caps given in section 80.91(e)(viii)(B). However, baseline parameters may now exceed these caps if the WIP adjusted baseline does not result in exhaust emissions of VOC, toxics, and NO_X which exceed the emission levels specified in § 80.91(e)(5)(vii)(B), namely 105% of the annual average statutory value.

Based on questions received since promulgation of the final rule, two changes in the language of the Work-In-Progress (WIP) provisions are made to section 80.91(e)(5) to further clarify certain aspects of the WIP adjustment not explicitly addressed in the final rule. The regulatory language dealing with the emissions and parameter caps is unclear as to whether the caps apply to the actual values or to the change in emissions or parameter values. In addition, there appeared to be some confusion over what was meant by "adjusted" baseline. Paragraphs 80.91(e)(5)(vi) and 80.91(e)(5)(vii) have been modified to clarify agency intent.

B. JP–4 Adjustment

In the final rule for reformulated gasoline, EPA allowed adjustments for specific extenuating circumstances. Baseline fuel parameters, volumes and emissions of a refinery can be adjusted due to the occurrence of specific extraordinary or extenuating circumstances which caused its 1990 gasoline production to be different than it would have been had the circumstance not occurred. However, the Agency's objective is not to establish a broad adjustment program. Allowable circumstances include unforeseen, unplanned downtime of at least 30 days of one or more gasoline blendstock producing units due to equipment failure or natural cause beyond the control of the refiner, or for non-annual maintenance (turnaround) downtime which occurred in 1990. These types of adjustments reflect instances where the 1990 baseline truly deviated from the otherwise expected baseline (historic and future), had the incident not occurred. EPA also expects that allowed adjustments will have minimal environmental impact while relieving a large regulatory burden.

In keeping with that policy objective, EPA promulgated provisions to permit baseline adjustments for certain refiners which produced JP–4 jet fuel in 1990, upon petition and approval. As discussed in the RIA for the reformulated gasoline final rule, EPA believes that it has authority to allow such adjustments due to the discretion afforded EPA by Congress. Additionally, *Alabama Power* v. *Costle*[7] gives EPA "case-by-case discretion" to grant variances or even dispensation from a rule where imposition of the requirement would result in minimal environmental benefit but would extremely burden a regulated party. Today's action changes two portions of the provisions for JP–4 adjustment: the multiple refinery requirement and the JP–4 to gasoline production ratio. In the final reformulated gasoline rule, JP–4 baseline adjustments are generally limited to single-refinery refiners because such refiners have no way to aggregate baselines[8] so as to reduce the combined burden of a JP–4 phaseout and the anti-dumping requirements on their operations. In some cases, if no

[7] *Alabama Power Company* v. *Costle*, 636 F.2d 323.357 (D.C. Cir 1979).

[8] A refiner with more than one refinery may determine an aggregate baseline, i.e., a conventional gasoline compliance baseline, which consists of the volume-weighted emissions or fuel parameters, as applicable, of two or more refineries.

relief were granted in this area, the viability of a refinery could be at stake.

1. Multiple-Refinery Requirement

The final reformulated gasoline rule also promulgated baseline adjustment provisions for multi-refinery refiners where each refinery produced JP–4 in 1990. This adjustment provision assumes that multi-refinery refiners are predominantly in the business of fuel production and thus possess the means to offset the refinery's JP–4 volume and associated fuel parameter increases with fuels volumes at other locations. The adjustment also assumes that refiners with multiple-refineries have process units offering various processing options which support an average (or typical) fuel production operation.

Today's action modifies the JP–4 baseline adjustment multiple refinery requirement. Every refinery of a multiple-refinery is no longer required to have produced JP–4. Such multi-refinery refiners are allowed to average their 1990 JP–4 production to 1990 gasoline production ratio across all of their refineries. However, all refineries of a multi-refiner must still meet the other two criteria specified for the JP–4 baseline adjustment in the reformulated gasoline final regulations. Specifically, only refiners that will not produce reformulated gasoline and that meet the 1990 JP–4 to gasoline production ratio are allowed to make a JP–4 baseline adjustment. The Agency is amending the requirement stipulating that each refinery of multiple-refineries produced JP–4 in 1990 because, essentially, the same environmental impact and economic hardship is expected regardless of whether a single refinery or all refineries of a multiple-refinery produced JP–4.

2. JP–4 Baseline Adjustment Ratio

The final reformulated gasoline rule promulgated baseline adjustment provisions which stipulate that 1990 JP–4 production must have constituted a specified portion of a refiner's 1990 fuel production in order for a significant enough burden to exist to justify permiting baseline adjustments. Additionally, a baseline is neither unrepresentative of 1990, nor incalculable, because of post-1990 changes in crude availability, fuel specifications, fuel markets, etc. EPA is permitting baseline adjustments for certain refiners which produced JP–4 jet fuel in 1990 because, as discussed in the Regulatory Impact Analysis for the reformulated gasoline final rule, EPA believes that it has a limited authority to allow such adjustments in certain extreme cases. The final reformulated gasoline regulations require that the ratio of the refinery's 1990 JP–4 production to its 1990 gasoline production equal or exceed 0.5.

Upon further evaluation of the baseline adjustment provisions, the Agency has concluded that the JP–4 to gasoline production ratio, as promulgated in the RFG final rule (0.5), is unnecessarily restrictive. Based on responses from affected refiners, under the December 1993 criteria only two refiners in the United States would likely qualify for the adjustment. In other words, very few refiners under contract to produce JP–4 will have the relief intended by the provision. Today's action alters the refiner's 1990 JP–4 production to 1990 gasoline production ratio from 0.5 to 0.2. EPA believes this revised ratio indicates that a significant amount of the refinery feedstock used for JP–4 production would have to be converted in order to produce gasoline. Altering the JP–4 to gasoline production ratio will allow additional small refiners to qualify for the adjustment and not be forced to operate from a drastically less competitive position or be driven out of business. Based on feedback EPA has received, changing the ratio from 0.5 to 0.2 raises the number of affected refiners from 2 to 6. If large refineries had such a ratio also, the regulatory burden would be just as great. Also, it would be more difficult to argue de minimis environmental impact for large refiners. In reality none do, such that the ratio is only an issue for small refiners.

Several different ratio options were suggested by commenters during the reformulated gasoline rulemaking as to what minimum portion of a refinery's 1990 production JP–4 should have constituted for the circumstance to be extenuating, as follows: JP–4 production to total refinery production, 20%; JP–4 production to gasoline production, 5%; JP–4 production to gasoline production, 75%; and, JP–4 production to gasoline plus JP–4 production, 10%. EPA's 0.2 JP–4 to gasoline ratio is in line with some of the commenters suggestions.

At less than a 1990 JP–4 to gasoline production ratio of 0.2, EPA believes the impact on benzene and aromatics may make it more costly for refiners to comply with the regulations, though it is unlikely that such refiners will be forced out of business or experience some similar extreme burden. For example, it is expected that no economic hardship will occur at a JP–4 to gasoline ratio of 0.1. Thus, the Agency discretion recognized in *Alabama*[9] to grant variances or even dispensation from a rule where imposition of the requirement would result in minimal environmental benefit but would extremely burden a regulated party, would not apply.

While the adjusted emission baselines of those approved for both amended JP–4 adjustments are likely to be higher than their actual 1990 baselines (primarily due to increased benzene and aromatics) EPA expects minimal negative environmental affects. First, the number of refineries meeting the criteria is still expected to be quite small. Second, the total production of all such refineries is also small. Thus, not very much additional gasoline will be affected by any baseline adjustments for JP–4 than if the criteria were less stringent or adjustments were not allowed at all. The modification of the multi-refinery requirement and the reduction of the ratio requirement to 0.2 both provide necessary flexibility to refiners and allow additional refiners (that are simultaneously burdened by the JP–4 phaseout and the anti-dumping provisions) regulatory relief.

As stated in the Regulatory Impact Analysis (RIA) for the reformulated gasoline final rule, JP–4 baseline adjustments will be allowed only for those refiners which will not produce reformulated gasoline, which is the most critical factor in assessing environmental impact. While the anti-dumping requirements, in general, apply to all conventional gasoline whether or not reformulated gasoline is also produced, in these specific cases no dumping will occur due to reformulated gasoline production. The intent of Congress with regard to the anti-dumping program will be met while not unduly burdening those that meet the specified criteria. Since both the unadjusted and adjusted baselines must be determined, if a refiner granted such an adjustment subsequently produces reformulated gasoline, its conventional gasoline compliance would immediately be subject to its original unadjusted baseline.

VII. Public Participation and Effective Date

The Agency is publishing this action as a direct final rule because it views the changes contained within as non-controversial and anticipates no adverse or critical comments. This action will be effective September 19, 1994 unless the Agency receives notice by August 19, 1994 that adverse or critical comments will be submitted, or that a party

[9] *Alabama Power Company* vs. *Costle*, 636 F.2d 323.357 (D.C. Cir 1979).

requests the opportunity to submit such oral comments pursuant to section 307(d)(5) of the Clean Air Act, as amended. If such notice is received regarding a change to a particular regulatory provision, the provision in question will be withdrawn before the effective date by publishing a subsequent **Federal Register** notice withdrawing the direct final rule for the identified provision.

Parties that submit adverse or critical comments, notify EPA of intentions to submit such comments, or request a public hearing within the allotted time period should identify the specific provision(s) at issue by specifying the preamble section numbers that discuss the provision(s). For instance, comments on the change to the oxygen valid range limits should include a reference to Section (Item Number) II.A.1 of the preamble. Comments on any of the insubstantial errors in Section I of the preamble should include a reference to the identification code associated with each change in that section. For instance, adverse comments on the paragraph reference change in § 80.41(h)(2)(iii) should include a reference to Item Number I–A.

The EPA will withdraw from final action only those specific provision(s) identified by the commenters or persons who notify EPA of their intent to comment or who request an opportunity to submit oral comments. All provisions in today's action that are not commented upon or for which EPA does not receive notice as described above will become effective September 19, 1994.

VIII. Statutory Authority

The statutory authority for the actions finalized today is granted to EPA by Sections 114, 211 (c) and (k) and 301 of the Clean Air Act, as amended; 42 U.S.C. 7414, 7545 (c) and (k), and 7601.

IX. Administrative Designation

Pursuant to Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this direct rule is not a "significant regulatory action".

X. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980 requires federal agencies to examine the effects of the renewable oxygenate regulation and to identify significant adverse impacts of federal regulations on a substantial number of small entities. Because the RFA does not provide concrete definitions of "small entity," "significant impact," or "substantial number," EPA has established guidelines setting the standards to be used in evaluating impacts on small businesses.[10] For purposes of the renewable oxygenate requirement for reformulated gasoline, a small entity is any business which is independently owned and operated and not dominant in its field as defined by SBA regulations under section 3 of the Small Business Act.

The Agency believes that the interpretations, clarifications, and corrections published in today's final action are unlikely to have a significant economic impact on a substantial number of small entities. In fact, the revisions contained herein are designed to promote successful implementation of the reformulated gasoline program for all regulated parties.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, and Motor vehicle pollution.

Dated: June 27, 1994.

Carol M. Browner,

Administrator.

40 CFR part 80 is amended as follows:

[10] U.S. Environmental Protection Agency, Memorandum to Assistant Administrators, "Compliance with the Regulatory Flexibility Act," EPA Office of Policy, Planning, and Evaluation, 1984. In addition, U.S. Environmental Protection Agency, Memorandum to Assistant Administrators, "Agency's Revised Guidelines for Implementing the Regulatory Flexibility Act," Office of Policy, Planning, and Evaluation, 1992.

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545 and 7601(a)).

2. In § 80.41, paragraphs (h)(2)(iii), (j)(2), and the introductory text to paragraph (m)(1) are revised to read as follows:

§ 80.41 Standards and requirements for compliance.

* * * * *

(h) * * *

(2) * * *

(iii) In the case of a refiner that operates more than one refinery, the standards specified under this paragraph (h)(2) shall be met using the refinery grouping selected by the refiner under § 80.101(h).

* * * * *

(j) * * *

(2) The aromatics value which, together with the values for benzene, RVP, and oxygen determined under paragraph (j)(1) of this section, meets the Simple Model toxics requirement specified in paragraphs (a) or (b) of this section, as applicable;

* * * * *

(m) * * *

(1) On each occasion that a covered area fails a NO_X emissions reduction survey conducted pursuant to § 80.68, except in the case of Phase II complex model NO_X standards for VOC-controlled gasoline, the NO_X emissions reduction requirements for that covered area beginning in the year following the failure shall be adjusted to be more stringent as follows:

* * * * *

3. Section 80.42 is amended by revising definitions "EXHVOCS1" through "REFVOCS2" in paragraph (a) introductory text; by adding a concluding sentence to paragraphs (b)(1)(ii), (b)(2)(ii), and (b)(3)(ii), and adding paragraph (b)(4); and by revising the table in paragraph (c)(1) to read as follows:

§ 80.42 Simple emissions model.

(a) * * *

EXHVOCS1=Exhaust nonmethane, nonethane VOC emissions from the fuel in question, in grams per mile, for VOC control region 1 during the summer period.

EXHVOCS2=Exhaust nonmethane, nonethane VOC emissions from the fuel in question, in grams per mile, for VOC control region 2 during the summer period.

EXHVOCW=Exhaust nonmethane, nonethane VOC emissions from the fuel in question, in grams per mile, during the winter period.
EVPVOCS1=Evaporative nonmethane, nonethane VOC emissions from the fuel in question, in grams per mile, for VOC control region 1 during the summer period.
EVPVOCS2=Evaporative nonmethane, nonethane VOC emissions from the fuel in question, in grams per mile, for VOC control region 2 during the summer period.
RLVOCS1=Running loss nonmethane, nonethane VOC emissions from the fuel in question, in grams per mile, for VOC control region 1 during the summer period.
RLVOCS2=Running loss nonmethane, nonethane VOC emissions from the fuel in question, in grams per mile, for VOC control region 2 during the summer period.
REFVOCS1=Refueling nonmethane, nonethane VOC emissions from the fuel in question, in grams per mile, for VOC control region 1 during the summer period.
REFVOCS2=Refueling nonmethane, nonethane VOC emissions from the fuel in question, in grams per mile, for VOC control region 2 during the summer period.

* * * * *

(b) * * *

(1) * * *

(ii) * * * Oxygen in the form of methanol or non-alcohol, non-ether oxygenates shall not be evaluated with the Simple Model, but instead must be evaluated through vehicle testing under the Complex Model per § 80.48.

* * * * *

(2) * * *

(ii) * * * Oxygen in the form of methanol or non-alcohol, non-ether oxygenates shall not be evaluated with the Simple Model, but instead must be evaluated through vehicle testing under the Complex Model per § 80.48.

* * * * *

(3) * * *

(ii) * * * Oxygen in the form of methanol or non-alcohol, non-ether oxygenates shall not be evaluated with the Simple Model, but instead must be evaluated through vehicle testing under the Complex Model per § 80.48.

(4) If the fuel aromatics content of the fuel in question is less than 10 volume percent, then an FAROM value of 10 volume percent shall be used when evaluating the toxics emissions equations given in paragraphs (b)(1), (b)(2), and (b)(3) of this section.

(c) * * *

(1) * * *

Fuel parameter	Range
Benzene content	0–4.9 vol %.
RVP	6.4–9.0 psi.
Oxygen content	0–4.0 wt %.
Aromatics content	0–55 vol %.

* * * * *

4. Section 80.45 is amended by:

a. revising Table 3 in paragraph (b)(3);

b. revising Table 6 in (c)(1)(iv)(A);

c. revising the first sentence and the equations for Phase I and II in paragraph (c)(1)(iv)(B), and revising (c)(1)(iv)(C)*(5)*;

d. revising the second sentence in paragraph (c)(1)(iv)(C)*(9)*;

e. revising paragraphs (c)(1)(iv)(C)*(11)* and *(12)*;

f. revising the first sentence in paragraph (c)(1)(iv)(C)*(13)* and revising paragraph (c)(1)(iv)(C)*(14)*;

g. revising paragraph (c)(1)(iv)(D)*(5)*, revising the second sentence in paragraph (c)(1)(iv)(D)*(9)*, and revising paragraphs (c)(1)(iv)(D)*(11)* and *(12)*;

h. revising the first sentence in paragraph (c)(1)(iv)(D)*(13)*, and revising paragraph (c)(1)(iv)(D)*(14)*;

i. revising the equation for VOCRL1 in paragraph (c)(3)(i);

j. revising the equations for VOCHS1 and VOCRF1 in paragraph (c)(3)(ii);

k. revising the equation for VOCRL2 in paragraph (c)(4)(ii), and revising paragraph (c)(8)(ii);

l. revising paragraph (d)(1)(iv)(A) and Table 7, revising the first sentence and the equations for Phase I and II in paragraph (d)(1)(iv)(B), revising paragraph (d)(1)(iv)(C)*(5)*, and revising the second sentence in paragraph (d)(1)(iv)(C)*(9)*;

m. revising the Phase I equation for "Toxics 2%" and the Phase II equation for "Toxics 1%" in paragraph (e)(1)(ii);

n. revising paragraph (e)(3) introductory text and removing paragraphs (e)(3)(i) and (e)(3)(ii);

o. revising the last sentence in paragraph (e)(4)(iii);

p. adding a concluding sentence to paragraphs (e)(5)(iv) and (e)(6)(iv);

q. revising equations "HSBZ1" through "RFBZ1" in paragraph (e)(9) and equations "HSBZ2" through "RFBZ2" in paragraph (e)(10); and

r. revising paragraph (f)(1).

The additions and revisions are set out to read as follows:

§ 80.45 Complex emissions model.

* * * * *

(b) * * *

(3) * * *

TABLE 3.—BASELINE EXHAUST EMISSIONS

Exhaust pollutant	Phase I		Phase II	
	Summer (mg/mile)	Winter (mg/mile)	Summer (mg/mile)	Winter (mg/mile)
VOC	446.0	660.0	907.0	1341.0
NO_x	660.0	750.0	1340.0	1540.0
Benzene	26.10	37.57	53.54	77.62
Acetaldehyde	2.19	3.57	4.44	7.25
Formaldehyde	4.85	7.73	9.70	15.34
1,3-Butadiene	4.31	7.27	9.38	15.84
POM	1.50	2.21	3.04	4.50

* * * * *

(c) * * *

(1) * * *

(iv) * * *

(A) * * *

TABLE 6.—ALLOWABLE RANGES OF E200, E300, AND ARO FOR THE EXHAUST VOC EQUATIONS IN PARAGRAPHS (c)(1)(i) and (ii) OF THIS SECTION

Fuel parameter	Phase I		Phase II	
	Lower limit	Higher limit	Lower limit	Higher limit
E200	33.00	65.83	33.00	65.52
E300	72.00	Variable[1]	72.00	Variable[2]
ARO	18.00	46.00	18.00	46.00

[1] Higher E300 limit=lower of 94.0 or 80.32+[0.390×(ARO)].
[2] Higher E300 limit=lower of 94.0 or 79.75+[0.385×(ARO)].

(B) For fuels with E200, E300, and/or ARO levels outside the ranges defined in Table 6, $Y_{VOC}(t)$ shall be defined as:
For Phase I:

$$Y_{VOC}(t)=100\%\times0.52\times[\exp(v_1(et))/\exp(v1(b))-1]+100\%\times0.48\times[\exp(v_2(et))/\exp(v_2(b))-1]+\{100\%-0.52\times[\exp(v_1(et))/\exp(v_1(b))]\times\{[(0.0002144\times E200_{et})-0.014470]\times\Delta E200\}+\{[(0.0008174\times E300_{et})-0.068624-(0.000348\times ARO_{et})]\times\Delta E300\}+\{[(-0.000348\times E300_{et})+0.0323712]\times\Delta ARO\}]\}+\{100\%\times0.48\times[\exp(v_2(et))/\exp(v2(b))]\times[\{[(0.000212\times E200_{et})-0.01350]\times\Delta E200\}+\{[(0.000816\times E300_{et})-0.06233-(0.00029\times ARO_{et})]\times\Delta E300\}+\{[(-0.00029\times E300_{et})+0.028204]\times\Delta ARO\}]\}$$

For Phase II:

$$Y_{VOC}(t)=100\%\times0.444\times[\exp(v_1(et))/\exp(v_1(b))-1]+100\%\times0.556\times[\exp(v_2(et))/\exp(v_2(b))-1]+\{100\%\times0.444\times[\exp(v_1(et))/\exp(v_1(b))]\times[\{[(0.0002144\times E200_{et})-0.014470]\times\Delta E200\}+\{[(0.0008174\times E300_{et})-0.068624-(0.000348\times ARO_{et})]\times\Delta E300\}+\{[(-0.000348\times E300_{et})+0.0323712]\times\Delta ARO\}]\}+\{100\%\times0.556\times[\exp(v_2(et))/\exp(v_2(b))]\times[\{[(0.000212\times E200_{et})-0.01350]]\times\Delta E200\}+\{[(0.000816\times E300_{et})-0.06233-(0.00029\times ARO_{et})]\times\Delta E300\}+\{[(-0.00029\times E300_{et})+0.028204]\times\Delta ARO\}]\}$$

* * * * *

(C) * * *

(5) If the E300 level of the target fuel is greater than 95 volume percent, then the E300 value of the target fuel shall be set equal to 95 volume percent for the purposes of calculating VOC emissions with the Phase I equation given in paragraph (c)(1)(iv)(B) of this section.

* * * * *

(9) * * * If the aromatics level of the target fuel is less than 10 volume percent, then ΔARO shall be set equal to −8 volume percent.

* * * * *

(11) If neither of the conditions established in paragraphs (c)(1)(iv)(C)*(9)* and *(10)* of this section are met, then ΔARO shall be set equal to zero.

(12) If the E300 level of the target fuel is less than 72 percent, then ΔE300 shall be set equal to (E300 − 72 percent).

(13) If the E300 level of the target fuel is greater than 94 volume percent and [80.32+(0.390×ARO)] also is greater than 94, then ΔE300 shall be set equal to (E300 − 94 volume percent).* * *

(14) If neither of the conditions established in paragraphs (c)(1)(iv)(C)*(12)* and *(13)* of this section are met, then ΔE300 shall be set equal to zero.

(D) * * *

(5) If the E300 level of the target fuel is greater than 95 volume percent, then the E300 value of the target fuel shall be set equal to 95 volume percent for the purposes of calculating VOC emissions with the Phase II equation given in paragraph (c)(1)(iv)(B) of this section.

* * * * *

(9) * * * If the aromatics level of the target fuel is less than 10 volume percent, then ΔARO shall be set equal to −8 volume percent.

* * * * *

(11) If neither of the conditions established in paragraphs (c)(1)(iv)(D)(9) and (10) of this section are met, then ΔARO shall be set equal to zero.

(12) If the E300 level of the target fuel is less than 72 percent, then ΔE300 shall be set equal to (E300)×72 percent).

(13) If the E300 level of the target fuel is greater than 94 volume percent and [80.32+(0.390×ARO)] also is greater than 94, then ΔE300 shall be set equal to (E300 − 94 volume percent). * * *

(14) If neither of the conditions established in paragraphs (c)(1)(iv)(D)(12) and (13) of this section are met, then ΔE300 shall be set equal to zero.

* * * * *

(3) * * *

(i) * * *

$$VOCRL1=[0.00279\times(RVP^2)]+[0.1096\times RVP]-0.7340$$

* * * * *

(ii) * * *

$$VOCHS1=[0.006654\times(RVP^2)]-[0.08094\times RVP]+0.2846$$

* * * * *

$$VOCRF1=[0.004767\times RVP]+0.011859$$

(4) * * *

(ii) * * *

$$VOCRL2=[0.016169\times(RVP^2)]-[0.17206\times RVP]+0.56724$$

* * * * *

(8) * * *

(ii) The total winter VOC emissions performance of the target fuel in percentage terms from baseline levels shall be given by the following equation during Phase II:

$$VOCW\%=[100\%\times(VOC-1.341\ g/mi)]/(1.341\ g/mi)$$

(d) * * *

(1) * * *

(iv) * * *

(A) The equations in paragraphs (d)(1)(i) and (ii) of this section shall be used within the allowable range of SUL, OLE, and ARO for the appropriate Phase, as defined in the following Table 7:

TABLE 7.—ALLOWABLE RANGES OF SUL, OLE, AND ARO FOR THE NO_X EQUATIONS IN PARAGRAPHS/(d)(1)(i) AND (ii) OF THIS SECTION

Fuel parameter	Phase I		Phase II	
	Low end	High end	Low end	High end
SUL	10.0	450.0	10.0	450.0
OLE	3.77	19.0	3.77	19.0
ARO	18.0	36.2	18.0	36.8

(B) For fuels with SUL, OLE, and/or ARO levels outside the ranges defined in Table 7 of paragraph (d)(2)(iv)(A) of this section, $Y_{nox}(t)$ shall be defined as:
For Phase I:

$$Y_{NOX}(t)=100\%\times0.82\times[\exp(n_1(et))/\exp(n_1(b))-1]+100\%\times0.18\times[\exp(n_2(et))/\exp(n_2(b))-1]$$

$+\{100\% \times 0.82 \times [\exp(n_1(et))/\exp(n_1(b))] \times [\{[(0.00000133 \times SUL_{et}) + 0.000692] \times \Delta SUL\} + \{[(-0.000238 \times ARO_{et}) + 0.0083632] \times \Delta ARO\} + \{[(0.000733 \times OLE_{et}) - 0.002774] \times \Delta OLE\}]\}$
$+\{100\% \times 0.18 \times [\exp(n_2(et))/\exp(n_2(b))] \times [\{0.000252 \times \Delta\Sigma\Theta\Lambda\} + + \{[(-0.0001599 \times ARO\varepsilon\tau) + 0.007097] \times \Delta ARO\} + \{[(0.000732 \times OLE_{et}) - 0.00276] \times \Delta OLE\}]\}$

For Phase II:

$Y_{nox}(t) = 100\% \times 0.738 \times [\exp(n_1(et))/\exp(n_1(b)) - 1] + 100\% \times 0.262 \times [\exp(n_2(et))/\exp(n_2(b)) - 1] + \{100\% \times 0.738 \times [\exp(n_1(et))/\exp(n_1(b))] \times [\{[(-0.00000133 \times SUL_{et}) + 0.000692] \times \Delta SUL\} + \{[(-0.000238 \times ARO_{et}) + 0.0083632] \times \Delta ARO\} + \{[(0.000733 \times OLE_{et}) - 0.002774] \times \Delta OLE\}]\} + \{100\% \times 0.262 \times [\exp(n_2(et))/\exp(n_2(b))] \times [\{0.000252 \times \Delta SUL\} + + \{[(-0.0001599 \times ARO_{et}) + 0.007097] \times \Delta ARO\} + \{[(0.000732 \times OLE_{et}) - 0.00276] \times \Delta OLE\}]\}$

* * * * *

(C) * * *

(5) If the E300 level of the target fuel is greater than 95 volume percent, then the E300 value of the target fuel shall be set equal to 95 volume percent for the purposes of calculating NO_X emissions with the equations given in paragraph (d)(1)(iv)(B) of this section.

* * * * *

(9) * * * If the aromatics level of the target fuel is less than 10 volume percent, then ΔARO shall be set equal to −8 volume percent.

* * * * *

(e) * * *

(1) * * *

(ii) * * *

$TOXICS2\% = [100\% \times (TOXICS2 - 47.58\ mg/mi)] / (47.58\ mg/mi)$

* * * * *

$TOXICS1\% = [100\% \times (TOXICS1 - 86.34\ mg/mi)] / (86.34\ mg/mi)$

* * * * *

(3) The year-round toxics performance in VOC Control Regions 1 and 2 shall be derived from volume-weighted performances of individual batches of fuel as described in § 80.67(g).

(4) * * *

(iii) * * * If the E300 value of the target fuel is greater than 95 volume percent, then an E300 value of 95 volume percent shall be used when evaluating the equations in paragraphs (e)(4)(i) and (ii) of this section.

(5) * * *

(iv) * * * Oxygen in the form of methanol or non-alcohol, non-ether oxygenates shall not be evaluated with the Complex Model, but instead must be evaluated through vehicle testing per § 80.48.

(6) * * *

(iv) * * * Oxygen in the form of methanol or non-alcohol, non-ether oxygenates shall not be evaluated with the Complex Model, but instead must be evaluated through vehicle testing per § 80.48.

* * * * *

(9) * * *

$HSBZ1 = 10 \times BEN \times VOCHS1 \times [(-0.0342 \times MTB) + (-0.080274 \times RVP) + 1.4448]$

$DIBZ1 = 10 \times BEN \times VOCD11 \times [(-0.0290 \times MTB) + (-0.080274 \times RVP) + 1.3758]$

$RLBZ1 = 10 \times BEN \times VOCRL1 \times [(-0.0342 \times MTB) + (-0.080274 \times RVP) + 1.4448]$

$RFBZ1 = 10 \times BEN \times VOCRF1 \times [(-0.0296 \times MTB) + (-0.081507 \times RVP) + 1.3972$

* * * * *

(10) * * *

$HSBZ2 = 10 \times BEN \times VOCHS2 \times [(-0.0342 \times MTB) + (-0.080274 \times RVP) + 1.4448]$

$DIBZ2 = 10 \times BEN \times VOCD12 \times [(-0.0290 \times MTB) + (-0.080274 \times RVP) + 1.3758]$

$RLBZ2 = 10 \times BEN \times VOCRL2 \times [(-0.0342 \times MTB) + (-0.080274 \times RVP) + 1.4448]$

$RFBZ2 = 10 \times BEN \times VOCRF2 \times [(-0.0296 \times MTB) + (-0.081507 \times RVP) + 1.3972$

* * * * *

(f) * * *

(1) The equations described in paragraphs (c), (d), and (e) of this section shall be valid only for fuels with fuel properties that fall in the following ranges for reformulated gasolines and conventional gasolines:

(i) For reformulated gasolines:

Fuel property	Acceptable range
Oxygen	0.0–4.0 weight percent.
Sulfur	0.0–500.0 parts per million by weight.
RVP	6.4–10.0 pounds per square inch.
E200	30.0–70.0 percent evaporated.
E300	70.0–100.0 percent evaporated.
Aromatics	0.0–50.0 volume percent.
Olefins	0.0–25.0 volume percent.
Benzene	0.0–2.0 volume percent.

For conventional gasoline:

Fuel property	Acceptable range
Oxygen	0.0–4.0 weight percent.
Sulfur	0.0–1000.0 parts per million by weight.
RVP	6.4–11.0 pounds per square inch.
E200	30.0–70.0 percent evaporated.
E300	70.0–100.0 percent evaporated.
Aromatics	0.0–550 volume percent.
Olefins	0.0–30.0 volume percent.
Benzene	0.0–4.9 volume percent.

* * * * *

5. Section 80.46 is amended by revising the table in paragraph (f)(1)(ii)(K) to read as follows:

§ 80.46 Measurement of reformulated gasoline fuel parameters.

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(K) * * *

Compound	Concentration (percent)	CAS No.	AMU	Retention time	Boiling point, °C
Benzene	2.25 vol	71–43–2	78	18.9 min	80.1
Methylbenzene	10.0 vol	108–88–3	91	25.5 min	111
Ethylbenzene	5.0 vol	100–41–4	91	34.1 min	136.2
1,3-Dimethylbenzene	5 vol	108–38–3	91	35.1 min	136–138
1,4-Dimethylbenzene		106–42–3			
1,2-dimethylbenzene	10 vol	95–47–6	91	38.1 min	144
(1-methylethyl)-benzene	2.25 vol	98–82–8	105	42.8 min	...
Propylbenzene	2.25 vol	103–65–1	91	48.0 min	159.2
1-ethyl-2-methylbenzene	2.25 vol	611–14–3	105	49.3 min	165
1,2,4-trimethylbenzene	2.25 vol	95–63–6	105	50.9 min	169
1,2,3-trimethylbenzene	2.25 vol	526–73–8	105	53.3 min	...

Compound	Concentration (percent)	CAS No.	AMU	Retention time	Boiling point, °C
1,3-diethylbenzene	2.25 vol	141-93-5	119	56.6 min	181
Butylbenzene	2.25 vol	104-51-8	91	60.7 min	183
o-Cymene	2.25 vol	527-84-4	119	63.9 min	
1-ethyl-3-methylbenzene	2.25 vol	620-14-4	105	64.2 min	
m-Cymene	2.25 vol	535-77-3	119	69.0 min	
p-Cymene	2.25 vol	99-87-6	119	73.0 min	
Isobutylbenzene	2.25 vol	538-93-2	91	75.0 min	
Indan	2.25 vol	496-11-7	117	50.0 min	
1-methyl-3-propylbenzene	2.25 vol	1074-43-7	105	78.9 min	
2-ethyl-1,4-dimethylbenzene	2.25 vol	1758-88-9	119	83.2 min	187
1,2,4,5-tetramethylbenzene	2.25 vol	95-93-2	119	83.4 min	
1-ethyl-2,4-dimethylbenzene	2.25 vol	874-41-9	119	85.7 min	
(1,1-dimethylethyl)-3-methylbenzene	2.25 vol	27138-21-2	133	87.3 min	
1-ethyl-2,3-dimethylbenzene	2.25 vol	933-98-2	119	88.7 min	
1-ethyl-1,4-dimethylbenzene	2.25 vol	874-41-9	119	94.9 min	
2-ethyl-1,3-dimethylbenzene	2.25 vol	2870-04-4	119	100.9 min	
1-ethyl-3,5-dimethylbenzene	2.25 vol	934-74-7	119	102.5 min	
1,2,3,5-tetramethylbenzene	2.25 vol	527-53-7	119	115.9 min	
Pentylbenzene	2.25 vol	538-68-1	91	116 min	
Naphthalene	2.25 vol	191-20-3	128	118.4 min	198
3,5-dimethyl-t-butylbenzene	2.25 vol	98-19-1	147	118.5 min	205.3
1-methylnaphthalene	2.25 vol	90-12-0	142	129.0 min	
2-methylnaphthalene	2.25 vol	91-57-6	142	131.0 min	

* * * * *

6. In § 80.48, paragraph (c)(1) introductory text is revised, the last sentence in paragraph (c)(1)(v) is revised, a concluding sentence is added to paragraph (c)(2)(iii), and paragraph (g) is revised to read as follows:

§ 80.48 Augmentation of the complex emission model by vehicle testing.

* * * * *

(c) * * *

(1) The analysis shall fit a regression model to the natural logarithm of emissions measured from addition fuels 1, 2, and 3 only (as specified at § 80.49(a) and adjusted as per paragraph (c)(1)(iv) of this section and § 80.49(d)) that includes the following terms:

* * * * *

(v) * * * If, after dropping the B_i term and re-estimating the model, the A_i term does not satisfy these criteria, then both terms shall be dropped, all test data shall be reported to EPA, and the augmentation request shall be denied.

(2) * * *

(iii) * * * The Administrator shall make available upon request existing complex model terms and coefficients in centered form.

* * * * *

(g) EPA reserves the right to analyze the data generated during vehicle testing, to use such analyses to determine the validity of other augmentation petitions, and to use such data to update the complex model for use in certifying all reformulated gasolines.

* * * * *

7. In § 80.49, the table in paragraph (a)(5)(i) is revised, and paragraph (b)(3)(iii) is revised to read as follows:

§ 80.49 Fuels to be used in augmenting the complex emission model through vehicle testing.

(a) * * *

(5) * * *

(i) * * *

Fuel parameter	Measurement uncertainty
API gravity	± 0.2 °API
Sulfur content	± 10 ppm
Benzene content.	± 0.02 vol %
RVP	± 0.05 psi
Octane	± 0.2 (R+M/2)
E200 level	± 2 %
E300 level	± 2 %
Oxygenate content.	± 0.2 vol %
Aromatics content.	± 0.5 vol %
Olefins content	± 0.3 vol %
Saturates content.	± 1.0 vol %
Detergent control Additives.	± 2% of the level required by EPA's detergents rule.

* * * * *

(b) * * *

(3) * * *

(iii) All other parameters shall be present at the levels specified in paragraph (b)(2)(ii) of this section.

* * * * *

8. In § 80.59, the last sentence in paragraph (a) is revised to read as follows:

§ 80.59 General test fleet requirements for vehicle testing.

(a) * * * To be technologically equivalent vehicles at minimum must have closed-loop systems and possess adaptive learning.

* * * * *

9. Section 80.65 is amended by revising paragraphs (d)(2)(iii), (d)(2)(v)(B), (d)(2)(vi), (d)(3), the third sentence of (e)(1), the table in (e)(2)(i), paragraph (e)(2)(ii)(A), (f)(4) introductory text, and paragraph (h) to read as follows:

§ 80.65 General requirements for refiners, importers, and oxygenate blenders.

* * * * *

(d) * * *

(2) * * *

(iii) Reformulated gasoline (but not RBOB) must be designated either as oxygenated fuels program reformulated gasoline, or not oxygenated fuels program reformulated gasoline.

(A) Gasoline must be designated as oxygenated fuels program reformulated gasoline if such gasoline:

(1) Has an oxygen content that is greater than or equal to 2.0 weight percent; and

(2) Arrives at a terminal from which gasoline is dispensed into trucks used to deliver gasoline to an oxygenated fuels control area within five days prior to the beginning of the oxygenated fuels control period for that control area.

(B) Gasoline may be designated as oxygenated fuels program reformulated gasoline if such gasoline has an oxygen content that is greater than or equal to 2.0 weight percent, regardless of whether the gasoline is intended for use

in any oxygenated fuels program control area during an oxygenated fuels program control period.

* * * * *

(v) * * *

(B) NO_X emissions performance in the case of gasoline certified using the complex model.

* * * * *

(vi) In the case of RBOB, as RBOB suitable for blending with:

(A) Any oxygenate;

(B) Ether only; or

(C) Other specified oxygenate type(s) and amount(s).

(3) Every batch of reformulated or conventional gasoline or RBOB produced or imported at each refinery or import facility, or each batch of blendstock produced and sold or transferred if blendstock accounting is required under § 80.102(e), shall be assigned a number (the "batch number"), consisting of the EPA-assigned refiner, importer or oxygenate blender registration number, the EPA-assigned facility registration number, the last two digits of the year in which the batch was produced, and a unique number for the batch, beginning with the number one for the first batch produced or imported each calendar year and each subsequent batch during the calendar year being assigned the next sequential number (e.g., 4321–54321–95–000001, 4321–54321–95–000002, etc.).

* * * * *

(e) * * *

(1) * * * A batch of simple model reformulated gasoline may be released by the refiner or importer prior to the receipt of the refiner's or importer's test results except for test results for oxygen and benzene, and RVP in the case of VOC-controlled gasoline.

(2) * * *

(i) * * *

Fuel property	Range
Sulfur content	25 ppm
Aromatics content	2.7 vol %
Olefins content	2.5 vol %
Benzene content	0.21 vol %
Ethanol content	0.4 vol %
Methanol content	0.2 vol %
MTBE (and other methyl ethers) content.	0.6 vol %
ETBE (and other ethyl ethers) content.	0.6 vol %
TAME	0.6 vol %
t-Butanol content	0.6 vol %
RVP	0.3 psi
50% distillation (T50)	5 °F
90% distillation (T90)	5 °F
E200	2.5 vol %
E300	3.5 vol %
API Gravity	0.3 °API

(ii) * * *

(A) The larger of the two values for the property, except the smaller of the two results shall be used for oxygenates; or

* * * * *

(f) * * *

(4) Any refiner that produces reformulated gasoline using computer-controlled in-line blending equipment is exempt from the independent sampling and testing requirements specified in paragraphs (f)(1) through (3) of this section and from the requirement of paragraph (e)(1) of this section to obtain test results for each batch prior to the gasoline leaving the refinery, provided that such refiner:

* * * * *

(h) *Compliance audits.* Any refiner and importer of any reformulated gasoline or RBOB, and any oxygenate blender of any RBOB who meets the oxygen standard on average, shall have the reformulated gasoline and RBOB it produced, imported, or blended during each calendar year audited for compliance with the requirements of this subpart D, in accordance with the requirements of subpart F, at the conclusion of each calendar year.

* * * * *

10. Section 80.66 is amended by revising paragraphs (g)(1) and (g)(2)(ii) to read as follows:

§ 80.66 Calculation of reformulated gasoline properties.

* * * * *

(g)(1) Per gallon values for VOC and NO_X emissions reduction shall be calculated using the methodology specified in § 80.45 that is appropriate for the gasoline.

(2) * * *

(ii) For gasoline subject to the complex model, the methodology specified in § 80.45 that is appropriate for the gasoline.

* * * * *

11. Section 80.68 is amended by:

a. revising paragraphs (c)(8)(ii)(A), (c)(9)(ii)(A), (c)(9)(ii)(B), (c)(10)(i);

b. redesignating paragraph (c)(12) as paragraph (c)(13), and removing the first two sentences in the newly redesignated (c)(13) introductory text;

c. by adding a new paragraph (c)(12); and

d. revising paragraphs (c)(13)(v)(G), (H) and (L).

The additions and revisions are set out to read as follows:

§ 80.68 Compliance surveys.

* * * * *

(c) * * *

(8) * * *

(ii) * * *

(A) For each complex model sample from the survey series, the VOC emissions reduction percentage shall be determined based upon the tested parameter values for that sample and the appropriate methodology for calculating VOC emissions reduction at § 80.45;

* * * * *

(9) * * *

(ii) * * *

(A) For each complex model sample from the survey series, the toxics emissions reduction percentage shall be determined based upon the tested parameter values for that sample and the appropriate methodology for calculating toxics emissions reduction at § 80.45;

(B) The annual average of the toxics emissions reduction percentages for all samples from a survey series shall be calculated according to the formula specified in paragraph (c)(9)(i)(B) of this section; and

* * * * *

(10) * * *

(i) For each sample from the survey and survey series, the NO_X emissions reduction percentage shall be determined based upon the tested parameter values for that sample and the appropriate methodology for calculating NO_X emissions reduction at § 80.45; and

* * * * *

(12) For any oxygen content survey series conducted in any covered area the average oxygen content for all samples from the survey series shall be calculated. If this annual average is less than 2.00 percent by weight, the covered area shall have failed an oxygen survey series.

(13) * * *

(v) * * *

(G) The results of the analyses of simple model samples for oxygenate type and oxygen weight percent, benzene content, aromatic hydrocarbon content, and RVP, the calculated toxics emission reduction percentage, and for each survey conducted during the period June 1 through September 15 the VOC emissions reduction percentage calculated using the methodology specified in paragraph (c)(8)(i) of this section;

(H) The results of the analyses of complex model samples for oxygenate type and oxygen weight percent, benzene, aromatic hydrocarbon, and olefin content, E–200, E–300, and RVP, the calculated NO_X and toxics emissions reduction percentage, and for each survey conducted during the period June 1 through September 15 the calculated VOC emissions reduction percentage, except that beginning on January 1, 2000 NO_X emissions

reduction percentages must be reported only for surveys conducted outside the period June 1 through September 15;

* * * * *

(L) The average toxics emissions reduction percentage for simple model samples and the percentage for complex model samples, the average benzene and oxygen percentages, and for each survey conducted during the period June 1 through September 15, the average VOC emissions reduction percentage for simple model samples and the percentage for complex model samples, the average NO_X emissions reduction percentage for all complex model samples collected prior to January 1, 2000, and the average NO_X emissions reduction percentage for samples collected outside the period June 1 through September 15 beginning on January 1, 2000;

* * * * *

12. Section 80.69 is amended by revising paragraphs (a)(7)(ii) introductory text and (b)(3) to read as follows:

§ 80.69 Requirements for downstream oxygenate blending.

* * * * *

(a) * * *

(7) * * *

(ii) In the event the test results for any sample indicate the gasoline does not comply with applicable standards (within the correlation ranges specified in § 80.65(e)(2)(i)), the refiner or importer shall:

* * * * *

(b) * * *

(3) Meet the standard requirements specified in § 80.65(c) and § 80.67(f), the record keeping requirements specified in § 80.74, and the reporting requirements specified in § 80.75; and

* * * * *

13. Section 80.70 is amended by revising paragraphs (d)(3)(viii) and (d)(3)(ix), adding paragraphs (d)(3)(x) and (d)(3)(xi), by revising paragraphs (j)(4)(i), (j)(4)(ii), (j)(10)(iv), (j)(11)(i), and (j)(14)(xvii) and by removing paragraph (j)(15) to read as follows:

§ 80.70 Covered areas.

* * * * *

(d) * * *

(3) * * *

(viii) Suffolk;

(ix) Westchester;

(x) Orange; and

(xi) Putnam.

* * * * *

(j) * * *

(4) * * *

(i) Portion of Bullitt County described as follows:

(A) Beginning at the intersection of Ky 1020 and the Jefferson-Bullitt County Line proceeding to the east along the county line to the intersection of county road 567 and the Jefferson-Bullitt County Line;

(B) Proceeding south on county road 567 to the junction with Ky 1116 (also known as Zoneton Road);

(C) Proceeding to the south on KY 1116 to the junction with Hebron Lane;

(D) Proceeding to the south on Hebron Lane to Cedar Creek;

(E) Proceeding south on Cedar Creek to the confluence of Floyds Fork turning southeast along a creek that meets Ky 44 at Stallings Cemetery;

(F) Proceeding west along Ky 44 to the eastern most point in the Shepherdsville city limits;

(G) Proceeding south along the Shepherdsville city limits to the Salt River and west to a point across the river from Mooney Lane;

(H) Proceeding south along Mooney Lane to the junction of Ky 480;

(I) Proceeding west on Ky 480 to the junction with Ky 2237;

(J) Proceeding south on Ky 2237 to the junction with Ky 61 and proceeding north on Ky 61 to the junction with Ky 1494;

(K) Proceeding south on Ky 1494 to the junction with the perimeter of the Fort Knox Military Reservation;

(L) Proceeding north along the military reservation perimeter to Castleman Branch Road;

(M) Proceeding north on Castleman Branch Road to Ky 44;

(N) Proceeding a very short distance west on Ky 44 to a junction with Ky 1020; and

(O) Proceeding north on Ky 1020 to the beginning.

(ii) Portion of Oldham County described as follows:

(A) Beginning at the intersection of the Oldham-Jefferson County Line with the southbound lane of Interstate 71;

(B) Proceeding to the northeast along the southbound lane of Interstate 71 to the intersection of Ky 329 and the southbound lane of Interstate 71;

(C) Proceeding to the northwest on Ky 329 to the intersection of Zaring Road on Ky 329;

(D) Proceeding to the east-northeast on Zaring Road to the junction of Cedar Point Road and Zaring Road;

(E) Proceeding to the north-northeast on Cedar Point Road to the junction of Ky 393 and Cedar Point Road;

(F) Proceeding to the south-southeast on Ky 393 to the junction of county road 746 (the road on the north side of Reformatory Lake and the Reformatory);

(G) Proceeding to the east-northeast on county road 746 to the junction with Dawkins Lane (also known as Saddlers Mill Road) and county road 746;

(H) Proceeding to follow an electric power line east-northeast across from the junction of county road 746 and Dawkins Lane to the east-northeast across Ky 53 on to the La Grange Water Filtration Plant;

(I) Proceeding on to the east-southeast along the power line then south across Fort Pickens Road to a power substation on Ky 146;

(J) Proceeding along the power line south across Ky 146 and the Seaboard System Railroad track to adjoin the incorporated city limits of La Grange;

(K) Then proceeding east then south along the La Grange city limits to a point abutting the north side of Ky 712;

(L) Proceeding east-southeast on Ky 712 to the junction of Massie School Road and Ky 712;

(M) Proceeding to the south-southwest and then north-northwest on Massie School Road to the junction of Ky 53 and Massie School Road;

(N) Proceeding on Ky 53 to the north-northwest to the junction of Moody Lane and Ky 53;

(O) Proceeding on Moody Lane to the south-southwest until meeting the city limits of La Grange;

(P) Then briefly proceeding north following the La Grange city limits to the intersection of the northbound lane of Interstate 71 and the La Grange city limits;

(Q) Proceeding southwest on the northbound lane of Interstate 71 until intersecting with the North Fork of Currys Fork;

(R) Proceeding south-southwest beyond the confluence of Currys Fork to the south-southwest beyond the confluence of Floyds Fork continuing on to the Oldham-Jefferson County Line; and

(S) Proceeding northwest along the Oldham-Jefferson County Line to the beginning.

* * * * *

(10) * * *

(iv) The portion of Essex County that consists of the portion of Whiteface Mountain above 4,500 feet in elevation.

* * * * *

(11) * * *

(i) Allegheny;

* * * * *

(14) * * *

(xvii) Richmond;

* * * * *

14. Section 80.75 is amended by revising paragraphs (b), (f)(2)(ii)(A) (*1*), and (j) to read as follows:

§ 80.75 Reporting requirements.

* * * * *

(b) *Reports for gasoline or RBOB produced or imported under the simple model.*

(1) *RVP averaging reports.*

(i) Any refiner or importer that produced or imported any reformulated gasoline or RBOB under the simple model that was to meet RVP standards on average ("averaged reformulated gasoline") shall submit to the Administrator, with the third quarterly report, a report for each refinery or importer for such averaged reformulated gasoline or RBOB produced or imported during the previous RVP averaging period. This information shall be reported separately for the following categories:

(A) Gasoline or RBOB which is designated as VOC-controlled intended for areas in VOC-Control Region 1; and

(B) Gasoline or RBOB which is designated as VOC-controlled intended for VOC-Control Region 2.

(ii) The following information shall be reported:

(A) The total volume of averaged reformulated gasoline or RBOB in gallons;

(B) The compliance total value for RVP; and

(C) The actual total value for RVP.

(2) *Sulfur, NO_X* and T90 averaging reports.

(i) Any refiner or importer that produced or imported any reformulated gasoline or RBOB under the simple model shall submit to the Administrator, with the fourth quarterly report, a report for such reformulated gasoline or RBOB produced or imported during the previous year:

(A) For each refinery or importer; or

(B) In the case of refiners who operate more than one refinery, for each grouping of refineries as designated by the refiner pursuant to § 80.41(h)(2)(iii).

(ii) The following information shall be reported:

(A) The total volume of reformulated gasoline or RBOB in gallons;

(B) The applicable sulfur content standard under § 80.41(h)(2)(i) in parts per million;

(C) The average sulfur content in parts per million;

(D) The applicable olefin content standard under § 80.41(h)(2)(i) in volume percent;

(E) The average olefin content in volume percent;

(F) The applicable T90 distillation point standard under § 80.41(h)(2)(i) in degrees Fahrenheit; and

(G) The average T90 distillation point in degrees Fahrenheit.

* * * * *

(f) * * *

(2) * * *

(ii) * * *

(A) * * *

(*1*) Gasoline which is designated as VOC-controlled and oxygenated fuels program reformulated gasoline (OPRG);

* * * * *

(j) *Additional reporting requirements for certain importers.* In the case of any importer to whom different standards apply for gasoline imported at different facilities by operation of § 80.41(q)(2), such importer shall submit separate reports for gasoline imported into facilities subject to different standards.

* * * * *

15. Section 80.76 is amended by revising paragraphs (c)(2), (c)(3) introductory text, (c)(3)(i), and (c)(3)(ii) to read as follows:

§ 80.76 Registration of refiners, importers or oxygenate blenders.

* * * * *

(c) * * *

(2) For each separate refinery and oxygenate blending facility, the facility name, physical location, contact name, telephone number, and type of facility; and

(3) For each separate refinery and oxygenate blending facility, and for each importer's operations in a single PADD:

(i) Whether records are kept on-site or off-site of the refinery or oxygenate blending facility, or in the case of importers, the registered address;

(ii) If records are kept off-site, the primary off-site storage facility name, physical location, contact name, and telephone number; and

* * * * *

16. Section 80.77 is amended by revising paragraphs (g)(2)(iii), (g)(2)(iv)(A) and (B), adding paragraph (g)(3), and by revising paragraph (h) introductory text to read as follows:

§ 80.77 Product transfer documentation.

* * * * *

(g) * * *

(2) * * *

(iii) In the case of VOC-controlled gasoline subject to the simple model standards, RVP;

(iv) * * *

(A) Prior to January 1, 1998, the NOx emissions performance minimum, and for VOC-controlled gasoline the VOC emissions performance minimum, in milligrams per mile; and

(B) Beginning on January 1, 1998, the NOx emissions performance minimum, and for VOC-controlled gasoline the VOC emissions performance minimum; and

(3) Identification of VOC-controlled reformulated gasoline or RBOB as gasoline or RBOB which contains ethanol, or which does not contain any ethanol.

(h) Prior to January 1, 1998, in the case of reformulated gasoline or RBOB subject to the complex model standards:

* * * * *

17. Section 80.78 is amended by revising paragraphs (a)(1)(v) (B) and (C) to read as follows:

§ 80.78 Controls and prohibitions on reformulated gasoline.

(a) * * *

(1) * * *

(v) * * *

(B) Unless each gallon of such gasoline that is subject to simple model standards has an RVP which is less than or equal to the applicable RVP maximum specified in § 80.41;

(C) Unless each gallon of such gasoline that is subject to complex model standards has a VOC and NOx emissions reduction percentage which is greater than or equal to the applicable minimum specified in § 80.41.

* * * * *

18. Section 80.81 is amended by revising paragraphs (a)(2)(iii), (b)(4), and (h) to read as follows:

§ 80.81 Enforcement exemptions for California gasoline.

(a) * * *

(2) * * *

(iii) Is imported into the State of California from inside the United States and that is manufactured at a refinery that does not produce reformulated gasoline for sale in any covered area outside the State of California.

(b) * * *

(4) The compliance demonstration required by paragraph (b)(3)(ii) of this section shall be submitted no later than May 31, 1996, along with the report for the first quarter of 1996 required to be submitted under § 80.75(a)(1)(i).

* * * * *

(h) For purposes of the batch sampling and analysis requirements contained in § 80.65(e)(1), any refiner, importer or oxygenate blender of California gasoline may, with regard to such gasoline, use a sampling and/or analysis methodology prescribed in Title 13, California Code of Regulations, sections 2260 *et seq.*, in lieu of any applicable methodology specified in § 80.46.

* * * * *

19. In § 80.90, the equation in paragraph (b)(1) is revised, and paragraph (e)(2) is revised to read as follows:

§ 80.90 Conventional gasoline baseline emissions determination.

* * * * *

(b) * * *

(1) * * *

EXHBEN = (1.884 + 0.949xBZ + 0.113x(AR − BZ))

* * * * *

(e) * * *

(2) The annual average baseline NO_X emissions of the facility shall be determined using the emissions values determined in paragraph (e)(1) of this section in the equation specified in paragraph (a) of this section.

* * * * *

20. Section 80.91 is amended by:

a. adding paragraph (c)(5)(iv);

b. adding a sentence to the end of paragraph (d)(1)(i)(A) introductory text;

c. revising paragraph (d)(1)(i)(A)*(1)*, and revising the last sentence in paragraph (d)(1)(i)(B);

d. revising the equation and the definition of T_{js} in paragraph (e)(2)(iv), and revising the definition of T_{js} in paragraph (e)(2)(v)(A);

e. revising the equations in paragraphs (e)(4)(i) (A) and (B), and the equation and definition of UV in paragraph (e)(4)(ii)(A) and the equation in paragraph (e)(4)(ii)(B);

f. revising the second sentence of paragraph (e)(5)(vi);

g. adding paragraphs (e)(5)(vi)(A) and (e)(5)(vi)(B);

h. and i. revising paragraph (e)(5)(vii) introductory text, and revising paragraph (e)(5)(viii);

j. and k. revising paragraph (e)(7)(i)(A);

l. revising paragraphs (e)(7)(i)(C) and (f)(2)(ii); and

m. adding paragraph (e)(7)(i)(D).

The revisions and additions are set out to read as follows:

§ 80.91 Individual baseline determination.

* * * * *

(c) * * *

(5) * * *

(iv) The annual average anti-dumping statutory baseline shall have the following set of emission values:

Exhaust benzene emissions, simple model—6.45

Exhaust benzene emissions, complex model—33.03 mg/mile

Exhaust toxics emissions, Phase I—50.67 mg/mile

Exhaust toxics emissions, Phase II—104.5 mg/mile

NO_X emissions, Phase I—714.4 mg/mile

NO_X emissions, Phase II—1461. mg/mile

(d) * * *

(1) * * *

(i) * * *

(A) * * * When method 1 per batch RVP data is available, a month is considered equivalent to 4 weeks of seasonal data.

(1) Method 1, per batch, actual RVP data will be used to define that batch as either summer fuel or winter fuel. Summer fuel is defined as fuel produced and intended for sale to satisfy federal summer volatility standards. When such per batch actual RVP data is not available, data is allocated per month as follows. A summer month is defined as any month during which more than 50 percent (by volume) of the gasoline produced by a refiner met the federal summer gasoline volatility requirements. Winter shall be any month which could not be considered a summer month under this definition.

* * * * *

(B) * * * In any case, all data collected through the date of collection of the last data point included in the determination of a baseline fuel parameter value must be utilized in the baseline determination of that fuel parameter.

* * * * *

(e) * * *

(2) * * *

(iv) * * *

$$X_{bs}^{m_s} = \sum_{j=1}^{T_{js}} \left\{ \frac{}{N_s} \times \left(\frac{\sum_{i=1}^{n_{js}} X_{ijs}}{n_{js}} + \frac{\sum_{i=1}^{p_{js}} \left(X_{ijs} \times V_{ijs} \times SG_{ijs} \right)}{\sum_{i=1}^{p_{js}} \left(V_{ijs} \times SG_{ijs} \right)} \right) \right\}$$

* * * * *

T_{js} = total 1990 volume of blendstock j used in the refinery's season s gasoline

* * * * *

(v) * * *

(A) * * *

T_{js} = total 1990 volume of blendstock j used in the refinery's season s gasoline

* * * * *

(4) * * *

(i) * * *

(A) * * *

UV = [AV/(100 − OV)] x 100

$$UR = \left[BR - \left\{ \sum_{i=1}^{n} \left(OV_i \times OR_i \right) \right\} / 100 \right] \Big/ \left[\left\{ 100 - \sum_{i=1}^{n} OV_i \right\} / 100 \right]$$

* * * * *

(B) * * *

* * * * *

(ii) * * *

(A) * * *

AV = UV x (100 − OV)/100

* * * * *

UV = non-oxygenated parameter value

* * * * *

(B) * * *

$$BR = \left\{ UR \times \left[100 - \sum_{i=1}^{n} (OV_i) \right] + \sum_{i=1}^{n} \left(OV_i \times OR_i \right) \right\} / 100$$

* * * * *

(5) * * *

(vi) * * *Such data shall be used in the determination of the baseline value, due to the work-in-progress, of each of the fuel parameters specified in § 80.91(a)(2)(i) and as verification of the effect of the work-in-progress.

(A) The baseline value, due to the work-in-progress, of each of the fuel parameters specified in § 80.91(a)(2)(i) shall be used in the determination of the emissions specified in § 80.90.

(B) The baseline values of sulfur, olefins and E300, due to the work-in-progress, shall be used in the determination of the emissions specified in § 80.41(j)(3).

(vii) The annual average baseline values of exhaust benzene emissions, per § 80.90(b) and § 80.90(c), exhaust toxics emissions, per § 80.90(d), and NO_X emissions, per § 80.90(e), are the values resulting from the work-in-progress baseline adjustment, not to exceed the larger of:

* * * * *

(viii) When compliance is achieved using the simple model, per § 80.41 and/or § 80.101, the baseline values of sulfur, olefins and T90 are the values resulting from the work-in-progress baseline adjustment, not to exceed the larger of:

(A) The unadjusted annual average baseline value of each fuel parameter specified in paragraph (e)(5)(viii) of this section; or

(B) The following values:

(*1*) Sulfur, 355 ppm;

(*2*) Olefins, 11.3 volume percent;

(*3*) T90, 349 °F; or

(C) An adjusted annual average baseline fuel parameter value for sulfur, olefins and T90 such that exhaust emissions of VOC, toxics, and NO_X do not exceed the complex model emission levels specified in paragraph (e)(5)(vii)(B) of this section. In the petition for a work-in-progress adjustment, the refiner shall specify sulfur, olefins and T90 values that meet these emission levels.

* * * * *

(7) * * *

(i) * * *

(A) (*1*) The refinery is the only refinery of a refiner such that it cannot form an aggregate baseline with another refinery (per paragraph (f) of this section) and meets the requirements specified in paragraphs (e)(7)(i) (B) and (C); or

(*2*) The refiner is a multi-refinery refiner where each of the refineries also meets the requirements specified in paragraphs (e)(7)(i) (B) and (D).

* * * * *

(C) For single refinery refiners, the ratio of a refiner's 1990 JP–4 production to its 1990 gasoline production must equal or exceed 0.2.

(D) For multi-refinery refiners, the 1990 JP–4 production to 1990 gasoline production ratio must equal or exceed 0.2. The ratio of a multi-refinery refiner must be calculated over all of its refineries (aggregated).

* * * * *

(f) * * *

(2) * * *

(ii) If the baseline fuel value for aromatics, olefins, and/or benzene (determined per paragraph (e) of this section) is higher than the high end of the valid range limits specified in § 80.42(c)(1) if compliance is being determined under the Simple Model, or in § 80.45(f)(1)(ii) if compliance is being determined under the Complex Model, then the valid range limits may be extended for conventional gasoline in the following manner:

(A) The new high end of the valid range for aromatics is determined from the following equation:

NAROLIM = AROBASE + 5.0 volume percent

where

NAROLIM = The new high end of the valid range limit for aromatics, in volume percent

AROBASE = The seasonal baseline fuel value for aromatics, in volume percent

(B) The new high end of the valid range for olefins is determined from the following equation:

NOLELIM = OLEBASE + 3.0 volume percent

where

NOLELIM = The new high end of the valid range limit for olefins, in volume percent

OLEBASE = The seasonal baseline fuel value for olefins, in volume percent

(C) The new high end of the valid range for benzene is determined from the following equation:

NBENLIM = BENBASE + 0.5 volume percent

where

NBENLIM = The new high end of the valid range limit for benzene, in volume percent

BENBASE = The seasonal baseline fuel value for benzene, in volume percent

(D) The extension of the valid range is limited to the applicable summer or winter season in which the baseline fuel values for aromatics, olefins, and/or benzene exceed the high end of the valid range as described in paragraph (f)(2)(ii) of this section. Also, the extension of the valid range is limited to use by the refiner whose baseline value for aromatics, olefins, and/or benzene was higher than the valid range limits as described in paragraph (f)(2)(ii) of this section.

(E) Any extension of the Simple Model valid range limits is applicable only to the Simple Model. Likewise any extension of the Complex Model valid range limits is applicable only to the Complex Model.

(F) The valid range extensions calculated in paragraphs (f)(2)(ii)(A), (B), and (C) of this section are applicable to both the baseline fuel and target fuel for the purposes of determining the compliance status of conventional gasolines. The extended valid range limit represents the maximum value for that parameter above which fuels cannot be evaluated with the applicable compliance model.

(G) Under the Simple Model, baseline and compliance calculations shall subscribe to the following limitations:

(*1*) If the aromatics valid range has been extended per paragraph (f)(2)(ii)(A) of this section, an aromatics value equal to the high end of the valid range specified in § 80.42(c)(1) shall be used for the purposes of calculating the exhaust benzene fraction.

(*2*) If the fuel benzene valid range has been extended per paragraph (f)(2)(ii)(C) of this section, a benzene value equal to the high end of the valid range specified in § 80.42(c)(1) shall be used for the purposes of calculating the exhaust benzene fraction.

(H) Under the Complex Model, baseline and compliance calculations shall subscribe to the following limitations:

(*1*) If the aromatics valid range has been extended per paragraph (f)(2)(ii)(A) of this section, an aromatics value equal to the high end of the valid range specified in § 80.45(f)(1)(ii) shall be used for the purposes of calculating emissions performances.

(*2*) If the olefins valid range has been extended per paragraph (f)(2)(ii)(B) of this section, an olefins value equal to the high end of the valid range specified in § 80.45(f)(1)(ii) shall be used for the target fuel for the purposes of calculating emissions performances.

(*3*) If the benzene valid range has been extended per paragraph (f)(2)(ii)(C) of this section, a benzene value equal to the high end of the valid range specified in § 80.45(f)(1)(ii) shall be used for the target fuel for the purposes of calculating emissions performances.

* * * * *

21. In § 80.93, the first sentence of paragraph (a)(3)(ii) is revised, and

paragraph (a)(3)(iv) is added, and paragraph (c)(9) is revised as follows:

§ 80.93 Individual baseline submission and approval.

(a) * * *

(3) * * *

(ii) Petitions, 'showings,' and other associated proof may be submitted to EPA prior to submittal of the individual baseline (per paragraphs (a)(1) and (a)(2) of this section). * * *

* * * * *

(iv) Petitions submitted prior to the deadline for baseline submittals shall be submitted to the EPA at the following address: Fuels Studies and Standards Branch, Baseline Petition, U.S. EPA, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

* * * * *

(c) * * *

(9) *Other baseline information.* Narrative discussing any aspects of the baseline determination not already indicated per the requirements of paragraph (c)(8) of this section shall be provided.

* * * * *

22. Section 80.101 is amended by revising paragraphs (e)(3), (f)(4)(i), (f)(4)(ii), (g)(1), and (i)(1) introductory text to read as follows:

§ 80.101 Standards applicable to refiners and importers.

* * * * *

(e) * * *

(3) California gasoline as defined in § 80.81(a)(2); and

* * * * *

(f) * * *

(4) * * *

(i) If the total volume of the conventional gasoline, RBOB, reformulated gasoline, and California gasoline as defined in § 80.81(a)(2), produced or imported by any refiner or importer during the averaging period is equal to or less than that refiner's or importer's 1990 baseline volume as determined under § 80.91(f)(1), the compliance baseline for each parameter or emissions performance shall be that refiner's or importer's individual 1990 baseline; or

(ii) If the total volume of the conventional gasoline, RBOB, reformulated gasoline, and California gasoline as defined in § 80.81(a)(2), produced or imported by any refiner or importer during the averaging period is greater than that refiner's or importer's 1990 baseline volume as determined under § 80.91(f)(1), the compliance baseline for each parameter or emissions performance shall be calculated according to the following formula:

$$CB_i = \left(B_i * \left(\frac{V_{1990}}{V_a} \right) \right) + \left(DB_i * \left(1 - \frac{V_{1990}}{V_a} \right) \right)$$

where

CB_i = the compliance baseline value for parameter or emissions performance i

B_i = the refiner's or importer's individual baseline value for parameter or emissions performance i calculated according to the methodology in § 80.91

DB_i = the anti-dumping statutory baseline value for parameter or emissions performance i, as specified at § 80.91(c)(5)(iii) or (c)(5)(iv), respectively

V_{1990} = the 1990 baseline volume as determined under § 80.91(f)(1)

V_a = the total volume of reformulated gasoline, conventional gasoline, RBOB, and California gasoline as defined in § 80.81(a)(2) produced or imported by a refiner or importer during the averaging period

(g) * * *

(1) (i) *Simple model calculations.* In the case of any refiner or importer subject to an individual refinery baseline, the annual average value for each parameter or emissions performance during the averaging period, calculated according to the following methodologies, shall be less than or equal to the refiner's or importer's standard under paragraph (b) of this section for that parameter.

(A) The average value for sulfur, T–90, olefin, benzene, and aromatics for an averaging period shall be calculated as follows:

$$APARM = \left(\frac{\sum_{i=1}^{n} (V_i \times PARM_i \times SG_i)}{\sum_{i=1}^{n} V_i \times SG_i} \right)$$

where

APARM = the average value for the parameter being evaluated

Vi = the volume of conventional gasoline or other products included under paragraph (d) of this section, in batch i

$PARM_i$ = the value of the parameter being evaluated for batch i as determined in accordance with the test methods specified in § 80.46

n = the number of batches of conventional gasoline and other products included under paragraph (d) of this section produced or imported during the averaging period

SG_i = specific gravity of batch i (only applicable for sulfur)

(B) Exhaust benzene emissions under the Simple Model for an averaging period are calculated as follows:

$$EXHBEN = 1.884 + (0.949 \times BZ) + (0.113 \times (AR - BZ))$$

where

EXHBEN = the average exhaust benzene emissions for the averaging period

BZ = the average benzene content for the averaging period, calculated per paragraph (g)(1)(i)(A) of this section

AR = the average aromatics content for the averaging period, calculated per paragraph (g)(1)(i)(A) of this section

(ii) *Complex model calculations.* Exhaust benzene, exhaust toxics, and exhaust NO_X emissions performance for each batch shall be calculated in accordance with the applicable model under § 80.45.

* * * * *

(i) * * *

(1) Any refiner or importer shall for each batch of conventional gasoline, and other products if included in paragraph (d) of this section:

* * * * *

23. Section 80.102 is amended by revising the formula in paragraph (b)(1) and the definition of V_{bs}, the formula in paragraph (d)(1)(i) and the definitions of V_{bs} and V_g, the formula in paragraph (d)(2)(i) and the definition of $V_{g,i}$, paragraph (d)(3)(iv), adding paragraph

(d)(3)(v), and revising paragraphs (e)(2)(i) and (f)(2)(i) to read as follows:

§ 80.102 Controls applicable to blendstocks.

* * * * *

(b)(1) * * *

$$BG_{by} = \frac{V_{bs}}{V_g}$$

* * * * *

V_{bs} = Volume of applicable blendstock produced or imported and transferred to others during the calendar year, and used to produce gasoline

* * * * *

(d) * * *

(1) * * *

(i) * * *

$$BG_a = \frac{V_{bs}}{V_g}$$

* * * * *

V_{bs} = Volume of applicable blendstock produced or imported and subsequently transferred to others during the averaging period

V_g = Volume of conventional gasoline, reformulated gasoline and RBOB produced or imported during the averaging period, excluding California gasoline as defined in § 80.81(a)(2)

* * * * *

(2) * * *

(i) * * *

$$BGC_{comp} = \frac{\sum_{i=1}^{n} V_{bs,i}}{\sum_{i=1}^{n} V_{g,i}}$$

* * * * *

$V_{g,i}$ = Volume of conventional gasoline, reformulated gasoline and RBOB produced or imported during averaging period i, excluding California gasoline as defined in § 80.81(a)(2)

* * * * *

(3) * * *

(iv) Transferred between refineries which have been grouped pursuant to § 80.101(h) by a refiner for the purpose of determining compliance under this subpart; or

(v) Used to produce California gasoline as defined in § 80.81(a)(2).

* * * * *

(e) * * *

(2) * * *

(i) Include all blendstocks produced or imported and transferred to others in its compliance calculations under § 80.101(g) for two averaging periods beginning on January 1 of the averaging period subsequent to the averaging period when the exceedance occurs;

* * * * *

(f) * * *

(2) * * *

(i) EPA may grant the waiver referred to in paragraph (f)(1)(iii) of this section if the level of blendstock production was the result of extreme or unusual circumstances (e.g., a natural disaster or act of God) which clearly are outside the control of the refiner or importer, and which could not have been avoided by the exercise of prudence, diligence, and due care.

* * * * *

24. Section 80.104 is amended by revising paragraph (a)(2)(ix) to read as follows:

§ 80.104 Recordkeeping requirements.

* * * * *

(a) * * *

(2) * * *

(ix) In the case of any refinery-produced or imported products listed in § 80.102(a) that are excluded under § 80.102(d)(3), documents which demonstrate that basis for exclusion; and

* * * * *

25. Section 80.105 is amended by revising paragraph (a)(2) to read as follows:

§ 80.105 Reporting requirements.

(a) * * *

(2) (i) The total gallons of applicable blendstocks produced or imported and transferred to others that are not excluded under § 80.102(d)(3); and

(ii) The total gallons of applicable blendstocks produced or imported and transferred to others that are excluded under § 80.102(d)(3);

* * * * *

26. Section 80.125 is amended by revising paragraph (a) to read as follows:

§ 80.125 Attest engagements.

(a) Any refiner, importer, and oxygenate blender subject to the requirements of this subpart F shall engage an independent certified public accountant, or firm of such accountants (hereinafter referred to in this subpart F as "CPA"), to perform an agreed-upon procedure attestation engagement of the underlying documentation that forms the basis of the reports required by §§ 80.75 and 80.105.

* * * * *

27. Section 80.128 is amended by revising paragraphs (e)(2), (e)(5), and (g)(3)(iii) to read as follows:

§ 80.128 Agreed upon procedures for refiners and importers.

* * * * *

(e) * * *

(2) Determine that the requisite contract was in place with the downstream blender designating the required blending procedures, or that the refiner or importer accounted for the RBOB using the assumptions in § 80.69(a)(9);

* * * * *

(5) Agree the sampling and testing frequency of the refiner's or importer's downstream oxygenated blender quality assurance program with the sampling and testing rates as required in § 80.69(a)(7).

* * * * *

(g) * * *

(3) * * *

(iii) Obtain a listing from the refiner or importer of the batches of conventional gasoline or conventional sub-octane blendstock, and the compliance calculations which include oxygenate blended by the downstream oxygenate blender, and test the mathematical accuracy of the calculations contained in this listing;

* * * * *

28. Section 80.129 is amended by revising paragraph (e) to read as follows:

§ 80.129 Agreed upon procedures for downstream oxygenate blenders.

* * * * *

(e) Agree the sampling and testing frequency of the blender's quality assurance program with the sampling and testing rates required in § 80.69.

[FR Doc. 94–17131 Filed 7–19–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 85

[AMS–FRL–5011–9]

Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a final rule that sets forth requirements and procedures for EPA authorization of California enforcement of standards and other requirements relating to the control of emissions from new nonroad vehicles or engines under section 209(e) of the Clean Air Act (Act), as amended.

The rule includes definitions of the categories of new nonroad engines and vehicles that the Act specifies as preempted from state regulation. These

definitions of "farm equipment", "construction equipment", and "locomotive" clarify which nonroad engines and vehicles may be subject to state regulation because such regulation is not preempted. The definition of "new" in this rulemaking applies to all new nonroad engines and vehicles with the exception of locomotives and engines used in locomotives. This rule also provides procedures by which EPA may authorize California to enforce standards and provides guidance for states that adopt California standards. Finally, the rule discusses the criteria to be used by EPA in its analysis of California authorization requests. The rule will provide guidance to California, other states, and vehicle and engine manufacturers regarding new nonroad engine and vehicle preemption.

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

ADDRESSES: Copies of material relevant to this rulemaking have been placed in Docket A–91–18 and are available for public inspection between the working hours of 8 a.m. to 4 p.m., Monday through Friday, at: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, Room M1500, First Floor Waterside Mall, 401 M Street, SW., Washington, DC 20460 (Telephone (202) 260–7548). A reasonable fee will be charged by EPA for copying docket material.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Attorney Advisor, Manufacturers Operations Division (6405–J), U.S. Environmental Protection Agency, Washington, DC 20460, Telephone: (202) 233–9256.

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I. Statutory Authority and Background

EPA is required under section 209(e) of the Clean Air Act (Act), as amended, 42 U.S.C. 7543, to "issue regulations to implement" subsection (e). Section 209(e) of the Act addresses the state adoption of emission standards for new nonroad vehicles and engines.

Under section 209(e), all states are preempted from adopting emissions standards for "[n]ew engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower" or for "[n]ew locomotives or new engines used in locomotives". In this final rule, EPA defines these preempted categories, except that EPA does not define the term "new" with respect to locomotives and engines used in locomotives. For new nonroad engines and vehicles not included in the preempted categories, EPA is directed to authorize California, after notice and opportunity for public hearing, to enforce such standards and other requirements as California adopts for the regulation of such engines and vehicles, if these regulations meet the criteria set forth in the Act. Several of the criteria to be used for nonroad engine and vehicle authorizations are similar to the requirements applicable to waivers of Federal preemption of emission standards for new motor vehicles under section 209(b). Section 209(a) prohibits state adoption of emission standards for new motor vehicles and engines. Section 209(b) directs EPA to waive this prohibition for California if certain criteria are met. Other states may adopt California nonroad vehicle or engine emission standards under section 209(e) if they comply with several requirements.

This rule was proposed at 56 FR 45866, Sept. 6, 1991. A public hearing was held on September 20, 1991. Many industries presented comments through an association or individually. Represented in the comments presented at the hearing and submitted in writing are the following: engine manufacturers; manufacturers and dealers of various types of equipment including agricultural, construction, mining, utility, and lawn and garden; manufacturers of emission controls; railroads; manufacturers of industrial trucks; the San Diego County Air Pollution Control District; and the State of California.

II. Discussion of Final Rule and Comments Received

A. Changes to Proposed Rule for Final Rule

After reviewing the comments received, EPA has made the following changes to the Notice of Proposed Rulemaking (NPRM) for the final rule. First, the final rule establishes one definition of "new" that applies equally to domestically manufactured and imported vehicles and engines. Second, the definition of "new" applies to all nonroad engines other than locomotives and engines used in locomotives. EPA will define "new" locomotives and "new" engines used in locomotives in its locomotive standards promulgated under section 213 of the Act. Third, in the final rule EPA defines the word "commercial," as used in the definitions of "farm equipment" and "construction equipment." Fourth, EPA makes minor modifications to the definitions of "construction equipment" and "locomotive." Fifth, the proposed federal labeling requirement is deleted. Sixth, EPA changes its interpretation of section 209(e) so that California may adopt, but not enforce, nonroad standards prior to EPA authorization. Seventh, EPA changes the standard of review of California's primary use determination to a preponderance of the evidence standard. Finally, EPA changes its interpretation of "consistent with this section" in section 209(e)(2)(A)(iii) to include section 209(b)(1)(C).

B. Nonroad Engines and Vehicles

In the NPRM, EPA acknowledged that at some point it would be necessary to clarify whether certain internal combustion engines, such as those used in movable pumps, generators, and compressors, are stationary sources and therefore subject to regulations under Title I of the Act or are mobile sources and therefore potentially subject to nonroad regulations under Title II of the Act. The issue is complex. The definitions of "stationary source" in sections 111(3) and 302(z) of the Act and of "nonroad engine" in section 216(10) of the Act do not make clear under which Title certain internal combustion engines belong. The engines in question are those used in equipment for reasons other than propulsion.

Ingersoll-Rand, the Engine Manufacturers Association (EMA), and the Equipment Manufacturers Institute (EMI), among others, commented that EPA should determine in this rulemaking that both self-propelled and transportable equipment are mobile sources. This would clarify to manufacturers that transportable farm and construction equipment are exempted from state regulation for purposes of control of emissions.

EPA agrees that the above issue needs to be addressed and has resolved this issue in a rulemaking implementing

section 213 of the Act.[1] Section 213 requires EPA to "conduct a study of emissions from nonroad engines and nonroad vehicles to determine if such emissions cause, or significantly contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." The section further provides that if the Administrator determines that nonroad emissions are "significant contributors" in more than one ozone or carbon monoxide (CO) nonattainment area, the Administrator shall promulgate standards for such nonroad engines.

EPA studied nonroad emissions and issued a report in November 1991.[2] In the June 17, 1994 rulemaking EPA determined, based on the study data and the docket of the rulemaking (A–91–24), that emissions from nonroad sources are significant contributors to ozone and CO in more than one nonattainment area. EPA's final rule also includes regulations that set forth emission standards for CO, hydrocarbon (HC), oxides of nitrogen (NO_X) and smoke emissions from large new nonroad compression-ignition engines at or above 37 kilowatts in power, with the exclusion for certain types of engines.[3] Within EPA's 37 kilowatt and above nonroad rule a definition of nonroad engine is provided. Section 89.2 of the 37 kilowatt and above rule provides the following definition:

Nonroad engine means:

(1) Except as discussed in (2) below, a nonroad engine is any internal combustion engine:

(i) in or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) in or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) that, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(2) An internal combustion engine is not a nonroad engine if:

(i) the engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Act; or

(ii) the engine is regulated by a federal New Source Performance Standard promulgated under section 111 of the Act; or

(iii) the engine otherwise included in (1)(iii) remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

For purposes of consistency with section 213, and the reasons set forth in the 37 kilowatt and above regulation,[4] EPA has decided to adopt and apply this definition to today's section 209(e) rulemaking.

The California Air Resources Board's (CARB) utility engine regulation (the California Utility Rule) affects only engines smaller than 25 horsepower. EPA believes that equipment that uses such small engines is intended to be mobile. For example, equipment that uses engines smaller than 25 horsepower includes hand-held and portable equipment, which EPA believes are clearly nonroad, mobile sources.

C. Definition of "New" as Used in "New Nonroad Engine," and "New Nonroad Vehicle"

In the NPRM, EPA defined "new nonroad engine" and "new nonroad vehicle" to mean a nonroad engine or a nonroad vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser. Ultimate purchaser was proposed to be defined as the first person who in good faith purchases such a new nonroad vehicle or nonroad engine for purposes other than resale. Additionally, with respect to imported nonroad engines, FPA proposed to define "new" nonroad engine to be a nonroad engine manufactured after the effective date of a regulation issued under section 213 which would be applicable to such engine had it been manufactured for importation into the United States. These definitions also applied to "new locomotives" and "new engines used in locomotives."

Comments on EPA's proposed definition of "new" were several. First, CARB, the San Diego Air Pollution Control Board (SDAPCB), and the Manufacturers of Emissions Controls Association (MECA) supported EPA's definition. CARB asked that EPA clarify which regulatory activities states may perform; for example, whether states may require in-use testing and impose add-on or retrofit requirements. On the other hand, many commenters, including U.S. Representative Terry Bruce, the Equipment Manufacturers Institute (EMI), the Engine Manufacturers Association (EMA), and the Portable Power Equipment Manufacturers Association (PPEMA), opposed EPA's proposed definition and proposed that "new" should mean manufactured after either the effective date of the Clean Air Act Amendments, November 15, 1990, or after federal regulations take effect. These commenters believe that Congress intended an "absolute" preemption. That is, the nonroad engines and vehicles in the preempted categories manufactured after November 15, 1990 would never be subject to any kind of state emission regulation. EMA commented that if EPA does not accept the latter definition, it should expand its proposed definition so that engines remain "new" until they have exceeded their useful life.

Commenters in the railroad industry also supported a definition of "new" as "manufactured after November 1990" and stated further that the railroad industry has traditionally been preempted from state regulation, such as in the area of safety. The same commenters indicated that they believe that state control of locomotive emissions or state enforcement of federal standards would interfere with interstate commerce. Railroad commenters also stated that any standards for rebuilt or remanufactured engines or locomotives should be uniform federal standards—not state standards. Furthermore, if remanufactured engines were rebuilt to comply with such federal standards, they should be considered "new".

[1] On June 17, 1994 a final rule was published (59 FR 31306) for nonroad engines 37 kilowatts (50 horsepower) which provides a definition of nonroad engine.

[2] Nonroad Engine and Vehicle Emission Study, EPA publication number 21A–2001, November, 1991. Available in EPA docket A–91–24 or from the National Technical Information Service (NTIS).

[3] 59 FR 31306, June 17, 1994.

[4] EPA incorporates by reference the 37 kilowatt and above nonroad regulation at 59 FR 31306, June 17, 1994.

Commenters also opposed the proposed definition regarding imported vehicles and engines because the definition of "new" was different depending upon whether the nonroad engine was produced domestically or abroad.

These proposed definitions for "new nonroad vehicles" and "new nonroad engines" parallel the definitions of "new motor vehicles" and "new motor vehicle engines" in section 216 of the Clean Air Act. The definition of "new" proposed for imported nonroad engines was intended to address nonconforming engines which may become subject to federal emission requirements at the time the engine or vehicle is imported into the United States. The Agency has decided to delete this definition of "new" for imported engines. EPA agrees with the commenters that imports and domestic products should generally be treated alike for regulatory purposes. The Agency has addressed the importation of nonroad engines which do not conform to federal emission standards at the time of importation.[5] Today's rule, in any event, treats domestic and imported nonroad engines the same way for purposes of determining whether they are preempted from state regulation.

This final rule establishes a definition for all domestically manufactured and imported "new nonroad engines," "new nonroad vehicles," other than "new locomotives" and "new engines used in a locomotive."[6] New nonroad engines and new nonroad vehicles are defined as engines and vehicles the equitable or legal title to which has not been transferred to an ultimate purchaser. The ultimate purchaser is defined as the first person who in good faith purchases such engine or vehicle for purposes other than resale. For some engines or vehicles the passage of title in the United States may not formally occur or manufacturers may retain title and lease the engines or equipment. In these cases, a domestic or imported nonroad engine or nonroad vehicle will retain its status as "new" until such engine or vehicle is "placed into service." An engine or vehicle is considered "placed into service" when the engine or vehicle is used for its functional purposes. EPA believes that the definition of new should include the "placed into service" addition to the motor vehicle definition of new found in section 216 of the Act because of the nature of the nonroad market. Nonroad engines and nonroad vehicles are often leased and maintained by the manufacturer well into the useful life of the nonroad equipment. A piece of equipment, the title of which has passed to the ultimate purchaser, should not be treated differently than a piece of equipment which is being used but has not yet passed to an ultimate purchaser.

The Agency believes that this definition of "new" comports with the language, intent and structure of the Clean Air Act and the definition of "new" contained in the 37 kilowatt and above regulation and is therefore a permissible construction of the statute. Contrary to the assertion of some commenters, EPA's definition of "new" is consistent with the dictionary definition of the word as "having existed or been made but a short time." Webster's Ninth New Collegiate Dictionary, 1990. Generally speaking, manufactured products are sold soon after they are made and are considered new until they are sold or used. The commenters' definition of new—anything manufactured after the Clean Air Act Amendments' enactment or an applicable regulation's promulgation—would mean, by contrast, that any engine manufactured after a certain date would be new forever. This is certainly not the plain meaning of "new." Congress could have stated that the federal preemption applied to certain equipment manufactured after a certain date, but Congress did not do so. Elsewhere in Title II, Congress specified that a provision only applied to products manufactured after a certain date (*see*, section 218 requiring a ban on engines manufactured after the 1992 model year that require leaded gasoline) or first introduced into commerce after a certain date (*see*, section 211(f) regarding prohibition on fuels that are not substantially similar to fuels used to certify vehicles as meeting emission standards). The lack of such a date here further supports that Congress intended "new" to mean newly manufactured and not yet sold.

The legislative record also shows Congressional intent that "new" should refer to newly manufactured products. In his colloquy with Senator Wilson explaining the final version of section 209(e), Senator Chafee notes that "because the preemption is limited to new engine standards only, States can continue to require existing *and in-use* nonroad engines to reduce emissions . . ." [Emphasis added] 136 Cong. Rec. S17237 (October 26, 1990). This language is echoed by similar language from Senator Baucus in his report to the Senate on the conference bill. 136 Cong. Rec. S16976 (October 27, 1990). If Congress intended the definition of new nonroad engines or equipment, and as a result the preemption, to apply to an engine for its entire life, then it would appear that there would be no distinction between new and in-use nonroad engines, as an engine manufactured after a certain date would always be new. Yet the statements of Senator Chafee and Senator Baucus clearly contemplate such a distinction.

The Agency's definition of new is also consistent with the way the Act approaches motor vehicle emission control. As noted earlier, section 216 defines new in the context of motor vehicles as "a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser." The Act applies federal emissions standards to "new" vehicles. These federal standards are enforced through certification, assembly line, and recall testing. States, on the other hand, have a role in motor vehicle emission control through inspection/maintenance programs and are not restricted from controlling used vehicles. The section 209(a) prohibition of state regulation of motor vehicles addresses only "new" motor vehicles and engines and prohibits state regulation that occurs before sale, titling, or registration of the vehicle.[7]

The Clean Air Act Amendments of 1990 take a parallel approach to nonroad standards and enforcement. Section 213 provides EPA with authority to set standards for "new" engines and provides for federal enforcement of such standards in the same manner as motor vehicle enforcement. Furthermore, nothing on the face of section 209(e) or section 213 indicates that Congress intended "new" to be interpreted differently in the nonroad and motor vehicle contexts. Given that the preemption provisions for new motor vehicles and new nonroad engines appear in the same section of the Clean Air Act, it is reasonable to believe that Congress did not intend for the word "new" to be defined differently within the same

[5] *See* 59 FR 31306, June 17, 1994, which sets forth CO, HC, particulate matter, NO_x and smoke opacity standards for 50 hp and above nonroad engines and vehicles. EPA is imposed certain restrictions on the importation of nonconforming nonroad engines based on existing regulations for the importation of nonconforming motor vehicles and motor vehicle engines.

[6] As discussed below, EPA is deferring its definitions of "new" locomotives and "new" engines used in a locomotive for the purpose of this regulation. EPA shall define these terms in a later rulemaking, under section 213 of the Act, specifically regulating locomotives.

[7] Section 209(a) provides, in part, ". . . No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment."

section without stating this intent explicitly.[8]

There is not a compelling policy or factual justification for defining new differently in the nonroad and motor vehicle contexts. State regulation of nonroad engines does not generally present any greater degree of disruption of the movement of products, engines or equipment between states than does regulation of motor vehicles. The comments provide little if any justification, in terms of relevant distinctions between motor vehicles and nonroad engines, to justify such a significant departure from EPA's established practice for regulating mobile sources.

The Agency's definition of new is also consistent with case law. *In Allway Taxi, Inc.* v. *City of New York,*[9] the court held that where the exercise of local police power serves the purpose of a federal act—the Clean Air Act in that case—the preemptive effect of the act should be narrowly construed. In keeping with that principle, EPA believes that section 209(e) should be construed narrowly in order to protect states' rights, particularly in an area such as public health in which states traditionally exercise control. California's nonroad regulations will serve the purpose of the federal act by improving air quality.

In *Allway Taxi,* the court discussed the federal preemption of new motor vehicles and interpreted the meaning of new motor vehicle as defined in Section 216 of the Act. The court noted that this definition "reveals a clear congressional intent to preclude states and localities from setting their own exhaust emission control standards only with respect to the manufacture and distribution of new automobiles."[10] The court stated further that the narrow purpose in the definition is reinforced by prohibiting states and localities from setting emission standards before the initial sale or registration of an automobile. Congress specifically declared that section 209 did not preempt states from regulation of the use or movement of motor vehicles after they have reached their ultimate purchasers.[11]

EPA believes that the further a state requirement is removed in time from the manufacture and distribution of new engines, the less interstate commerce is likely to be burdened. Furthermore, the legality of particular regulatory controls that a state may impose on nonroad vehicles or engines that are no longer new will depend upon the burden that such controls place on interstate commerce. In fact, the court in *Allway Taxi* stated that a state or locality is not free to impose its own emission control measures the moment after a new car is bought and registered. "That would be an obvious circumvention of the Clean Air Act and would defeat the congressional purpose of preventing obstruction to interstate commerce."[12] The court further stated that federal preemption does not, however, preclude a state from imposing its own exhaust emission control standards upon the resale or reregistration of the automobile. Furthermore, states are not precluded from setting standards for licensing of vehicles for commercial use. These types of regulations, which are more removed, "would cause only minimal interference with interstate commerce, since they would be directed primarily to intrastate activities and the burden of compliance would be on individual owners and in-state users and not on manufacturers and distributors."[13]

EPA expects that the principles articulated in *Allway Taxi* will be applied by the courts to any State adoption of in-use controls. For example, manufacturers have voiced a concern that California would attempt to impose in-use emission control measures that would apply immediately after a new vehicle or engine were purchased. As the *Allway Taxi* court said, such standards applied to almost-new vehicles would be an attempt to circumvent section 209 preemption and would obstruct interstate commerce.[14]

It should be noted that section 209(e)(2) of the Act does not prevent California or other states from regulating nonroad engines and vehicles in use.[15] EPA believes that the requirements of section 209(e)(2) apply only to new nonroad engines and vehicles. The requirements of section 209(e)(2) are only required for nonroad engines and vehicles the regulation of which has been preempted. The language of section 209(e)(2) does not state any clear preemption, either for new or in use vehicles. The only clear preemption of state regulation of nonroad engines occurs in section 209(e)(1) and section 209(a).[16] Both of these subsections are limited to new engines and vehicles. Given the general legal presumption against reading a preemption more broadly than explicitly required, as discussed in *Allway Taxi,* a preemption of state regulation of nonroad engines and vehicles in use should not be readily implied.

Another indication that section 209(e)(2) was not intended to apply to most in-use regulations of nonroad engines is the fact that neither the Senate nor the House version of the 1990 Act amendments would have preempted state regulation of anything but new nonroad engines. Neither version would have expressly preempted regulation in use. It would be unusual for a bill to come out of conference with a broader preemption than existed in either house and without any mention in the legislative history that such broader preemption had been mandated. In fact, both Senators Chafee and Baucus believed that the scope of the preemption had been narrowed from the House bill, not widened.[17]

In fact, as the legislative history indicates, it appears that Congress

[8] EPA recognizes that regulation of locomotives presents unique circumstances, including questions regarding interstate commerce, that require special attention. EPA is therefore deferring its definition of "new locomotive" and "new engine used in a locomotive" until a later rulemaking dealing specifically with regulation of locomotives.

[9] *Allway Taxi, Inc.* v. *City of New York,* 340 F. Supp. 1120 (S.D.N.Y.), *aff'd,* 468 F.2d 624 (2d Cir. 1972).

[10] *Id.* at 1124.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.* EPA expects the reasoning and policy outlined above in the *Allway Taxi* discussion to apply to locomotives although its implementation is dependent upon the ultimate definition of new locomotive.

[15] In-use testing and recall programs of the type set forth in section 207 ensure compliance with standards required to be met by manufacturers at the time of certification of the engine. Because these in-use standards relate to the original manufacture of the engine and place the burden of compliance upon the manufacturer, they are deemed to be standards affecting a new motor vehicle or a new nonroad engine and thus require a waiver under the criteria of section 209(b) or 209(e)(2) respectively.

[16] Section 209(a) applies to nonroad vehicles because of the language of section 213(d) of the Act, which specifically requires that EPA's standards regulating nonroad engines and vehicles be subject to sections 206, 207, 208 and 209 of the Act, with such modifications of the applicable regulations as the Administrator deems appropriate. Thus, Congress clearly anticipated that all of section 209 would be applicable to nonroad engines. Subsections (a) through (d) of section 209 do not specifically reference nonroad engines, nor do sections 206, 207 or 208. However, the language of section 213(d) clearly is intended to apply such provisions to nonroad engines. Further indication of Congress' intent is the language of the last sentence of section 209(e)(1), which states that subsection 209(b) does not apply for purposes of subsection (e)(1). (Section 209(b) provides the procedure under which California can receive a waiver of section 209(a) preemption for motor vehicles.) This sentence would not have been necessary unless subsection 209(a) through (d) otherwise applied.

[17] Both Senators declare that state preemption is limited to new locomotives and new small farm and construction equipment. Both mention that states may still regulate other new nonroad equipment, presumedly after receiving EPA approval. Finally, each declare that states also fully retain existing authority to regulate emissions from all types of existing or in-use nonroad engines by specifying fuel quality specifications, operational modes or characteristics or measures that limit the use of nonroad engines or equipment.

intended the preemption provisions of section 209, as applied to nonroad engines, to be analogous to the preemption provisions as applied to motor vehicles, except that California cannot request any waiver of the Federal preemption of state regulation of new small farm and construction equipment and locomotives.

Further indication that section 209(e)(2) was not intended to apply to in-use regulations is the fact that, if the subsection were applied to in-use regulations, then California would be the only government (local, state or federal) that could directly set regulations for nonroad engines in use. EPA's mandate under section 213 applies only to new engines. Therefore, EPA will not promulgate standards for in-use regulation of nonroad engines under section 213, beyond in-use regulations normally associated with new certified engines (*e.g.* in-use testing and recall requirements under section 207). States other than California would not be able to regulate nonroad engines in use (*e.g.* operation controls under section 209(d)) until California regulates them and could only regulate them in a manner identical to California's regulations. Nothing in the legislative history indicates such a dramatic departure from the current ability of states and local authorities to regulate emissions of mobile sources in use. Therefore, if section 209(e)(2) is determined to apply to in-use regulations, the entire United States regulatory scheme for regulation of nonroad engines in use would be dependent on the actions of one state, California. Congress could not have meant to grant such plenary power to a single state.

This is especially true given the location-specific nature of in-use regulations. In-use regulations, such as time of use or place of use restrictions (*e.g.* high occupancy vehicle lanes) are typically very site specific. An in-use regulation suitable for California, or in part of California, may have little or no relevance or practicality to the type of in-use regulation suitable for another area. Such regulations which primarily effect local users are more appropriately controlled and implemented by local and state governments.

Moreover, section 209(d) of the Act clearly limits the preemption of state regulation in use. It states that "nothing in this part shall preclude or deny to any other State or political subdivision thereof the right otherwise to control, regulate, or restrict the use, operation or movement of registered or licensed motor vehicles." As was stated above, section 209 as a whole applies equally to nonroad engines. Thus, section 209(d) should be interpreted to mean that, unless state regulation of use of nonroad engines is specifically preempted, section 209 should not be interpreted to grant any implicit preemption, except within the framework of *Allway Taxi*.

Given the language of section 209 and the lack of any express preemption, the legislative history of these provisions, and the general presumption against providing broad preemption where such preemption is not made explicit, EPA believes that it is clear that section 209(e)(2) does not apply to in use regulation of nonroad engines.

While EPA recognizes the important principle of narrowly construing the preemptive effect of the Act as explained in *Allway Taxi*, EPA also notes that certain state regulations that may be characterized as "in-use" regulations may be preempted because they are effectively regulations on the design of new engines rather than on the use of "in-use" engines. Industry has expressed concern that states might impose retrofit requirements on nonroad engines and vehicles as soon as they are introduced into commerce, or when such engines are being rebuilt, or at a date after which nonroad engines are typically rebuilt.[18] EPA recognizes that CARB does not envision a retrofit requirement and that, because of the nature of the nonroad market, it is unlikely that other states would adopt such a requirement.[19] However, given EPA's definition of new and the scope of the definition within this rulemaking, this issue could arise when other states plan their in-use emission strategy. In such a case, EPA believes that a retrofit requirement mandating a retrofit of a nonroad engine immediately after the engine is no longer new is adverse to the Congressional intent of section 209(e) and the principles laid out in *Allway Taxi*. Therefore, in this scenario, such a retrofit requirement would be deemed an in-use emission standard relating back to the original design of the new engine by the original engine manufacturer (OEM) and would be subject to the waiver criteria of section 209(e)(2). Within this same scenario, only California could adopt such a requirement and other states could only adopt California's requirement if California subsequently was granted a waiver. However, after a reasonable amount of time has passed and the engine is no longer new (most likely when an engine is being rebuilt), modest retrofit requirements would most likely not be deemed to significantly affect the OEM and thus such requirements would not be subject to subsection 209(e)(2). In this second scenario, the modest retrofit requirements would still be subject to challenge in court under the *Allway Taxi* criteria.[20]

Therefore, the Agency has determined that nonroad engines and nonroad vehicles will be "new" for purposes of the Act until the equitable or legal title passes to the ultimate purchaser, or if title passage does not occur, then the engine or vehicle will be new until placed into service.

D. Definition of Farm Equipment

The NPRM defined "farm equipment" to mean any internal combustion engine-powered machine primarily used in the commercial production and/or harvesting of food, fiber, wood, or commercial organic products.

Several manufacturers and trade groups were concerned that the definition was too narrow. These commenters thought it necessary to change the words "primarily used in" to "designed for use in". They asserted that the designer is the only one who knows what tasks a particular machine was meant to perform. They also thought that the definition should include engines used in post-harvest processing and storage that take place on the farm (the U.S. Department of Agriculture had a similar comment) and transportation which takes place on the farm. Caterpillar, Inc., PPEMA, EMI and others were concerned that the word "commercial" might exclude equipment used in the public sector (*e.g.*, state agricultural programs) or on cooperative or communal farms.

CARB, SDAPCB, and MECA, on the other hand, thought the definition was too broad. CARB and SDAPCB believed that the word "commercial" was not only necessary but needed to be defined. Suggestions for the definition

[18] *See* Oral Statement of the Engine Manufacturers Association, Docket entry IV–F–7, which states "The ultimate purchaser must have the assurance that the engine . . . she might purchase, and which properly meets EPA requirements—is 'good' until that engine is ready to be rebuilt. No state should be allowed to impose retrofit standards on engines which otherwise conform to EPA requirements."

[19] *See* Letter from Mr. Cackette, CARB to Mr. Mandel, EMA, dated July 20, 1993, Docket entry IV–I–55.

[20] EPA's definition of "new" does not present a problem for engines or equipment that do not sell relatively quickly (*e.g.*, within a year of being made) in California. If California's regulation set standards applicable to "new" engines, *i.e*, as of the date title passed, regardless of when the engine was produced, then an engine manufactured in 1990 but not sold until 1994 would be subject to 1994 emission standards. This problem is avoided since California's Utility Engine Rule ties the date of manufacture to the standard, therefore a 1990 engine would be subject to a 1990 standard and a 1994 engine subject to a 1994 standard.

were supplied. MECA suggested that the definition should be site and use specific. CARB also thought the wording should be changed to "production *and* harvesting" in place of "*and/or*". CARB provided their characterization of typical farm equipment (self-propelled and operated independent of other equipment) and a partial list of pieces of equipment that should not be included under the definition of farm equipment (utility vehicles used by a farmer to check his crops or portable power units used to generate electricity for another piece of equipment).

EPA does not believe that "designed for use in" should be added to the definition of nonroad engine. While a machine's designer may have designed the machine with certain tasks in mind, EPA believes that the intention of the designer is less important than the actual use to which the equipment is put. A machine may have been designed to assist farmers in some process, but if more than 50 percent of these machines are now used by homeowners, it may fairly be considered other than farm equipment. Requiring that equipment "be designed for use" on a farm would also leave the categorization of farm equipment entirely up to the manufacturers who might, in turn, choose to categorize products as farm equipment merely to avoid state regulation. Additionally, although requested, commenters have not provided examples of where the absence of "designed for" in the definition would make a difference in the preemption of some engines.

EPA also did not agree with CARB's description of farm and non-farm equipment because it did not address the machines which are likely to be used in both situations. Classifying equipment that is uniquely farm or non-farm related is straightforward. The more difficult equipment to characterize is multiple use equipment. Whether and when such equipment is preempted from state regulation is addressed under Section G—the Application of Definitions, Primary Use Test section of this rule.

CARB's further comment, that EPA should require that equipment be involved in both production and harvesting in order to be considered farm equipment, does not account for the specialization of farm machinery. Most farm equipment is used for a specific job: cultivating, planting, harvesting, etc., rather than for tasks involving both production and harvesting. The impetus for CARB's comment is the desire to separate the harvest of tree farms from that of natural forests which might contain no element of production and to ensure that landscaping and groundskeeping are not considered farming.

Under EPA's definition, however, harvesting trees from a natural forest is considered farming. Plant nurseries would also be considered farming, as plants are a product that is grown and gathered. The American Association of Nurserymen supported the proposed definition. At the same time, CARB's concern that landscaping and groundskeeping might be considered farming is alleviated. Although cutting and trimming are involved in these operations, production and harvesting are not, so equipment used would not be farm equipment unless used primarily on farms. (See Scope of Preemption section)

MECA suggested that the definition be changed to ". . . used *on a farm* . . ." to require site specificity. While most of the preempted equipment is operated on farms, EPA has not included this suggestion out of concern that it may create ambiguity for some operations, like plant nurseries.

The SDAPCB was also concerned that the phrase "commercial organic products" would allow some chemical and man-made products to be considered farm produce and thus their associated processing equipment to be considered farm equipment. The list of acceptable farm products is broad and may include items not generally considered farm products. However, the equipment used in any processing after the harvest is not considered farm equipment. Thus, equipment used to make chemical or man-made products would not be considered farm equipment.

As noted in the NPRM, EPA intended harvesting to be the last operation in the farming process to be considered "farming" and, therefore, equipment that performed any function later in the process, *i.e.*, processing or storing, would not be preempted. However, the U.S. Department of Agriculture (USDA) commented that all activities associated with planting, harvesting and on-farm processing of agricultural products for use on the farm should be considered farm activities. The Nisei Farmers League had similar comments with respect to on-farm activities although they did not limit the operations to those preparing products for further use on the farm. Therefore, EPA decided that equipment used in certain post-harvesting operations will be accepted within the preemption category when they relate directly to the continued operation of the farm. Those activities include such things as grinding, drying, and storage operations of products usually used in the future on the farm. Examples of crops subject to these activities are hay, silage, and other animal feed. For less traditional agricultural operations such as nurseries, equipment used in similar operations will also be considered farm equipment. Machinery that is used on crops for continued use in that agricultural operation, such as conveyors (hay bale loaders) and ensiles, will be considered farm equipment. Post-harvest processing of crops in preparation for sale will not be considered farm operations.

SDAPCB expressed the concern that the definition is so broad that it could limit the state's ability to regulate stationary equipment used in the refining, handling, cleaning or processing of food products. We believe that the above discussion of what post-harvesting processing may still be considered farming should alleviate that concern.

EMI supplied EPA with a proposed definition which many others supported.[21] EPA's definition is nearly as inclusive as EMI's definition. One of the differences between the two was the inclusion in the EMI definition of storage and processing activities of the harvested product. EPA's resolution of how such activities should be treated is discussed above. Another difference was EMI's inclusion of off-road transportation. We do not believe that such nonroad vehicles should usually be considered farm equipment as they are primarily used to transport persons or property on or off farms and are not unique to farms. EMI's definition also could include vehicles which are frequently used for property maintenance of a sort which is also not unique to farms. EMI noted at the public hearing that under its definition such equipment as lawn mowers would be included.[22] Such a definition of farm equipment is overly broad.

EPA has decided to define "commercial" in the final rule as "an activity engaged in as a vocation."

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[21] EMI proposed that "farm equipment or vehicle" means any engine-powered machine, device, apparatus, or movable stationary source which is self-propelled or transportable and which is designed by the manufacturer for use, or is used, to supply mechanical, hydraulic, pneumatic or electric power, for: preparation for production, production, harvesting, processing, storage or off-road transportation of food, fiber, animal feed, other organic material or any other agricultural product or commodity, or any product used in an agricultural operation; handling of products or water related to the care of animals; movement of animals; or operation or maintenance of a farmstead, ranch or logging operation.

[22] *See* Transcript of Sept. 20,1991 Public Hearing regarding Authorization of Nonroad Standards in California at page 139, line 5.

Farming does not have to be the sole or primary vocation. If a person engages in vocations in addition to farming, farming would still be a vocation. EPA believes that a dollar threshold would not serve the purpose of distinguishing residential from commercial use. EPA defined farm equipment as equipment used for "commercial" purposes to prevent the inclusion of such activities as backyard gardening in the definition of farming. There is no reason to believe that Congress meant to include equipment used in these operations which are not conventionally considered to be farms. Thus, equipment used on an agricultural school farm would fall under this definition of commercial because it is equipment used to educate students to farm as a vocation. Also, equipment used on farms that grow crops only for livestock would be considered to be farm equipment. Finally, equipment would be farm equipment if found on "subsistence" farms, defined by Webster's New Collegiate Dictionary as farming that provides all or almost all the goods required by the farm family usually without any significant surplus for sale. EMA and PPEMA's suggestion that any piece of equipment that is used on a farm is farm equipment would preclude from potential CARB regulation many types of machines that are incidental to living on a farm and not used in operations normally associated with growing or harvesting agricultural products. An example would be the lawn mowers that EMI said should be deemed farm equipment.

In the final rule, farm equipment is defined as any internal combustion engine-powered machine primarily used in the commercial production and/or harvesting of food, fiber, wood, or commercial organic products or for the processing of such products for further use on the farm.

E. Definition of Construction Equipment

The NPRM stated that "construction equipment" means any internal combustion engine-powered machine primarily used on commercial construction sites.

Many of the comments concerning this definition were similar to those comments provided regarding the definition of farm equipment. Several manufacturers and trade groups were concerned that the definition was too narrow. They thought it necessary to change the words "primarily used in" to "designed for use in." Caterpillar, the Construction Industry Manufacturer's Association (CIMA) and others were concerned that the word "commercial" might exclude equipment used on public works projects or in residential construction. The EPA exclusion of mining equipment from this preempted category drew unfavorable comments from EMA, EMI, CIMA, and the American Mining Congress (AMC). The American Association of Nurserymen (AAN) requested that EPA explicitly recognize that landscape contracting involves earthmoving and is thus construction.

CARB, SDAPCB and MECA, on the other hand, thought the definition was too broad. CARB and SDAPCB recommended that all auxiliary equipment such as compressors and pumps be excluded from preemption. Both believed that the phrase "commercial construction sites" be defined. MECA suggested that the definition should be site and use specific. Both CARB and SDAPCB approved of our mining equipment exclusion.

EPA's response to the comments that the phrase "designed for" should be part of the construction equipment definition is identical to the Agency's response to the same comments under the Definition of "farm equipment" section of this rule. Please refer to that section for further discussion.

The comments on the use of the word "commercial" may be approached in a manner similar to the way they were addressed under the definition of "farm equipment." EPA believes that defining "commercial" in the final rule as "an activity engaged in as a vocation" is as appropriate in the context of construction equipment as it is in the context of farm equipment. "Commercial" in the construction equipment definition is meant to distinguish equipment that homeowners typically use to perform repairs on their own property from equipment typically used by contractors. Construction of public works projects is "commercial" under this definition.

MECA suggested that the definition be changed to ". . . used *in construction and located* on . . ." to specify the activity involved. This is a reasonable suggestion. EPA believes that including these recommended words in the definition will make it clear that the function of machinery is as important as its location on a site on which construction occurs.

EMA, EMI, CIMA, AMC and others pointed out that mining operations (surface mining) share with construction sites the use of many of the same machines. While this may be true, Congress expressed no intent to preempt from state regulation equipment used in mining operations. According to Webster's Third New International Dictionary (1971 unabridged) construction is "the act of putting parts together to form a complete integrated object." Although EPA's definition includes operations such as demolition and painting which take place outside the actual structural fabrication, the definition still would not include mining, which Webster's defines as "getting ore, metals, coal or precious stones out of the earth." These are not construction activities. Additionally, underground mining usually employs uniquely designed equipment unlike equipment found on a construction site. Surface mining, while sharing some equipment, is a separate activity not associated with construction. The regulation of equipment, however, that is used in surface mining and is also primarily used in construction activities, as defined in this rule, would be preempted.

As discussed in the NPRM, a number of diverse activities take place on a construction site. Earthmoving is one such activity, and thus, landscape contracting could use construction equipment as AAN notes. AAN made no mention of the specific earthmoving equipment in question; thus, the primary use test (See Scope of Preemption section) must be applied to such machinery. Groundskeeping is not a construction activity. AAN did state its support of EPA's definition of construction equipment.

Ingersoll-Rand thought that the words "commercial" and "primary use" should be deleted and that the definitions of farm and construction equipment should be broadened to include any machine that includes an engine belonging to an engine family which is used in construction equipment. The issue of commercial is considered above. Ingersoll-Rand's use of the engine family concept is addressed, as is the primary use issue, in the Application of Definitions, Primary Use Test section.

SDAPCB and CARB thought that the definition should exclude ancillary equipment such as electrical generators and air compressors. CARB argued that these machines are not specifically construction machines in that they perform the same functions in other types of applications. While this is true, such equipment may be employed in construction activity; the question then becomes one of primary use, which is discussed in the Application of Definitions, Primary Use Test section.

For the reasons discussed above, construction equipment is defined in the final rule as any internal combustion engine-powered machine primarily used

in construction and located on commercial construction sites.

F. Definition of Locomotive

The NPRM defined locomotive as a self-propelled piece of on-track equipment (other than equipment designed for operation both on highways and rails, specialized maintenance equipment, and other similar equipment) designed for moving other equipment or carrying freight or passenger traffic or both.

EMA noted a difference between the NPRM definition and the definition given in the Locomotive Inspection Act (LIA) upon which the EPA definition was based, but did not recommend EPA use the LIA definition in the definition EMA provided. The only difference between the EPA definition and the LIA definition is that the LIA definition of locomotive includes a piece of equipment without propelling motors but with one or more control stands. This item was not included by EPA since if it has no propelling motors it will not be of concern for purposes of engine emissions regulations. It is noted that neither the Association of American Railroads (AAR) nor any railroad companies that commented on the NPRM, such as Union Pacific and Southern Pacific, had any specific comments on the definition of locomotive.

EMA provided definitions for "locomotive" and "locomotive engine." [23] Under this definition, the regulation of any engine mounted on a locomotive (such as an engine driving a crane or winch) would be preempted. The dictionary definition of "locomotive" is a "self-propelled vehicle, usually diesel or electric, that travels on rails and moves railroad cars." [24]

EMA's definition of locomotive engine goes beyond the specific purpose of locomotion to include any other engine that might be placed on a locomotive. EPA believes that the term "locomotive engine" is limited to the engine used to propel the locomotive and other railroad cars. However, EPA does believe that the term "engines used in locomotives," as found in section 209(e)(1)(B), can be defined to include other engines which are mounted on a locomotive regardless of whether they are used for purposes of self-propulsion. EPA notes that under this definitional framework the "locomotive" is only that piece of on-track equipment which is self-propelling and is designed for moving other cars containing equipment, freight, or passengers. "Engines used in locomotives" thus includes an engine placed in the locomotive to propel the train and also includes other engines mounted on the locomotive for auxiliary power generation for the train, but does not include engines mounted on the train elsewhere than the locomotive. An engine providing power for a crane or winch, for example, would only be considered preempted from state regulation (if it otherwise met the requirements for "new") as "an engine used in [a] locomotive" if such engine were mounted on the locomotive. EPA believes these definitions reflect the intent of Congress to reduce the burden on interstate commerce for the railroad industry, and address EMA's concerns regarding auxiliary engines.[25]

Regulation of auxiliary engines whose primary function are not for propulsion is addressed by EPA in its final regulation for nonroad engines 37 kilowatt (50 hp) and above under section 213 of the Act.[26]

EPA has stricken the word "carrying" from the definition of locomotive. This was done to avoid implying that any persons or property that were moved by the engine had to be located directly on the locomotive. The word "moving" in the definition is all that is needed to give the correct meaning.

For the final rule, EPA has decided that a "locomotive" means a self-propelled piece of on-track equipment (other than equipment designed for operation both on highways and rails, specialized maintenance equipment, and other similar equipment) designed for moving other equipment, freight or passenger traffic. EPA has also decided that the term "engines used in locomotives" means either an engine placed in the locomotive to move other equipment, freight, or passenger traffic, or an engine mounted on the locomotive to provide auxiliary power.

G. Application of Definitions; Primary Use Test

1. Introduction

EPA is defining farm equipment as any internal combustion engine-powered machine primarily used in the commercial production and/or harvesting of food, fiber, wood, or commercial organic products or for the processing of such products for further use on the farm. EPA is defining construction equipment as any internal combustion engine-powered machine primarily used in construction and located on commercial construction sites. Many types of equipment are used almost exclusively for farming and construction (*e.g.*, tractors and bulldozers). In the case of such equipment, the applicability of EPA's definition is clear: they are farm or construction equipment and thus preempted from state regulation. Other types of equipment, however, are used not only for farming or construction, but for other purposes as well (*e.g.*, pumps used for irrigation and swimming pools). The issue thus arises whether or not such multi-purpose equipment should be considered farm or construction equipment and thus preempted from state regulation.

2. EPA's Proposal

In the NPRM, EPA proposed a "primary use" test to assess whether state regulation of multiple use equipment would be preempted. EPA proposed that in order for state regulation to be preempted, equipment must be "primarily used"—used 51 percent—as farm or construction equipment. Under this test, for example, a compressor used 51 percent in farming or construction applications would be preempted from state regulation. EPA proposed 51 percent as a reasonable use cut-off point because it corresponds to a bare "majority". EPA believed that the preempted category would be unreasonably expanded if state regulation could be preempted simply because a small fraction of such equipment was used in farm or construction applications.

3. Comments on and Alternatives to EPA's Proposal

During the comment period following the hearing EPA received comments from industry and CARB opposing the primary use test. EMI, EMA, PPEMA, Industrial Truck Association (ITA), Construction Industry Air Quality Coalition (CIAQC), and Ingersoll-Rand Company stated that the primary use test is unauthorized and should not be employed. They stated that the plain meaning of the preemption provision does not permit EPA to apply a percentage test to determine if equipment is farm or construction equipment. Congress, they contended, meant to preempt state regulation of all nonroad engines used in farm or construction equipment, even if only a small fraction of the equipment is

[23] EMA recommended the following definitions: "Locomotive" means a self-propelled piece of on-track railroad equipment (other than equipment designed for operation both on-highway and on-track) and "Locomotive engine" means an engine included in a locomotive. *See* Statement of Engine Manufacturers Association, Docket entry IV–G–19.

[24] Websters II, New Riverside University Dictionary, 1988.

[25] *See* Letter from Glenn Keller, EMA to Joanne Goldhand, EPA, Docket entry IV–I–54.

[26] 59 FR 31306, June 17, 1994.

represented in these preempted categories. CIMA commented that the proposed test would be unworkable because the data on which to base a primary use finding are unavailable, and Deere and Company and others similarly stated that accurate data cannot be obtained, in part because of the rental market.

On the other side of the issue, CARB argued that the 51 percent primary use test is contrary to Congressional intent. CARB noted that it is unlikely that Congress intended to so limit California's authority to control emissions from nonroad sources given the broad waiver of federal preemption it provides California in the area of motor vehicle emission control.

CARB initially supported a position that equipment should be defined as farm or construction equipment only if more than 75 percent of the equipment is used in farming or construction. CARB noted, in its comments supporting a 75 percent cutoff, that this would ensure that state regulation would be preempted only for equipment primarily used on farm or construction sites. Commenters submitted alternative proposals.

EMA and the Outdoor Power Equipment Institute (OPEI) proposed that EPA should define the scope of preemption in terms of the primary use of the engine family, not the equipment. EMA proposed that the Agency consider preempting for state regulation any engine line "used in" farm or construction equipment regardless of the extent which the engine line is used in other types of equipment. CARB and MECA both commented that only regulation of the individual engines actually used in farm or construction equipment should be preempted. CARB also proposed that preemption apply only to regulation of engines exclusively designed for and used in the farm and construction industries. Failing that, both CARB and MECA believed that the 51 percent test for determining how equipment was primarily used was too low. CARB recommended that state regulation of multiple-use equipment be preempted only if more than 75 percent of the equipment is used in farming or construction. CARB noted that this would ensure that any preempted equipment was primarily used on farms or at construction sites.

PPEMA proposed that EPA use a different test to determine whether multi-use equipment should be considered farm or construction equipment for purposes of determining the scope of federal preemption. This test would be that federal preemption applies whenever equipment is used in more than *de minimis* amounts for farming or construction, and such equipment is necessary to perform farming and construction activities. PPEMA did not state any criteria to be used in determining such a "*de minimis*" amount or determining what "necessary" is. PPEMA supported this proposal with several arguments.

First, PPEMA argued that a *de minimis* test follows the plain language of the statute. PPEMA argued that the "plain language" of the statute does not include modifiers such as "primarily" or "predominantly" and thus does not in any way imply that Congress intended for EPA to apply a percentage test to determine if equipment was used for farming or construction. PPEMA contended that Congress intended to preempt state regulation of all nonroad engines used in farm and construction equipment.

Second, PPEMA argued that Congress explicitly limited the scope of preemption by specifying that preemption would apply to regulation of engines used in farm and construction equipment smaller than 175 horsepower. Thus, according to PPEMA, there is no need for EPA to clarify the scope of preemption further.

PPEMA's final argument is that a *de minimis* test would not unduly expand the scope of federal preemption. Equipment would be preempted only if it were found in more than *de minimis* amounts and were necessary to the performance of farm and construction operations.

4. Response to Comments

a. *Primary Use Test*

EPA has decided to apply the primary use test to determine which multiple-use equipment will be considered farm or construction equipment and thus preempted from state regulation. As explained in the NPRM, the "primary use" test is the most appropriate method for classifying (as farm or construction, or other) multiple use equipment. Industry commenters who believe EPA must consider multiple-use equipment to be farm or construction equipment beg the question of what is farm and construction equipment. Some industry commenters stated that EPA could not use the primary use test because the language of section 209(e)(1) refers to new engines which are used in construction or farm equipment or vehicles, not to engines which are "primarily" used in construction of farm equipment or vehicles. These comments miss the point of the primary use test. The test is not used to define "used in", but is used to define "construction equipment" and "farm equipment". In order to identify an engine used in farm or construction equipment, EPA must first determine whether a piece of equipment is farm or construction equipment. Equipment used only incidentally (perhaps 10 percent) in farm or construction applications is not fairly considered to be farm or construction equipment. A type of equipment such as a pump, for example, is not farm equipment merely because it is used on a handful of farms and otherwise used exclusively in residential settings. Therefore, the engine used in this type of equipment is not an engine used in farm or construction equipment and, therefore, regulation of that engine type is not preempted.

EPA believes that the terms "farm equipment" and "construction equipment" are best identified by referring to the general use of the equipment. EPA does not believe that the *de minimis* approach suggested by PPEMA is an appropriate approach to defining these terms. EPA does not believe that a piece of equipment primarily used in non-construction or non-farming activities should be defined as construction or farm equipment merely because it is or could be used for some farm or construction applications. Such a definition would inappropriately expand the preempted categories.

Similarly, EPA does not agree with CARB's initial proposal that equipment should be defined as farm and construction equipment only if more than 75 percent of the equipment is used in farm or construction. EPA believes that the 51 percent cutoff is a better measure of whether or not a piece of equipment is farm or construction equipment, especially given Congress's apparent intent to protect new farm and construction equipment from state regulation. If equipment is used more than half the time in farm or construction applications, then it should be considered farm or construction equipment even if it has some applications outside of the farm or construction area. A 75 percent threshold would be inappropriate because equipment that may be used regularly and predominantly in farm and construction applications could still be used enough in other applications to prevent a 75 percent threshold to be met. EPA believes its final decision on this issue will not unduly limit California's authority to control emissions from nonroad sources.

Thus, EPA has decided to retain the 51 percent criterion for the primary use determination. It believes this criterion is in keeping with Congress's implicit goal of striking a balance between the

competing interests of national uniformity of regulatory requirements and state control over sources of in-state pollution. This test still permits California to regulate new engines that are installed in machines used in farms or at construction sites if most of such engines are in equipment not used in those situations.

Since the frequency with which multiple use equipment is used on farms or at construction sites ranges from "almost never" to "every day", it is clear that a line must be drawn somewhere along this continuum. Many comments were received addressing the selection of 51 percent as the primary use cut-off point. EPA selected it because it corresponds to a bare "majority".

As noted previously, PPEMA would like to see this limit lowered to *de minimis* amounts. This would mean that equipment used more often than this small amount in preempted categories would be judged farm or construction equipment and thus its regulation would be preempted. Therefore, under such a limit, items such as lawn mowers and hedge trimmers could be judged farm or construction equipment. EPA believes that this result, and such a low threshold by which a lawn mower could be considered a piece of farm or construction equipment, is not consistent with Congressional intent of preempting state regulation of new farm and construction equipment.

No matter what number is chosen as the cutoff there will always be some categories of equipment that fall just above or just below the line. No commenter has made a strong case for why EPA should select a cut-off point other than the 51 percent cut-off. EPA notes CARB's most recent submittal, dated July 20, 1993,[27] (see discussion below) which recognizes the use of a primary use test by EPA.

EPA believes the primary use test is in keeping with Congress' implicit goal of striking a balance between the competing interests of national uniformity of regulatory requirements and state control over sources of in-state pollution. Under this test, equipment used for a majority of the time in farming and construction is preempted from California regulation. Conversely, equipment used primarily by consumers and in consumer settings would more than likely be subject to California regulation since their use in farming or construction would most likely not meet the primary use test. This test, therefore, preempts California from regulating new engines that are installed in any equipment which is primarily used in the commercial production and/or harvesting of food, fiber, wood, or commercial organic products or for the processing of such products for further use on the farm. This test also preempts California from regulating new engines that are installed in equipment which is primarily used in construction and located on commercial construction sites.

EPA's application of the primary use test in this rule is similar to the proposed application of the 51 percent primary use test found in the notice of proposed rulemaking. That is, EPA believes that it is appropriate for CARB to make a preliminary determination of primary use for multiple-use equipment that is in question in a CARB regulation such as the Utility Engine Rule. (EPA's discussion of CARB's role in such determinations is found below in Section K). CARB will be required to come forward with evidence, data, agreements with industry, and analysis to support a finding that a category or subcategory of equipment is primarily not used in farm or construction applications and is thus subject to state regulation.

CARB and the major industry commenters had a series of meetings during which they discussed whether various types of equipment should fall into a preempted category or a non-preempted category should EPA adopt its proposed primary use test based on 51 percent usage. As a result, on July 20, 1993, EPA received a letter from CARB explaining the process by which it and major industry commenters[28] reached agreement on lists of equipment which would or would not be considered as farm or construction equipment based on the primary use test as set out in the Notice of Proposed Rulemaking for this section 209(e) rule.[29] CARB noted that EMI had not reached agreement with the primary use test but apparently was in agreement with the categorized lists of equipment and this seems to be supported by EMI's letter to CARB during this time period.[30]

EPA recognizes the significance of these lists for several reasons. The lists are intended to be exhaustive of all equipment currently in existence, according to CARB, and eliminates uncertainty regarding the categorization, as farm or construction or other, of any equipment currently in production. For any currently existing equipment under 25 horsepower that is not considered on the list, EPA believes manufacturers will have the ability to petition CARB for the appropriate categorization. Further, the lists of equipment are generic such that any modifications to existing equipment types would fall into existing categories, with appropriate review by CARB, and thereby reduce any burden on manufacturers to produce large amounts of new information to support their position that such modified equipment is farm or construction.

For newly developed equipment, which is not a modification of existing equipment or included on the lists, CARB and manufacturers will classify it as preempted or non-preempted based upon, among other things, a description of the equipment, its intended application, and projected sales market. EPA believes the classification process will be clear and predictable and will not require substantial new information. It is anticipated that CARB and the manufacturers will continue to work together to minimize the information gathering burden for the small number of newly developed types of equipment.

The existence of these lists is noted here merely as an example of how CARB and industry foresee the future categorization of nonroad equipment. As CARB noted in its July 20, 1993 letter, EPA maintains its independent authority under section 209(e) to review each separate CARB nonroad authorization request and to determine, by examining data as explained in section II(K) of this preamble, whether such equipment is indeed farm or construction equipment.

b. *Subcategorization*

The USDA commented that some of California's suggested categories might be too inclusive because they were not subcategorized as to professional or non-professional use, particularly chain saws.

As noted in the NPRM, unless there is a very clear delineation of types of equipment within a category, all similar pieces of equipment could remain together in one group rather than being split into multiple sub-groups. Not every product may be susceptible to subcategorization because there may not be clear delineations defining types of equipment. However, in cases when

[27] *See* Letter from Tom Cackette, CARB to Richard Wilson, EPA, Docket entry IV-I-52. This letter discusses an agreement between CARB and certain industry representatives regarding whether certain equipment types should or should not be considered farm or construction equipment, subject to EPA's review.

[28] The major industry groups that met with CARB included the Engine Manufacturers Association, the Portable Power Equipment Manufacturers Association, the Industrial Truck Association, the Outdoor Power Equipment Institute, the Construction Industry Manufacturers Association, and the Equipment Manufacturers Institute (EMI).

[29] *See* Letter from Tom Cackette, CARB to Richard Wilson, EPA, Docket entry IV-I-52.

[30] *See* Letter from Gary Baise, Counsel to EMI to Mike Kenny, CARB, Docket entry IV-I-53.

subcategories of equipment can be identified they should be separately grouped and not subjected to state regulation. It would be inappropriate for California to regulate a subcategory of multiple-use equipment which is primarily used as farm or construction equipment. In preparing its use determination California should look carefully at whether there are subcategories of equipment that are primarily used on farms or construction sites. California should not aggregate a group of equipment that can be subcategorized that is primarily used as farm or construction equipment with subcategories that are not used as farm or construction equipment in order to extend its reach into federally preempted categories. When commenters bring to EPA's attention a product that is primarily used as farm or construction equipment but is also used in other applications, EPA will carefully review California's categorization determination as part of its authorization process.

c. *Data for use determination*

The preamble to the NPRM provided that in determining primary use California would consider national sales data to demonstrate whether CARB's various equipment categories were or were not preempted. PPEMA, ITA and others commented that sales data do not correlate with actual use and that hours-of-use would be a better measure. EMI, CIMA and others were concerned with the year-to-year variability of sales, while OPEI and Caterpillar stated that accurate sales data were not available.

CARB suggested that, if a primary use test were used, it be permitted to apply the best data available in making its determination and requested that national sales data, mentioned in the NPRM, not be mandated. EPA agrees that California should employ the most relevant information and data at hand to make its determination of primary use. The classes of equipment in the Utility Engine Rule regulation and in any potential future California regulations that may employ a usage test are so varied and unique that EPA is not in a position to specify the type of data to be used. Therefore, EPA is not mandating CARB to use any specific type of data, e.g. national sales data; however, California should select the appropriate data base keeping in mind that EPA will review any use determination as part of an authorization request by California under the preponderance of the evidence standard of review. (See discussion in Section K below regarding this standard of proof.)

d. *Equipment versus engine line*

The primary use test described in the NPRM is based upon an assessment of whether multiple use equipment is primarily used as farm or construction equipment. Several commenters suggested that the preemption should be based instead on a primary use test of an engine manufacturer's engine line. (An engine line is all the engines produced by a manufacturer with many common characteristics such as number of cylinders, displacement, calibration, etc.) Two rules would be followed under their suggested system: (1) state regulation of all engines used in farm and construction equipment would be preempted, and (2) state regulation of all engines from an *engine line* which is primarily used in farm and construction equipment (no matter what else they are installed in) would be preempted.

Primary use would mean 51% under the engine line test also. Under this suggested system, in a situation in which 70 percent of an engine line went to farm and construction equipment and 30 percent went to other equipment, regulation of the entire engine line would be preempted. Thus state control of the 30 percent fraction of the engines would be preempted even though they would be installed in equipment that could not be considered farm or construction equipment and that Congress intended the state be allowed to regulate. If the fractions were reversed, state control of the 30 percent fraction would be preempted since it was used in farm and construction equipment while state regulation of the 70 percent fraction would not be preempted and would be subject to state requirements.

The commenters suggest that the engine-line test is preferable because engines are generally designed by engine-line, not by equipment. Under the equipment-based test, engine manufacturers would have to divide their engine lines based on the use of the engines in equipment. Thus, the exact same engines might have to be divided into two families.

In the equipment application method, if an engine manufacturer has an engine line where 70 percent of the engines go to farm and construction equipment (and their regulation would therefore be preempted) and 30 percent go to other equipment (and state regulation would not be preempted), the manufacturer must decide whether to split the engine line and manufacture the 30 percent portion of the engines to meet California's standards (and label them as such) or discontinue the production of those engines for California.[31] If the example is reversed with 70 percent of the engines going into other equipment and 30 percent going into farm and construction, the manufacturer could decide to produce and certify its entire line to meet California's standards or to split its engine line into two separate engine types—one certified for sale in California and one not. Therefore, under the equipment-based test, equipment manufacturers would have to maintain an awareness of their California and non-California markets and specify the number of engines of each type they will need.

However, engine manufacturers may also have to divide their engine lines under their proposed engine-line approach. If 30 percent of an engine line is used in farm and construction equipment and the remainder is used in non-preempted equipment, then under the commenters' plan, the engine line would be split, because 30 percent of the engine line would be preempted but the remainder would be subject to state regulation. Therefore, the problem the commenters sought to avoid would not be avoided.

On the other hand, there are several advantages of an equipment-based determination. The only requirement of an equipment-based determination would be to develop two lists—one of farm and construction equipment and one of other equipment (non-farm and non-construction equipment). With these two lists the equipment manufacturer knows the type of engine it needs in each piece of equipment produced—either a preempted (farm or construction) engine or an engine that complies with California emission requirements if California has such requirements.

Enforcement under the equipment-based method would be relatively simple. An inspector would only have to determine whether a piece of equipment was farm or construction equipment, or an other type of equipment. If it is farm or construction equipment, nothing more need be done, as the piece of equipment would not be subject to state regulation. If it is not farm or construction equipment, the inspector need only look for the required CARB label if there are California standards for that type of equipment. Enforcement would require additional steps if an engine line based system were used: for example, the inspector would have to determine whether a non-preempted piece of

[31] This discussion presumes that California will actually promulgate regulations for the engine line in question.

equipment contained an engine from a manufacturer who claimed its entire engine line as preempt from state regulation.

If the primary use determination were based on an engine line, EPA would have several concerns. As with the equipment based method, two equipment lists would still be developed, but additionally each engine line for every engine manufacturer must be determined to be preempted or not after gathering data on whether the engines were now installed in farm or construction equipment. This would add another layer of calculations to the process. According to many of those who commented at the public hearing, engine destination data are difficult to obtain. In a case where most engines in an engine line are used in non-preempted equipment, the engine line would be split, causing the same burden as manufacturers stated would occur in the equipment-based method and which they wanted to avoid. Additionally, this method would give a competitive advantage to manufacturers who now make engine lines which are primarily used in farm and construction equipment. Such manufacturers, who have engines for which state regulation is preempted, would enjoy an advantage over a manufacturer whose engines are not preempted and therefore must meet California's emission standards. Ford Motor Company recognized this issue and expressed its concerns and disagreement with EMA on this issue.

EPA is also concerned that the commenters' method would be contrary to section 209 in that it is overinclusive and inconsistent in its definition of farm and construction equipment. Under the commenters' method, if 70 percent of the engines in an engine line were used in farm and construction equipment and 30 percent were used in other equipment, the entire engine line would be preempted. Thus, the regulation of some engines would be preempted even though they are not used in farm or construction equipment. This would create a preemption greater than that contemplated by the statute. Moreover, the method is inconsistent in application: if 70 percent of the engines in an engine line were used in non-preempted equipment but the remainder were used in farm or construction equipment, California could only regulate 70 percent of the engines, not 100 percent. Therefore, the method gives engine manufacturers the benefit of full preemption when the majority of the engines are preempted, but it does not allow full California regulation if the majority of the engines are not preempted. This inconsistency appears arbitrary and could result in higher emissions (as noted by Ford Motor Company) because California would be precluded from regulating engines that it would otherwise be able to regulate under a more evenhanded approach.

Furthermore, this approach does not solve the question that is at the heart of the "primary use" issue: *i.e.*, when should a multiple use piece of equipment be defined as farm and/or construction equipment? In order to determine whether an engine line is being used 30 percent in farm and construction equipment or 70 percent in farm or construction equipment, one still must know what is meant by farm and construction equipment. This approach, taken by itself, does not provide an answer. Finally, manufacturers did not explain how a newly developed engine line would be judged (preempted or non-preempted) since there would be no existing data upon which to base a determination.

EMA stated that the equipment-based method would result in higher certification costs than the engine-line method. EPA believes that under both methods, engine manufacturers could face additional costs for any engine they wished to certify for sale in California. These costs would include research and development expenses to develop a cleaner engine, and administrative and testing expenses associated with the state certification process. Those engine manufacturers who chose to compete in the California market would face higher certification costs than those who did not, but there should be little difference in certification costs between the two methods.

In the final rule, rather than use the engine-line method, EPA is requiring a primary use test that preempts California from regulating new engines that are installed in equipment that is primarily used in farming or construction settings.

H. Labeling Requirement

The NPRM would require engine manufacturers to label new engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower. The label would state to which standard or standards (California, Federal, or both) the engine is certified.

Most commenters opposed the labeling requirement. CARB stated that it intended to require labels on engines that comply with California emission regulations. CARB, EMI, and EMA agreed that a federal labeling requirement was not appropriate until EPA determined under section 213 whether federal standards were necessary. In fact, EMI argued that authority for labeling lies in section 213, not section 209(e).

EPA has decided to not implement a labeling requirement under section 209(e). It should be noted that the regulation setting forth federal nonroad standards under section 213 contains a labeling requirement.[32]

I. Authorization Criteria and Procedures

In the NPRM, EPA noted that sections 209(b) and (e) are in many respects alike and in those respects should be similarly interpreted. One difference between the two provisions that the Agency identified, however, was an apparent difference in the sequence of California and EPA actions. In this regard, EPA focused on the following language of section 209(b):

> (b)(1) The Administrator shall, after notice and opportunity for public hearing, waive application of this section to any State which *has adopted standards* . . . for the control of emissions from new motor vehicles or new motor vehicle engines *prior to March 30, 1966.* . . . (Emphasis added.)

EPA interpreted the phrase "has adopted" to mean that the Administrator could waive the prohibition of section 209(a) after a state has adopted standards. By contrast, section 209(e)(2) provides that "the Administrator shall . . . authorize California to adopt and enforce motor vehicle emission standards." EPA concluded that the difference in language indicated that California must receive authorization from EPA before it can adopt any nonroad standards or requirements.

CARB took issue with EPA's interpretation of section 209(e)(2) as requiring California to obtain authorization before adopting regulations. It believed that for several reasons, EPA could and should follow the same process under section 209(e) as it follows in granting motor vehicle waivers under section 209(b). First, CARB argued that although section 209(e) states that "the Administrator shall . . . authorize California to adopt and enforce standards . . . ," sections 209(a) and (b) could be similarly construed when read together. Section 209(a) states that "no state . . . shall adopt or attempt to enforce. . . ." The only exception to the prohibition is if the Administrator grants a waiver under section 209(b). Thus, considered together, sections 209(a) and (b) could

[32] *See* 59 FR 31306, June 17, 1994, specifically 40 CFR Part 89, Subpart B, § 89.110–96.

be construed to preclude prior adoption of a regulation by a state unless a waiver is granted.

CARB noted that despite this language, EPA has consistently interpreted sections 209(a) and (b) to provide that the waiver process commences after state regulatory adoption. EPA's rationale has been that the Administrator should consider a "final" regulation when making a determination to waive federal preemption of state regulations that may differ from federal regulations. Between the time CARB holds a hearing on a proposed regulation and submission of the final regulation to the California Office of Administrative Law (OAL), significant changes could be made to the regulation. Under the California procedures for adopting regulations, CARB releases a "Staff Proposal: Initial Statement of Reasons for Proposed Rulemaking" along with a Notice for Public Comment. The comment period is forty-five days. A Board hearing takes place at the end of this forty-five day period. CARB makes modifications to the regulation after the hearing. These modifications are made available for public comment for fifteen days. CARB then prepares a "Final Statement of Reasons for Rulemaking" in which it addresses changes made to the regulation and summarizes and responds to all comments received during the public comment period. This document is submitted to the Executive Officer, who signs an Executive Order which formally adopts the final version of the regulations. Then CARB is required to submit the final regulation to OAL, which reviews regulations adopted by state agencies. OAL has thirty days to review and either approve or disapprove. It has authority to disapprove if (1) the regulation is inconsistent with California law or (2) improper procedure has been followed. If OAL disapproves, CARB has 120 days to modify the regulation, re-adopt, and re-submit the regulation to OAL.[33]

Thus, significant changes could be made to a regulation between the CARB hearing and adoption as well as after CARB adoption due to the review by OAL. If significant changes were to occur, the waiver California received would be insufficient to cover the regulations as adopted and California would be forced to reapply for a waiver of a now final regulation.

EPA finds California's argument persuasive. As an initial matter, the Agency no longer believes that the difference in language between sections 209(b) and (e) was intended to delineate a difference in the sequence of events surrounding adoption and authorization. The use of the past tense in section 209(b) ("has adopted") was merely intended to identify the states that could obtain a waiver for motor vehicle standards. (In fact, California alone had adopted such standards prior to March 30, 1966, and therefore, all other states have been prohibited from adopting emission control standards for new motor vehicles except as provided under section 177.) EPA also acknowledges that sections 209(a) and (b) could be read to require California to obtain a waiver prior to adopting motor vehicle standards, but the Agency has not so interpreted these provisions. Therefore, sections 209(b) and (e) need not be interpreted as requiring different adoption and authorization processes.

Moreover, EPA believes section 209(e) should be interpreted to allow a process like that established under section 209(b) for the same reasons EPA construed 209(b) to permit California to seek a waiver after it has adopted motor vehicle standards. It is inefficient for EPA to rule on a waiver or authorization request for what amounts to a regulatory recommendation. Until California adopts its program, neither California nor EPA can be sure that the program for which a waiver or authorization is requested is the program that the responsible official will sign into law. If there is a difference between the program submitted to EPA by California and the program California eventually adopts, any waiver or authorization granted may be insufficient to cover the enacted program.

In fact, EPA received comments that illustrate the confusion that would result if California were required to receive EPA authorization before it could adopt final regulations. Several commenters were concerned that CARB had modified its proposed Utility Engine Rule twice since CARB had requested EPA authorization in December 1990. The commenters requested that EPA clarify that it will grant authorization based on the most recent version it has received from CARB and that if any changes are made after an authorization is granted, California must resubmit its authorization request. EPA believes that today's change allowing California to adopt before receiving EPA authorization resolves this confusion and inefficiency.[34]

At the same time, EPA does not believe that section 209(e) may be interpreted to permit California to enforce any nonroad regulations before receiving authorization. Were California to enforce its regulations before it receives authorization, it would defeat the protection section 209(e) was established to provide—that California's nonroad program only go forward if EPA authorizes it in accordance with the provisions of that section. Thus, EPA believes that while California may adopt nonroad regulations before receiving EPA authorization, its adoption must be conditioned upon EPA's authorizing those regulations under 209(e). In short, California may adopt, but not enforce, nonroad standards prior to EPA authorization.

Regarding the authorization criteria, EPA proposed that the first two criteria be interpreted the same as for section 209(b). These criteria are first, that no waiver or authorization shall be granted if EPA finds that California's determination that its standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious. Second, no waiver or authorization shall be granted if California does not need such standards to meet compelling and extraordinary conditions.

The language of the third criterion, however, was not as clearly similar to section 209(b). Section 209(e)(2)(A)(iii) stated that no authorization shall be granted if "California standards and accompanying enforcement procedures are not consistent with this section." EPA proposed that "this section" be interpreted to mean consistent with sections 209(a) and 209(e)(1).

Commenters disagreed with EPA's proposed interpretation of "consistent with this section," stating that "consistent with section 209" should mean all of section 209, particularly section 209(b). Some commenters also proposed that "consistent with this section" should include section 213.

EPA has determined that, given the plain language of section 209(e), interpreting "consistent with this section" to mean "consistent with section 213" is not a reasonable statutory interpretation. The phrase "consistent with this section" clearly refers to section 209, not section 213. EMA proposed to interpret this phrase to refer to section 222 of the Clean Air Act Amendments of 1990. This would require consistency with both sections 209 and 213 of the Act. Absent any legislative history to explain the intent of "consistent with this section", however, this interpretation would give

[33] Cal. Admin. Code tit. 2, §§ 11340–11356 (1989).

[34] EPA notes, however, that as with motor vehicle waivers under section 209(b), if CARB substantively amends a rule, EPA would expect CARB to request a new authorization.

to the phrase a meaning clearly different than its plain meaning in light of its placement in section 209 alone.

The Agency has decided, however, that it is reasonable and effects Congressional intent to interpret "consistent with this section" to include all of section 209, including section 209(b)(1)(C). Hence, EPA believes that it should review nonroad authorization requests under the same "consistency" criterion that it reviews motor vehicle waiver requests.

Under section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. EPA has interpreted this criterion in previous motor vehicle waiver decisions. First, California's standards are not consistent with section 202(a) if there is inadequate lead time to permit the development of technology necessary to meet those requirements, giving appropriate consideration to the cost of compliance within that time frame. Second, California's accompanying enforcement procedures would be inconsistent with section 202(a) if the federal and California test procedures were inconsistent, that is, manufacturers would be unable to meet both the state and the federal test requirements with one test vehicle or engine.

EPA's review of nonroad authorization requests will include the following. First, CARB must request EPA authorization of its adopted nonroad standards. Second, EPA shall not grant an authorization if (1) EPA determines that CARB's "in the aggregate" determination is arbitrary and capricious; (2) California does not need such standards to meet compelling and extraordinary conditions; and (3) if California's nonroad standards are not consistent with section 209, *i.e.*, that they not be inconsistent with section 209(a), section 209(e), and section 209(b), as EPA has interpreted that subsection in the context of motor vehicle waivers.

J. State Adoption of California Standards and Test Procedures

EPA received comments on several aspects regarding how other states may adopt California nonroad standards and test procedures. First, both EMA and EMI argued that other states that decide to adopt California standards should be subject to the same process as California. However, the Act neither requires that states obtain EPA authorization to impose California's nonroad engine standards nor authorizes the Agency to require that states do so. Under section 209(e)(2)(B), any state which has plan provisions approved under part D of Title I of the Act (generally states within ozone nonattainment areas) may adopt and enforce, "after notice to the Administrator," California standards. Language requiring that other states request and receive authorization from EPA is noticeably absent. Indeed, the statutory text reads as *authorizing states* to adopt California standards on their own volition. In contrast, section 209(e)(2)(A) clearly states that California must receive authorization from EPA. Moreover, the language of section 209(e)(2)(B) is nearly identical to section 177 which provides that "any state which has plan provisions approved under this part may adopt and enforce" California motor vehicle emission standards. Under section 177 New York, Massachusetts and Maine have adopted California standards, and other states are considering following suit. These States did not ask for EPA authorization before they adopted the California standards, nor did EPA or the automobile industry suggest that they needed such authorization.[35]

Several commenters stated that section 209(e)(2)(B) required that California be subject to a two-year lead time requirement. EPA does not agree with this interpretation. Section 209(e)(2)(A) requires EPA to authorize California regulation of nonroad engines unless the Administrator makes certain findings, including that California's standards are "not consistent with this section." As discussed earlier, EPA interprets that phrase as requiring that California's standards are technologically feasible in the available lead time. Since California is thus required to provide adequate lead time under section 209(e)(2)(A), it would not make sense to interpret section 209(e)(2)(B) as independently requiring at least two years of lead time. Instead, EPA interprets section 209(e)(2)(B)'s reference to two years of lead time in the same way it interprets the virtually identical provision in section 177: that an adopting state must provide two years of lead time before the California standards take effect in the adopting state and California must have adopted standards two years before commencement of the period for which the standards take effect in the adopting state, but California may adopt standards having less than two years of lead time in California.

[35] Ford Motor Co. v. EPA, 606 F.2d 1293, 1298 (D.C. Cir. 1979).

K. Rulemaking Procedure

In the NPRM, EPA proposed definitions for the new engines used in the preempted categories: farm equipment, construction equipment, and locomotives. For equipment types that are used in a variety of applications, EPA also proposed a primary use test to assess whether such equipment is primarily used as farm or construction equipment. New engines used primarily in this equipment would be preempted from state regulation. EPA proposed that in determining "primary use", CARB would use sales data to show that an equipment type was or was not primarily used in farming or construction. When CARB requested EPA to authorize its proposed regulations, EPA would review California's determination regarding the primary use of particular equipment.

In the Proposed Authorization Decision, 53 FR 45876, September 6, 1991, EPA proposed to review the decision California made regarding the primary use of nonroad equipment under an arbitrary and capricious standard of review, the standard of review that section 209(e)(2) requires that the Administrator use in reviewing California's determination that its standards "will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards."

Several commenters, including EMA, EMI, PPEMA, and the Railway Engineering-Maintenance Suppliers Association, Inc. (REMSA) stated that EPA's proposed approach to determining the primary use of nonroad engines and equipment inappropriately relinquished authority to California. They pointed out that the primary use determination goes to the scope of the federal preemption accorded by section 209(e)(1), and argued that such a threshold determination should be made by EPA, not California. To the extent that California did have a role in determining primary use, they urged that EPA apply a clear and compelling evidence standard of review instead of the less strict arbitrary and capricious test in reviewing California's determinations.

EPA believes these commenters are essentially correct in that the scope of federal preemption is not for California to decide and that EPA should have a greater role in making that determination than the Agency's proposal would have required. At the same time, EPA sees nothing wrong with having California make a preliminary determination as to the use of nonroad engines and equipment.

California's coming forward with the evidence and analysis to support such a determination is in keeping with the role California has with regard to other aspects of the waiver and authorization requests it makes under section 209.

Notably, sections 209(b) and (e) expressly place the burden of coming forward on California only with regard to the determination of the aggregate protectiveness of California's program. Nevertheless, under section 209(b) California has traditionally addressed not only the protectiveness determination but also the other two criteria set forth in section 209(b)(1)(B) and (C). This approach simply reflects the fact that California is the party interested in obtaining the waiver. Similarly, under section 209(e) EPA believes it appropriate for California to make a preliminary use determination (primary use, as discussed above) based on the available evidence and for EPA to review that determination in light of any public comments and additional evidence received.

EPA agrees with the industry commenters that the arbitrary and capricious standard of review is not appropriate for review of California's primary use determination. The arbitrary and capricious standard is generally applied in two types of circumstances: (1) where the decision-maker must apply his expertise to resolve complex issues, or (2) where the decision-maker has been accorded discretion in making the decision under review. Underlying the arbitrary and capricious standard is a recognition that the reviewing authority either does not have as much expertise as the decision-maker or that the judgment of the reviewing authority should not be substituted for that of the decision-maker to whom discretion has been granted. An illustration of this approach to application of the arbitrary and capricious standard of review is Congress' specification of that standard for California's protectiveness determination under section 209. The legislative history of that section makes clear that Congress sought to give California broad leeway to design a program that in California's judgment was best suited to the unique set of circumstances faced by that state.

Neither reason for applying the arbitrary and capricious standard of review applies to California's primary use determinations. California does not have unique expertise in determining the use of nonroad engines and equipment. Nor is there any indication that Congress sought to accord California discretion to determine the scope of federal preemption. Indeed the fact that Congress prohibited *all* state regulation of certain categories of new nonroad equipment and required California to obtain EPA authorization to regulate any other categories suggests a strong congressional interest in limiting state regulation affecting makers of new nonroad engines and equipment. While preemption provisions are generally construed narrowly, congressional intent to prohibit states from regulating in certain areas must also be safeguarded. EPA believes the arbitrary and capricious standard of review would not sufficiently reflect congressional intent to prohibit state regulation of farm and construction equipment.

At the same time, EPA does not believe that the much stricter clear and compelling evidence standard suggested by CIAQC is the appropriate standard of review. CIAQC argued that in *Motor and Equipment Manufacturers Association, Inc.*, 627 F.2d 1095, (D.C. Cir. 1979) (*MEMA I*), the court found that the Administrator's use of a clear and compelling evidence standard to evaluate California's request for a waiver for enforcement procedures was valid. EPA disagrees with CIAQC's application of *MEMA I*.

As an initial matter, *MEMA I* does not deal with the threshold matter of the scope of preemption. On such matters the court is silent as to the appropriate standard of review beyond providing general guiding principles. Instead, the court focuses on the standard of review to be employed by EPA on California's protectiveness determination. In fact, the section of the decision cited by CIAQC focuses on this issue, not on the issue of preemption. There the court not only states that California's determination is presumed to satisfy the waiver requirements, but that the burden of proving otherwise falls on the party attacking the determination. It is in this context that the court notes that the Administrator determined that there must be "clear and compelling evidence" to show that California's proposed procedures *undermine* the protectiveness of California's standards. It is in the context of a party challenging California's protectiveness determination that the clear and compelling standard comes into play. Thus, EPA believes that the clear and compelling standard is neither applicable nor appropriate for its review of CARB's primary use determination.

The Agency considers the preponderance of the evidence standard of review to be appropriate for its review of California's primary use determination. If EPA were to make the determination itself, it would apply such a test in making it. There is no reason to apply a different test simply because California has made an initial determination. Public commenters may supplement the record assembled by California in support of its determination, and the Agency will weigh all the evidence in reviewing California's determination. To the extent California's determination is supported by a preponderance of the evidence in the record, EPA will accept it.

Several commenters stated that EPA was denying interested parties their due process rights by attempting to consider California's request for authorization for its Utility Engine Rule at the same time it is seeking comment on its proposed criteria for authorizing nonroad requests. The commenters argued that a final rule under section 209(e) was necessary to comment meaningfully on the CARB authorization request.

EPA believes parties should be given another opportunity to comment on California's utility engine rule after today's rule implementing section 209(e) has become final. Thus, EPA will publish in the **Federal Register** a Notice of Opportunity for Public Hearing and Request for Comments regarding California's request for authorization of its Utility Engine Rule. Interested parties will have the opportunity to submit written comments, and if requested, EPA will hold a hearing. This will provide interested parties with an opportunity to comment on California's request after today's rule is finalized.

L. Executive Order 12866

In the NPRM, EPA stated it had determined that the proposed rule is not "major" within the criteria set forth in section 1(b) of Executive Order (E.O.) 12291 and was therefore not required to prepare a Regulatory Impact Analysis (RIA). Since the NPRM E.O. 12291 has been replaced by Executive Order 12866.

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

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

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

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

Comments were received from EMI which suggested that an RIA be performed under the guidelines set forth in E.O. 12291. EPA will examine these comments in the context of E.O. 12866. In connection with every "significant regulatory action" as defined at section 3(f)(1) (Annual effect on the economy of $100 million * * *), E.O. 12866 requires an RIA be performed. EMI submitted that the second and third independent criteria for a "major rule" under E.O. 12291, were met by both the NPRM and CARB's Utility Engine Rule currently before EPA.

In relation to the second criterion for determining whether a rule is "major", EMI stated that its member manufacturers of farm and construction equipment will incur costs in attempting to comply with EPA's rule and CARB's Utility Engine Rule. EMI also states that both consumers of farm and construction equipment and California's economy will incur costs as a result of geographically diverse emission standards. EMI makes reference to no evidence or cost data in support of its claim.

EMI points to the potential of diverse or multiple emission standards as its support that United States farm and construction equipment manufacturers would be unduly hindered in the international marketplace as evidence that the rule meets the third criterion for a "major rule". Again, EMI makes no reference to any examples of costs or evidence to support its belief.

EPA still believes that an RIA is not needed for the NPRM or the final rule. Today's rule does not itself impose any increase in costs to individual industries or the State of California. Indeed, the rule merely sets out definitions and criteria for nonroad authorization requests. California makes cost determinations as part of its own rulemaking and provides the rulemaking record to EPA as part of an authorization request. At the same time, EPA notes that while its rule does not impose any direct costs on equipment manufacturers, the more narrowly the scope of preemption is drawn, the more opportunities California has to impose costs through regulations.

Pursuant to the terms of E.O. 12866, OMB notified EPA that it considered the action a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

M. Paperwork Reduction Act

In the NPRM, EPA stated that the proposed rule did not contain any additional information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* (PRA). The purpose of the PRA is "to minimize and control burdens associated with the collection of information by federal agencies from individuals, businesses and other private institutions, and State and local governments." 5 CFR 1320.1.

EPA received comments from two parties claiming that the PRA applied to the proposed rule and that such application would require changes within the proposed rule. North American Equipment Dealers Association (NAEDA) and EMI indicated that the "primary use" test would cause an increase of burdensome paperwork, with manufacturers dependent upon dealers and end users to provide the requisite information to determine primary use. At the same time, EMI noted that EPA did not specify any particular paperwork requirements. In addition, EMI did not indicate that any information need be submitted to EPA. Instead, EMI apparently supposes that under the PRA a greater administrative burden would be created by implementing a primary use information collection system as opposed to a "designed for" test and information collection system, and thus claims the latter should be implemented.

EPA finds these comments are not relevant to the question of whether the Paperwork Reduction Act applies to the proposed and final rule. Although EPA finds the comments helpful in understanding the distinction between the "primary use" versus "designed for" issue, the comments fail to set forth any basis for asserting that the final rule, which adopts the proposed primary use test, contains any additional information collection requirements. Indeed, the comments presuppose the applicability of the PRA and focus on options to make information collection less burdensome without recognizing the significance of the fact that EPA has not required any information collection from manufacturers, dealers, or any private entity. EPA did not propose and has not included in the final rule any paperwork requirements and thus imposes no burden upon manufacturers, dealers or end users of nonroad equipment to submit to EPA any information regarding the use of nonroad equipment. EPA recognizes that in order for California to receive authorization from EPA for non-preempted nonroad equipment, California must present sufficient information that nonroad equipment is not used more than 51 percent as farm or construction equipment. California may thus require submission of relevant information to determine primary use, but EPA has not.

EPA has determined that the Paperwork Reduction Act does not apply towards this rulemaking. EPA has not set forth any specific requirements for these entities to collect or submit any data to EPA.

N. Regulatory Flexibility Act

In the NPRM, EPA stated that the proposed regulation would not have a significant impact on a substantial number of small entities. EPA determined that the proposed rule would affect manufacturers of nonroad equipment, a group without a substantial number of small entities.

EPA received public comments which suggested that the proposed rule would in fact affect small entities. One small business equipment dealer commented that if the proposed rule and CARB's Utility Engine Rule are enacted, and nonroad farm and construction equipment is separately regulated by California, then it would be adversely impacted. This same dealer, along with the Far West Equipment Dealers Association (FWEDA), stated that a scenario would arise where new and used nonroad farm and construction equipment purchased outside California would cost less than that found in California, and would thus adversely affect dealers of such equipment within California. FWEDA provided examples of several pieces of farm or construction equipment, and their projected cost increases in order to meet proposed CARB emission standards, in an effort to present the price differential for California dealers of such equipment. In addition, FWEDA states that the purchasers/users of their farm and construction equipment within California will be at an unfair cost disadvantage in relation to users outside of California's boundary.

For purposes of Regulatory Flexibility Act analysis, the issue is whether the final rule will have a significant impact on a substantial number of small entities. EPA makes no change in its

determination in the NPRM that the final rule will have no significant impact on a substantial number of small entities since the rule imposes no burden on *any* entities. However, EPA reminds the parties which submitted comments on the applicability of the Regulatory Flexibility Act that California is specifically preempted from regulation of farm and construction equipment under 175 horsepower. The pieces of equipment cited by FWEDA as being potentially affected are preempted from regulation by California. Thus, the apprehension that such equipment will cost less outside of California is unfounded, as such equipment will be subject only to the federal regulations.

As a result, EPA has determined, as required under the Regulatory Flexibility Act, that the final rule does not have a significant impact on a substantial number of small entities.

List of Subjects for 40 CFR Part 85

Environmental protection, Administrative practice and procedure, Air pollution control, Federal preemption, Motor vehicle pollution, Nonroad engine and vehicle pollution, Reporting and recordkeeping requirements, and State controls.

Dated: July 1, 1994.

Carol Browner,

Administrator.

Therefore, 40 CFR Part 85 is amended as follows:

PART 85—CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES AND MOTOR VEHICLE ENGINES

1. The authority citation for part 85 is revised to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7543, 7547, and 7601(a), unless otherwise noted.

2. Part 85 is amended by adding subpart Q to read as follows:

Subpart Q—Preemption of State Standards and Waiver Procedures for Nonroad Engines and Nonroad Vehicles

85.1601 Applicability.
85.1602 Definitions.
85.1603 Application of definitions; scope of preemption.
85.1604 Procedures for California nonroad authorization requests.
85.1605 Criteria for granting authorization.
85.1606 Adoption of California standards by other states.

Subpart Q—Preemption of State Standards and Waiver Procedures for Nonroad Engines and Nonroad Vehicles

§ 85.1601 Applicability.

The requirements of this subpart are applicable to nonroad engines and nonroad vehicles.

§ 85.1602 Definitions.

As used in this subpart, all terms not defined shall have the meaning given them in the Clean Air Act, as amended.

Commercial means an activity engaged in as a vocation.

Construction equipment or vehicle means any internal combustion engine-powered machine primarily used in construction and located on commercial construction sites.

Engine used in a locomotive means either an engine placed in the locomotive to move other equipment, freight, or passenger traffic, or an engine mounted on the locomotive to provide auxiliary power.

Farm equipment or vehicle means any internal combustion engine-powered machine primarily used in the commercial production and/or commercial harvesting of food, fiber, wood, or commercial organic products or for the processing of such products for further use on the farm.

Locomotive means a self-propelled piece of on-track equipment (other than equipment designed for operation both on highways and rails, specialized maintenance equipment, and other similar equipment) designed for moving other equipment, freight, or passenger traffic.

New means a domestic or imported nonroad vehicle or nonroad engine the equitable or legal title to which has never been transferred to an ultimate purchaser. Where the equitable or legal title to an engine or vehicle is not transferred to an ultimate purchaser until after the engine or vehicle is placed into service, then the engine or vehicle will no longer be new after it is placed into service. A nonroad engine or vehicle is placed into service when it is used for its functional purposes. The term *ultimate purchaser* means, with respect to any new nonroad vehicle or new nonroad engine, the first person who in good faith purchases such *new* nonroad vehicle or new nonroad engine for purposes other than resale. This definition of *new* shall not apply to locomotives or engines used in locomotives.

Nonroad engine means:

(1) Except as discussed in paragraph (2) of this definition, a nonroad engine is any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(2) An internal combustion engine is not a nonroad engine if:

(i) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Act; or

(ii) The engine is regulated by a federal New Source Performance Standard promulgated under section 111 of the Act; or

(iii) The engine otherwise included in paragraph (1)(iii) of this definition remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

Primarily used means used 51 percent or more.

§ 85.1603 Application of definitions; scope of preemption.

(a) For equipment that is used in applications in addition to farming or construction activities, if the equipment is primarily used as farm and/or construction equipment or vehicles, as defined in this subpart, it is considered farm or construction equipment or vehicles.

(b) States are preempted from adopting or enforcing standards or other

requirements relating to the control of emissions from new engines smaller than 175 horsepower, that are primarily used in farm or construction equipment or vehicles, as defined in this subpart.

(c) States are preempted from adopting or enforcing standards or other requirements relating to the control of emissions from new locomotives or new engines used in locomotives.

(d) No state shall enforce any standards or other requirements relating to the control of emission from new nonroad engines or vehicles except as provided for in this subpart.

§ 85.1604 Procedures for California nonroad authorization requests.

(a) California shall request authorization to enforce its adopted standards and other requirements relating to the control of emissions from new nonroad vehicles or engines that are otherwise not preempted by § 85.1603(b) or 85.1603(c) from the Administrator of EPA and provide the record on which the state rulemaking was based.

(b) After receipt of the authorization request, the Administrator shall provide notice and opportunity for a public hearing regarding such requests.

§ 85.1605 Criteria for granting authorization.

(a) The Administrator shall grant the authorization if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.

(b) The authorization shall not be granted if the Administrator finds that:

(1) The determination of California is arbitrary and capricious;

(2) California does not need such California standards to meet compelling and extraordinary conditions; or

(3) California standards and accompanying enforcement procedures are not consistent with section 209.

§ 85.1606 Adoption of California standards by other states.

Any state other than California which has plan provisions approved under Part D of Title I of the Clean Air Act may adopt and enforce emission standards, for any period, for new nonroad vehicles or engines subject to the following requirements:

(a) The state must provide notice to the Administrator that it has adopted such standards.

(b) Such standards shall not apply to new engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower or to new locomotives or new engines used in locomotives.

(c) Such standards and implementation and enforcement shall be identical, for the period concerned, to the California standards authorized by the Administrator.

(d) The state shall adopt such standards at least two years before commencement of the period for which the standards take effect.

(e) California shall have adopted such standards two years before commencement of the period for which the standards take effect in the state that is adopting under section 209(e)(2)(B).

[FR Doc. 94–17002 Filed 7–19–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–230; RM–8298, RM–8359]

Radio Broadcasting Services; Madison, South Dakota and Slayton, Minnesota

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a petition filed by Wallace Christensen a *Notice of Proposed Rule Making* was issued requesting the substitution of Channel 276C2 for Channel 276A at Slayton, Minnesota, modification of the construction permit for Station KLOH–FM accordingly, substitution of Channel 288A for Channel 276A at Madison, South Dakota, and modification of the license for Station KJAM–FM to accommodate the upgrade at Slayton. *See* 58 FR 42714, August 11, 1993. In response to a counterproposal filed by Madison Broadcasting Company, we will substitute Channel 291C2 for Channel 276A at Slayton, Minnesota, at coordinates 43–59–43 North Latitude and 95–44–51 West Longitude and modify the construction permit for Station KLOH–FM accordingly. We shall also substitute Channel 276C2 for Channel 276A at Madison, South Dakota, at coordinates 43–59–08 North Latitude and 97–07–42 West Longitude and modify the license for Station KJAM–FM to specify operation on the higher class channel. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 29, 1994.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 93–230, adopted June 30, 1994, and released July 15, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 276A and adding Channel 291C2 at Slayton.

3. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by removing Channel 276A and adding Channel 276C2 at Madison.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–17607 Filed 7–19–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–263]

Organization and Delegation of Powers and Duties; Delegation of Authority to the Maritime Administrator

AGENCY: Office of the Secretary, DOT

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) hereby delegates to the Maritime Administrator authority conferred by Section 2927, Title XXIX, of Public Law 103–160, enacted November 30, 1993, to convey surplus real property to public entities for use in the development or operation of a port facility. The Secretary also

revokes a previous delegation of authority to the Maritime Administrator where the Secretary's statutory authority has expired.

EFFECTIVE DATE: This rule becomes effective July 20, 1994.

FOR FURTHER INFORMATION CONTACT: John W. Carnes, Chief, Division of Port and Intermodal Operations, Maritime Administration, MAR–831, Room 7201, 400 Seventh Street SW., Washington, DC, 20590, (202) 366–4357 or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement (C–50), Department of Transportation, Room 10424, 400 Seventh Street SW., Washington, DC 20590, (202) 366–9306.

SUPPLEMENTARY INFORMATION: Section 2927, Title XXIX, of Public Law 103–160, the National Defense Authorization Act for Fiscal Year 1994, amends Section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) to authorize the Secretary to convey surplus real property to public entities for development or operation of a port facility. Transfer of such real property by the Secretary is subject to the disapproval of the Administrator of General Services or the Secretary of Defense. The Secretary is hereby amending regulations of the Office of the Secretary of Transportation, at 49 CFR 1.66, to delegate that authority to the Maritime Administrator. Another change is being made to revoke the delegation of authority in § 1.66(x) to carry out the provisions of Section 709 of Public Law 101–595 (the Merchant Mariner Memorial Act of 1990), which authority has expired, and to reserve that paragraph. Corresponding changes are being made to the Department's Organization Manual.

Since this amendment relates to departmental management, organization, procedure, and practice; notice and comment are unnecessary, and the rule may become effective in fewer than 30 days after publication in the **Federal Register.**

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Pub.L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.66 is amended by removing and reserving paragraph (x), and by adding new paragraph (z), to read as follows:

§ 1.66 Delegations to Maritime Administration.

* * * * *

(z) Carry out the functions vested in the Secretary by Section 2927, Title XXIX of the National Defense Authorization Act of 1994 (Public Law 103–160; November 30, 1993) relating to authority to convey surplus real property to public entities for use in the development or operation of port facilities.

Issued at Washington, DC this 20th day of June 1994.

Federico Peña,

Secretary of Transportation.

[FR Doc. 94–17622 Filed 7–19–94; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB88

Endangered and Threatened Wildlife and Plants; Final Rule To List the Rio Grande Silvery Minnow as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the Rio Grande silvery minnow (*Hybognathus amarus*) to be an endangered species under the Endangered Species Act of 1973 (Act), as amended. This fish occurs only in the middle Rio Grande from Cochiti Dam downstream to the headwaters of Elephant Butte Reservoir, New Mexico. Threats to the species include dewatering, channelization and regulation of river flow to provide water for irrigation; diminished water quality caused by municipal, industrial, and agricultural discharges; and competition or predation by introduced non-native fish species. Currently, the species occupies about five percent of its known historic range. This action will implement Federal protection provided by the Act for the Rio Grande silvery minnow. The Service further determines that finalization of proposed critical habitat will not occur at this time, as critical habitat is not now determinable because the required economic analysis has not been completed. Pursuant to section 4(b)(6)(C)(ii) of the Act, a final determination on critical habitat may be delayed up to 1 year beyond the normal deadline.

EFFECTIVE DATE: August 19, 1994.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, New Mexico Ecological Services State Office, 3530 Pan American Highway NE., Suite D, Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Jennifer Fowler-Propst, State Supervisor, at the above address (505/883–7877).

SUPPLEMENTARY INFORMATION:

Background

The Rio Grande silvery minnow is one of seven species in the genus *Hybognathus* found in the United States (Pflieger 1980). The species was first described by Girard (1856) from specimens taken from the Rio Grande near Fort Brown, Cameron County, Texas. It is a stout silvery minnow with moderately small eyes and a small, slightly oblique mouth (Pflieger 1975). Adults may reach 90 mm (3.5 in) in total length (Sublette et al. 1990). Its dorsal fin is distinctly pointed with the front located slightly closer to the tip of the snout than to the base of the tail (Pflieger 1975). Life color is silver with emerald reflections. Its belly is silvery white, fins are plain, and barbels are absent (Pflieger 1975, Sublette et al. 1990).

This species was historically one of the most abundant and widespread fishes in the Rio Grande basin, occurring from Espanola, New Mexico, to the Gulf of Mexico (Bestgen and Platania 1991). It was also found in the Pecos River, a major tributary of the Rio Grande, from Santa Rosa, New Mexico, downstream to its confluence with the Rio Grande in south Texas (Pflieger 1980). Collection data indicate the species presently occupies about five percent of its historic range (Platania 1993). It has been completely extirpated from the Pecos River and from the Rio Grande downstream of Elephant Butte Reservoir. Currently, it is found only in a 275 km (170 mi) reach of the middle Rio Grande, New Mexico, from Cochiti Dam, Sandoval County, to the headwaters of Elephant Butte Reservoir, Socorro County (Bestgen and Platania 1991). Throughout much of its historic range, decline of *H. amarus* may be attributed to modification of stream discharge patterns and channel desiccation by impoundments, water diversion for agriculture, and stream channelization (Bestgen and Platania 1991, Cook et al. 1992).

The Rio Grande silvery minnow no longer exists in the Pecos River where it was replaced by a congener, the introduced plains minnow (*H. placitus*) (Hatch et al. 1985, Bestgen et al. 1989, Cook et al. 1992). It is believed that the plains minnow was introduced into the Pecos drainage during 1968, probably the result of the release of "bait minnows" that were collected from the Arkansas River drainage. The replacement that ensued was complete in less than one decade (Cowley 1979). The plains minnow may be more tolerant of modified habitats and therefore able to replace *H. amarus* in the modified reaches of the Pecos River where it was introduced. It is also believed the two species hybridized (Cook et al. 1992). Habitat alteration and resulting flow modification could have also contributed to extirpation of the Rio Grande silvery minnow in the Pecos River.

Decline of the species in the Rio Grande probably began in 1916 when the gates at Elephant Butte Dam were closed. Elephant Butte was the first of five major mainstream dams constructed within the Rio Grande silvery minnow's habitat (Shupe and Williams 1988). These dams allowed the flow of the river to be manipulated and diverted for the benefit of agriculture. Often this manipulation resulted in the desiccation of some river reaches and elimination of all fish. Concurrent with construction of the mainstream dams was an increase in the abundance of non-native and exotic fish species, as these species were stocked into the reservoirs created by the dams (Sublette et al. 1990). Once established, these species often completely replaced the native fish fauna (Propst et al. 1987). Development of agriculture and the growth of cities within the historic range of *H. amarus* resulted in a decrease in the quality of water in the river that may have adversely affected the range and distribution of the species.

Most land bordering the river where the species currently exists is owned by the Middle Rio Grande Conservancy District, which is a quasi-public agency of the State of New Mexico. Other landowners include six Native American Pueblos, the U.S. Bureau of Reclamation, the Service, the U.S. Bureau of Land Management, New Mexico State Parks, New Mexico Department of Game and Fish, New Mexico State Lands Department, and the U.S. Army Corps of Engineers (Corps).

Water flow in the middle Rio Grande is controlled by the Rio Grande Compact Commission. Established in 1929 for the purpose of permanently and equitably apportioning the flows of the Rio Grande, the Commission is composed of a Federal chairperson appointed by the President of the United States and three voting members—a representative designated by the Texas Governor and the State Engineers of New Mexico and Colorado. The Commission meets annually to review compliance with the compact over the preceding year, to hear reports from Federal water management agencies, and to consider water management decisions that have interstate implications. Federal agencies that also determine timing and amount of flow in the river include the International Boundary and Water Commission, the Bureau of Reclamation, and the Corps.

Previous Service Actions

The Rio Grande silvery minnow was listed on the Service's Animal Notice of Review (56 FR 58804; November 21, 1991) as a category 1 species. A category 1 species is one for which the Service has on file substantial information on biological vulnerability and threat(s) to support a proposal to list it as an endangered or threatened species. A proposed rule to list the Rio Grande silvery minnow as endangered with critical habitat was published in the **Federal Register** on March 1, 1993 (58 FR 11821).

Summary of Comments and Recommendations

In the March 1, 1993, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The comment period originally scheduled to close on April 30, 1993, was extended until August 25, 1993, (58 FR 19220; April 13, 1993) to conduct public hearings and allow submission of additional comments. Appropriate Tribal governments, State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in New Mexico in the Albuquerque Journal on May 2, 1993; Las Cruces Sun News on April 30, 1993; Socorro Defensor Chieftain on April 28, 1993; Santa Fe New Mexican on April 20, 1993; and in Texas in the El Paso Times on March 20, 1993.

Because of anticipated widespread public interest, the Service held two public hearings that were announced in an April 13, 1993, **Federal Register** notice. Interested parties were contacted and notified of the hearings. Thirty-seven people attended the hearing in Albuquerque, New Mexico, and 58 attended the hearing in Socorro, New Mexico. Oral or written comments were received from 25 parties at the hearings; none directly supported the proposed listing. Transcripts of these hearings are available for inspection (see **ADDRESSES**). Briefing sessions were also held for tribal leaders on May 18, 1993, in Albuquerque, New Mexico; and for a number of northern pueblos at Santo Domingo Pueblo, New Mexico, on September 9, 1993.

A total of 40 written comments were received at the Service's Ecological Services State Office in Albuquerque, New Mexico: 13 supported the proposed listing; 14 opposed the proposed listing; and 13 commented on information in the proposed rule but expressed neither support nor opposition.

Oral or written comments were received from 7 Federal and 5 state agencies, 14 local officials, and 36 private organizations, companies, and individuals. Written comments and oral statements presented at the public hearings and received during the comment periods are covered in the following summary. Comments of a similar nature or point are grouped into a number of general issues. These issues, and the Service's response to each, are discussed below.

Issue 1: The Service has come to the conclusion that only instream flow will assure the species' existence. Will the Service propose a program for the purchase of water rights in order to provide water for the species?

Response: The Service has not reached this conclusion. Possible instream flow requirements of the species are among several factors that need to be considered in the recovery planning process. If, during the recovery planning process, the Service determines that the purchase of water rights will enhance recovery of the species, the Service would explore with other State and Federal entities the possible purchase of water rights from willing sellers.

Issue 2: The United States, under the terms of the Convention of 1906, has the obligation to deliver 60,000 acre-feet of water annually to the Republic of Mexico. The U.S. International Boundary and Water Commission (IBWC) is responsible for ensuring that the U.S. government meets those obligations. The IBWC is concerned that the listing may interfere with their ability to meet these treaty requirements.

Response: The Service recognizes the treaty obligation of the United States to provide to the Republic of Mexico 60,000 acre-feet of water annually from

the Rio Grande. Measures taken to protect and recover the Rio Grande silvery minnow will take into consideration this treaty obligation and IBWC's ability to meet treaty requirements.

Issue 3: Completion of the dams above Elephant Butte Dam has had the effect of extending stream flow. Flood control and conservation storage operations do not, cannot, and have not been used to create or extend reaches of no flow in the riverbed.

Response: The Service agrees with the statement. Availability of flow is likely not the only factor affecting decline of the silvery minnow. These operations change the natural flow regime of the river and thus may affect survival of the Rio Grande silvery minnow. The final rule recognizes these other factors in the "Summary of Factors Affecting the Species."

Issue 4: Reservoirs do not, as implied, store all spring runoff and summer inflows. Water is normally released during summer, not winter months. Diversion dams and canals have limited capacities to divert flows. They cannot "completely divert all flows . . . into irrigation ditches" under flood conditions.

Response: The Service agrees with the statement that reservoirs do not store all spring runoff and summer inflow. While most water is released during the spring and summer, a fall and winter release does occur in the Middle Rio Grande Valley when conditions permit (Beal and Gold 1988, Borland and Gold 1989). Under flood conditions, the irrigation diversions do not have the capacity to divert all flows. Under non-flood flows they do have the capacity to divert all flows. United States Geological Survey (USGS) records substantiate the occurrence of no-flow periods downstream of the various irrigation diversion dams.

Issue 5: The proposed regulation is unsupported by any hydrological study as to the statements that irrigation uses have depleted the water flow. Not a single source of information is cited for comments regarding hydrology of the river. Depletions of water in the system may be the result of the construction of wildlife watering impoundments by the Forest Service and Bureau of Land Management.

Response: It can be readily documented by examining USGS flow gage records that river flows decrease when the irrigation season starts. In addition, the Service reviewed Bullard and Wells (1992), which provides information on the hydrology of the middle Rio Grande. This reduction in flow is most noticeable in mid-summer after the spring to early summer peak flow has passed. Wildlife impoundments are often very small (less than one acre in size) and are considered to be insignificant in the amount of water they deplete from the drainage.

Issue 6: Economic considerations should be given more weight when communities may be affected.

Response: Section 4(a)(1) of the Act identifies five factors that are considered in making a determination of whether a species should be listed as threatened or endangered. Section 4(b)(1)(A) of the Act requires that listing determinations be based solely on the best available scientific and commercial data, and prohibits the Service from considering economic factors (50 CFR 424.11(b)). However, because economics are considered in the designation of critical habitat, the Service will conduct an economic analysis in the process of evaluating proposed critical habitat for the Rio Grande silvery minnow.

Issue 7: The Service needs to ensure public input before listing the Rio Grande silvery minnow. The Service is required to notify counties and other affected parties to solicit their input prior to listing a species under the Act. The Service failed to meet this obligation.

Response: On February 19, 1991, about 80 pre-proposal letters of inquiry were mailed to various governmental agencies, knowledgeable individuals, and the New Mexico Congressional delegation. On March 20, 1992, the Service held a meeting in Albuquerque, New Mexico, with various interested governmental and private entities to explore existing or potential flexibility in water delivery schedules that might avoid dewatering of the Rio Grande within the range of the Rio Grande silvery minnow. The Service also published notices of the proposal in 5 local newspapers and mailed copies of the proposed rule to 148 different government agencies, private organizations, and interested individuals, including all counties having lands that border the area being proposed for critical habitat designation. Two public hearings were also held. The Service has fully met or surpassed the requirements of the Endangered Species Act for public notification.

Issue 8: The Service held public hearings only to fulfill a legal obligation and will not pay attention to any public comment. The Service should have held public hearings in El Paso and Las Cruces.

Response: The Service disagrees. All comments are carefully evaluated before the Service makes a determination on whether to proceed with a final rule. Numerous notifications of the proposed rule and extension of the comment period were distributed, and Service biologists traveled to several areas, including El Paso and Las Cruces, to present briefings on the proposed rule and accept comments.

Issue 9: The Service should establish a coordinating committee composed of interests below Elephant Butte Reservoir whose task would be to develop a full-scale report on the existing data available on the Rio Grande silvery minnow and how the river could be managed for the benefit of all, including the Rio Grande silvery minnow.

Response: After the species is listed the Service will consider, through the recovery planning process, establishing a coordinating committee to develop a report on the Rio Grande silvery minnow and how the river could be managed for the benefit of all, including the Rio Grande silvery minnow.

Issue 10: During periods of dewatering of the river, the ditches provide habitat for the species. The Service should consider exploring with the Middle Rio Grande Conservancy District, the counties, and other agencies the multiple use of riverside drains for the species and the preservation of bosque habitat.

Response: The Service agrees that during periods of drought, which result in the dewatering of the mainstream Rio Grande, the various irrigation ditches and drains may provide a temporary place of refuge for the Rio Grande silvery minnow. However, these areas do not contain suitable habitat for long-term use by the species. Few Rio Grande silvery minnows are found in the ditches and drains. Those that are found are believed to represent Rio Grande silvery minnows that became entrapped due to the diversion of irrigation water from the mainstream. The Service intends to investigate, with all interests, the potential use of the riverside drains for recovery of the species.

Issue 11: Few data exist on the abundance of the species on Pueblo lands or whether it can survive in the mud and sand when the river bed is dry.

Response: The Service used all available biological information in making the determination to list the Rio Grande silvery minnow as an endangered species. Recent census data from Pueblo lands are reported by Bestgen and Platania (1991), Platania and Bestgen (1988), Platania and Clemmer (1984), and the U.S. Bureau of Reclamation (1992). As additional information becomes available, including information from Pueblo waters, the Service will use that

information in the recovery planning process. The Service hopes that, through initiation of recovery efforts for the species, and in cooperation with the Pueblos, additional information can be obtained on the status of the species on Pueblo lands. The Service has no scientific data indicating that the species survives in the mud and sand during periods when the river is dry.

Issue 12: Competition between *H. amarus* and its congener *H. placitus* could have also contributed to extirpation of the species from the Pecos River. Studies should be conducted to determine if predation or competition by non-native fishes impacts the species. The studies should not just determine if it is a problem, they should also determine where and to what extent it is a problem.

Response: The Service has no data to substantiate any reasons for extirpation of the Rio Grande silvery minnow from the Pecos River and replacement by its congener *H. placitus*. Competition may have been a factor in its extirpation; however, it is more likely that hybridization between the two species was the primary factor. Studies designed to determine if predation or competition by non-native fishes impacts the survival of the Rio Grande silvery minnow will be conducted as part of recovery efforts for the species.

Issue 13: Recent biological studies have been conducted during a period of high flow; therefore, the results of those studies do not accurately reflect the distribution of the species under normal conditions.

Response: It is true that, other than 1989, recent data have been collected during a period of higher than normal flow. However, even these data show that the species is not as abundant as it was during other periods of above-normal flow. This leads to a conclusion that factors other than flow may be impacting the species and its habitat.

Issue 14: It seems a fair conclusion that the Cochiti downstream reach is no longer favorable habitat because of lowered water temperatures and degradation of favored *H. amarus* substrate. This further limits the area in which the species has to survive.

Response: Although the reach immediately downstream of Cochiti Dam may not be favorable habitat for the Rio Grande silvery minnow, it is not known how far downstream these conditions persist. As part of recovery efforts for the species, studies will be conducted on this question, and attempts may be made to correct the unfavorable conditions.

Issue 15: Since little is known of feeding habits or reproduction, the claim that channel modification would adversely affect the Rio Grande silvery minnow is not supported by the best scientific evidence. Changes in food supply, not water supply, may be a factor affecting the species in the Rio Grande. Also, the effects of non-native plants upon the habitat need to be investigated.

Response: Recent data have shown that spawning activity occurs during peak spring and early-summer flows. The fertilized eggs drift with the current for about 24 hours and then hatch. The larval fish continue to drift downstream until they are swept into calm backwater and edge areas where food is abundant and they can continue to grow. Because of this spawning behavior, any modifications to the channel that result in changes that sweep the eggs and larval fish into less favorable habitats would adversely affect the species. There are no data presently available to support the contention that a reason for decline of the species was a decrease in the species' food supply or the invasion of non-native plants. As part of recovery efforts, the impacts of all habitat modifications will be investigated to determine if and how they impact the species.

Issue 16: Very little information was presented at the public hearing or in the **Federal Register** to show a cause-and-effect relationship between water quality and decline of the species.

Response: Limited information exists on the relationship between water quality and the decline of the species. A better understanding of this relationship will be developed as a result of recovery efforts.

Issue 17: The proposed listing of the Rio Grande silvery minnow is just a part of a much larger problem—the modification of the floodplain. Are activities at Bosque del Apache National Wildlife Refuge (NWR) affecting the species?

Response: The Service agrees. Listing the species will invoke protective provisions of the Act, such as those contained in section 7. The Service has no information that indicates activities at Bosque del Apache NWR impact the species. The Service will work with Federal agencies, including Bosque del Apache NWR, to ensure that their actions do not jeopardize the species through adverse effects on the floodplain. In addition, the Service is involved in several cooperative efforts with Federal, State, and private entities to protect the Rio Grande Bosque and associated floodplain.

Issue 18: The facts presented in the status report do not support the conclusion that "anticipated additional modifications" would limit prospects of survival for the species in the middle Rio Grande.

Response: The facts presented in the status report do support the conclusion that "anticipated additional modifications" would limit prospects of survival for the species in the middle Rio Grande. According to the authors of the status report, "Conservation measures are necessary as continued habitat and flow modifications, introductions of non-native species, and lack of refugia threaten survival of *H. amarus*." The present status of the species is such that any activity that could negatively impact the species may limit prospects for its survival.

Issue 19: Only two facts support listing; that the species is presently found in only 5 percent of its historic range, and that other fish native to the middle Rio Grande (Rio Grande bluntnose shiner, phantom shiner, Rio Grande shiner, and speckled chub) have been extirpated from the river. The Service does not have adequate data to support the conclusion that the Rio Grande silvery minnow is endangered and should be listed under the Act.

Response: The Service agrees that the above two facts support listing. However, other facts that support listing include the species' decrease in abundance within the area it presently occupies, and its extirpation from the Pecos River after the introduction of the plains minnow into that system. The Service concludes, as detailed in the "Summary of Factors" section, that there is sufficient evidence to support listing the species as endangered under the Act. The Service reviewed the best scientific and commercial data available to make this determination.

Issue 20: The Rio Grande silvery minnow is not a distinct species. It is just a local population of the Mississippi silvery minnow. The Service should consider conducting studies for two years on the species' taxonomy.

Response: The Service has taxonomic information that verifies the Rio Grande silvery minnow as a distinct species. The Rio Grande silvery minnow is recognized by the American Fisheries Society, which is considered the scientific authority for the names of fishes, as a full species (American Fisheries Society 1991). Cook et al. (1992), using starch gel electrophoretic methods, found that phenetic and phylogenetic analyses corroborated the hypothesis that *H. amarus* is distinct at the species level from *H. nuchalis* and *H. placitus*, with which it was previously grouped.

Issue 21: The Service has not conducted in-depth studies to determine the number of silvery minnows that exist in the Middle Rio Grande Valley and associated drainage ditches. The species may be doing well without protection of the Federal government.

Response: Since 1987, studies have been conducted to document the population of Rio Grande silvery minnows in both the Middle Rio Grande Valley and its associated irrigation and drainage ditches from Velarde to Elephant Butte Reservoir, New Mexico. These studies have shown that very few Rio Grande silvery minnows survive in the drainage ditches. The listing is based, in part, upon the extirpation of the species from about 95 percent of its historic range. The species was once thought to be one of the most numerous fish in the Rio Grande. In 50 fish collections made between Bernalillo and Elephant Butte Reservoir between 1987 and 1988, the Rio Grande silvery minnow was the second most abundant species, comprising 18 percent of the total fish collected. From 1989 to 1992, 56 collections were made in the same area and only 3 Rio Grande silvery minnows were collected. During that period, the Rio Grande silvery minnow went from being the second most abundant native fish species to the least abundant native species (Platania 1993). The Service believes that without the protection afforded through Federal listing, the species is likely to become extinct. Two native Rio Grande fish species have already become extinct.

Issue 22: The fish exist in stretches of the river that have been subject to drying for at least 50 years, but have disappeared from areas where there has been instream flow for the past 50 years.

Response: The Service agrees that the species has persisted in reaches of the river that have experienced seasonal drying during the past 50 years and has been extirpated from reaches where there has been continual flow during the last 50 years. In the past, during periods of extremely low flow, the species survived in areas where irrigation water returned to the river, in seepage and leakage pools located downstream of irrigation diversion dams, and, prior to construction of Cochiti Dam, in the canyon reach of the Rio Grande upstream of Cochiti. Prior to the construction of irrigation and flood control dams in the southwest, it was not unusual for portions of major rivers to become dry during periods of drought. During these drought periods, native fishes would retreat to canyon reaches where permanent water existed. After the drought ended, they would re-inhabit the reaches of river that had formerly been dry. There was a constant expansion and contraction of fish populations. Construction of mainstream dams prevented this movement and may have contributed to the extitirpation of downstream populations of native fishes.

The reasons for the extirpation of the species from continual flow reaches of the river are not known but probably relate to factors other than flow. Changes in species composition, flow regimes, and water quality could all have been causative factors in the decline of the Rio Grande silvery minnow from these areas. Even in those areas where the species presently persists, its abundance has been substantially reduced (Platania 1993).

Issue 23: Listing is not necessary because of existing protection that is afforded the species by the requirements of the Coordination Act, National Environmental Policy Act, and other habitat protection regulations, such as section 404 of the Clean Water Act. Any activity that could affect the habitat of the species would have to undergo these reviews, including the Middle Rio Grande Conservancy District's work on its structures. Such work could not be done with impunity. Protection is also provided to the species because of its listing as endangered by the State of New Mexico.

Response: To date, the species has declined even with these regulations in place. These regulations do not ensure that habitat for the Rio Grande silvery minnow will be protected. Listing of the species by the State of New Mexico only regulates collecting of the species. It does not provide protection for its habitat or for its recovery. The Service believes the protective mechanisms of the Act are necessary to prevent the species' extinction.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Rio Grande silvery minnow should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*), and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Rio Grande silvery minnow (*Hybognathus amarus*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The only existing population of *H. amarus* continues to be threatened by annual dewatering of a large percentage of its habitat. This dewatering is primarily the result of diversion of river flow for agriculture within the Middle Rio Grande Valley of New Mexico. During a year when an average or above-average amount of water is available, the impacts of the diversions are not severe. During a below-average water year, the river channel may be dry from Isleta Diversion Dam downstream about 179 km (111 mi) to the headwaters of Elephant Butte Reservoir for two months or more. When two below-average flow years occur consecutively, a short-lived species such as *H. amarus* can be severely affected, if not completely eliminated from the dry reaches of river. During the 94 years for which flow records have been maintained for the middle Rio Grande, it has not been unusual for the 245 km (153 mi) reach of the Rio Grande from the Angostura Diversion Dam downstream to Elephant Butte Reservoir to experience periods of no flow. Even before construction of mainstream dams, the middle Rio Grande frequently experienced periods of no flow. During such periods, it is suspected *H. amarus* survived in areas where irrigation return flows re-entered the river, in the pools formed by water leaking through the gates of the diversion dams, in the irrigation ditches and drains, and in the reaches of stream above the diversions from which their offspring could repopulate downstream reaches when conditions permitted. It is not known why these same factors do not provide sufficient habitat to support *H. amarus* under current conditions. Other factors, such as an increase in non-native and exotic fish species, or an increase in contamination may be exacerbating the stress placed upon the species during low-flow periods.

Mainstream dams permit the artificial regulation of flow, prevent flooding, trap nutrients, alter sediment transport, prolong flows, and create reservoirs that favor non-native fish species. These changes may affect the Rio Grande silvery minnow by reducing its food supply, altering its preferred habitat, preventing dispersal, and providing a continual supply of non-native fishes that may compete with or prey upon the species. Altering flow regimes may also improve conditions for other native fish species that occupy the same habitat as the Rio Grande silvery minnow and may thereby cause their populations to

expand at the expense of the Rio Grande silvery minnow.

Since completion of Elephant Butte Dam in 1916, four additional mainstream dams have been constructed on the middle Rio Grande, and two dams have been constructed on one of its major tributaries, the Rio Chama (Shupe and Williams 1988). Construction and operation of these dams, which are either irrigation diversion dams such as Angostura, Isleta, and San Acacia; or flood control and water storage dams such as Elephant Butte, Cochiti, Abiquiu, and El Vado, have modified the natural flow of the river. The dams make it possible during a low-flow year to completely divert all of the flow from the river channel into irrigation ditches. The species does not persist in the irrigation ditches or the low-flow conveyance channel. Platania (1993) collected fish samples from 11 locations along the low-flow conveyance channel between 1987–1989 and failed to locate any Rio Grande silvery minnows. The dams also store spring runoff and summer inflow, which would normally cause flooding, and release this water back into the river channel over a prolonged period of time. This release is often made during the winter months when low flows would normally occur. Artificially-controlled flows depart significantly from natural conditions. Reduced flows may limit the amount of preferred habitat available to the species and may limit dispersal of the species. Although the mechanisms of how the decline of the species occurred are not fully understood, manipulation of flow may be one of the primary reasons *H. amarus* has been extirpated from portions of its historic range.

Channelization of the middle Rio Grande has resulted primarily from the placement of Kellner jetty fields, or jacks, along the river. They are designed to protect the levees by retarding flood flows, trapping sediment, and promoting the establishment of vegetation. Since 1951, the Bureau of Reclamation and Corps have installed in excess of 100,000 individual jetties occupying more than 2,000 ha (5,000 ac) (Bullard and Wells 1992).

From Elephant Butte Dam downstream about 325 km (200 mi) to its confluence with the Rio Conchos, the Rio Grande is fully controlled by reservoir releases and irrigation return flows. Meanders, oxbows and other components of historic aquatic habitat have been eliminated in order to pass water as efficiently as possible for agricultural irrigation and downstream deliveries. These changes affected the Rio Grande silvery minnow by altering its habitat to the extent that its survival was not possible. The sandy substrate, which it prefers, has been replaced by gravel and cobble, and no backwater areas exist where the young can develop. Winter flows released from Caballo Dam often equal .06 cubic meters per second (2 cubic feet per second), which is not enough flow to maintain habitat for fishes.

In 1958, in an effort to meet Rio Grande Compact water delivery requirements, the Bureau of Reclamation initiated operation of a 97 km (60 mi) long conveyance channel from San Acacia to Elephant Butte Reservoir. The purpose of the conveyance channel is to divert all flow less than 63 cubic meters per second (2000 cubic feet per second) in order to prevent loss of the Rio Grande flow to seepage and evaporation from the aggraded riverbed. Prior to 1985, the conveyance channel had been operated to its full capacity for about 28 years. Since 1985, it has not been operated at full capacity. If, however, the channel were to be operated at full capacity, the natural stream bed downstream of San Acacia would be dry more frequently and for longer periods of time. Both the Corps and the Bureau of Reclamation are drafting plans to rehabilitate and protect the conveyance channel in order to bring it into full operation. Should the conveyance channel be placed in full operation, the portion of the Rio Grande silvery minnow's habitat downstream of San Acacia dam would be desiccated when river flows at the dam became less than 63 cubic meters per second (2000 cubic feet per second), resulting in death or displacement of individuals.

Water diversions also occur above the Middle Rio Grande Valley in both Colorado and New Mexico. These diversions, which provide irrigation for about 248,000 ha (620,000 ac) in Colorado and about 24,400 ha (61,000 ac) in New Mexico, have a significant effect on flows (Cruz et al. 1993). In addition to these upstream diversions, about 94,000 acre-feet of water are diverted annually from the San Juan River basin and transported via a tunnel into the Rio Grande basin. This diversion may benefit the species since it is used to supplement flows during periods of low flow.

Growth of agriculture and cities along the Rio Grande during the last century may have adversely affected the quality of the river's water. During low-flow periods, a large percentage of the river's flow consists of municipal and agricultural discharge and less water is available to dilute pollutants. This degradation of water quality may affect *H. amarus* survival. Poor water quality in the Rio Grande near Albuquerque, especially during low flows, may be a problem, as low numbers of *H. amarus* and an overall reduced fish community are found there (Bestgen and Platania 1991).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

It is not presently known if the species is being overutilized for commercial, recreational, scientific, or educational purposes. New Mexico Department of Game and Fish controls scientific taking of the species through a permit process. Licensed commercial bait dealers may sell bait minnows only within the drainage where they have been collected. They are also restricted from selling any State-listed fish species. However, it has been demonstrated on the Pecos River, New Mexico, that often the dealers and retailers cannot identify listed fish species. Utilization of the species for recreational purposes could occur should an individual unknowingly collect the species while gathering bait minnows for personal use.

C. Disease or Predation

When fish are forced into confined habitats due to low flow, they are more susceptible to both disease and predation. Predation takes place when non-native species, including northern pike (*Esox lucius*), walleye (*Stizostedion vitreum*), white crappie (*Pomoxis annularis*), white bass (*Morone chrysops*), black and brown bullheads (*Ameiurus melas, A. nebulosus*), smallmouth bass (*Micropterus dolomieui*), and largemouth bass (*Micropterus salmoides*) are confined, during low flow or no flow, in limited habitat with *H. amarus* and other native species. These species have been introduced primarily by State and Federal fish and wildlife management agencies in efforts to develop sport fisheries in reservoirs created by the mainstream dams. The species have not remained confined to the reservoirs and have become established in the river both upstream from the impoundments and downstream of the dams where it is suspected they may compete with *H. amarus* for space and food in addition to preying upon them. Native predatory fish species, including the Rio Grande chub (*Gila pandora*) and bluegill (*Lepomis macrochirus*), may also prey upon subadult *H. amarus* under these circumstances. Avian and mammalian predation probably increases when *H. amarus* become confined in small clear-water pools.

Confining fish to pools causes stress that can often result in outbreaks of parasitic disease. Most notable is parasitism by the protozoan *Ichthyophthirius multifilis*, which can be promoted by stress. External parasites, such as the copepod *Lernaea*, are more common among fish in confined conditions. No studies have been conducted on the impact of disease and parasites upon *H. amarus;* therefore, the significance of these threats for existing populations of the species is not known. However, stress-induced outbreaks may be exacerbated when high levels of pollutants or other stresses are present.

D. The Inadequacy of Existing Regulatory Mechanisms

The State of New Mexico lists *H. amarus* as an endangered species, Group 2 (New Mexico Department of Game and Fish 1993), which includes those species ". . . whose prospects of survival or recruitment within the State are likely to be in jeopardy within the foreseeable future." This listing provides the protection of the New Mexico Wildlife Conservation Act (Section 17–2–37 through 17–2–46 NMSA 1978) and prohibits taking of such species except under the issuance of a scientific collecting permit. The protection afforded to the species by the State does not provide protection to the habitat upon which the species depends.

New Mexico water law does not include provisions for acquisition of instream water rights for protection of fish and wildlife and their habitats. This has been a major factor affecting the survival of species dependent upon the presence of instream flow. Agencies responsible for administering water rights have been unable to administer the rights in a manner that protects, maintains, and recovers the Rio Grande silvery minnow. Under the existing water rights administration, two native fish species in the Rio Grande have become extinct, and two others have been extirpated.

State Game and Fish regulations in New Mexico allow the use of live minnows, including those brought into the State from other drainages, for sport fishing. This practice has encouraged the spread of these species, one of which, the plains minnow, has completely replaced and/or hybridized with *H. amarus* in the Pecos River.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

In 1979, Cowley discovered the introduction of plains minnow (*H. placitus*) into the Pecos River drainage, New Mexico, from collections made as early as 1968, and also recognized the disappearance of native *H. amarus*. The last known collections of *H. amarus* from the Pecos River took place in 1968 near Roswell, New Mexico. These same collections verified the first specimens of *H. placitus* from the river. It is suspected, because of the widespread use of *H. placitus* as a commercial bait species, that its introduction into the Pecos River was the result of release of bait fish by anglers.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Rio Grande silvery minnow (*Hybognathus amarus*) as endangered throughout its historic range. A decision to take no action would constitute failure to properly classify this species pursuant to the Endangered Species Act and would exclude it from protection of the Act. The Service believes threatened status is not the proper classification for the species because of the extremely limited habitat the species presently occupies and the threats it faces. Endangered status is appropriate because of the significantly reduced range and declining abundance of the species, and because of the remaining threats to this fish and its habitat. Without Federal protection, the Rio Grande silvery minnow can be expected to become extinct in the foreseeable future.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Section 4(b)(6)(C) states that a concurrent critical habitat designation is not required, and that the final decision on designation may be postponed for 1 year from the date of publication of the final rule to list the species. Section 4(b)(6)(C)(ii) allows the Service to delay critical habitat designation if it is not then determinable. The Service's regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service is in the process of evaluating the information obtained during the comment period on the economic impacts of designating critical habitat, and has started the process of having an economic analysis prepared on the proposed critical habitat designation. The complexities and extent of the activities that must be assessed preclude completion of the economic analysis within the 1-year deadline for listing the species. The completed draft economic analysis will be made available for public review and comment. The final decision on designation of critical habitat for the Rio Grande silvery minnow must be made by March 1, 1995, pursuant to section 4(b)(6)(C)(ii) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and authorizes recovery plans for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal actions that are expected to occur that may affect the survival of *H. amarus* include the operation and maintenance of dams and other structures that regulate the flow of water in the Rio Grande. Federal agencies that serve as water managers and decision-makers who determine timing and amount of flow in the river include the International Boundary and Water Commission, which ensures delivery of

water to Mexico under international treaties; the Bureau of Reclamation, which has played an important role in water development in the middle Rio Grande and has been actively involved in the major water supply networks of the basin; and the Corps, which is responsible for controlling any dredging or filling within navigable waterways and associated wetlands under section 404 of the Clean Water Act. The Corps also has constructed and operates Abiquiu, Cochiti, Galisteo, and Jemez dams to control flood waters and sediment in the Rio Grande. The Environmental Protection Agency oversees water quality issues that may affect the river. In addition, actions on the northern pueblos that are funded, authorized, or carried out by the Bureau of Indian Affairs may affect the Rio Grande silvery minnow.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. This species is not in trade, and such permit requests are not expected.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the State Supervisor, New Mexico Ecological Services State Office (see **ADDRESSES** section).

Author: The primary author of this final rule is Gerald L. Burton (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "FISHES", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species	Common name / Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
*	*	*	*	*	*		*
Fishes							
*	*	*	*	*	*		*
Minnow, Rio Grande silvery.	*Hybognathus amarus*	U.S.A. (NM, TX), Mexico.	Entire	E	541	NA	NA
*	*	*	*	*	*		*

Dated: June 30, 1994.

Mollie H. Beattie

Director, Fish and Wildlife Service.

[FR Doc. 94–17576 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 59, No. 138
Wednesday, July 20, 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

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 93–135–1]

Imported Fire Ant; Addition of Authorized Chemical Treatment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the appendix to the imported fire ant regulations to add the insecticide tefluthrin (FORCE®) to the list of authorized chemicals for the treatment of containerized nursery stock that is to be certified for interstate movement from quarantined areas. We are also proposing to add provisions regarding the proper use of tefluthrin. This action would give nurseries another choice of insecticides with which to meet the certification requirement for interstate movement of containerized nursery stock.

DATES: Consideration will be given only to comments received on or before August 19, 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. 93–135–1. 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. Robert L. Brittingham, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

Imported fire ants, *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, are aggressive, stinging insects that, in large numbers, can seriously injure or even kill livestock, pets, and humans. Imported fire ants feed on crops, and their large, hard mounds damage farm and field machinery.

The restrictions in "Subpart—Imported Fire Ant" (7 CFR §§ 301.81 through 301.81–10, referred to below as "the regulations") prevent the spread of the imported fire ant (IFA) on articles moving interstate by quarantining IFA-infested States or IFA-infested areas within States and imposing restrictions on the interstate movement of certain articles, known as regulated articles, from these quarantined States or areas.

Sections 301.81–4 and 301.81–5 of the regulations provide, among other things, that regulated articles requiring treatment before interstate movement must be treated in accordance with the methods and procedures prescribed in the Appendix to Subpart "Imported Fire Ant"—Portion of "Imported Fire Ant Program Manual" (referred to below as "the Appendix"). The Appendix sets forth the treatment provisions of the "Imported Fire Ant Program Manual."

Research recently conducted by the Animal and Plant Health Inspection Service (APHIS) Imported Fire Ant Methods Development Station in Gulfport, MS, has shown that the insecticide tefluthrin, in granular form, is effective at a dosage rate of 25 parts per million (ppm) in treating soil or potting media to prevent the spread of the imported fire ant. Based on this research, APHIS has determined that containerized nursery stock could be certified for interstate movement after treatment with granular tefluthrin at a dosage rate of 25 ppm.

The insecticide tefluthrin is registered with the United States Environmental Protection Agency (EPA). In May 1993, EPA approved a label, providing for a dosage rate of 25 ppm, for the use of granular tefluthrin in treating soil or potting media for the imported fire ant. We are proposing to revise the Appendix by adding granular tefluthrin to the list of authorized chemicals for the treatment of regulated articles under the regulations.

We are also proposing to: (1) Amend paragraph III.C.3. of the Appendix by adding provisions regarding the material to be treated, the dosage rate, and the exposure period, and by adding a new "Method E—Granular Incorporation (Tefluthrin);" (2) amend paragraph III.C.4., under the "Exclusion" heading, to allow tefluthrin to be used as an alternative to bifenthrin in treating soil or potting media for plants grown on the premises to prevent infestation with or spread of the imported fire ant; and (3) amend paragraph III.C.4., under the "Enforcement" heading, by adding "tefluthrin" to a reference to chemical treatments that are described in paragraph III.C.3. of the Appendix.

We are not proposing that tefluthrin be used as an alternative to bifenthrin for treating plants received from outside sources (under the "Exclusion" heading). Drench applications are used to treat plants received from outside sources, and tefluthrin is only approved for granular incorporation. Drench application is more thorough than topical application or granular incorporation, and is therefore the most effective treatment for plants received from outside sources which may not have already been treated for the imported fire ant.

In addition, we are proposing to make two miscellaneous changes in paragraph III.C.4. The first, under the "Exclusion" heading, would add the word "drench" immediately after the word "bifenthrin" in paragraph (b), to make it clear that only drench applications are to be used in treating plants received from outside sources. The second miscellaneous change, under the "Enforcement" heading, would remove the word "liquid" before the phrase "liquid chlorpyrifos and bifenthrin" to make it clear that the bifenthrin can be in either liquid or granular form.

Executive Order 12866 and Regulatory Flexibility Act

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

This proposed rule would amend the Appendix to the imported fire ant regulations to allow the use of the

insecticide tefluthrin (FORCE®), in granular form, for the treatment of containerized nursery stock that is to be certified for interstate movement from areas quarantined for imported fire ant.

Approximately 2,645 nurseries move containerized nursery stock interstate from quarantined areas each year. Twelve of these nurseries would be considered large; 2,633 would be considered small, with annual sales below $500,000.

Current regulations allow for the incorporation of granular bifenthrin for the treatment of containerized nursery stock that is to be certified for interstate movement from quarantined areas. A 50-pound bag of granular bifenthrin currently retails for about $38.50. The expected retail price for tefluthrin is not available, but should be comparable to that of bifenthrin. For this reason, APHIS anticipates that the economic impact to nurseries that use these products would not be significant.

The addition of tefluthrin to the list of authorized chemicals would give nurseries another choice of insecticides so they could choose whichever product best suits their needs, and would provide a backup in case one of the insecticides is taken off the market or is unavailable for any reason. The addition of tefluthrin could also stimulate competition for imported fire ant insecticides, which could drive down prices for all chemicals authorized under the IFA program. If this were to happen, nurseries would benefit by lower treatment costs.

We do not anticipate that there would be a noticeable impact on small entities that distribute agricultural chemicals. Distributors of agricultural chemicals are diversified businesses that sell a wide variety of chemicals, fertilizers, and other farm and nursery supplies.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this proposed rule. The assessment provides a basis for our conclusion that use of tefluthrin at the dosage rate of 25 ppm would not present a risk of disseminating plant pests and would not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection 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. In addition, copies may be obtained by writing to the individual listed under FOR FURTHER INFORMATION CONTACT.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 would be amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Part 301, Subpart—Imported Fire Ant, Appendix to the subpart, would be amended as follows:

Appendix to Subpart [Amended]

a. In paragraph III.B., under the "Insecticides" heading, "Tefluthrin (FORCE®)" would be added following "Fenoxycarb (AWARD®)".

b. Paragraph III.C.3.c. would be redesignated as paragraph III.C.3.d., and a new paragraph III.C.3.c. would be added to read as set forth below.

c. In newly redesignated paragraph III.C.3.d., the introductory text, the phrase "chlorpyrifos and bifenthrin" would be removed and the phrase "chlorpyrifos, bifenthrin, or tefluthrin" would be added in its place; and a new "Method E—Granular Incorporation (Tefluthrin)" would be added at the end of the paragraph, to read as set forth below.

d. In paragraph III.C.4., under the "Exclusion" heading, paragraph (b), introductory text, the word "drench" would be added immediately after the word "bifenthrin"; and a new entry, titled "*Tefluthrin*", would be added following paragraph (b)(3) to read as set forth below.

e. In paragraph III.C.4., under the "Enforcement" heading, in the sixth paragraph, the phrase "liquid chlorpyrifos or bifenthrin" would be removed and the phrase "chlorpyrifos, bifenthrin, or tefluthrin" would be added in its place.

Subpart—Imported Fire Ant

* * * * *

Appendix to Subpart "Imported Fire Ant"—Portion of "Imported Fire Ant Program Manual" [8]

III. Regulatory Procedures

* * * * *

C. Approved Treatments.

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3. Plants—Balled or in Containers.

* * * * *

c. Tefluthrin: Granular Formulation.

Material: Granular tefluthrin—incorporation into soil or potting media for containerized nursery stock.

Dosage: Dosage rate is 25 ppm. The amount of granular tefluthrin needed to achieve 25 ppm varies with the bulk density of the soil or potting media.

[8] A copy of the entire "Imported Fire Ant Program Manual" may be obtained from the Administrator, c/o Domestic and Emergency Operations, PPQ, APHIS, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Follow label directions to calculate the amount of granular tefluthrin needed to achieve 25 ppm.

Exposure period: Containerized nursery stock can be certified for interstate movement from quarantined areas immediately upon completion of the treatment.

d. * * *

* * * * *

Method E—Granular Incorporation (Tefluthrin)

Apply tefluthrin according to the label directions for granular incorporation. Mix thoroughly to distribute the granular tefluthrin evenly throughout the soil or potting media. After potting, containers must be watered to the point of saturation.

Precautions: Saturation of the soil or potting media with the tefluthrin is essential. Water that drains from the treatment area, which may contain tefluthrin, must be disposed of in accordance with State and local laws.

4. Imported-Fire-Ant-Free Nursery—Containerized Plants Only

* * * * *

Exclusion

* * * * *

Tefluthrin

For plants grown on the premises: Treatment of soil or potting media with granular tefluthrin prior to planting is permitted as an alternative to treatment with granular or wettable powder formulation of bifenthrin. This treatment reduces the risk of infestation of containers by alate queens flying in from adjacent or nearby infested premises. The dosage rate is 25 ppm.

Apply this treatment according to the label directions.

Mixing must be adequate to blend the required dosage of granular tefluthrin throughout the entire soil or potting media.

* * * * *

Done in Washington, DC, this 14th day of July 1994.

B. Glen Lee,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–17632 Filed 7–19–94; 8:45 am]

BILLING CODE 3410–34–P

Rural Electrification Administration

7 CFR Part 1710

Credit Support of Power Supply Borrowers

AGENCY: Rural Electrification Administration, USDA.

ACTION: Advance notice of proposed rulemaking; reopening of comment period.

SUMMARY: On June 2, 1994, the Rural Electrification Administration (REA) published an advance notice of proposed rulemaking requesting public comment on REA's policies on credit support required in connection with loans to power supply borrowers (G&T's). In response to requests from members of the public, REA is reopening the comment period on this advance notice.

DATES: Written comments and recommendations must be received by REA by August 17, 1994.

ADDRESSES: Written comments should be addressed to F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, Rural Electrification Administration, room 2234, 14th and Independence Avenue, SW., Washington, DC 20250–1500. REA requires a signed original and three copies of all comments (7 CFR 1700.30(e)). All comments received will be made available for public inspection in room 2234–S (address as above) during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, room 2234–S, at the above address. Telephone: (202) 720–0736.

SUPPLEMENTARY INFORMATION: On June 2, 1994, at 59 FR 28495, the Rural Electrification Administration (REA) published an advance notice of proposed rulemaking on 7 CFR part 1710 on REA's credit support policies for REA power supply borrowers. The advance notice had a 45-day period for public comments which ended on July 18. Because of requests from the public for more time to prepare responses, REA is extending this public comment period by 30 days. The new comment period will expire on August 17, 1994.

Dated: July 14, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–17631 Filed 7–19–94; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–48–AD]

Airworthiness Directives; Aerospatiale Model ATR42–200, –300, and –320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive that is applicable to certain Aerospatiale Model ATR42–200, –300, and –320 series airplanes. This proposal would require modification of the wiring in the elevator controls and the pitch trim dissymmetry monitoring equipment. This proposal is prompted by a report of loss of a propeller and engine gearbox, which resulted in damage to the fuselage. There has also been a report that a modification was implemented in the elevator control cables during manufacture, which reduced the maximum physical separation between the elevator controls and the monitoring equipment. The actions specified by the proposed AD are intended to prevent reduced controllability of the airplane in the event that debris from an engine burst or propeller failure were to strike the fuselage and sever the elevator flight controls.

DATES: Comments must be received by September 22, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–48–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Sam Grober, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1187; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–48–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–48–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42–200, –300, and –320 series airplanes. The DGAC advises of a recent incident involving a Model ATR42–300 in which loss of a propeller and engine gearbox damaged the fuselage in the right-hand propeller plane of rotation. The DGAC also advises that a modification was implemented in the elevator control cables during manufacture that reduced the maximum physical separation between the elevator controls and the monitoring equipment. This reduced separation could allow severing of the elevator flight controls in the event that debris from an engine burst or propeller failure were to strike the fuselage. This condition, if not corrected, could result in reduced controllability of the airplane.

Aerospatiale has issued Service Bulletins ATR42–27–0068, and ATR42–27–0069, both dated January 25, 1994, that describe procedures for rerouting the wiring between the normal mechanical pitch controls and the normal electric pitch trim controls, and between the normal mechanical pitch controls and the pitch trim dissymmetry monitoring equipment. Accomplishment of this modification is intended to restore maximum physical separation between the elevator controls and the monitoring equipment. The DGAC has issued French Airworthiness Directive 93–205–052(B), as revised by Erratum, dated February 2, 1994, to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the wiring in the elevator controls and the pitch trim dissymmetry monitoring equipment. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 110 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 49 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $296,450, or $2,695 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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 adding the following new airworthiness directive:

Aerospatiale: Docket 94–NM–48–AD.

Applicability: Model ATR42–200, –300, and –320 series airplanes; as listed in Aerospatiale Service Bulletin ATR42–27–0068 and ATR42–27–0069, both dated January 25, 1994; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, accomplish the following:

(a) Within 3 months after the effective date of this AD, modify the wiring in the elevator controls and the pitch trim dissymmetry monitoring equipment, in accordance with

Aerospatiale Service Bulletin ATR42–27–0068 or ATR42–27–0069, both dated January 25, 1994, as applicable.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) 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.

Issued in Renton, Washington, on July 13, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–17591 Filed 7–19–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

RIN 0960–AD72

Computing Benefit Amounts, Disposing of Underpayments, Resolving Overpayments, and Payment Restriction

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: We are proposing to revise our rules on computation of benefits to define the term "first becomes eligible" as it relates to a pension based on noncovered employment. We are also revising the computation rules to provide that we will consider all government service used by a pension-paying agency when we determine whether an individual first became eligible before 1986 for a pension based on noncovered employment. We are also revising our rule on determining fault regarding overpayments to state that benefit deductions because of net earnings from self-employment are not applicable after an individual attains age 70. Additionally, we are revising our rules on underpayments to clarify a misleading cross reference. Finally, we are updating the list of countries to which benefit payments are withheld because of Treasury Department restrictions.

DATES: Your comments will be considered if we receive them no later than September 19, 1994.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–0869, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 a.m. on the date of publication in the **Federal Register.** To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–8471 for information about these rules.

SUPPLEMENTARY INFORMATION: Section 215(a)(7) of the Social Security Act (the Act) requires us to perform a modified computation of the primary insurance amount (the basic benefit amount) of an individual's old-age or disability insurance benefit if the individual first becomes eligible after 1985 for such a benefit and for a monthly periodic payment based on noncovered employment. The modified computation affects individuals who are concurrently entitled to such a monthly periodic payment and to old-age or disability benefits under title II of the Act. It results in a lower primary insurance amount that would have been computed if the monthly periodic payment had been considered. However, neither the Act nor our regulations at 20 CFR 404.213 define the phrase "first becomes eligible."

In defining "first becomes eligible," we have identified two interpretations which pertain to the date creditable service is acquired. One interpretation is that an individual first becomes eligible when he or she has currently acquired enough service to qualify for a pension. The other interpretation is that an individual first becomes eligible when he or she has acquired enough service to qualify for a pension, regardless of when the service was acquired.

We recently became aware that some individuals have purchased credit for prior service, e.g., military service, which could affect their eligibility date and allow them to become eligible before 1986 for a monthly pension based on noncovered employment. Such an individual would thus be excluded from the modified computation because he or she first became eligible for the monthly pension before 1986. There is no restriction in the Act which precludes using purchased credit to establish eligibility before 1986 for a monthly pension based on noncovered employment and we see no reason not to consider purchased credits when deciding whether the modified computation applies.

We have adopted the interpretation that we will consider all applicable service used by the pension-paying agency, regardless of when the service was acquired. Under this interpretation, an individual "first becomes eligible" for a monthly periodic payment for the first month (including a past month) that the individual meets all the requirements for the payment except stopping work or applying for the payment. We, therefore, propose to amend § 404.213(a) to include the definition of "first becomes eligible" and our policy on applicable service.

Regarding underpayments, the current § 404.503(b), which reflects section 204(d) of the Act, provides that if an individual dies before receiving a title II benefit payment, the underpayment so created is payable to a person or persons in an order of priority as specified in that section. Paragraph (3) of § 404.503(b) provides that if there is no one higher in the order of priority, the underpayment may be paid to the "parent or parents of the deceased individual (as defined in § 404.374) entitled to monthly benefit on the basis of the same earnings record as was the deceased individual" in the month of death. Under paragraph (6) of § 404.503(b), if there is no one higher in the order of priority, the underpayment may be paid to the "parent or parents of the deceased individual (as defined in § 404.374) who do not qualify under paragraph (b)(3)."

Section 404.374 defines "parent" as the natural, adoptive, or stepparent of an *insured* person and is based on the statutory requirements for eligibility for benefits as the parent of an insured worker. However, these stringent criteria are not required for purposes of

receiving an underpayment. Section 204(d) (3) and (6) of the Act require only that the individual be the parent of the deceased underpaid beneficiary. The cross reference to § 404.374 in § 404.503(b) (3) and (6) results in an unduly restrictive definition of a parent who is eligible for an underpayment. We are, therefore, proposing to revise § 404.503(b) (3) and (6) so that for purposes of eligibility for an underpayment, the definition of "parent" in § 404.374 is extended to a parent of any deceased individual who was entitled to social security benefits.

Regarding overpayments, we are amending § 404.510, which lists the situations where an individual may be considered to be "without fault" for accepting an incorrect benefit payment. Paragraph (*l*) of that section explains that the overpaid individual may be "without fault" in causing the overpayment if he or she reasonably believed that net earnings from self-employment after attaining age 72 in a taxable year would not be cause for deductions from benefits for months in the year of attaining age 72 that are before the month of attainment. For months after 1982, the age at which social security beneficiaries are no longer subject to an earnings test has been reduced from age 72 to age 70. This reduction from age 72 to 70 is based on section 302 of Pub. L. 95–216 (the Social Security Amendments of 1977) which became effective for months after December 1982, as provided in section 2204 of Pub. L. 97–35 (the Omnibus Budget Reconciliation Act of 1981). We are, therefore, revising § 404.510(*l*) to change age 72 to age 70 for months after December 1982.

Our final amendment in these regulations is to delete Albania and the German Democratic Republic from the list in § 404.460 of countries to which the Department of the Treasury will not send benefit checks. On November 7, 1991, The Department of the Treasury removed the German Democratic Republic from the Withheld Check List set out in 31 CFR 211.1 by publishing final rules in the **Federal Register** at 56 FR 56931. On September 30, 1992, the Department removed Albania from the list by publishing final rules in the **Federal Register** at 57 FR 44998.

Regulatory Procedures

Executive Order No. 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under E.O. 12866. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These proposed rules impose no additional reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 93.802 Social Security-Disability Insurance; 93.803 Social Security-Retirement Insurance; 93.805 Social Security-Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Blind disability benefits, Old-age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

Dated: May 27, 1994.

Shirley Chater,

Commissioner of Social Security.

Approved: July 7, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, we are proposing to amend Subparts C, E, and F of Part 404 of 20 CFR Chapter III as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for Subpart C of Part 404 continues to read as follows:

Authority: Secs. 202(a), 205(a), 215, and 1102 of the Social Security Act; 42 U.S.C. 402(a), 405(a), 415, and 1302.

2. Section 404.213 is amended by adding two sentences after the first sentence of paragraph (a)(3) to read as follows:

§ 404.213 Computation where you are eligible for a pension based on your noncovered employment.

(a) * * *

(3) * * *

We consider you to first become eligible for a monthly pension in the first month for which you met all requirements for the pension except that you were working or had not yet applied. In determining whether you are eligible for a pension before 1986, we consider all applicable service used by the pension-paying agency. * * *

* * * * *

3. The authority citation for Subpart E of Part 404 continues to read as follows:

Authority: Secs. 202, 203, 204(a), and (e), 205(a) and (c), 222(b), 223(e), 224, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 422(b), 423(e), 424, 427, and 1302.

4. Section 404.460 is amended by revising the list of countries in paragraph (c)(3) to read as follows:

§ 404.460 Nonpayment of monthly benefits of aliens outside the United States.

* * * * *

(c) * * *

(3) * * *

Cuba, Democratic Kampuchea (formerly Cambodia), North Korea, Vietnam.

* * * * *

5. The authority citation for Subpart F of Part 404 continues to read as follows:

Authority: Secs. 204(a)–(d), 205(a), and 1102 of the Social Security Act; 31 U.S.C. 3720A; 42 U.S.C. 404(a(c)(1)(iv)(C)–(d), 405(a), and 1302.

6. Section 404.503 is amended by revising paragraphs (b)(3) and (b)(6) to read as follows:

§ 404.503 Underpayments.

* * * * *

(b) * * *

(3) The parent or parents of the deceased individual, entitled to a monthly benefit on the basis of the same earnings record as was the deceased individual for the month in which such individual died (if more than one such parent, in equal shares to each such parent). For this purpose, the definition of "parent" in § 404.374 includes the parent(s) of any deceased individual who was entitled to benefits under title II of the Act.

* * * * *

(6) The parent or parents of the deceased individual, who do not qualify under paragraph (b)(3) of this section (of more than one such parent, in equal shares to each such parent). For this purpose, the definition of "parent" in § 404.374 includes the parent(s) of any deceased individual who was entitled to benefits under title II of the Act.

* * * * *

7. Section 404.510 is amended by revising paragraphs (l) to read as follows:

§ 404.510 When an individual is "without fault" in a deduction-overpayment.

* * * * *

(l) Reasonable belief, with respect to earnings activity for months after December 1982, that net earnings from

self-employment after attainment of age 70 (age 72 for months after December 1972 and before January 1983) in the taxable year in which such age was attained would not cause deductions (see § 404.430(a)) with respect to benefits payable for months in that taxable year prior to the attainment of such age.

* * * * *

[FR Doc. 94–17401 Filed 7–19–94, 8:45 am]
BILLING CODE 4190–29–M

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20 CFR Part 404

RIN 0960–AD79

Federal Old-Age, Survivors and Disability Insurance; Changes in Evidence Required To Presume a Person Is Dead

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: These proposed regulations would provide that, under title II of the Social Security Act (the Act), a presumption of death arises when the claimant established an individual has been absent from his or her residence and not heard from for 7 years. Once the presumption is made, the burden then shifts to us to rebut the presumption either by presenting evidence that the missing individual is still alive or by providing an explanation to account for the individual's absence in a manner consistent with continued life rather than death.

DATES: To be sure your comments are considered, we must receive them no later than September 19, 1994.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. 1585, Baltimore, MD 21235. Alternatively, you may fax you comments to the Commissioner of Social Security at (410) 966–0869 or deliver them to the Office of Regulations, Social Security Administration, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235 between 8:00 a.m and 4:30 P.M. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1769.

SUPPLEMENTARY INFORMATION:

Background

Under title II of the Act, a lump sum death payment and monthly survivors' benefits may be payable based on the earnings of a deceased insured person. In order to ensure that these benefits are not paid based on mere desertion, any inquiry into entitlement begins with an assumption that a person last known to be alive is still living, and that a person's failure to communicate with a few people and to return to a particular place do not, in themselves, give rise to a presumption of death. To establish eligibility for such benefits, the claimant must establish that the insured person is dead. If proof of death (as described in §§ 404.720(b) and (c)) is unavailable, we will presume an insured person is dead if certain evidence is presented. Under the present § 404.721(b), such evidence includes signed statements by those in a position to know and other records which show that the person has been absent from his or her residence *for no apparent reason*, and has not been heard from for at least 7 years.

This evidentiary requirement has yielded two very different interpretations. It has long been our policy that the claimant must present the evidence necessary to establish that he or she is entitled to benefits. Accordingly, for us to presume that an insured person is dead, the claimant must establish that the insured person not only has not been heard from for at least 7 years, but also that he or she has been absent from his or her residence for no apparent reason. If the insured person's absence can be attributer to known domestic or financial difficulties or to some other rational reason for leaving home, death is not presumed. We are not required to establish that the insured person is still alive to explain the person's absence.

In contrast to our interpretation, a number of United States Courts of Appeals have issued decisions which have presumed the death of a missing person despite the existence of other reasonable explanations for the person's absence. These court decisions have held that a presumption of death arises under our regulations when the claimant shows that a person has been absent from his or her residence and not heard from for 7 years. Once the claimant has made this showing, these decisions state that the Secretary bears the burden of rebutting the presumption of death either by presenting evidence showing that the missing person is alive or by providing an explanation to account for the individual's absence in a manner that is consistent with continued life. As a result of these court decisions, we published Social Security Acquiescence Rulings applicable in the Third, Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits which adopt this interpretation of § 404.721.

We published a Notice of Proposed Rulemaking (NPRM) on February 29, 1984, (49 FR 7405–7406), containing proposed revisions of § 404.721 which we hoped would clarify the regulation to avoid the varying interpretations of the regulation made by the courts. Under the previously proposed regulation, we would presume the death of the insured person if signed statements by persons, who were in a position to know, and other evidence showed that all three of the following requirements were met:

(1) The insured person has not had contact of any kind with any relatives, dependents, employers, or friends for at least 7 years.

(2) A diligent search was conducted with the air of the appropriate authorities reasonably soon after the insured person's disappearance, but the search failed to locate or explain the absence of the insured person.

(3) Circumstances surrounding the insured person's disappearance allow no reasonable explanation of that person's absence other than death.

After much deliberation, we have decided that we will not adopt the rule published in the NPRM. This NPRM withdraws the NPRM published at 49 FR 7405–7406 on February 29, 1984.

In light of the Social Security Acquiescence Rulings, we are now administering two different standards with respect to presumption of death for entitlement purposes. One standard is based on our historical interpretation of the regulation; the other on the Social Security Acquiescence Rulings issued for the seven different circuits as the result of appellate court decisions. We have reevaluated our policies and are proposing to revise the existing regulation and establish a national policy based on the interpretation set forth by the courts.

Also, we propose to revise the regulations to include a new section which will contain information on evidence which will rebut a presumption of death. Current regulations do not provide guidance on what constitutes evidence to rebut a presumption of death.

The proposed regulations will provide that the presumption of death arises when the claimant establishes an individual has been absent from his or her residence and not heard from for 7 years. Once the presumption is made, the burden then shifts to us to rebut the

presumption either by presenting evidence that the missing individual is still alive or by providing an explanation to account for the individual's absence in a manner consistent with continued life rather than death.

We will remove reference to establishing no apparent reason for the absence from § 404.721(b). We will provide rules concerning the rebuttal of a presumption of death in proposed § 404.722, a new section to the regulations. This section will provide that a presumption of death made based on § 404.721(b) will be rebutted if there is evidence available that the person is still alive or the absence can be explained in a manner consistent with continued life rather than death. We will also make a conforming change to § 404.988 (conditions for reopening) to reflect the proposed change in § 404.721(b).

We will rescind the following Social Security Acquiescence Rulings by publishing a notice in the **Federal Register** when we publish these rules as final in the **Federal Register** AR 86–6(3); AR 86–7(5); AR 86–8(6); AR 86–9(9); AR 86–10(10); AR 86–11(11); and AR 93–6(8).

Regulatory Procedures

Executive Order No. 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do not meet the criteria for a significant regulatory action under E.O. 12866. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these regulations will not have a significant impact on a substantial number of small entities because these rules will only affect individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These proposed regulations impose no new reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security-Disability Insurance; 93.803, Social Security-Retirement Insurance; and 93.805, Social Security-Survivors Insurance.)

List of Subjects in 20 CFR 404

Administrative practice and procedure; Aged, Blind, Death benefits; Old-age, Survivors, and Disability insurance; Reporting and recordkeeping requirements, Social Security.

Dated: May 17, 1994.

Shirley Chater,

Commissioner of Social Security.

Approved: July 7, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, we are proposing to amend Subparts H and J of Part 404 of 20 CFR Chapter III as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for Subpart H of Part 404 continues to read as follows:

Authority: Secs. 205(a) and 1102 of the Social Security Act; 42 U.S.C. 405(a) and 1302.

§ 404.721 [Amended]

2. Section 404.721(b) is amended by removing "for no apparent reasons," and by removing the comma between "from" and "for" in the first sentence; and by removing "If there is no evidence available that he or she is still alive" in the second sentence and substituting the words "If the presumption of death is not rebutted pursuant to § 404.722" in its place.

3. New section 404.722 is added to read as follows:

§ 404.722 Rebuttal of a Presumption of Death.

A presumption of death made based on § 404.721(b) can be rebutted by evidence that establishes that the person is still alive or explains the individual's absence in a manner consistent with continued life rather than death.

Example 1: Evidence in a claim for surviving child's benefits showed that the worker had wages posted to his earnings record in the year following the disappearance. It was established that the wages belonged to the worker and were for work done after his "disappearance." In this situation, the presumption of death is rebutted by evidence (wages belonging to the worker) that the person is still alive after the disappearance.

Example 2: Evidence shows that the worker left the family home shortly after woman, whom he had been seeing, also disappeared, and that the worker phoned his wife several days after the disappearance to state he intended to begin a new life in California. In this situation the presumption of death is rebutted because the evidence explains the worker's absence in a manner consistent with continued life.

4. The authority citation for Subpart J of Part 404 continues to read as follows:

Authority: Secs. 201(j), 205(a), (b), and (d)–(h), 221(d), and 1102 of the Social Security Act; 31 U.S.C. 3720A; 40 U.S.C. 401(j), 405(a), (b), and (d)–(h), 421(d), and 1302.

5. Paragraph (c)(4) introductory text and (c)(4)(i) of § 404.988 are revised to read as follows:

§ 404.988 Conditions for reopening.

* * * * *

(c) * * *

(4) Your claim was denied because you did not prove that a person died, and the death is later established—

(i) By a presumption of death under § 404.721(b); or,

(ii) * * *

* * * * * *

[FR Doc. 94–17402 Filed 7–19–94; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 80, 82, 84, 87, 88, and 90

[CGD 94–011]

RIN 2115–AE72

Inland Navigation Rules; Lighting Provisions

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend certain technical lighting provisions and interpretive regulations supplementing the Inland Navigation Rules. These proposed changes will bring certain U.S. technical rules into conformity with amendments to the International Regulations for Preventing Collisions at Sea (72 COLREGS) scheduled to become effective in November, 1995. In addition, at the request of the Navigation Safety Advisory Council (NAVSAC), the Coast Guard is proposing several interpretive regulations to clarify ambiguities in the rules.

DATES: Comments must be received on or before September 19, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–011), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through

Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, executive Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Epstein, Navigation Rules and Information Branch, Office of Navigation Safety and Waterway Services, (202) 267–0352 or (202) 267–0357.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 94–011) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

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

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

Drafting Information

The principal persons involved in drafting this document are Jonathan Epstein, Project Manager, Office of Navigation Safety and Waterway Services, and Ms. Helen Boutrous, Project Counsel, Office of Chief Counsel.

Background and Purpose

The Inland Navigation Rules and the International Regulations for Preventing Collisions at Sea (72 COLREGS) provide Rules governing all vessels on inland waters and on the high seas, respectively. In order to maintain consistency between the 72 COLREGS and the Inland Navigation Rules, the Coast Guard is proposing to revise certain technical rules to conform with amendments to the 72 COLREGS scheduled to become effective in November 1995. The Coast Guard anticipates that these proposed revisions, if adopted, would also become effective November 1995 to coincide with the effective date of the COLREGS amendments. In no case would the amendments become effective before November, 1995.

In addition, the Navigation Safety Advisory Council (NAVSAC), a congressionally mandated advisory group, has been reviewing the Inland Navigation Rules for consistency with the 72 COLREGS. As part of this ongoing review, NAVSAC has recommended several regulatory changes to clarify ambiguities in practical application of the rules as well as to bring the Inland Navigation Rules into closer conformity with the 72 COLREGS.

Discussion of Proposed Amendments to Conform to 72 COLREGS Changes

In November 1995, eight amendments to the 72 COLREGS will become effective. NAVSAC has endorsed amending the Inland Navigation Rules technical annexes to reflect these changes to the 72 COLREGS. These proposed amendments deal primarily with light placement requirements.

Masthead Lights for Vessels Less Than 20 Meters in Length (§ 84.05)

The Coast Guard is proposing to revise 33 CFR 84.05 to allow vessels less than 20 meters in length to carry their masthead light as far forward as is practicable. This would result in no substantive change for mariners because Inland Navigation Rule 23(a) already provides that vessels less than 20 meters in length may carry their masthead lights as far forward as is practicable. However, this proposed change to § 84.05 would maintain parallel language between the Inland Navigation Rules and the 72 COLREGS. Although the 72 COLREGS amendment was originally based on a U.S. proposal to the International Maritime Organization (IMO) to amend Rule 23(a)(i), the IMO Subcommittee chose to amend technical Annex I rather than Rule 23(a)(i). The proposed revision will ease compliance for mariners who will be able to refer to parallel language in Annex I of the 72 COLREGS and Annex I of the Inland Rules.

Use of Two Lights To Meet Angular Sector Requirements (§ 84.17)

This proposed amendment would allow the pairing of light fixtures to ensure all round visibility of navigation lights. This change would maintain consistency with the corresponding 72 COLREGS amendment. On a vessel with a mast of large diameter, such as a warship or a vessel with a combined smoke stack and mast configuration, it is often structurally impractical to mount a single all around light at a sufficient distance from the mast to meet the 6° angular cutout requirements of the Navigation Rules, which prescribe a maximum 6° blind zone. This problem can be addressed either through the use of two separate lights adequately screened, or two lights close enough together that they appear, for all practical purposes, as one light. This proposed regulation will specifically allow the use of two lights sufficiently screened or placed near enough together that they appear as one light at a distance of one mile. Two unscreened all-around lights that are 1.28 meters (4.2 feet) apart or less will appear as one light to the naked eye at a distance of one mile.

High Speed Craft (§ 84.27)

This proposed amendment would allow modern high speed catamarans and other craft of unusually wide design to carry masthead lights at a lower level than would otherwise be prescribed by the rules. This change will keep the Inland Annex I in conformity with an amendment to the 72 COLREGS Annex I. The proposal would create a new provision for high speed craft. The proposed definition of high speed craft is the same as is used in IMO's "Draft Code of Safety of High Speed Craft". This change recognizes that existing light placement requirements based on traditional ship design are often impractical when dealing with non-traditional designs such as catamarans and SWATH (Small Waterplane Area Twin Hull) craft. The proposed definition of high speed craft includes a formula which captures those vessels, such as hydrofoils and hovercraft, that can exceed conventional craft hull speed through use of dynamically supportable hull designs. The corresponding 72 COLREGS amendment was drafted such that modern catamaran and non-displacement craft that are unusually wide relative to their length and capable of speeds generally in excess of 25 knots, would not be required to carry their masthead light at a heights unreasonable for the size of the vessel. This new provision would

apply to vessels that meet the definitional requirements for both high speed craft and have a length to breadth ratio of less than three-to-one. The following example illustrates the calculations for mast height on a vessel meeting the definitional requirements: A high speed catamaran ferry, 59 meters in length with a 20 meter beam, may carry its forward masthead light 5.1 meters above the sidelights, instead of 8 meters above the hull. (Sidelights need only be placed above the hull high enough so as not to be interfered with by deck lights). The definition of "high speed craft" is based on a formula that compares displacement to maximum speed. Generally hydrofoils, surface effect ships, some light monohulls and catamarans will meet this definition, while conventional displacement vessels, tankers, fishing vessels and container ships, will not. Certain high powered displacement vessels such as frigates or destroyers may meet this definition but would not meet the length to breadth ratio requirements. Because compliance with the proposed provision for high speed craft would be required only in lieu of compliance with § 84.03(a)(1), existing vessels need not modify their light configurations.

IMO considered extending the use of the yellow light provided for in Rule 23(b) for air-cushioned vessels to all high speed craft. However, this light is intended to draw to the attention of other vessels the possibility that an air-cushioned vessel may be proceeding at a large yaw angle. Thus, the navigation lights may not give an accurate indication of the track made good. Therefore, the IMO determined that extending the use of the yellow light to all high speed craft would be inappropriate.

Radar Transponders (§ 87.1)

In order to maintain consistency with the 72 COLREGS, this rulemaking proposes to add the use of survival craft radar transponders to the list of distress signals included in 33 CFR 87.1. The 1988 amendments to the Safety of Life at Sea Convention (SOLAS), in Regulation III/26.1.4, require that cargo and passenger ships subject to SOLAS carry Search and Rescue Transponders (SARTS) for use in survival craft. A SART is a radar transponder that responds automatically to most surface navigation radars allowing rescuers to quickly locate a vessel or survival craft. Carriage requirements and specifications for SARTS are codified in Federal Communication Commission regulations at 47 CFR 80.1095, which are referenced in the proposed revision.

Discussion of Other Proposed Regulations

Lights on Moored Barges (§ 82.5, 88.13, 90.5)

These proposed amendments to the Pilot Rules, the interpretive rules of the 72 COLREGS and the interpretive rules of the Inland Rules, will clarify the responsibilities of vessels moored to mooring buoys or other similar devices.

Rule 30 of the 72 COLREGS and Rule 30 of the Inland Navigation Rules provide lighting requirements for vessels at anchor, without specifically mentioning vessels moored to mooring buoys. The Coast Guard proposes interpretive rules to clarify that the term "vessels at anchor" in Rule 30 of the 72 COLREGS and the Inland Rules rules is to be interpreted to include vessels moored to a mooring buoy.

Recognizing the need to specify safe lighting procedures for vessels moored to a mooring buoys, the Coast Guard presented this issue first to the Navigation Safety Advisory Council (NAVSAC), and then, at their request, to the Towing Safety Advisory Council (TSAC) and the National Boating Safety Advisory Council (BSAC). Although reaching different formulations, all three advisory groups agreed that a vessel moored to a mooring buoy or other similar device should be lighted as a vessel at anchor in accordance with Rule 30.

The groups also agreed however, that barges should be lighted on the corners in a scheme to that provided in 33 CFR 88.13 for barges moored to a bank or dock. Information indicates that most barge operators already light barges on the corners. Not only does this lighting scheme provide better definition of the size and dimensions of the barge(s) than a single anchor light, but by placing the lights near the sides, it allows a better vertical visibility of small boats. Additionally, the Coast Guard has determined that it would be appropriate to require such lights on barges to be visible for one nautical mile, and to otherwise meet the technical standards for marine lights as provided in 33 CFR 84.15 (Annex I to the Inland Navigation Rules). Currently, barges moored along banks or docks are required to carry two unobstructed white lights of an intensity to be visible for at least one mile on a clear dark night (33 CFR 88.13(b)). This requirement has led to confusion in the maritime community. In a recent allision between a tug and tow and moored barges, the limited visibility of the lights on the moored barges was a contributing factor in the allision. Barge operators can easily meet the proposed requirement. Marine light fixtures meeting this standard are required for recreational vessels operating at night. Therefore, these fixtures are readily available and inexpensive.

In consideration of the foregoing, the proposed interpretive rules of § 90.5 (Inland) and § 82.5 (COLREGS) provide that a vessel moored to a mooring buoy be lighted as a vessel at anchor, in accordance with Rule 30, except that barges, unless otherwise authorized by the Coast Guard Captain of the Port (COTP), shall be lighted in accordance with § 88.13. However, the exception provided in Inland and COLREGS Rule 30(e) for vessels less than 7 meters in length, and Inland Rule 30(g) for vessels less than 20 meters in length in special anchorage areas would also apply to vessels moored to mooring buoys.

The proposed additions to the Pilot Rules at § 88.13 will prescribe, unless otherwise authorized by the Coast Guard Captain of the Port (COTP), a different lighting scheme for barges (generally, a white light on each corner). This scheme is already customary practice in many parts of the country. However, in particular circumstances the COTP could authorize that a barge be lighted in another manner. For example, the COTP could authorize a barge to be lighted as a vessel at anchor. This could arise where it would be safer for a barge moored in relatively open water to light with fore and aft anchor lights with a visibility of three miles in lieu of four lights with a visibility of only one mile.

The Coast Guard, through proposed § 82.5, intends to require these lighting schemes for barges on all U.S. navigable waters including COLREGS waters, specifically, Alaskan waters, Puget Sound and other heavily trafficked U.S. waters which are COLREGS waters for the purposes of the Rules. This type of special regulation for U.S. navigable waters is within the special rules exception of COLREGS Rule 1(b).

Barge Sidelights (§ 82.7, 90.7)

Improper lighting of barges has been a contributory factor in some accidents involving recreational boaters and has been the subject of periodic Congressional interest. This interpretative regulation will clarify the requirements of Rule 24 of the 72 COLREGS and Rule 24 of the Inland Rules for barge sidelights and thereby help to reduce the incidence of improper lighting of barges.

The U.S. delegation to the IMO raised the issue of sidelights on unmanned barges with the Subcommittee on Safety of Navigation. It was agreed that sidelights powered with existing battery technology could not meet the vertical

sector requirements for larger vessels under the 72 COLREGS. It was further agreed that an unmanned barge, unable to meet the technical lighting requirements, could meet the requirements under COLREGS Rule 24(h). Rule 24(h) allows a vessel or object being towed to exhibit alternative lighting where it is impracticable to light the vessel as prescribed in paragraphs (e) or (g) of Rule 24. A Commandant Instruction to this effect was issued on May 10, 1989. (Commandant Instruction 16672.3A International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS); Lights for Unmanned Barges.). The instruction indicates that those lighting unmanned barges may avail themselves of the Rules 24(h) exception. This exception pertains to the "vertical sector" technical requirements only. This has been the source of some confusion to mariners who have asserted that paragraph (h) exempts them from other provisions of Rule 24 as well. The proposed interpretive rules will make clear that in all other respects, the sidelights must meet all the technical requirements of the Inland Rules for vessels of that size. This would preclude the use of known non-marine light fixtures. Failure to comply with Inland Rule technical requirements, except the vertical sector requirements under Rule 24(h), where appropriate, could subject a mariner to civil penalties. Including this interpretation in §§ 82.7 and 90.7 will help to ensure that mariners are aware of the correct interpretation of Rule 24 and its exception in paragraph (h).

Corrections to COLREGS Demarcation lines (§ 80)

This proposal also includes corrections to several errors in the description of COLREGS demarcation lines in 33 CFR part 80. COLREGS demarcation lines are codified boundaries that delineate the applicability of either the Inland Navigation Rules or COLREGS. These lines are marked on navigational charts. The first correction is to the geographic coordinates in § 80.501 and § 80.520. While these lines are correctly depicted on navigational charts, their description in the Code of Federal Regulations includes inadvertent errors. This rule also proposes to correct several errors in § 80.1495, which misspells Johnston Island; refers to Canton Island, which was returned to the Republic of Kirbati in the late 1970s, as a U.S. Possession; and refers to the Trust Territory of the Pacific Islands which was dissolved in 1987.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The only proposed provision involving potential costs to mariners is the proposed rule that would require moored barges to display lights in accordance with prescribed lighting schemes meeting certain minimum standards. This lighting scheme is consistent with existing industry practice. The Coast Guard estimates that a relatively small proportion of bargetowboat owners are not equipped to light their barges as prescribed by this NPRM. For those persons that do not have lights meeting appropriate standards, the cost is de minimus. An all-round white light fixture costs approximately $12.00. Because most barge lights are placed onboard temporarily by fleeting or towboats when necessary, and barges fleeted together would be lighted as one unit, it is difficult to accurately estimate the number of lights that would be required to be purchased by an individual mariner or maritime company. However, because of the low unit cost, the impact on any one operator will be minimal. The Coast Guard specifically requests comments from the industry regarding the expected costs of the proposed rules.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include (1) small not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The only potential economic impact would be cost of marine type fixtures. As discussed above, that cost is de minimus. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Under federal law, authority to issue regulations to implement the Inland Navigational Rules is vested in the Secretary of transportation and delegated to the Coast Guard. Therefore, if this rule become final, the Coast Guard intends it to preempt State action addressing this subject matter.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 80

Navigation (water), Treaties Waterways.

33 CFR Part 82

Navigation (water), Treaties.

33 CFR Part 84

Navigation (water), Waterways.

33 CFR Part 87

Navigation (water), Waterways.

33 CFR Part 88

Navigation (water), Waterways.

33 CFR Part 90

Navigation (water), Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR parts 80, 82, 84, 87, 88 and 90 as follows:

PART 80—COLREGS DEMARCATION LINES

1. The authority citation for part 80 continues to read as follows:

Authority: 14 U.S.C. 2; 14 U.S.C. 633: 33 U.S.C. 151(a); 49 CFR 1.46.

2. In § 80.501, paragraph (d) is revised to read as follows:

§ 80.501 Tom's River, NJ to Cape May, NJ.

* * * * *

(d) A line drawn from the southern most point of Longport at latitude 39°18.2′ N. longitude 74°33.1′ W. to the northeastern-most point of Ocean City at latitude 39°17.6′ N. longitude 74°33.1′ W. across Great Egg Harbor Inlet.

* * * * *

3. In § 80.520, paragraph (a) is revised to read as follows:

§ 80.502 Cape Hatteras, NC to Cape Lookout, NC.

(a) A line drawn from Hatteras Inlet Lookout Tower at latitude 35°11.8′ N. Longitude 75°44.9′ W. 255° true to the eastern end of Ocracoke Island.

* * * * *

4. Section 80.1495 is revised as follows:

§ 80.1495 U.S. Pacific Island Possessions.

The 72 COLREGS shall apply on the bays, harbors, lagoons, and waters surrounding the U.S. Pacific Island Possessions of American Samoa, and Baker, Howland, Jarvis, Johnston, Palmyra, Swains and Wake Islands.

PART 82—72 COLREGS: INTERPRETATIVE RULES

5. The authority citation for part 82 is revised to read as follows:

Authority: 14 U.S.C. 2, 663; 33 U.S.C. 1602; E.O. 11964; 49 CFR 1.46(n).

6. Section 82.5 is added to read as follows:

§ 82.5 Lights for moored vessels.

For the purposes of Rule 30 of the 72 COLREGS, a "vessel at anchor" includes a vessel made fast to one or more mooring buoys or other similar device attached to the bottom. Such a vessel shall be lighted as a vessel at anchor in accordance with Rule 30, except that a barge, unless otherwise authorized by the cognizant Coast Guard Captain of the Port (COTP), shall meet the applicable requirements of 33 CFR 88.13.

7. Section 82.7 is added to read as follows:

§ 82.7 Sidelights for unmanned barges.

An unmanned barge complies with Rule 24 of the 72 COLREGS even if it is unable to meet the technical vertical sector requirements for sidelights as prescribed in Annex I(10) paragraphs (a) and (c) of the 72 COLREGS, if the sidelights meet all other technical requirements of these rules, such as requirements for luminous intensity and arc of visibility.

PART 84—ANNEX I: POSITIONING AND TECHNICAL DETAILS OF LIGHTS AND SHAPES

8. The authority citation for part 84 continues to read as follows:

Authority: 33 U.S.C. 2071; 49 CFR 1.46.

9. In § 84.01, redesignate paragraphs (b) through (c) as paragraphs (c) through (d) and add a new paragraph (b) to read as to read as follows:

§ 84.01 Definitions.

* * * * *

(b) The term *high speed craft* means a craft capable of maximum velocity equal to or exceeding: $V=3.7\ D^{0.1667}$; where: V=velocity at displacement (meters/second) and D=maximum permissible displacement ($meters^3$).

Note: The same formula expressed in knots and pounds is: $V(kts)=1.98D(lbs)D^{0.1667}$; where: V=maximum vessel speed in knots and D=maximum displacement in pounds.

* * * * *

10. In § 84.05, revise paragraph (a), redesignate paragraph (b) as paragraph (e), redesignate paragraph (c) as paragraph (b), redesignate paragraph (d) as paragraph (c) and add a new paragraph (d) to read as follows:

§ 84.05 Horizontal positioning and spacing of lights.

(a) Except as specified in paragraph (e) of this section, when two masthead lights are prescribed for a power-driven vessel, the horizontal distance between them must not be less than one quarter of the length of the vessel but need not be more than 50 meters. The forward light must be placed not more than one half of the length of the vessel from the stem.

* * * * *

(d) When only one masthead light is prescribed for a power-driven vessel, this light must be exhibited forward of amidships; except that a vessel of less than 20 meters in length need not exhibit this light forward of amidships but must exhibit it as far forward as is practicable.

* * * * *

11. In § 84.17, redesignate paragraph (b) as paragraph (b)(1) and add paragraph (b)(2) to read as follows:

§ 84.17 Horizontal sectors.

* * * * *

(b)(1) * * *

(2) If it is impracticable to comply with paragraph (b)(1) of this section by exhibiting only one all-around light, two all-around lights shall be used suitably positioned or screened so that they appear, as far as practicable, as one light at a distance of one mile. Note: Two unscreened all-round lights that are 1.28 meters apart or less will appear as one light to the naked eye at a distance of one mile.

12. Section 84.27 is added to read as follows:

§ 84.27 High speed craft.

(a) The masthead light of high speed craft with a length to breadth ratio of less than 3.0 may be placed at a height related to the breadth lower than that prescribed in § 84.03(a)(1), provided that the base angle of the isosceles triangle formed by the side lights and masthead light when seen in end elevation is not less than 27 degrees as determined by the formula in paragraph (b) of this section.

(b) The minimum height of masthead light above sidelights is to be determined by the following formula: $\text{Tan } 27° = {}^{x}/_{y}$; where Y is ½ the horizontal distance between the sidelights and X is the height of the forward masthead light.

PART 87—ANNEX IV: DISTRESS SIGNALS

13. The authority citation for part 87 continues to read as follows:

Authority: 33 U.S.C. 2071; 49 CFR 1.46.

14. In § 87.1, paragraph (o) is revised as follows:

§ 87.1 Need of assistance.

* * * * *

(o) Signals transmitted by radiocommunication systems, including survival craft radar transponders meeting the requirements of 47 CFR 80.1095.

* * * * *

PART 88—ANNEX V: PILOT RULES

15. The authority citation for part 88 is continued to read as follows:

Authority: 33 U.S.C. 2071; 49 CFR 1.46.

16. In § 88.13, revise the heading, revise paragraph (b) and (c), redesignate paragraph (d) as paragraph (e) and add a new paragraph (d) to read as follows:

§ 88.13 Lights on moored barges.

* * * * *

(b) Barges described in paragraph (a) of this section shall carry two unobstructed all-round white lights of an intensity to be visible for at least 1 nautical mile and meeting the technical requirements as prescribed in § 84.15 of this chapter.

(c) A barge or group of barges at anchor or made fast to one or more mooring buoys or other similar device,

unless otherwise authorized by the Coast Guard Captain of the Port (COTP), shall carry unobstructed all-round white lights of an intensity to be visible for at least 1 nautical mile that meet the requirements of § 84.15 of this chapter and shall be arranged as follows:

(1) Any barge that projects from a group formation, shall be lighted on its outboard corners.

(2) On a single barge moored in water where other vessels normally navigate on both sides of the barge, lights shall be placed to mark the corner extremities of the barge.

(3) On barges moored in group formation, moored in water where other vessels normally navigate on both sides of the barge, lights shall be placed to mark the corner extremities of the barge.

(d) The following are exempt from the requirements of this section:

(1) A barge or group of barges moored in a slip or slough used primarily for mooring purposes;

(2) A barge or group of barges moored behind a pierhead; and

(3) A barge less than 20 meters in length when moored in a special anchorage area designated in accordance with § 109.10 of this chapter.

* * * * *

PART 90—INLAND RULES: INTERPRETATIVE RULES

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

Authority: 33 U.S.C. 2071; 49 CFR 1.46(n)(14).

18. Section 90.5 is added to read as follows:

§ 90.5 Lights for moored vessels.

A "vessel at anchor" includes a vessel made fast to one or more mooring buoys or other similar device attached to the bottom. Such vessels shall be lighted as a vessel at anchor, in accordance with Rule 30, except that barges, unless otherwise authorized by the Coast Guard Captain of the Port (COTP), shall show the lights prescribed in 33 CFR 88.13.

19. Section 90.7 is added to read as follows:

§ 90.7 Sidelights for unmanned barges.

An unmanned barge complies with Rule 24 of the Inland Rules even if it is unable to meet the technical vertical sector requirements for sidelights as prescribed in Annex I of the Inland Rules (§ 84.19 (a) and (c) of this chapter), if the sidelights meet all other technical requirements of the Inland Rules, such as requirements for luminous intensity and arc of visibility.

Dated: July 12, 1994.

G.A. Penington,

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

[FR Doc. 94–17532 Filed 7–19–94; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 14

RIN 2900–AH01

Expanded Remote Access to Computerized Veterans Claims Records by Accredited Representatives

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to establish policy, procedures and criteria governing when, and under what circumstances, VA will grant authorized claimants' representatives read-only access to the automated claims records of claimants whom they represent from approved office locations away from the VA Regional Offices of jurisdiction for the claimants' records. Access will be granted only for the purpose of representing those claimants before VA on claims-related matters. In order to help safeguard the confidentiality of claimants' automated claims records, the proposed rules also set out responsibilities and restrictions on claimants' representatives in exercising their remote access to VA's automated claims records. These procedures and criteria will provide for better and more timely representation of claimants in claims matters by allowing their representatives to have faster, easier and more efficient access to the claimants' records than they currently have when they have to travel to the Regional Offices. The proposed regulations will also ensure more efficient use of VA resources in meeting the agency mission in that VA employees will have to spend less time providing access to those representatives who do not have their own computers in Regional Offices.

DATES: Comments must be received on or before August 19, 1994. Comments will be available for public inspection until August 29, 1994.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC, 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 119 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday except holidays until August 29, 1994.

FOR FURTHER INFORMATION CONTACT: David G. Spivey, Chief, Authorization Procedures Staff (213B), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420, (202) 273–7258 or Jeffrey C. Corzatt, Staff Attorney (024H2), Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC, 20420, (202) 273–6381.

SUPPLEMENTARY INFORMATION: VA is proposing to incorporate into its regulations policies, criteria and procedures governing access to certain Veterans Benefits Administration (VBA) computerized claimants' records by individuals and organizations which represent those claimants from locations away from the Regional Offices of jurisdiction for those claimants' records.

Currently, accredited representatives of veterans service organizations who hold a valid, current, VA power of attorney to assist claimants in the presentation of claims for benefits administered by VA may have on-line, remote access to certain information about those claimants contained in VA's automated claims records if the representatives and their computers are located in office space provided within VBA Regional Offices under 38 U.S.C. § 5902(a)(2). Accredited veterans' representatives not located at a VBA Regional Office who do not have such remote, on-line access are expected to go to the Regional Office and arrange with VA employees using VA computers to view a veteran's automated claims records.

VA has decided to provide the same on-line, remote access capability to all individuals and organizations accredited under 38 CFR 14.626–.635 who represent claimants on VA claims for benefits and who request such access. Access will also be provided to attorneys of record for claimants before the Court of Veterans Appeals who request such access.

The proposed rules concern when, and under what circumstances, VA will grant access, the responsibilities of those granted access, and the bases to revoke or suspend access. VA will grant no more than read-only access to authorized claimants' representatives for the purpose of assisting claimants for whom they hold a valid power of attorney (or equivalent designation) in presenting their claims for VA benefits.

Read-only access necessarily includes the ability to print or down-load the information.

Qualified representatives will be granted access by the Regional Office of jurisdiction for the particular claimant's records. In order for VBA to grant access, the Regional Office must first approve the equipment and software the applicant will use to obtain access, as well as the location from which the representative will access the VBA computer system. Approval of the hardware and software is intended to ensure that access can be accomplished while maintaining the necessary security. Approval of the location is intended to ensure that access is only from the representative's customary and usual or primary place of representation, and not from other locations. This avoids the use of unapproved equipment and limits the possibility of unauthorized access to the data by individuals not approved for access by VA. The applicant must also sign a notice that contains the security requirements applicable to the system.

Certain confidentiality statutes, namely, the Privacy Act, 5 U.S.C. § 552a, and 38 U.S.C. §§ 5701 and 7332 generally govern the VA's disclosure of claimants' records, whether paper or automated, to their representatives. Accredited representatives and agents may see the claims folders of those individuals whom they represent for two reasons: the claimant has indicated in advance in writing to the Department that the named individual or organization represents him or her on a claim for benefits, and the claimant has given prior written consent to VA's release of information to the claimant's representative. Attorneys, as officers of the court, need only file documentation that they represent the claimant. A routine use then permits the disclosure.

These requirements also are designed to provide audit and accountability records for those who access the system, as well as ensuring the integrity and confidentiality of the system and data from unauthorized access.

In order to oversee access activities properly which provide for the security of the data and system, VBA may, without notice, inspect the accessor's computer systems, review its security procedures, and monitor its access activities.

VBA may revoke access privileges in two circumstances. The first is based on applicable confidentiality statutes, e.g., the Privacy Act, 5 U.S.C. § 552a, and 38 U.S.C. §§ 5701 and 7332. Whenever an individual or organization is no longer entitled to access a particular claimant's records as a matter of law under the applicable confidentiality statutes, VA will terminate that individual's access privileges to that particular claimant's automated claims records. VA may also revoke access privileges based upon failure to comply with the regulations.

Regulatory Flexibility Act

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

This certification can be made because the regulations facilitate representative access to their claimants' information while imposing little in the way of cost or administrative burden. Further, the rules affect only the small number of entities and individuals which represent claimants in claims before VA.

This regulation is subject to review under Executive Order 12866.

There are no Catalog of federal Domestic Assistance numbers for this program.

List of Subjects in 38 CFR Part 14

Government employees, Lawyers, Legal services, Veterans.

Approved: June 13, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

38 CFR part 14, Legal Services, General Counsel, is proposed to be amended as follows:

PART 14—LEGAL SERVICES, GENERAL COUNSEL

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

Authority: 38 U.S.C. 5903.

2. In part 14, §§ 14.640 through 14.643 and an undesignated center heading prior to § 14.640 are added to read as follows:

Expanded Remote Access to Computerized Veterans Claims Records by Accredited Representatives

Sec.

14.640 Purpose.
14.641 Qualifications for access.
14.642 Utilization of access.
14.643 Disqualification.

Expanded Remote Access to Computerized Veterans Claims Records by Accredited Representatives

§ 14.640 Purpose.

(a) Sections 14.640 through 14.643 establish policy, assign responsibilities and prescribe procedures with respect to:

(1) When, and under what circumstances, VA will grant authorized claimants' representatives read-only access to the automated Veterans Benefits Administration (VBA) claims records of those claimants whom they represent;

(2) The exercise of authorized access by claimants' representatives; and

(3) The bases and procedures for disqualification of a representative for violating any of the requirements for access.

(b) VBA will grant access to its automated claimants' claims records from locations outside Regional Offices under the following conditions. Access will be provided:

(1) Only to individuals and organizations granted access to automated claimants' records under §§ 14.460 through 14.643;

(2) Only to the claims records of VA claimants whom the organization or individual represents as reflected in the claims file;

(3) Solely for the purpose of the representative assisting the individual claimant whose records are accessed in a claim for benefits administered by VA; and

(4) On a read-only basis. Individuals authorized access to VBA automated claims records under §§ 14.640 through 14.643 will not be permitted to modify the data.

(c)(1) Access will be authorized only to the inquiry commands of the Benefits Delivery Network which provide access to the following categories of data:

(i) Beneficiary identification data such as name, social security number, sex, date of birth, service number and related service data; and

(ii) Claims history and processing data such as folder location, claim status, claim establishment date, claim processing history, award data, rating data, including service-connected medical conditions, income data, dependency data, deduction data, payment data, educational facility and program data (except chapter 32 benefits), and education program contribution and delimiting data (except chapter 32 benefits).

(2) Access to this information will currently be through the inquiry commands of BINQ (BIRLS (Beneficiaries Identification and

Records Location Subsystem) Inquiry), SINQ (Status Inquiry), MINQ (Master Record Inquiry), PINQ (Pending Issue Inquiry) and TINQ (Payment History Inquiry). The identifying information received from BIRLS to representative inquiries will be limited to file number, veteran's name, date of death, folder location and transfer date of folder, insurance number, insurance type, insurance lapse date and insurance folder jurisdiction.

(d) Sections 14.640 through 14.643 are not intended to, and do not:

(1) Waive the sovereign immunity of the United States; or

(2) Create, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law against the United States or the Department of Veterans Affairs.

§ 14.641 Qualifications for access.

(a) An applicant for read-only access to VBA automated claims records from a location other than a VA Regional Office must be:

(1) An organization, representative, attorney or agent approved or accredited by VA under 38 CFR 14.626 through 14.635; or

(2) An attorney of record for a claimant in proceedings before the Court of Veterans Appeals or subsequent proceedings who requests access to the claimant's automated claims records as part of the representation of the claimant.

(b) The hardware, modem and software utilized to obtain access, as well as their location, must be approved in advance by VBA.

(c) Each individual and organization approved for access must sign and return a notice provided by the Regional Office Director (or the Regional Office Director's designee) of the Regional Office of jurisdiction for the claim. The notice will specify the applicable operational and security requirements for access and an acknowledgment that the breach of any of these requirements is grounds for disqualification from access.

§ 14.642 Utilization of access.

(a) Once an individual or organization has been issued the necessary passwords to obtain read-only access to the automated claims records of individuals represented, access will be exercised in accordance with the following requirements:

(1) The individual or organization will obtain access only from equipment and software approved in advance by the Regional Office from the location where the individual or organization primarily conducts its representation activities which also has been approved in advance;

(2) The individual will use only his or her assigned password to obtain access;

(3) The individual will not reveal his or her password to anyone else, or allow anyone else to use his or her password;

(4) The individual will access only the VBA automated claims records of VA claimants who are represented by the person obtaining access or by the organization employing the person obtaining access;

(5) The individual will access a claimant's automated claims record solely for the purpose of representing that claimant in a claim for benefits administered by VA.

(6) Upon receipt of the password, the individual will destroy the hard copy; no written or printed record containing the password will be retained; and

(7) The individual and organization will comply with all security requirements VBA deems necessary to ensure the integrity and confidentiality of the data and VBA's automated computer systems.

(b) An organization granted access shall ensure that all employees provided access in accordance with these regulations will receive regular, adequate training on proper security, including the items listed in § 14.643(a). Where an individual such as an attorney or registered agent is granted access, he or she will regularly review the security requirements for the system as set forth in these regulations and in any additional materials provided by VBA.

(c) VBA may, at any time without notice:

(1) Inspect the computer hardware and software utilized to obtain access and their location;

(2) Review the security practices and training of any individual or organization granted access under these regulations; and

(3) Monitor an individual's or organization's access activities. By applying for, and exercising, the access privileges under §§ 14.640 through 14.643, the applicant expressly consents to VBA monitoring the access activities of the applicant at any time.

§ 14.643 Disqualification.

(a) The Regional Office Director or the Regional Office Director's designee may revoke an individual's or an organization's access privileges to a particular claimant's records because the individual or organization no longer represents the claimant, and, therefore, the beneficiary's consent is no longer in effect. The individual or organization is no longer entitled to access as a matter of law under the Privacy Act, 5 U.S.C. § 552a, and 38 U.S.C. §§ 5701 and 7332. Under these circumstances, the individual or organization is not entitled to any hearing or to present any evidence in opposition to the revocation.

(b) An individual or organization granted access privileges to VBA automated claims benefits systems may have such access privileges revoked either to an individual claimant's records or to all claimants' records if the individual or organization:

(1) Violates any of the provisions of §§ 14.640 through 14.643;

(2) Accesses or attempts to access data for a purpose other than representation of an individual veteran;

(3) Accesses or attempts to access data other than the data specified in these regulations;

(4) Accesses or attempts to access data on a VA beneficiary who is not represented either by the individual who obtains access or by the organization employing the individual who obtains access;

(5) Utilizes unapproved computer hardware or software to obtain or attempt to obtain access to VBA computer systems;

(6) Modifies or attempts to modify data in the VBA computer systems.

(c) If VBA is considering revoking an individual's access, and that individual works for an organization, the Regional Office of jurisdiction will notify the organization of the pendency of the action.

(d) After an individual's access privileges are revoked, if the conduct which resulted in revocation was such that it merits reporting to an appropriate governmental licensing organization such as a State bar, the VBA Regional Office of jurisdiction will immediately inform the licensing organization in writing of the fact that the individual's access privileges were revoked and the reasons why.

(e) The VBA Regional Office of jurisdiction may temporarily suspend access privileges prior to any determination on the merits of the proposed revocation where the Regional Office Director or the Director's designee determines that such immediate suspension is necessary in order to protect the integrity of the system or confidentiality of the data in the system from a reasonably foreseeable compromise. However, in such case, the Regional Office shall offer the individual or organization an opportunity to respond to the charges immediately after the temporary suspension.

[FR Doc. 94–17358 Filed 7–19–94; 8:45 am]

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POSTAL SERVICE

39 CFR Part 111

Revisions to Standards for Walk-Sequenced Bulk Third-Class Mail

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule will amend the standards for walk-sequence rate mail to require an identifying marking on each piece.

DATES: Comments must be received on or before August 19, 1994.

ADDRESSES: Written comments should be mailed or delivered to Manager, Advertising Mail, USPS Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260–2412. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 5540 at the above address.

FOR FURTHER INFORMATION CONTACT: Joseph D. Moeller, (202) 268–2660.

SUPPLEMENTARY INFORMATION: The Postal Service uses the In-Office Cost System (IOCS) and the Carrier Cost System (CCS) as tools to develop cost information for each class and subclass of mail, and for special services. This information is used to develop proposals for new postal rates and to assist in management evaluation of new rate structures. The IOCS uses work sampling to provide data for attributing labor cost to each class, subclass, and special service. The CCS is used to collect data regarding the volume of each type of mail on sampled delivery routes. These data are used to assign delivery costs to the pertinent categories of mail.

In order for the IOCS and CCS to be used to examine the costs of distinct groupings of mail, each piece in the grouping must have a distinctive marking. When an individual sample is conducted, information regarding markings on the mailpiece is recorded. To better quantify the value of mailer walk-sequencing, the Postal Service would like to track the cost of third-class pieces claiming the 125-piece and saturation walk-sequence rates using IOCS and CCS. Currently this is not possible because walk-sequenced mail can be identified as such simply by including a facing slip with the phrase "WALK-SEQUENCE CARRIER ROUTE MAIL" on the top of each package. The proposed change would require that each individual piece contain a "WS" marking either on the carrier route identification line or as part of the carrier route presort endorsement. Although facing slips would still be allowed, they would no longer fulfill the requirement for identifying the mail as walk-sequenced.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the DMM, incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend Domestic Mail Manual M304, Walk-Sequence [Carrier Route Mail Preparation], by adding a new subsection 1.3 and revising subsection 3.2 to read as follows:

M304 Walk-Sequence

1.0 Basic Standards

* * * * *

1.3 Marking

In addition to the markings required by M303, each piece claimed at a walk-sequence rate must be marked "WS" immediately preceding either the carrier route information line (e.g., **WS CARRIER ROUTE 017) or the carrier route presort marking shown in M303 (e.g., WS CAR-RT SORT). Pieces not claimed at a walk-sequence rate must not bear the "WS" marking.

* * * * *

3.0 Preparation

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3.2 Labeling

In addition to the labeling required in M303, a facing slip with a phrase identifying the mail, such as "WALK-SEQUENCED CARRIER ROUTE MAIL," may be placed on the top of each package. A facing slip does not satisfy the marking required on each piece by 1.3.

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–17580 Filed 7–19–94; 8:45 am]

BILLING CODE 7710–12–M

39 CFR Part 111

Contents of Second-Class Mail

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would revise the present standards in the Domestic Mail Manual (DMM) on materials eligible for mailing at second-class rates with authorized second-class publications. The proposal would remove the current advertising limitation on loose supplements to bound publications and adopt a more objective test for determining what material can be mailed as a supplement. The proposal would revise the regulations on pages with "novel" characteristics, giving publishers more latitude in page design. The provisions concerning the mailing of products and product samples have been liberalized. A new provision has been added specifying how advertising content of second-class publications is to be measured. A provision has also been added defining public service announcements. Finally, the proposal would reorganize and clarify a number of additional standards for second-class mail concerning addressing, mailpiece construction, rate eligibility, and postage payment. These additional changes are editorial rather than substantive in nature.

DATES: Comments on this proposal must be received on or before September 19, 1994.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Business Mail Acceptance, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 8430, Washington, DC 20260–6808. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Jerome M. Lease, (202) 268–5188, or Alixe Johnson, (312) 765–5487.

SUPPLEMENTARY INFORMATION: In the mid-1980s the Postal Service undertook an extensive review of the regulations governing what could be mailed as part of a periodical publication at second-class postage rates, with a special focus on supplements to second-class publications. Beginning in September 1986, the Postal Service published four proposed rules, culminating in a final rule that was published 2 years later. 53 FR 35813 (September 15, 1988). The final rule explained that then-recent changes in technology—specifically the introduction of equipment making it

practical to insert a publication into a sealed plastic wrapper (polybag)—made it possible for publishers of bound second-class publications to include with their publications additional materials that are separate and distinct from the publication. A number of publishers were in favor of taking advantage of this new technology, but others were concerned that allowing separately prepared material to be enclosed loose in a polybag at second-class rates would cause an undesirable movement of printed advertising materials from third-class mail to second-class mail.

The Postal Service noted the difficulty in reaching an appropriate balance between the conflicting concerns and interests in this area, and was hopeful that the rulemaking would resolve these issues. To counter arguments that second-class mail would be harmed by the inclusion of too much advertising in the form of loose supplements riding along with bound second-class publications, the final rule adopted, among other things, requirements that a loose second-class supplement and its host bound publication must be enclosed in an envelope or wrapper, that the supplement must contain a minimum of 25 percent nonadvertising content, and that the supplement must be marked "Supplement to" followed by the name of the publication or the publisher.

Although that rulemaking was at least partially successful in achieving its goals, experience over the past 6 years indicates that further revisions may be appropriate. Technological advancements, such as selective binding, continue to affect the design of publications, and publishers continue to seek to include materials with second-class publications that were not contemplated at the time the current regulations were adopted. Many publishers consider the 25 percent nonadvertising rule for loose supplements to be burdensome and inappropriate as a means of curbing the influx of advertising in second-class mail. Many publishers also consider the current restrictions on the use of pages with "novel" characteristics and the inclusion of products and product samples to limit unduly their creativity in designing publications that appeal to their readers and advertisers. These publishers also point out that private delivery companies do not impose similar restrictions on their delivery of publications.

The most significant problem with the current regulations from the Postal Service's perspective is the difficulty in applying these standards. This problem is not limited to customers, but exists for postal personnel as well, as is demonstrated by the relatively large number of revenue deficiencies and decisions overturned on administrative appeal that concern the mailing of supplements, novelty pages, and products with second-class publications. This difficulty of application creates additional expense for the Postal Service in training and in mail acceptance, and it compromises the ability of the Postal Service to collect consistently the correct postage on second-class mailings.

Accordingly, the Postal Service undertook a review of the standards that pertain to the content of second-class mail. This included review of the terminology involved (e.g., supplements, enclosures, attachments, novelty pages, independent publications), the substantive rules concerning eligibility of these materials for second-class rates, the clarity of the existing rules, and the organization of these rules in the DMM. The result of this review is the instant proposal for substantive and editorial changes to, and deletion of a number of, existing rules with the renumbering and reorganizing of these rules for clarity and ease of use.

The Postal Service believes that the proposed rules, if adopted, will reduce the costs of mail acceptance and training, and facilitate timely collection of the appropriate postage on second-class mailings. The Postal Service also believes that the proposed elimination of a number of restrictions on publication design will promote publishers' continued use of the Postal Service for delivery of their periodical publications. Moreover, the proposed changes are not expected to have any adverse operational effect on the Postal Service.

To provide clarity and improve the organization of the mailing standards governing the contents and characteristics of second-class mail, Domestic Mail Manual (DMM) C200 has been completely reorganized and renumbered under four main headings: 1.0 Permissible Mailpiece Components, 2.0 Impermissible Components, 3.0 Mailpiece Construction, and 4.0 Printed Features. Within these sections are subsections that specifically identify what may and may not be included in a mailpiece claimed at second-class rates. The following discussion identifies the significant changes being proposed in C200.

The reference to pages of a second-class publication in proposed C200.1.1 is new and describes those printed sheets that form the second-class mailpiece. Rather than addressing advertising and "novelty pages" in separate standards (as is currently done in C200.5.0 and 6.0), this proposed section sets forth a general rule that provides that the pages in a second-class publication, whether they contain advertising or nonadvertising matter or both, may be prepared with novel or unusual characteristics, i.e., different size, shape, or construction. This proposed change would limit the number of these pages to a minor portion of the publication so that the general appearance of the material as a "periodical publication" is maintained. In proposing this greater latitude on the preparation of pages to a publication, the Postal Service is concerned that publishers might create publications whose physical characteristics would encumber efficient postal processing. Therefore, this provision includes a requirement that no page may have dimensions (when folded) that exceed the dimensions of the cover of the publication.

In another change from current standards, this new pages section would allow the use of grommets, string, rubber bands, and similar types of fastening materials in minor amounts in the production of printed sheets. The Postal Service has concluded that allowing the use of minor amounts of these fastening materials in the preparation of pages is consistent with the existing practice of allowing second-class publications to be bound with staples, saddle stitching, or spiral binding.

The mailing standards governing the preparation of parts and sections in proposed C200.1.2 remain unchanged, although current C200.2.0, 2.1, 2.2, and 2.3 have been condensed into one paragraph. The provision governing parts or sections produced by someone other than the publisher has been retained in 1.2 to preserve the distinction between parts and sections of a publication and supplements to a publication.

Nonincidental enclosures at First- and third-class rates are covered in proposed C200.1.3, which is composed of former 8.1, 8.3b, 8.4, 8.6, and 10.2. The wording has been changed for clarity.

Proposed C200.1.4 incorporates current sections (C200.3.2, 3.3, 7.1, 7.2, and 7.3) governing enclosures and attachments mailable at second-class rates. The last sentence of current 3.2f (proposed C200.1.4b) is deleted to remove the single-fold limitation on a printed sheet accompanying a receipt, request, or order for a subscription. The Postal Service does not believe that it is

necessary to limit the method used by publishers in producing this material.

The proposal allows all items listed in C200.1.4 as permissible second-class enclosures to be treated as neither advertising nor nonadvertising, but instead to be accounted for in the weight of the host publication when determining postage. This is a change in the interpretation of current rules that distinguish between the subscription order or requester form and any additional material that promotes the publisher's publications. Allowing these permissible enclosures to be accounted for only in the weight of the host publication will simplify the acceptance review process without any significant effect on postal revenues.

The proposed supplements section in C200.1.5 would change the standard concerning loose supplements to bound publications to eliminate the current requirement that such a supplement contain at least 25 percent nonadvertising content. If adopted, this change would allow publishers to include loose supplements with bound publications that could consist of up to 100 percent advertising. This change is being proposed in response to widespread requests from publishers for an elimination of this provision. These publishers argue that this provision is an unnecessary restriction on their ability to choose whether to place advertising matter in the host publication or in an accompanying loose supplement. They argue that competitors of the Postal Service impose no such restrictions on the nonpostal delivery of publications. They also argue that the responses by some publishers to the 25 percent nonadvertising requirement (e.g., the use of such devices as public service announcements that say such things as "Just Say No To Drugs") demonstrate the uselessness of the provision as a means to increase the "editorial" content of second-class publications. These publishers argue that the overall requirement that second-class publications contain a substantial amount of nonadvertising content and the need to provide substantial editorial content to satisfy their subscribers are sufficient safeguards of the integrity and value of second-class mail. These publishers also correctly state that all advertising in supplements will be accounted and paid for at the advertising rates because the determination of a publication's advertising/nonadvertising content is based on the host piece and any supplements. The Postal Service finds that these arguments have merit and has determined to propose the elimination of the 25 percent nonadvertising content requirement for comment by all interested parties.

The proposed supplements section also includes clarifying provisions, based on current standards and on Postal Service rulings, restricting the inclusion of loose sheets of advertising as a supplement. These provisions describe the permissible preparation of supplements for the four different methods of second-class mailpiece preparation—a bound publication not enclosed in a wrapper, a bound publication enclosed in a wrapper, and an unbound publication not enclosed in a wrapper, an unbound publication enclosed in a wrapper. Bound and unbound publications are defined in C200.3.1. The standards proscribing the use of mailing wrappers are set forth in C200.3.3 and 3.4.

A bound publication that is not enclosed in a wrapper may not have any supplements included loose with it. Only enclosures under C200.1.4 may be included loose in a bound publication. A bound publication with one or more supplements must be enclosed in a wrapper. If a supplement to a bound publication is made up of more than one printed sheet, all sheets making up the supplement must be bound together to form one piece. If not, each loose sheet must separately qualify as a supplement. A supplement to an unbound publication that is not enclosed in a wrapper must be combined with, and inserted within, the publication. A loose supplement may be included with an unbound publication only if the entire mailpiece is enclosed in a wrapper.

The proposed supplements section will retain the requirement that loose supplements to bound publications contain the identification "Supplement to" followed by the name of the publication or the publisher. This requirement to identify a supplement will also apply to any loose supplement mailed with an unbound publication enclosed in a wrapper. The presence of the "Supplement to" statement is an objective demonstration that the publisher designed the material to be included as a supplement to the host publication. The Postal Service believes that the retention of this identification requirement, the retention of the general requirement in C200.4.3 that all advertisements in bound publications must be permanently attached, and the clarification in C200.1.5 that any multisheet supplement to a bound publication must also be bound together will effectively limit the inclusion of miscellaneous loose advertising pieces with second-class publications enclosed in wrappers.

The section on attachments (proposed C200.1.8) consolidates the wording contained in current 4.3 pertaining to the addition of stickers on covers of second-class publications or on mailing wrappers. Additionally, proposed 1.8 includes information currently contained in 10.1 and 10.4, regarding the required markings for nonincidental First- and/or third-class enclosures.

Except for its movement from A200.2.0 to C200.1.10, the provision allowing label carriers remains unaltered. Placement in C200 is more appropriate for these standards because they will be with the sections governing what may be combined loose in a polybag or plastic wrapper and mailed at the second-class rates (a mailing practice that commonly uses a label carrier).

Publishers have also complained about the subjective nature of the current standards concerning what material may not be included as a loose supplement at second-class rates. For example, current rules state that an independent publication may not be sent at second-class rates. Those rules then require the reviewer to determine the independence of material by making a subjective judgment based on a number of factors. Although the specified items (such as independent publications) remain ineligible for mailing at second-class rates (even if bound into publications), the Postal Service has undertaken to respond to publishers' concerns by explaining these restrictions more clearly. For this reason, proposed C200.2.1 sets forth a general standard that all the impermissible components in 2.2 to 2.5 are prohibited from being mailed at second-class rates whether they take the form of a run-of-press page, supplement, bound-in advertisement, or other component of the publication. Proposed C200.2.2 would base the decision on what constitutes impermissible matter on a review of the questionable material against a list of objective criteria, any one of which will automatically make that material ineligible for mailing at second-class rates. These criteria are a separate price or subscription instructions; the word "catalog"; a First-, third-, or fourth-class permit imprint; an International Standard Book Number (ISBN); or an International Standard Serial Number (ISSN). The Postal Service believes that this change will simplify the determination of what constitutes impermissible second-class matter. This change is expected to benefit publishers by reducing the uncertainty and confusion they have

experienced with regard to the current and more subjective standards.

Current standards restrict the inclusion of products and product samples (see C200.1.8) in items mailed at the second-class rates. Proposed C200.2.3 would continue to exclude products, such as stationery, cassettes, and floppy disks, that are not printed sheets, but the proposed section would no longer prohibit product samples that are otherwise formed of printed sheets. The Postal Service believes that applying the general requirement that all second-class matter must be formed of printed sheets is a sufficient standard to limit the inappropriate mailing of products and product samples at second-class rates. Additionally, this section would relax current interpretations on what constitutes a product or merchandise when the item is a printed sheet. For example, under specific conditions, a 12-month calendar or a poster will now be eligible to be mailed at second-class rates if it is not separately distributed or offered for sale. Including the name of the host publication, issue or issue date, and relating such a piece to advertising or nonadvertising within the content of the host publication would provide further proof that the piece is properly prepared as a page of the publication.

To ensure that second-class mail is transported and delivered intact, proposed C200.3.3 specifies what may be included loose within a second-class publication without requiring wrapping. For consistency, proposed C200.3.4 has been added to provide guidance on when wrappers are required.

Proposed C200.3.5 includes all the standards governing protective covers in current C200.4.1. In recognition of the practicalities of publication production, the requirement that a protective cover cover completely a publication is changed to allow the cover to be smaller than the publication if it extends to within ¾ inch of the edge of the publication opposite the fold or binding. No similar allowance has been proposed for the top and bottom edges of a protective cover because the Postal Service has had no indication from publishers that there is any problem with covers matching a publication's top and bottom edges.

The proposed advertising standard in C200.4.3 blends the contents of current C200.6.1 and 6.4 and explains that all advertisements must be prepared as an integral part of the publication and that, except for advertisements prepared as supplements and advertisements on printed matter included as part of a receipt or order for subscriptions (or requests), all advertisements in a bound publication must be permanently attached. The provision in current C200.6.3 concerning the types of material that can comprise printed sheets has been moved to E211.3.0, the eligibility section that includes the printed sheet standard.

Additionally, several new proposed sections have been added to provide clarifying definitions, such as C200.1.6 (covers), 1.7 (mailing wrappers), and 3.1 (bound/unbound). Other sections have been proposed to clarify further what is allowable and what is excluded at second-class rates, e.g., the proscription against combining fourth-class mail with second-class mail.

The proposed rule also contains an expanded definition of public service announcements in E211.11.2, to clarify those announcements that do not have to be treated as advertising matter. An expanded standard explaining procedures to be followed when measuring advertising in second-class publications is proposed in new P070.1.7. This provision, which is based on Postal Service rulings, is designed to ensure uniform treatment of blank space in publications. Section E211.7.3 has been revised to clarify that materials such as annual reports, directories, and lists may be included as supplements to second-class publications. Minor nonsubstantive changes have also been proposed to DMM modules A, E, and P.

Although exempt from the notice and comment provisions of the Administrative Procedures Act (5 U.S.C. 553(b) and (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendments of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 remains as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Renumber existing Domestic Mail Manual A200.1.0 (including Exhibit 1.3) as A010.7.0; renumber subsections accordingly and revise as shown below; delete remainder of existing A200.

A010 General Information

* * * * *

7.0 ADDITIONAL STANDARDS FOR SECOND-CLASS MAIL

7.1 Preparation

[Insert text of existing A200.1.1.]

7.2 Address Labels

[Insert text of existing A200.1.2.]

7.3 Address Placement

The delivery address must be clearly visible on or through the outside of the mailpiece, whether placed on a label or directly on the host publication, a component, or the mailing wrapper. If placed on the mailing wrapper, the address must be on a flat side, not on a fold (see Exhibit 7.3). If a polybag is used, the address must not appear on a component that rotates within the bag, and the address must remain visible throughout the addressed component's range of motion.

7.4 Return Address

The return address must appear on any mailing wrapper that is also endorsed "Return Postage Guaranteed."

3. Revise all Domestic Mail Manual C200, Second-Class Mail, to read as follows:

C200 Second-Class Mail

1.0 PERMISSIBLE MAILPIECE COMPONENTS

1.1 Pages

Pages are the printed sheets forming the publication or one of the mailpiece's components, bearing advertising, nonadvertising, or both, including those having textual and graphic matter (see E211.2.4); blank spaces for writing or marking; and material to be completed or used by the reader. A minor portion of the pages in a second-class mailpiece may have unusual characteristics, such as a different size, shape, or construction, or portions that may be wholly or partially separable; and pages prepared for folding out. No page may have dimensions (when folded, if folded) that exceed the dimensions of the cover of the publication. Pages are also subject to these standards:

a. A detachable coupon, application, or order form must relate directly to advertising or nonadvertising matter printed on the page of which it is a part or to which it is attached.

b. Multilayer pages, including those formed by sheets glued together and those that have unusual shapes, such as cutouts, movable flaps, or "pop-ups," may include small amounts of fastening material such as grommets, string, or rubber bands as needed to assemble the page. Multilayer pages may also be formed as pouches or pockets but may

contain only permissible loose enclosures (see 1.4) or other securely affixed permissible components.

c. Multiple pages may be held together by staples or other means separate from and in addition to the regular binding of the publication.

d. Oversized pages may be used for illustrations, charts, maps, and other advertising and nonadvertising content.

1.2 Parts and Sections

Parts and sections are pages (subject to 1.1) that are physically separate subdivisions of the publication, as identified by the publisher. Each part or section must show the name of the publication, and the number of parts or sections in the issue must be stated on the cover of the first part or section. Parts or sections produced by someone other than the publisher may not be mailed at second-class rates if these parts or sections are prepared by or for advertisers or if they are provided to the publisher free or at a nominal charge. On request, publishers must submit to the RCSC serving the known office of publication contracts entered into with producers of parts or sections.

1.3 Enclosures at First- or Third-Class Rates

Matter to be paid at the applicable First- or third-class rate may be enclosed in a second-class mailpiece subject to these conditions:

a. The total weight of all enclosed third-class matter must be less than 16 ounces.

b. Postage and fee payment is subject to P070. A permit imprint that may appear on a First- or third-class enclosure must not be visible when the mailpiece is prepared for mailing except as provided under P070.

c. When enclosing nonincidental First- or any third-class mail, combination envelopes or containers with separate parts for the two classes of mail may be used. If both the sender's and addressee's names and addresses are not on both pieces, the sender's name and address must be placed on one and the addressee's name and address on the other. Combination containers with inseparable parts may bear the names and addresses on only one part.

d. The applicable "First-Class Mail Enclosed" or "Third-Class Mail Enclosed" marking must be placed on or in the host publication if it contains a nonincidental First- or third-class enclosure. If placed on the outer wrapper, polybag, envelope, or cover of the host publication, the marking must be set in type no smaller than any used in the required "POSTMASTER: Send change of address . . ." statement. If placed in the identification statement, the marking must meet the applicable standards. The marking must not be on or in copies not accompanied by a First- or third-class enclosure unless additional information is provided under the applicable postage payment standards in P070.

1.4 Enclosures at Second-Class Rates

Only the following material may be included loose as an enclosure in a second-class mailpiece and be paid at second-class rates, subject to the corresponding conditions:

a. An incidental First-Class piece that must be closely related but secondary to the second-class publication with which it is enclosed, and that consists of matter that, if mailed separately, would require First-Class postage. Examples of an incidental First-Class enclosure are a bill for the publication, a statement of account for past publication purchases, or a personal message or greeting included with the publication.

b. A receipt, request, or order for a subscription that may be printed or written; prepared as a card or envelope, including business reply, or as a combination form for the host and one or more second-class publications issued by the same publisher; arranged to include a coin receptacle; and inserted in an envelope within the publication. The receipt or request may be part of or accompanied by a single sheet of printed matter containing information related exclusively to a receipt or request or order for a subscription to the host second-class publication (or a combination of the host and other second-class publications of the same publisher), if that printed matter does not advertise, promote, or offer for sale other products or services.

c. A card or form for the recipient's use in providing address correction information to the publisher that may be printed or written; prepared as a card or envelope, including business reply, or as a combination form for two or more second-class publications issued by the same publisher; inserted in an envelope that is attached to, bound in, or loose within the publication; or prepared as a detachable part of another permissible enclosure. Enclosures listed in 1.4b and 1.4c are not counted when determining the percentage of advertising in the publication, but they are included in the total weight of the publication reported on the mailing statement. If the publication otherwise consists entirely of nonadvertising matter, an incidental First-Class enclosure as described in 1.4a may be treated as nonadvertising matter. In all other cases, an incidental First-Class enclosure is considered part of the advertising portion of the publication.

1.5 Supplements

A supplement is one or more pages (subject to 1.1) formed by one or more printed sheets that are not bound into a publication. A bound publication with one or more supplements must be enclosed in a wrapper (see 3.3 and 3.4). If a supplement to a bound publication is formed of more than one sheet, all sheets comprising the supplement must be bound together. Except where the mailpiece is enclosed in a wrapper (see 3.4), a supplement to an unbound publication must be combined with, and inserted within, the publication. A loose supplement may be included with an unbound publication only if the mailpiece is enclosed in a wrapper (see 3.4). A supplement may be devoted to a single topic, and may contain material different from that in the host publication. The external dimensions of a supplement (i.e., its length and height) may not exceed those of the host publication. Each supplement to a bound publication and loose supplements included with unbound publications must bear the printed endorsement "Supplement to" followed by the name of the publication or publisher.

1.6 Covers

A cover may be placed on the outside of a second-class publication. A protective cover is an additional cover placed around the outside of a publication; preparation is subject to 3.5. Advertising, nonadvertising, or both may be printed on the cover or protective cover. The cover and protective cover on a publication are included when measuring advertising percentage. Nothing may be attached to the cover or protective cover except as permitted under 1.8.

1.7 Mailing Wrappers

A mailing wrapper is an envelope, sleeve, or polywrap used to enclose the mailpiece. Advertising may be printed on the mailing wrapper and is included when measuring advertising percentage. Nothing may be attached to the mailing wrapper except as permitted under 1.8.

1.8 Attachments

The following may be attached to a page, cover, protective cover, or mailing wrapper of a publication, subject to the corresponding standards:

a. Stickers of any size and shape. If attached to the cover, protective cover, or mailing wrapper, no portion of the publication's name may be obscured.

b. Material that is allowed as a loose enclosure described in 1.3 or 1.4. When nonincidental First- and/or third-class enclosures (see 1.3) are attached, the marking "First-Class" or "Letter Enclosed" must be on a First-Class attachment; "Third-Class," on a third-class attachment.

1.9 Printed Additions

Only the following may be printed on a copy of a second-class publication after it is printed, or placed on its cover, protective cover, or mailing wrapper:

a. The name and address of the intended recipient or of the publisher or sender.

b. The printed title of the publication and its place of publication.

c. The date the subscription ends.

d. Requests for address-correction information from the addressee.

e. The words "Sample Copy" (on a sample), "Marked Copy" (when the copy contains a marked item or article), or "Return Postage Guaranteed" (when the copy is to be returned to the sender if undeliverable as addressed).

f. The number of copies enclosed (on the outside of a package) or a package count (e.g., "2 of 4") (on a package wrapper).

g. Corrections of typographical errors or a mark, except by written or printed words, to call attention to a word or passage.

h. Printed messages not required to be mailed as First-Class or Express Mail.

1.10 Label Carriers

A label carrier is a single unfolded, uncreased sheet of card or paper stock, securely affixed to the cover of the publication or large enough so that it does not rotate inside the wrapper or cover the publication title (if placed over the front cover), that is used to carry the delivery address for the mailpiece, subject to these conditions:

a. It must bear the title of the second-class publication; the second-class imprint or "Second-Class" endorsement in the upper right corner of the address side (unless "Second-Class" is printed on the address side of the polybag); and the address to which the mailpiece can be returned if undeliverable (if endorsed "Return Postage Guaranteed").

b. If the address remains clearly visible, the label carrier may also bear a request for address correction from the addressee; information for requesting or subscribing to the publication; or a subscription or request form.

c. As applicable, the label carrier may show the endorsement "First-Class Mail Enclosed" or "Third-Class Mail Enclosed" or the permit imprint used to pay postage for the First- or third-class enclosure if the imprint is below the second-class imprint or the endorsement "Second-Class."

d. Other printed information, whether advertising or nonadvertising, is permitted only on the back of the label carrier and is subject to measurement and postage payment accordingly. A single line of text calling attention to information on the reverse may be placed on the front of the label carrier. If any information on the reverse of the label carrier is advertising, the line of text on the front is also treated as advertising.

2.0 IMPERMISSIBLE COMPONENTS

2.1 General Standard

Regardless of preparation or characteristics, or whether otherwise meeting the standards in 1.0, the materials described in 2.2 through 2.5 are not eligible for second-class rates and may not form, or be included, in a second-class mailpiece.

2.2 Prohibited Matter

Material that either contains any one of the following printed items, or that is referred to in a component of the second-class mailpiece (by the use of one of these items), is ineligible to be mailed at second-class rates:

a. A separate price or subscription instructions different from the host publication.

b. The word "Catalog."

c. A First-, third-, or fourth-class permit imprint.

d. An ISBN (International Standard Book Number).

e. An ISSN (International Standard Serial Number) different from the ISSN of the host publication.

2.3 Products

Products may not be mailed at second-class rates. Examples include stationery (pads of paper or blank printed forms); cassettes; floppy disks; merchandise; envelopes containing enclosures, other than receipts, orders for subscriptions, and incidental First-Class matter; and wall, desk, and blank calendars. Printed pages, including oversized pages and calendars, are not considered products if they are not separately distributed or offered for sale, bear the name of the host publication and the issue or issue date, and relate to other advertising or nonadvertising content of the host publication.

2.4 Fourth-Class Mail

Fourth-class mail may not be combined with a second-class publication.

2.5 Nonprinted Sheets

Any matter not formed of printed sheets (except as permitted under 1.1b) is not eligible for second-class rates.

3.0 MAILPIECE CONSTRUCTION

3.1 Bound/Unbound

Publications may be prepared in either a bound or unbound form, with or without wrappers unless required by 3.6. A bound publication is a publication whose pages are securely held together by two or more staples, spiral binding, glue, stitching, or other permanent fastening. All other publications are unbound, including folded multisheet and single-sheet publications and those whose pages are loose and collated or "nested," or whose pages are held together by a single staple.

3.2 Physical Size

Standards for size or weight may apply to publications claimed at certain rates. Requester publications must contain at least 24 pages per issue.

3.3 Without Wrapper

When the mailpiece does not have a mailing wrapper, all the components of an unbound publication must be combined with and inserted inside the publication. Only enclosures mailable at second-class rates under 1.4 may be included loose inside a bound unwrapped publication. An enclosure under 1.3 or 1.4 may be securely attached on the outside of an unwrapped publication along the bound edge if it does not exceed any dimension of the cover of the publication.

3.4 With Wrapper

Except as provided in 4.1, when the mailpiece is completely enclosed in a mailing wrapper, there are no restrictions on where the components may be located within that wrapper. When a sleeve or other partial wrapper is used, the components must be secured so that they do not fall out during handling. Bound publications carrying loose supplements or prepared in physically separate parts or sections either must be totally enclosed in an envelope, plastic wrapper (polybag) or paper wrapper, or they must be inserted within a sleeve so that the component parts do not become separated while in the mail.

3.5 Protective Cover

If the mailpiece is not completely enclosed in a mailing wrapper, any protective cover must cover both the front and back of the host publication

and extend to within at least ¾ inch of the edge opposite the fold or binding. If the host publication is bound, the protective cover must be permanently attached to the publication.

3.6 APO/FPO Copies

Any single copy of an unbound publication that includes any enclosures, supplements, or more than one part or section and that is mailed to an APO/FPO address must be completely enclosed in a mailing wrapper.

3.7 Sealing

Second-class mail must be prepared so that it can be easily examined. Mailing publications at second-class postage rates represents consent by the sender to USPS inspection of the contents whether loose or inserted in envelopes, wrappers, or other covers. Mailers who want to ensure that publications are not opened for postal inspection must pay First-Class rates and mark such mail accordingly.

4.0 PRINTED FEATURES

4.1 Publication Name; Notices

The publication name must be displayed prominently on the publication, and the name must be visible through or displayed prominently on any protective cover or mailing wrapper. The publication name, followed immediately by the USPS publication number, and the mailing address to which undeliverable copies or change-of-address notices are to be sent, may be shown in the upper left corner of the address side of a mailing wrapper, or directly on the outside of the host publication if it can be read when the mailing wrapper is in place. The publication number includes an alpha prefix and is to be within parentheses, e.g., THE NATIONAL WEEKLY (ISSN 9876–543X) or THE COMMUNITY (USPS 123–456).

4.2 Endorsements

Mailing wrappers that completely enclose the host publication must bear the words "Second-Class" in the upper right corner of the address area. If a clear plastic wrapper is used, those words may appear anywhere on the address side of the wrapper or the topmost item inside.

4.3 Advertising

Advertising (as defined in E211) may be printed on the pages of any component of a publication, subject to the corresponding standards. Regardless of location, an advertisement must be prepared as an integral part of the publication. Except for advertisements in supplements, and on printed matter included as part of a receipt or order for subscriptions (or requests), all advertisements in a bound publication must be permanently attached. Except as provided in C200.1.4d, all advertising must be included in the advertising portion of the issue measured under P200. Different advertising may occupy the same space in different editions of the same issue.

4.4 Marking of Paid Reading Matter (18 USC 1734)

If a valuable consideration is paid, accepted, or promised for the publication or any editorial or other reading matter in a second-class publication, that matter must be plainly marked "advertisement" by the publisher. When a single item of paid editorial or other reading matter occupies more than one page, it need only be marked "advertisement" on the first page. The word "advertisement" may be included in a statement that explains why the material is marked "advertisement." Such a statement must be prominent on the first page of the material and the word "advertisement" in the statement must be in bold or italicized print, or otherwise emphasized so that it can be plainly seen. Editors or publishers who print such matter without plainly marking it "advertisement" are subject to a fine of not more than $500.

4. Revise Domestic Mail Manual E211, Standards Applicable to All Second-Class Mail, to read as follows:

E211 Standards Applicable to All Second-Class Mail

* * * * *

3.0 PRINTED SHEETS

[Insert the following after the first sentence:]

Sheets may be die cut or deckle-edged and may be made of paper, cellophane, foil, or other similar materials.

* * * * *

7.0 ISSUES

* * * * *

7.3 Contents

Issues may include annual reports, directories, lists, and similar material prepared as supplements (see C200).

* * * * *

9.0 BACK NUMBERS AND REPRINTS

Second-class rates may be paid on mailings of back issues (if the publication's second-class entry is in effect); reprint copies of daily publications printed within 1 week of the issue date; and reprint copies of other than daily publications printed before the next issue is printed. Other mailings of reprint or back issues, including permanently bound reprint or back issues, are subject to the applicable First-, third-, or fourth-class rates.

* * * * *

11.0 ADVERTISING STANDARDS

* * * * *

11.2 Public Service

Public service announcements are announcements for which no valuable consideration is received by the publisher, which do not include any matter related to the business interests of the publisher, and which promote programs, activities or services of federal, state, or local governments or of nonprofit organizations, or matters generally regarded as in the public interest. Public service announcements are not treated as advertising.

* * * * *

5. Revise Domestic Mail Manual P070, Mixed Classes, to read as follows:

P070 Mixed Classes

* * * * *

2.0 ENCLOSURES IN SECOND-CLASS PUBLICATIONS

* * * * *

[Delete existing 2.4; renumber succeeding sections accordingly.]

* * * * *

2.8 Computing Permit Imprint Postage

[Renumber as 2.7 and insert the following after the first sentence:]

The enclosure is eligible for the rate for its class of mail that is most comparable to the presort, automation, and destination discounts that apply to the second-class host piece. For example, a third-class enclosure is eligible for the SCF entry discount if the publication is deposited at the destinating SCF. When more than one enclosure of the same class of mail is enclosed with a publication, they are treated as a single enclosure for computing postage.

* * * * *

6. In Domestic Mail Manual P200, Second-Class Mail, renumber existing 1.7 through 1.11 as 1.8 through 1.12, respectively; delete existing 2.3; renumber 2.4 and 2.5 as 2.3 and 2.4, respectively; add new 1.7 to read as follows:

P200 Second-Class Mail

1.0 BASIC INFORMATION

* * * * *

1.7 Measuring Advertising

The total advertising and nonadvertising portions may be determined by column inches, square inches, pages, or by another recognized unit of measure, if the same unit of measure is used for both. One full page of advertising must equal one full page of nonadvertising regardless of the amount of blank space between each advertisement or nonadvertising article on a page. If measured in column inches, nonadvertising inches are determined by subtracting the total measured advertising inches from the total column inches of the publication. A blank page, portion of a page, or blank border or margin is counted as advertising if consideration was received for the whole page, the blank portion, or the blank border or margin. The border of a page is otherwise considered neither advertising nor nonadvertising and is not measured, but it is included in the total weight of the publication for purposes of postage calculation. When measuring nonrectangular sheets, the measurement is based on the smallest rectangle that could contain the irregular sheet; exact measurement is not attempted. When two or more sheets or parts thereof are glued together, the surface area of each sheet (front and back) is included when measuring the advertising or nonadvertising portion.

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–17714 Filed 7–18–94; 9:21 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5013–8]

Redesignation of the Yavapai-Apache Reservation to a PSD Class I Area; State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The purpose of this action is to extend the period for public comment on the request by the Yavapai-Apache Tribal Council to redesignate the Yavapai-Apache Reservation ("the Reservation") in the State of Arizona to Class I under EPA's regulations for prevention of significant deterioration of air quality. The Class I designation will result in lowering the allowable increases in ambient concentrations of particulate matter, sulfur dioxide, and nitrogen dioxide on the Reservation.

DATES: Comments must be received on or before August 22, 1994.

ADDRESSES: Written comments should be addressed to: Jessica Gaylord, Air and Toxics Division (A–5–1), U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Supporting information used in developing the proposed rule and materials submitted to EPA relevant to the proposed action are available for public inspection and copying at the docket address listed above during normal business hours. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Jessica Gaylord, Air and Toxics Division (A–5–1), U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1256.

SUPPLEMENTARY INFORMATION: Part C of the Clean Air Act ("the Act") provides for the prevention of significant deterioration (PSD) of air quality. The intent of this part is to prevent deterioration of existing air quality, particularly in areas considered to be pristine. The Act provides for three basic classifications applicable to all lands of the United States. Associated with each classification are increments which represent the maximum allowable increase in ambient air pollutant concentrations above a baseline concentration. A Class I designation is the most protective of the three classifications, with the lowest amount of allowable increases in pollutant concentrations. Class II applies to areas in which pollutant increases accompanying moderate growth would be allowed. Class III applies to those areas in which considerably more air quality deterioration would be considered acceptable.

Section 164 of the Act and the federal regulations set forth at 40 CFR 52.21(g) contain the procedural requirements for redesignation of areas under the PSD program. The Act provides that lands within the exterior boundaries of reservations of federally recognized Indian tribes may be redesignated only upon request by the appropriate Indian Governing Body. Under section 164(b)(2) and 40 CFR 52.21(g)(5), EPA may disapprove a request for redesignation only if it finds, after notice and opportunity for hearing, that the redesignation request does not meet the procedural requirements of section 164 and 40 CFR 52.21(g).

On December 17, 1993, the Yavapai-Apache Tribal Council (herein referred to as "the Tribal Council") submitted to EPA a request to redesignate the Yavapai-Apache Reservation from Class II to Class I. EPA reviewed this request and determined that it met the procedural requirements of Section 164 of the Act and 40 CFR 52.21(g). On April 18, 1994, EPA published a notice of proposed rulemaking in the **Federal Register** which proposed to approve the request and solicited public comment regarding whether the Tribal Council had met the procedural requirements. 59 FR 18346. Please refer to this **Federal Register** notice for further information regarding this proposed rulemaking.

EPA held a public hearing on the request for redesignation on June 22, 1994. Following the public hearing, a request to extend the public comment period was made. By this notice, the public comment period is extended to August 22, 1994. The public is invited to comment on whether the Tribal Council has met all the procedural requirements of section 164 of the Act and 40 CFR 52.21(g). Comments should be submitted to the address listed in the **ADDRESSES** section of this document. Public comments received by August 22, 1994 will be considered in the final rulemaking action taken by EPA.

Administrative Review

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

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000. The proposed action affects only major stationary sources, as defined by 40 CFR 52.21, will not result in any additional requirements for small entities. Therefore, I certify that this action does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and

recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7642.

Dated: July 7, 1994.

John Wise,

Acting Regional Administrator.

[FR Doc. 94–17690 Filed 7–19–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–3000346; FRL–4868–7]

RIN 2070–AC18

Tetrachlorvinphos, Terbutryn, and Etridiazole; Removals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to remove tolerances for residues of tetrachlorvinphos (2-chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate), terbutryn (2-tert-butylamino-4-ethylamino-6-methylthio-*s*-triazine), and etridiazole (5-ethoxy-3-(trichloromethyl)-1,2,4-thiadiazole) in or on certain raw agricultural commodities (RAC's). EPA is initiating this action because there are no current registrations associated with these food uses. The applicable registrations for these pesticide uses have been cancelled for nonpayment of maintenance fees and/or by company request.

DATES: Written comments, identified by the document control number [OPP-300346], must be received on or before September 19, 1994.

ADDRESSES: By mail, submit comments to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to Rm. 1128, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the Virginia adddress given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Sherada D. Hobgood, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8352.

SUPPLEMENTARY INFORMATION: This document proposes the revocation of certain tolerances established under section 408 of the Federal, Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 346a) for residues of the insecticide tetrachlorvinphos, the herbicide terbutryn, and the fungicide etridiazole in or on certain RAC's. Since a tolerance is generally not necessary for a pesticide chemical which is not registered for a particular food use, EPA is initiating this action because all registered food uses associated with these tolerances have been cancelled.

I. Discussion of Chemicals

A. Tetrachlorvinphos

EPA proposes to revoke the tolerances established for residues of the insecticide 2-chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate (tetrachlorvinphos) as listed in 40 CFR 180.252 in or on th following RAC's: (1) 110 parts per million in or on and corn fodder and forage (including field corn, sweet corn, and popcorn); (2) 10 parts per million in or on apples, cherries, corn grain, fresh corn including sweet corn (kernels plus cob with husk removed), cranberries, and pears; (3) 5 parts per million in or on tomatoes; (4) 0.1 part per million in or on peaches.

Registered uses of the parent compound on these commodities were cancelled August 20, 1987.

Action levels to replace revoked tolerances are not necessary based on: (1) the small number of detectable residues that were found during a period of time the tetrachlorvinphos was registered for use; (2) the low levels in the samples that were indicated in the findings; (3) the long period of time that had elapsed since tetrachlorvinphos was last registered for use in the U.S. (over 6 years); and (4) the fact that FDA did not detect any tetrachlorvinphos residues in its monitoring programs in recent years.

B. Terbutryn

EPA proposes to revoke the tolerances established for negligible residues (N) of the herbicide terbutryn (2-tert-butylamino-4-ethylamino-6-methylthio-*s*-triazine) as listed in 40 CFR 180.265 in or on the following RAC's:

Commodity	Parts per million
Barley, fodder	0.1 (N)
Barley, grain	0.1 (N)
Barley, green	0.1 (N)
Barley, straw	0.1 (N)
Sorghum, grain	0.1 (N)
Wheat, fodder	0.1 (N)
Wheat, grain	0.1 (N)
Wheat, green	0.1 (N)
Wheat, straw	0.1 (N)

Action levels to replace revoked tolerances are not required because: (1) Uses of terbutryn on these crops were all cancelled on or prior to October 10, 1989; (2) the tolerances for terbutryn on these commodities all reflect non-detectable residues in or on the treated commodities indicating that residues are minuscule even in the treated crop; and (3) FDA did not detect any terbutryn residues in its monitoring programs in recent years. Therefore, detectable residues are not likely to be found in subsequent crops as a result of past uses of terbutryn.

C. Etridiazole

EPA proposes to amend 40 CFR 180.370 to revoke the tolerance established for residues of the fungicide 5-ethoxy-3-(trichloromethyl)-1,2,4-thiadiazole (etridiazole) and its monoacid metabolite 3-carboxy-5-ethoxy-1,2,4-thiadiazole as listed in 40 CFR 180.370 in or on the following RAC:

Commodity	Parts per million
Tomatoes	0.15

An action level to replace the revoked tolerance is not required because: (1) Use of etridiazole on the crop was cancelled in the mid-1980's; (2) the tolerance for etridiazole on the commodity reflects very low residues in or on the treated commodity, indicating that residues are low even in the treated crop; and (3) residues have degraded and dissipated from prior use. Therefore, detectable residues are not likely to be found in subsequent crops as a result of past uses of etridiazole.

II. Solicitation of Comments

Any person who has registered or submitted an application for registration of a pesticide chemical under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, that contains tetrachlorvinphos, terbutryn, and etridiazole may request, within 60 days after the publication of the

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. Further, EPA is soliciting comments from anyone adversely affected by revocation of these tolerances. EPA requests that anyone adversely affected by these revocations submit information pertaining to why and provide specific information: (1) Are there any existing stocks of the chemicals?; (2) What amount of existing stocks remains?; (3) When will the stocks be depleted?; (4) How long would the commodities treated with these chemicals be in the channels of trade?; (5) Are any of these three pesticide chemicals used in foreign countries?; (6) Would residues of any of these three pesticide chemicals be present in or on commodities grown in foreign countries and imported into the United States?

Comments must bear a notation indicating the document control number [OPP-300346]. All written comments filed in the Public Response to this document will be available for public inspection in the Public Response Section, at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Agency has conducted an anaylsis in order to satisfy requirements as specified by Executive Order 12866 and the Regulatory Flexibility Act. This analysis is available for public inspection in Rm. 1128 at the Virginia address given above.

III. Other Regulatory Requirements

A. Executive Order 12866

Executive Order 12866 requires the Agency initially to determine whether a proposed regulatory action being proposed or issued is a "significant" rule and therefore subject to the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget [OMB]). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

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

B. Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have an economic impact on small businesses, small organizations, or small governmental jurisdictions.

This regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide has been used in an unregistered or illegal manner.

Since all domestic registrations associated with these food uses of tetrachlorvinphos, terbutryn, and etridiazole have been cancelled, it is expected that no economic impact would occur at any level of business enterprise if these tolerances were revoked.

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

List of Subjects in 40 CFR Part 180

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

Dated: July 5, 1994

Daniel M. Barolo,

Director, 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 180.252 is revised to read as follows:

§ 180.252 2-Chloro-1-(2,4,5-trichlorphenyl)vinyl dimethyl phosphate; tolerances for residues.

Tolerances are established for residues of the insecticide 2-chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl phosphate in or on raw agricultural commodities as follows:

Commodity	Parts per million
Cattle, fat	1.5
Eggs	0.1
Goats, fat	0.5
Hogs, fat	1.5
Horses, fat	0.5
Milk, fat (reflecting negligible residues in whole milk)	0.5
Poultry, fat	0.75
Sheep, fat	0.5

§ 180.265 [Removed]

2. By removing § 180.265 *Terbutryn; tolerances for residues.*

§ 180.370 [Amended]

3. In § 180.370 *5-Ethoxy-3-(trichloromethyl)-1,2,4-thiadiazole; tolerances for residues* by amending the table therein by removing the entry for tomatoes.

[FR Doc. 94–17561 Filed 7–19–94; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–56, RM–8459]

Radio Broadcasting Services; Borger, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Zia Broadcasting Company, proposing the allotment of Channel 294A to Borger, Texas, as the community's second local FM service. Channel 294A can be allotted to Borger in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 294A at Borger are 35–39–24 and 101–23–36.

DATES: Comments must be filed on or before September 6, 1994, and reply comments on or before September 21, 1994.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Timothy C. Cutforth, P.E., Vir James P.C., Broadcast Engineering Consultants, 965 S. Irving Street, Denver, Colorado 80219 (Consultant for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–56, adopted June 7, 1994, and released July 15, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–17608 Filed 7–19–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 552

Air Brake Systems; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration, Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking, submitted by the California Highway Patrol, that requests the agency to amend the air pressure warning signal requirements in Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems.* After conducting its review, the agency has determined that the petition should not be granted because the situation described by the petition does not raise a significant safety problem. The agency further notes that establishing an upper limit to the operating range of the low pressure warning signal would not correct the problem of the signal's failure to warn a driver of low pressure in the trailer brake system. Since there is no reasonable possibility that the requested amendment would be issued at the conclusion of a rulemaking proceeding, the agency is denying the petition.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Tinto, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366–5229.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems,* establishes performance requirements for braking systems on vehicles equipped with air brakes. The purpose of the standard is to ensure safe braking performance under normal and emergency braking conditions.

The standard requires vehicles equipped with air brakes to have certain equipment. Section S5.1.5 requires that each vehicle equipped with an air brake system be equipped with a "signal, other than a pressure gage, that gives a continuous warning to a person in the normal driving position when the ignition is in the "on" or "run" position and the air pressure in the service reservoir system is below 60 p.s.i." The purpose of this requirement is to inform the driver of situations in which there may be low, potentially unsafe levels of air pressure in the service brake system.

On June 7, 1993, the California Highway Patrol (CHP), submitted a petition for rulemaking that requested the agency to amend the low air pressure warning signal requirements in S5.1.5 of Standard No. 121. The petitioner contended that:

> this subsection permits a warning signal that is activated at any pressure above 60 psi as long as it also produces the signal at pressures below 60 psi. This would permit a device that activates a warning in the normal operating range of the system, approximately 85–115 psi. This could result in a false signal where the driver would not be warned of a true low air pressure situation. Though unlikely, a warning device that was activated whenever the ignition key was in the "on" or "run" position would comply with the existing regulation, while fulfilling neither the intent of the regulation nor any useful purpose.

Based on its concern, CHP requested that the agency initiate rulemaking to specify an upper limit to the warning signal operating range, so that it would give a "true warning" of a low air pressure condition. CHP recommended that the upper cutoff be 75 p.s.i.

After reviewing the petition, NHTSA has decided not to establish an upper limit to the low pressure warning signal requirement. The agency disagrees with CHP's claims that establishing such an upper limit would improve safety. The agency notes that under the current requirement, some valves may activate at slightly higher air pressures than 60 p.s.i. since the valves are typically designed with a tolerance of about ± 6 p.s.i. Nevertheless, activation at 65 p.s.i. rather than 60 p.s.i. also indicates a relatively low pressure level about which the driver should be concerned. The agency believes that the modification requested by the petition is not warranted, since the agency is aware of no safety problems related to this requirement which has been in effect since 1971. The agency further notes that setting an upper limit might unreasonably restrict the potential for designing new air brake systems, since the valve manufacturers would be faced with the unnecessary task of redesigning the valves, even though such a modification would not provide any safety benefits.

Based on the above considerations, NHTSA has determined that CHP's petition should not be granted. In accordance with 49 CFR Part 552, the agency has completed its technical review of the petition and determined that there is no reasonable possibility that the requested amendment would be issued at the conclusion of a rulemaking proceeding. Accordingly, the agency is denying the petition.

Notwithstanding NHTSA's decision to deny the petition, the agency is reviewing the pressure setting requirements for the low pressure warning switch in light of possible problems with a recent amendment to Standard No. 121. On October 8, 1991, NHTSA issued a final rule that eliminated the requirements for a separate protected reservoir capable of releasing the parking brakes. (56 FR 50666) Among other things, that amendment added a requirement for 70 p.s.i. supply line pressure retention and established the air pressure at which automatic application of the parking brakes would commence during loss of air pressure.

In comments on a separate rulemaking on the parking brake requirements applicable to air-applied, mechanically held systems (58 FR 13437, March 11, 1993), the American Trucking Associations (ATA) and Allied Signal contended that the 70 p.s.i. requirement prevents tractor low air pressure warning systems from warning drivers of the loss of service air pressure and thus loss of service brakes on

trailers. Allied requested that the agency raise the governor cut-in pressure to 100 p.s.i., which it believed would enable manufacturers to provide low pressure warnings. It stated that the pressure switch is currently limited by the 85 p.s.i. minimum governor cut-in pressure requirement. In addition, ATA has informed the agency that it is conducting tests to determine whether it should petition the agency to raise the cut-in requirements from the present 85 p.s.i. minimum and the low pressure warning limits from 60 p.s.i. to 75 p.s.i. or 80 p.s.i. Based on these test results, NHTSA may consider initiating rulemaking to raise the lower limit for the low pressure warning signal.

Authority: 49 U.S.C. 30103 and 30162; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 14, 1994.

Stanley R. Scheiner,

Acting Associate Administrator for Rulemaking.

[FR Doc. 94–17589 Filed 7–19–94; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 59, No. 138
Wednesday, July 20, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Trails End Integrated Project; Allegheny National Forest, Pennsylvania

AGENCY: Forest Service, USDA.

ACTION: Cancellation of notice of intent to prepare an environmental impact statement.

SUMMARY: The Allegheny National Forest is cancelling its published notice of intent to prepare an environmental impact statement for the Trails End Integrated Project on the Ridgway Ranger District. (Refer to 59 FR 9276, March 1, 1994.)

Dated: June 24, 1994.

Heather Harvey,

Acting Forest Supervisor.

[FR Doc. 94–17578 Filed 7–18–94; 8:45 am]

BILLING CODE 3410–11–M

Forest Plan Amendment, Ouachita National Forest, Scott and Polk Counties, Arkansas; Renewal of the Shortleaf Pine/Bluestem Grass Ecosystem and Recovery of the Red-cockaded Woodpecker

ACTION: Notice of intent to prepare an environmental impact statement.

Pursuant to 36 CFR 219.10(f), the Forest Supervisor for the Ouachita National forest gives notice of the agency's intent to prepare an environmental impact statement (EIS) for the decision to amend the Land and Resource Management Plan for the Ouachita National Forest. This notice includes a summary of the proposed changes to the Forest Plan, an explanation of the need for these changes, identifies preliminary issues, and a brief description of potential alternatives to these changes. This notice also provides estimated dates for filing the draft and final EIS; information about future public involvement; the name and address of the responsible official; and the name of the person who can provide additional information.

DECISION TO BE MADE: The Forest Service will decide whether or not to amend the existing Forest Plan. Specifically, the Forest Service will decide whether or not to amend the Forest Plan to create a new management area (Management Area 22) that will encompass 155,010 acres of National Forest. Whether or not this will be a significant amendment to the Forest Plan will be part of the analysis and decision. The new management area will provide for the renewal of the Shortleaf Pine/Bluestem Grass ecosystem and implement the Regional EIS for *Management of the Red-cockaded Woodpecker and its habit on National Forest in the South.*

No irreversible or irretrievable commitment of resources (site specific actions) will be made as a result of this decision. Projects to implement the Amended Forest Plan will involve site specific environmental analysis and appropriate documentation.

DATES: The Agency expects to file the draft EIS (DEIS) with the Environmental Protection Agency and make it available for public comment in August, 1994.

The Agency expects to file the final EIS in November, 1994.

MEETINGS AND PUBLIC INVOLVEMENT: The Forest Service invites comments and suggestions from Federal, State, and local agencies, individuals and organizations about issues concerning the effects of this proposal. The Ouachita National Forest has scheduled three public meetings to discuss the proposal. These meetings will be held as follows:

Poteau Ranger District—Waldron, Arkansas. July 11, 1994.
Mena Ranger District—Mena, Arkansas. July 12, 1994.
Cold Springs Ranger District—Booneville, Arkansas. July 14, 1994.

The purpose of these meetings is to discuss the proposed changes to the Forest Plan, to identify issues associated with those changes, and to develop alternatives which respond to the proposed changes. Written comments are encouraged. Additional meetings with individuals or groups may be arranged and can include tours of the Forest area contained in the proposal. Comments will be most useful if received before July 30, 1994.

Refer to the "For Further Information Contact" section of this notice for the contact individual. There is an extensive mailing list that has been developed for this proposal. Those on this list will be contacted to solicit input. Many interested citizens helped with the proposal and will again be contacted during this process. Finally, the Forest has continuing contact with federal, state, and local agencies and congressional offices. These agencies and offices will be involved with this planning effort.

FOR FURTHER INFORMATION CONTACT: George Bukenhofer, Project Coordinator, Ouachita National Forest, Poteau Ranger District, P.O. Box 2255, Waldron, AR 72958.

RESPONSIBLE OFFICIAL: The Forest Supervisor for the Quachita National Forest, located at P.O. Box 1270, Hot Springs, AR 71902, is the Responsible Official and the deciding official for this action. If this becomes a significant amendment to the Forest Plan, the Regional Forester in Atlanta, Georgia will be the Responsible Official and the deciding official for this action.

PROPOSED ACTION: The goal of this proposal is to renew the historic shortleaf pine/bluestem grass ecosystem on a portion of the Ouachita National Forest. Renewal includes recovery of the Red-cockaded Woodpecker (RCW). This EIS will document the analysis of alternatives to the proposed action and disclose the effects of designating a Shortleaf Pine/Bluestem Grass Ecosystem Management Area and implementing the Regional EIS for *Management of the RCW and its Habitat on National Forests in the South.*

Recovery of the RCW includes changing the current Forest Plan goal of 50 breeding groups to a minimum of 250 breeding groups on the Forest. Designation of Management Area 22 affects the management direction for 155,010 acres of National Forest. There will be no change in the amount of land classified as suitable for timber harvest.

Ecosystem management of the proposed area would include a broad variety of forest conditions and management practices. Resource outputs such as timber production would be a product of managing to restore the shortleaf pine/bluestem grass

ecosystem. To feature older stands, regeneration cycles will be lengthened to a minimum of 120 years. Regeneration areas would retain indefinitely a portion of the overstory trees.

Management Area 22 would occur in portions of the Ouachita National Forest in Scott and Polk counties, Arkansas. Included within this management area would be the proposed Habitat Management Area (HMA) for the RCW, containing 84,312 acres of which 66,606 acres is suitable for timber management. A new desired future condition, management area goals and standards and guidelines would be formulated for this new Management Area.

Preliminary Issues

Through our informational meetings and meetings with other citizens, the following issues relating to the effects of the proposal have been identified. These are *preliminary* issues. Additional scoping and public participation will be used to refine and add to this list to develop a complete understanding of the significant issues related to this proposal.

1. People are concerned that this proposal will result in a reduction in the local supply of timber products from the National Forest. This could have a direct and indirect effect on local communities.

2. People are concerned that hardwood trees would be eliminated in the proposed Management Area. Hardwood tree retention and forest diversity in pine-dominated areas of the Forest has been an issue that has been addressed many times in the past. This proposal stresses that current hardwood tree retention guidelines will not be changed.

3. There are concerns that smoke from an increased prescribed burning program could lower air quality and visibility.

4. There is a concern that this proposal will increase costs to taxpayers. Costs, both direct and indirect, would have to be estimated. Timber receipts from projects in the proposed area will help pay expenses through the Knutson-Vandenberg Act of 1930.

6. There is a concern that if the population of Red-cockaded Woodpeckers (RCW) on the Forest increases, the RCW's will move to adjoining private lands. Since they are a federally listed endangered species, this could lead to limitations on the management of that private land under Section 9 of the Endangered Species Act.

7. There is a concern that portions of the Forest might be closed to uses such as hunting, fishing, berry picking or firewood gathering in the future.

8. There is a concern that evenaged timber management techniques will be the only harvest techniques used in this area.

Preliminary Alternatives: The Forest Service will evaluate a wide range of alternatives to the proposal in response to the issues identified in the scoping process. The agency expects to consider at least the following alternatives, which respond to preliminary issues identified to date. As new issues are identified through public participation, new alternatives may be created, and existing alternatives modified. Some of these preliminary alternatives may not be analyzed in detail.

Alternative A (No Action) This alternative would not change the management area allocations, activities or desired future condition of the existing Forest Plan. The rotation age for shortleaf pine would remain at 70 years. The current goal of 50 groups of RCW would remain. There would be no change in fire control or prescribed fire activities. Revenues and expenditures would remain at or near current levels, as would the supply of timber products. Hardwood tree retention rates would not change.

Alternative B. This alternative would respond to the issues related to the supply of timber products from the project area by not including the extended portion of the area. The new management area would be limited to the HMA portion of the proposal, 84,312 acres. Ecosystem management practices such as increased use of prescribed fire, increasing rotation age to a minimum of 120 years, retention and creation of snag trees, and all the requirements specified in the Regional EIS for *Management of the Red-cockaded Woodpecker and its habitat on National Forests in the South* would be featured in this area.

Alternative C. This alternative would respond to the issue of cost to the taxpayer by doing most of the prescribed burning in the growing season and not doing mechanical (chainsaw) midstory reduction. The acreages in this alternative would be the same as the proposed action. Ecosystem management practices would be the same as the proposed action and would implement the direction of the Regional EIS.

Alternative D. This alternative would respond to the issue of dominant forest harvest technique by harvesting 75% of the area that is suitable for timber harvest using an unevenaged management system. Areas needed for RCW nesting, replacement, and recruitment stands would be the only areas using the evenaged management system. These same stands would be the only ones to receive midstory treatments or prescribed burning. The rotation age of the evenaged stands would be 120 years.

Public Comments on the Draft EIS: After the DEIS has been published, the Forest Service will again be actively seeking information, comments, and assistance from Federal, State and local agencies and from individuals and organizations who may be interested in or affected by the proposed action. It is now important that those interested in this proposed action participate at that time. The DEIS should be available for public review in August 1994. After a minimum comment period of 45 days, the Final EIS and Forest Plan Amendment should be completed in September 1994. If in the analysis it is determined that this will be a significant amendment to the Forest Plan, the comment period will be 90 days.

The comment period for the DEIS will commence on the day the Environmental Protection Agency publishes the "Notice of Availability" in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contention. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that are not raised during the draft environmental impact stage but rather after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these rulings, it is very important that those interested in this proposed action participate by the close of the comment period. This will assure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering additional issues and concerns about the proposed action, comments about the draft environmental statement should be as

specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Act at 40 CFR 1503.3 in addressing these points.

Dated: July 1, 1994.

John M. Curran,

Forest Supervisor.

[FR Doc. 94–17635 Filed 7–19–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: Trade Fair Certification Application.

Agency Form Number: ITA 4100P.

OMB Approval Number: 0625–0130.

Type of Request: Revision of a currently approved collection.

Burden: 700 hours.

Number of Respondents: 70.

Avg Hours Per Response: 10.

Needs and Uses: The Department of Commerce's Trade Fair Certification Program provides endorsement and support for private–sector recruited and organized foreign trade shows. Certifying a trade show means Commerce endorses a qualified trade show as a proven opportunity to promote exports. Certification also provides endorsement of the U.S. show organizer or agent as a reliable firm capable of effectively organizing and managing a U.S. pavilion or show. The information provided is used by the Department to assess the credentials of the show and applicant.

Affected Public: Businesses or other for–profit and non–profit entities.

Frequency: On occasion.

Respondent's Obligation: Required to obtain a benefit.

OMB Desk Officer: Donald Arbuckle, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: July 14, 1994.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–17605 Filed 7–19–94; 8:45 am]

BILLING CODE 3510–CW–F

Change in Time for Public Hearing on the International Aspects of the National Information Infrastructure

AGENCY: U.S. Department of Commerce.

ACTION: Notice of change in time for public hearing.

SUMMARY: This notice is to inform the public of a time change to the second day of the international telecommunications hearing first announced June 21, 1994 (59 FR 31979–80). The first day of the hearing on July 27 will continue as scheduled, beginning at 9:00 a.m. However, the hearing will resume on July 28 at 1:00 p.m. Both days of the hearing will continue to be held at the Georgetown University Conference Center, Grand Ballroom.

DATES: July 27, 1994 9 a.m. to 4:30 p.m.; July 28, 1994, 1:00 p.m. to 4:30 p.m.

ADDRESSES: (1) The hearing will be held at Georgetown University Conference Center (Thomas and Dorothy Leavey Center), Grand Ballroom, 3800 Reservoir Road, N.W., Washington D.C.

(2) Those wishing to attend the hearing should contact Nicole Brown or Angie Mitchell by telephone at (202) 482–4772.

FOR FURTHER INFORMATION CONTACT: Randall Cook by telephone at (202) 482–0490, facsimile at (202) 501–4695, electronic mail via the Internet at rcook@doc.gov or by mail at the address listed above.

Dated: July 18, 1994.

Carol C. Darr,

Deputy General Counsel.

[FR Doc. 94–17789 Filed 7–19–94; 8:45 am]

BILLING CODE 3510–60–P

International Trade Administration

[A–357–809; A–351–826; A–428–820; and A–475–814]

Initiation of Antidumping Duty Investigations: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Argentina, Brazil, Germany and Italy

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: July 20, 1994.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0371.

INITIATION OF INVESTIGATIONS:

The Petition

On June 23, 1994, we received four petitions filed in proper form by Gulf States Tube Division of Quanex Corporation (petitioner). In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 353.12 (1994), the petitioner alleges that small diameter circular seamless carbon and alloy steel standard, line and pressure pipe (seamless pipe) from Argentina, Brazil, Germany and Italy is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioner has stated that it has standing to file the petitions because it is an interested party, as defined under section 771(9)(C) of the Act, and because the petitions were filed on behalf of the U.S. industry producing the product subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, these petitions, it should file a written notification with the Assistant Secretary for Import Administration.

Scope of Investigations

For purposes of these investigations, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end,

bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications.

The seamless pipes subject to these investigations are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

The following information further defines the scope of these investigations, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1000 degrees fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of these investigations includes all multiple-stenciled seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, whether or not also certified to a non-covered specification. Standard, line and pressure applications are defining characteristics of the scope of these investigations. Therefore, seamless pipes meeting the physical description above, but not produced to the A–106, A–53, or API 5L standards shall be covered if used in an A–106, A–335, A–53 or API 5L application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of these investigations.

Specifically excluded from these investigations are boiler tubing, mechanical tubing and oil country tubular goods except when used in a standard, line or pressure pipe application. Also excluded from these investigations are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

Request for Comments From Interested Parties

The scope contained in the petitions, which has been slightly clarified in the above "Scope of Investigations" section, contains the clause that products used in standard, line or pressure pipe applications be included in the scope, regardless of whether they meet A–106, A–335, A–53 or API 5L standards. Implementing this clause would require some type of end-use certification. Given the burden on Customs and the difficulty involved in administering end-use certifications, the Department generally avoids end-use as a scope criterion. *See Final Determination of Sales at Less Than Fair Value: Certain Alloy and Carbon Hot-Rolled Bars, Rods, and Semifinished Products of Special Bar Quality Engineered Steel from Brazil,* 58 FR 31496 (June 3, 1993). However, because petitioner has alleged that circumvention may occur if end-use is not part of any order resulting from these investigations, we are requesting comments regarding end-use as a criterion for the scope of these investigations. Petitioner has based its allegation on circumstances that occurred in the investigations of *Preliminary Affirmative Determination of Scope Inquiry on Antidumping Duty Orders on Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea, and Mexico,* 59 FR 1929 (January 13, 1994). Petitioner has identified specific possible substitution products for the scope merchandise. Petitioner has also indicated that, while it is not aware at this time of substitution occurring, it may occur in the future should antidumping duties be assessed on seamless standard, line and pressure pipe. Therefore, we are including end-use in the scope for purposes of initiation; however, we intend to consider its appropriateness further and we invite comments from interested parties regarding the scope information presented above under the "Scope of Investigations" section of this notice. Specifically, we will examine comments that address "end-use" as a scope criterion. Interested parties are invited to comment on the following: (1) Whether or not end-use is an appropriate criterion for the merchandise described in the "Scope of Investigations" section of this notice; (2) how the Department would be informed when substitution is occurring, *i.e.*, a trigger mechanism; (3) at what point the

Department should implement suspension of liquidation and use of end-use certificates for products meeting the physical parameters described in the scope other than those stenciled A–106, A–335, A–53 and/or API 5L; (4) what specific characteristics or factors the Department should evaluate regarding end-use as a scope criterion; (5) what information should be provided on an end-use certificate; (6) precise details as to how the Department and Customs should administer any antidumping duty orders that result from these investigations given end-use as a scope criterion; and (7) the universe of products that could possibly be substituted for the subject merchandise.

Finally, we invite comments from parties on whether the products within the scope of these investigations constitute more than one class or kind of merchandise. Parties should include an analysis using the following factors: (1) The physical characteristics of the merchandise; (2) the expectations of the ultimate purchaser; (3) the channels of trade; (4) the ultimate use of the product; and (5) the cost.

Parties interested in commenting on the items mentioned above should submit their comments no later than close of business October 21, 1994. Rebuttal comments will be accepted no later than close of business October 31, 1994.

United States Price and Foreign Market Value

For purposes of these initiations, no adjustments were made to petitioner's calculations. If it becomes necessary at a later date to consider these petitions as a source of best information available (BIA), we may review all of the bases for the petitioner's estimated dumping margins in determining BIA.

Argentina

For Argentina, petitioner based United States price (USP) on U.S. price quotes to an end-user. Petitioner made adjustments for transportation and insurance charges, port and handling charges, and U.S. duties paid. Petitioner adjusted USP to account for the tax levied on seamless pipe in the home market. Petitioner also calculated the amount of the tax adjustment that was due solely to the inclusion of price deductions in the original tax base.

Petitioner based foreign market value (FMV) on home market prices to end-users. Petitioner made adjustments for distributor mark-up, transportation, home market taxes, and a tax offset to account for the amount of tax that was due solely to the inclusion of price deductions in the original tax base.

The range of dumping margins of seamless pipe from Argentina based on a comparison of USP to FMV alleged by petitioner is 66.57 percent to 108.13 percent.

Brazil

For Brazil, petitioner based USP on U.S. price quotes to a distributor. Petitioner made adjustments for freight and insurance, port and handling charges and U.S. duties paid. Petitioner adjusted USP to account for the tax levied on seamless pipe in the home market. Petitioner also calculated the amount of the tax adjustment that was due solely to the inclusion of price deductions in the original tax base. Finally, petitioner adjusted USP to account for the difference in level of trade between the home market and U.S. market.

Petitioner based FMV on home market price quotes to an end-user. Petitioner adjusted the prices for home market taxes not included in the prices. Petitioner made a tax offset for the amount of tax that was due solely to the inclusion of price deductions in the original tax base.

The range of dumping margins of seamless pipe from Brazil based on a comparison of USP to FMV alleged by petitioner is 79.83 percent to 130.08 percent.

Germany

For Germany, petitioner based USP on U.S. price quotes to an end-user. Petitioner made adjustments for distributor mark-up, freight and insurance, port and handling charges and U.S. duties paid.

Petitioner was unable to obtain home market prices. Moreover, petitioner was unable to develop a meaningful constructed value as petitioner claims it operates a substantially different production process than the German manufacturer of the subject merchandise. Therefore, petitioner based FMV on third country prices in Britain, which was the only information reasonably available to it. Petitioner obtained ex-warehouse and delivered prices from three British distributors of subject merchandise from Germany. Petitioner made adjustments for the distributor mark-up, delivery charges, where appropriate, and transportation charges.

The range of dumping margins of seamless pipe from Germany based on a comparison of USP to FMV alleged by petitioner is 11.67 percent to 57.72 percent.

Italy

For Italy, petitioner based USP on U.S. price quotes to an end-user. Petitioner made adjustments for distributor mark-up, transportation and insurance charges, port and handling charges, and U.S. duties paid. Petitioner adjusted the prices for home market taxes. Petitioner made a tax offset for the amount of tax that was due solely to the inclusion of price deductions in the original tax base.

Petitioner based FMV on home market price quotes to an end-user. Petitioner made adjustments for discounts on cash sales, distributor mark-up and freight charges. Petitioner adjusted the prices for home market taxes and made a tax offset for the amount of tax that was due solely to the inclusion of price deductions in the original tax base.

The range of dumping margins of seamless pipe from Italy based on a comparison of USP to FMV alleged by petitioner is 4.57 percent to 11.26 percent.

Initiation of Investigations

We have examined the petitions on seamless pipe from Argentina, Brazil, Germany and Italy, and have found that these petitions meet the requirements of section 732(b) of the Act and 19 C.F.R. 353.12. Therefore, we are initiating antidumping duty investigations to determine whether imports of seamless pipe from Argentina, Brazil, Germany and Italy are being, or are likely to be, sold in the United States at less than fair value.

Preliminary Determination by the International Trade Commission

The International Trade Commission (ITC) will determine by August 8, 1994, whether there is a reasonable indication that imports of seamless pipe from Argentina, Brazil, Germany and Italy are materially injuring, or threaten material injury to, a U.S. industry. A negative ITC determination will result in the investigations being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: July 13, 1994.

Barbara R. Stafford,

Deputy Assistant Secretary for Investigations.

[FR Doc. 94–17680 Filed 7–19–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–428–812]

Certain Lead and Bismuth Carbon Steel Products From Germany Termination of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Termination of Countervailing Duty Administrative Review (09/17/92–12/31–93).

SUMMARY: The Department of Commerce (the Department) has terminated the countervailing duty administrative review of the order on certain lead and bismuth carbon steel products from Germany initiated on April 15, 1994 (59 FR 18100).

EFFECTIVE DATE: July 20, 1994.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Rick Herring, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: On March 4, 1994, the Department published in the **Federal Register** (59 FR 10368) a notice of "Opportunity to Request Administrative Review" on the countervailing duty order on certain lead and bismuth carbon steel products from Germany (58 FR 15325; March 22, 1993) for the period September 17, 1992, through December 31, 1993. On March 31, 1994, respondent Saarstahl AG, a producer of the subject merchandise, requested that the Department conduct a review of the subject countervailing duty order. No other interested party requested a review.

On April 15, 1994, the Department published a notice of initiation of a review of the order (59 FR 18100). On March 20, 1994, Saarstahl AG withdrew its request for an administrative review. Because the request for withdrawal was timely pursuant to 19 CFR 355.22(a)(3), the Department is terminating this review.

This notice is published in accordance with 19 CFR 355.22(a)(3).

Dated: July 13, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance

[FR Doc. 94–17679 Filed 7–19–94; 8:45 am]

BILLING CODE 3510–DS–M

[C–475–815]

Notice of Initiation of Countervailing Duty Investigation: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 20, 1994.

FOR FURTHER INFORMATION CONTACT: Vincent Kane, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2815.

Initiation

The Petition

On June 23, 1994, Gulf States Tubes, a division of Quanex Corporation, (hereinafter "petitioner") filed with the Department of Commerce ("the Department") a countervailing duty petition on behalf of the United States industry producing small diameter circular seamless carbon and alloy steel standard, line and pressure pipe (hereinafter "seamless pipe"). In accordance with section 701 of the Tariff Act of 1930, as amended ("the Act"), petitioner alleges that manufacturers, producers, or exporters of the subject merchandise in Italy receive countervailable subsidies.

Injury Test

Because Italy is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation. Accordingly, the U.S. International Trade Commission ("ITC") must determine whether imports of the subject merchandise from Italy materially injure, or threaten material injury to, a U.S. industry.

Standing

Petitioner has stated that it has standing to file the petition because it is an interested party as defined in sections 771(9)(C) and 771(9)(D) of the Act and that it has filed the petition on behalf of the U.S. industry producing the like product. If any interested party, as described in sections 771(9)(C), (D), (E), or (F), wishes to register support for, or opposition to, this petition, such party should file written notification with the Assistant Secretary for Import Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

Scope of the Investigation

For purposes of this investigation, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications.

The seamless pipes subject to this investigation are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States ("HTSUS").

The following information further defines the scope of this investigation, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials ("ASTM") standard A–106 may be used in temperatures of up to 1000 degrees fahrenheit, at various American Society of Mechanical Engineers ("ASME") code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not

exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this investigation includes all multiple-stenciled seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, whether or not also certified to a non-covered specification. Standard, line and pressure applications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the A–106, A–53, or API 5L standards shall be covered if used in an A–106, A–335, A–53, or API 5L application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from this investigation are boiler tubing, mechanical tubing, and oil country tubular goods except when used in a standard, line or pressure pipe application. Also excluded from this investigation are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Request for Comments From Interested Parties

The scope contained in this investigation, which has been slightly clarified in the above "Scope of the Investigation" section, contains the clause that products used in standard, line or pressure pipe applications be included in the scope, regardless of whether they meet A–106, A–335, A–53 or API 5L standards. Implementing this clause would require some type of end-use certification. Given the burden on Customs and the difficulty involved in administering end-use certifications, the Department generally avoids end-use as a scope criterion. *See Final Determination of Sales at Less Than Fair Value: Certain Alloy and Carbon Hot-Rolled Bars, Rods, and Semifinished Products of Special Bar Quality Engineered Steel from Brazil*, 58 FR 31496 (June 3, 1993). However, because petitioner has alleged that circumvention may occur if end-use is not part of any order resulting from this investigation, we are requesting comments regarding end-use as a criterion for the scope of this investigation. Petitioner has based its allegation on circumstances that occurred in the investigations of *Preliminary Affirmative Determination of Scope Inquiry on Antidumping Duty Orders on Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea, and Mexico*, 59 FR 1929 (January 13, 1994). Petitioner has identified specific possible substitution products for the scope merchandise. Petitioner has also indicated that, while it is not aware at this time of substitution occurring, it may occur in the future should countervailing duties be assessed on seamless standard, line and pressure pipe. Therefore, we are including end-use in the scope for purposes of initiation; however, we intend to consider its appropriateness further and we invite comments from interested parties regarding the scope information presented above under the "Scope of the Investigation" section of this notice. Specifically, we will examine comments that address "end-use" as a scope criterion. Interested parties are invited to comment on the following: (1) Whether or not end-use is an appropriate criterion for the merchandise described in the "Scope of the Investigation" section of this notice; (2) how the Department would be informed when substitution is occurring, i.e., a trigger mechanism; (3) at what point the Department should implement suspension of liquidation and use of end-use certificates for products meeting the physical parameters described in the scope other than those stenciled A–106, A–335, A–53 and/or API 5L; (4) what specific characteristics or factors the Department should evaluate regarding end-use as a scope criterion; (5) what information should be provided on an end-use certificate; (6) precise details as to how the Department and Customs should administer any countervailing duty orders that result from this investigation given end-use as a scope criterion; and (7) the universe of products that could possibly be substituted for the subject merchandise.

Finally, we invite comments from parties on whether the products within the scope of this investigation constitute more than one class or kind of merchandise. Parties should include an analysis using the following factors: (1) The physical characteristics of the merchandise; (2) the expectations of the ultimate purchaser; (3) the channels of trade; (4) the ultimate use of the product; and (5) the cost.

Parties interested in commenting on the items mentioned above should submit their comments no later than close of business October 21, 1994. Rebuttal comments will be accepted no later than close of business October 31, 1994.

Allegation of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to petitioner supporting the allegations.

Initiation of a Countervailing Duty Investigation

The Department has examined the petition on seamless pipe from Italy and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702 of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers,

producers, or exporters of seamless pipe from Italy receive subsidies.

We are including in our investigation the following programs alleged in the petition to have provided subsidies to producers of the subject merchandise in Italy:

1. *1988/89 Equity Infusion.*
2. *Subsidized Loans under Law 675/77.*
3. *Grants under Law 193/84.*
4. *Retraining Grants.*
5. *Preferential Export Financing under Law 227/77.*
6. *Exchange Rate Guarantee Program under Law 796/76.*
7. *European Coal and Steel Community ("ECSC") Loans and Interest Rebates.*

We are not including the following programs alleged to be benefitting producers of the subject merchandise in Italy:

1. "Indirect" Equity Infusion

Petitioner has named Dalmine S.p.A. ("Dalmine") as the producer in Italy of the subject merchandise. Until 1989, Dalmine owned 51 percent of a subsidiary, Tubificio Dalmine Italsider S.p.A. ("Tubificio"). The remaining 49 percent was owned by Dalmine's parent company ILVA S.p.A. ("ILVA"), which is a government-owned steel producer. In 1989, Dalmine sold its shares in Tubificio to ILVA. Petitioner alleges that in return, Dalmine received a cash payment from ILVA which should be treated as an "indirect" equity infusion. The reasons cited by petitioner are that (1) Tubificio was essentially a worthless company because it made losses in the three years immediately prior to the sale, and (2) the cash paid by ILVA served as an indirect pass-through of illegal subsidies received by ILVA.

In previous cases involving the Italian steel industry, we have treated capital infusions into unequityworthy companies by government-owned holding companies such as Finsider S.p.A. ("Finsider") and the Istituto per la Ricostruzione Industriale ("IRI") as countervailable equity infusions. However, in those cases, the recipient companies were offering their own shares in exchange for cash. (*See, e.g., Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy,* ("*Electrical Steel*"), 59 FR 18357 (April 18, 1994).)

In the instant case, however, Dalmine sold shares in its subsidiary, Tubificio, to ILVA, Dalmine's parent and the other owner of Tubificio. ILVA's holding in Dalmine did not increase (absolutely or relatively) as a result of this transaction. Therefore, we do not view this as a direct or indirect equity infusion into Dalmine. Moreover, ILVA is not a holding company like IRI or Finsider, but an operating company. While the Department found in *Electrical Steel* and *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy,* ("*Certain Steel from Italy*"), 58 FR 37327 (July 9, 1993), that ILVA benefitted from subsidies, those subsidies were allocated to ILVA S.p.A.'s operations and not to its subsidiaries. Beyond its simple claim that the cash paid by ILVA served as an indirect pass-through of illegal subsidies received by ILVA, petitioner has provided no basis for believing that ILVA was channelling government funds to Dalmine.

On this basis, we are not including the "indirect" equity infusion in the investigation.

2. Secured and Unsecured Loans From Italian Banks

Petitioner maintains that Dalmine was uncreditworthy from 1978 through 1992. According to petitioner, all secured and unsecured loans obtained by Dalmine from Italian banks during these years are, therefore, countervailable. Petitioner states that, while it cannot outline the terms of the financing provided, the loans are countervailable because they were provided at interest rates lower than the rates that should have been charged to an uncreditworthy company.

Petitioner has not specified under which laws or programs the secured and unsecured loans are being provided, nor has petitioner provided information as to how this funding is specific to the steel industry (*see* the petition requirements in § 355.12(b)(7) of the Department's regulations). On this basis, we are not including the secured and unsecured loans in our investigation.

3. Debt Forgiveness in Connection With the 1981 and 1988 Restructuring Plans

Petitioner claims that in *Certain Steel from Italy,* the Department found that Finsider (the government-owned holding company for the steel industry until 1989) benefitted from government assumption of debt in connection with the 1981 and 1988 restructurings of the state-owned steel industry. Because Dalmine was a subsidiary of Finsider in those years, petitioner alleges that Dalmine benefitted from the debt forgiveness provided to Finsider in connection with these restructurings.

Regarding the 1981 debt forgiveness, the Department established in *Certain Steel from Italy* that Finsider assumed the debts of its subsidiary Italsider which we treated as a countervailable subsidy to Italsider. In the present case, however, petitioner has not provided any evidence that Dalmine benefitted from this debt forgiveness or that Finsider forgave Dalmine's debts.

With respect to the 1988 debt forgiveness, we found in *Certain Steel from Italy* that a portion of Finsider's liabilities was forgiven in connection with another restructuring of the state-owned steel industry undertaken from 1988–1990. We treated this forgiveness as a countervailable subsidy to ILVA, which was the respondent company in that investigation. However, in *Electrical Steel,* we focused our investigation on subsidies provided directly to the producer of the subject merchandise, rather than subsidies received by its parent company. Therefore, we did not treat the debt forgiveness provided to Finsider as a countervailable benefit in *Electrical Steel.*

In this case, petitioner has not shown that any debt forgiveness was provided directly to Dalmine or that a portion of the debt forgiven to Finsider in 1988 can be attributed to Dalmine. On this basis, we are not including the 1981 or 1988 instances of debt forgiveness provided to Finsider in our investigation.

4. European Investment Bank ("EIB") Loans

Petitioner claims that Dalmine received loans from the EIB in the early 1980s. While petitioner has not alleged that the EIB loan program itself represents a countervailable subsidy, petitioner contends that Dalmine received EIB loans at interest rates below the rates that should have been applied to an uncreditworthy company.

The Department has previously found EIB loans to be not countervailable (*see, e.g., Certain Steel Products from Belgium,* 58 FR 37273 at 37285 (July 9, 1993)). Because petitioner has not provided any new information that would cause us to change our earlier determination, we are not including the EIB loans in our investigation.

5. European Regional Development Fund ("ERDF") Subsidies

Petitioner claims that some loans obtained by Dalmine from the EIB and ECSC may have been subsidized by the ERDF, but has not presented any evidence in support of this allegation.

At verification of the responses submitted by the European Community ("EC") in *Certain Steel from Italy,* we found that ERDF grants are provided to regions whose development is lagging behind and to regions seriously affected by industrial decline. In addition, we found that rural regions with certain development problems are eligible for

ERDF aid. In the instant case, however, petitioner has not demonstrated that Dalmine has production facilities in the regions that are eligible for ERDF assistance. Moreover, there is no evidence in the petition or in previous investigations that ERDF grants are used to subsidize ECSC or EIB loans. For these reasons, we are not including the ERDF grants in our investigation.

6. Early Retirement Under Law 193/84

Petitioner alleges that Dalmine has used the early retirement provisions under Law 193/84 and that this program provided a countervailable subsidy to Dalmine. Petitioner requests that the Department treats benefits under Law 193/84 as non-recurring grants.

Dalmine's Annual Reports show that the company used early retirement pursuant to Law 193/84 in 1984 through 1987. In *Certain Steel from Italy*, the Department found early retirement, including the program provided under Law 193/84, to be countervailable. Because early retirement is a program we typically consider to be recurring (*see* the *General Issues Appendix* to *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217 at 37226 (July 9, 1993), we countervailed the program as a recurring grant in *Certain Steel from Italy*.

At verification in *Electrical Steel*, Italian government officials explained that there were two laws providing for early retirement in 1992: Law 223/91 and Law 406/92. We found early retirement under Law 223/91 to be not countervailable in our final determination. We did not make a determination with respect to any other early retirement laws, including Law 193/84, because these laws were not used by the *Electrical Steel* respondent in the period of investigation. Petitioner has requested that, because the Department did not make a determination with respect to Law 193/84 in *Electrical Steel*, we should investigate whether Dalmine used early retirement under Law 193/84. However, information collected in *Electrical Steel* suggests that Law 193/84 has been superseded and petitioner has not presented any evidence to the contrary. There is no evidence in the petition that Dalmine used early retirement under Law 193/84 after 1987. Rather, petitioner apparently believe that we should change our practice and treat early retirement as a non-recurring benefit.

The last year for which we have been able to establish that Dalmine used early retirement is 1991. The Annual Report for that year shows that Dalmine used the early retirement program under Law 223/91, which we found to be not countervailable in *Electrical Steel*. Moreover, petitioner has not presented any information that would cause us to change our earlier determination that early retirement, if found countervailable, should be treated as a recurring grant. For these reasons, we are not including early retirement in our investigation.

7. Grants From the Cassa per il Mezzogiorno

Petitioner alleges that Dalmine has received grants from the Cassa per il Mezzogiorno ("Cazmez") which are directed to southern Italy. In *Certain Steel*, we found such grants to be countervailable because they were provided on a regional basis. Petitioner is not aware of any Dalmine plants outside of Bergamo, which is in the North, but points to Dalmine's Annual Reports which show that the company received Cazmez grants in the early and mid-1980s. Based on this finding, petitioner states that Dalmine must have a plant located in the South. Therefore, petitioner requests that the Department, in addition to the Cazmez grants, investigate a large number of other subsidy programs directed to the South, should we find that Dalmine maintains production facilities there.

From Dalmine's Annual Reports, we have found that the company formerly had two production facilities in the South, both of which produced welded pipe. Apart from these two plants, which were spun off in 1989, we have not found any other production facilities in the South. Because both the plants in the South produced welded pipe, which is not included in the scope of this investigation, we are not including the Cazmez grants or any other programs directed to the South in our investigation.

ITC Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of this initiation.

Preliminary Determination by the ITC

The ITC will determine by August 8, 1994, whether there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, by reason of imports from Italy of seamless pipe. Any ITC determination which is negative will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to 702(c)(2) of the Act and 19 CFR 355.13(b).

Dated: July 13, 1994.

Barbara R. Stafford,

Deputy Assistant Secretary for Investigations.

[FR Doc. 94–17681 Filed 7–19–94; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Monterey Bay National Marine Sanctuary Advisory Council Open Meeting.

SUMMARY: The Advisory Council was established in December 1993 to advise and assist the Secretary of Commerce in the implementation of the management plan for the Monterey Bay National Marine Sanctuary.

TIME AND PLACE: July 29, 1994 from 9:00 until 4:30. the meeting location will be at the Naval Postgraduate School in Monterey, California. The morning session will be in Spanagle Hall, Room 101A, and the afternoon session will be in Glasgow Hall, Room 102.

AGENDA: General issues related to the Monterey Bay National Marine Sanctuary are expected to be discussed.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Aaron King at (408) 647–4257 or Elizabeth Moore at (301) 713–3141.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program.

Dated: July 14, 1994.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 94–17613 Filed 7–19–94; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 071194B]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its

advisory entities will hold meetings July 31 through August 5, 1994, at the Red Lion Hotel Columbia River, 1401 North Hayden Island Drive, Portland, OR; telephone: (503) 283–2111.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland OR 97201; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION:

Council Meetings

The Council meetings will begin on August 2, at 8:00 a.m. in a closed session (not open to the public) to discuss personnel matters and litigation. The open session will begin at 8:30 a.m. The Council will reconvene at 8:00 a.m. each day, August 3 through August 5. The meetings may continue each day into the evening hours if necessary to complete business. The following items are on the Council agenda:

A. Call to Order

1. Opening remarks, introductions, roll call
2. Approve proposed agenda
3. Approve March, April and June 1994 minutes

B. Administrative and Other Matters

1. Election of Chair and Vice Chair for fiscal year 1995
2. Budget Committee Report
3. Summary of Council Chairs' Meeting
4. Status of legislation
5. Composition of the Scientific and Statistical Committee (SSC) and Advisory Subpanels for the 1995–96 term and solicitation of nominations
6. Research and data needs for 1994–96
7. Draft agenda for October 1994 meeting

C. Coastal Pelagic Species Management

Anchovy spawning biomass estimate and quotas for 1994–95 season

D. Habitat Issues

Report of the Habitat Steering Group

E. Salmon Management

1. Sequence of events and status of fisheries
2. Plan Amendment 12: Deficit accounting for Klamath River fall chinook

F. Groundfish Management

1. Status of Federal regulations implementing Council actions
2. Final report on industry/scientist workshops
3. Status of fisheries and inseason trip limit adjustments
4. Policy on deviations from harvest guidelines (overages and underages)
5. Preliminary stock assessments, harvest levels and other specifications for 1995
6. Management measures for 1995, including designating open access trip limits as routine measures
7. Associating trip limits with Limited Entry Permits and "Stacking Permits"
8. Individual quotas, trip limit alternatives and season for the Limited Entry Fixed Gear Sablefish Fishery
9. Groundfish Fishery Observer Program

G. Pacific Halibut Management

1. Review of halibut bycatch estimate
2. Review of halibut stock assessment
3. Area 2A halibut allocation for 1995 and beyond

Other Meetings

The Groundfish Subcommittee of the SSC will meet on July 31 from 7:00 until 10:00 p.m. to review groundfish stock assessments.

The SSC will meet August 1 through August 3 (if necessary), beginning at 8:00 a.m. each day, to address scientific issues on the Council agenda.

The Salmon Technical Team will meet on August 1 at 10:00 a.m., and on August 2 at 8:00 a.m. to review hooking mortality estimates for ocean fisheries and the deficit accounting issue for Klamath River fall chinook.

The Groundfish Management Team will convene on August 1 at 8:00 a.m. to address groundfish management items on the Council agenda.

The Groundfish Advisory Subpanel will convene on August 1 at 1:00 p.m. and on August 2 at 8:00 a.m. to address groundfish management items on the Council agenda.

The Habitat Steering Group will meet on August 1 at 1:00 p.m. to consider activities affecting the habitat of fish stocks managed by the Council.

The Budget Committee will convene on August 1 at 3:00 p.m. to review the status of the fiscal year 1994 Council budget and the fiscal year 1995 budget proposal.

The Enforcement Consultants will meet on August 2 at 7:00 p.m. to address enforcement issues related to Council agenda items.

Detailed agendas for the above advisory meetings will be available after July 21, 1994.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: July 14, 1994.

David S. Crestin,

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

[FR Doc. 94–17678 Filed 7–19–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

July 14, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: July 22, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. 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 limit for Category 362 is being increased for special carryforward. As a result, the limit for Category 362, which is currently filled, will re-open.

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 3847, published on January 27, 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 MOU dated January 17, 1994, 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

July 14, 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 24, 1994, 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 textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on July 22, 1994, you are directed to amend further the directive dated January 24, 1994 to increase the limit for Category 362 to 8,845,363 numbers [1], as provided under the terms of the Memorandum of Understanding dated January 17, 1994 between the Governments of the United States and the People's Republic of China.

The Committee for the Implementation of Textile Agreements has determined that this action falls 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. 94–17606 Filed 7–19–94; 8:45 am]

BILLING CODE 3510–DR–F

COMMISSION ON IMMIGRATION REFORM

Commission on Immigration Reform—Lowell Hearing

AGENCY: Commission on Immigration Reform.

ACTION: Announcement of hearing.

This notice announces a public hearing of the U.S. Commission on Immigration Reform. The Commission was established by the Immigration Act of 1990 under section 141. The mandate of the Commission is to review and evaluate the impact of U.S. immigration policy and transmit to the Congress a report of its findings and recommendations. The Commission's first report to Congress is due on September 30, 1994.

The hearing will address the role of immigration in the history and present day circumstances of Lowell, a small town with a manufacturing base and a long tradition of immigration. Testimony will focus on the economic, social, and cultural impacts of immigrants on Lowell, as well as the long term integration and adaptation of the immigrants themselves. Furthermore, the Commission will hear testimony on the role of the community in absorbing immigrants and the support and cooperation of public and private organizations. Panelists will include public officials, representatives of local organizations, researchers, and other experts.

DATES: August 1, 1994.

TIME: 9:00 AM–1:00 PM.

ADDRESSES: Special Events Center, 2nd Floor, Boott Cotton Mills Museum, Lowell National Historical Park, 400 Foot of John Street, Lowell, MA 01852, 508–459–1000.

FOR FURTHER INFORMATION CONTACT: David Howell or Deborah Waller, 202–673–5348.

Dated: July 7, 1994.

Susan Martin,

Executive Director.

[FR Doc. 94–17636 Filed 7–19–94; 8:45 am]

BILLING CODE 6820–97–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: DoD FAR Supplement, Subparts 227.4, Rights in Technical Data; 227.5, Rights in Computer Software and Computer Software Documentation; and related solicitation provisions and contract clauses at 252.227; OMB Control Number 0704–0240.

Type of Request: Revision.

Number of Respondents: 2,330,688.

Responses per Respondent: Variable.

Annual Responses: 11,834,453.

Average Burden per Response: 28 minutes.

Annual Burden Hours (Including Recordkeeping): 6,457,651.

Needs and Uses: This information collection proposal implements the requirements of 10 USC 2320 and 2321, requiring contractors and subcontractors to maintain records and furnish information to justify restrictions on the government's rights to use or disclose technical data.

Affected Public: Businesses or other for-profit; Federal agencies or employees; non-profit institutions, and small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 15, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–17625 Filed 7–19–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Defense Science Board Task Force on Joint Advanced Strike Technology Program (JASTP)

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Joint Advanced Strike Technology Program (JASTP) will meet in closed session on August 2–3 and August 16–17, 1994 at the Institute for Defense Analyses, Alexandra, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will provide recommendations for implementing a Joint Advanced Strike Technology Program in the FY 95–05 period.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1993.

Dated: July 15, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–17626 Filed 7–19–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Intent To Prepare an Environmental Impact Statement for the Proposed Construction of New Military Family Housing at the Fort MacArthur Upper Reservation, San Pedro, CA

In an effort to meet the current deficit of military family housing (MFH) units, the U.S. Air Force (USAF) is proposing to construct new housing units for military personnel that will be assigned to the Space and Missile Systems Center (SMC) at Los Angeles Air Force Base (LAAFB), California. The USAF is proposing to construct approximately 150 MFH units on a leased parcel of Angels Gate Park in the community of San Pedro within the boundaries of the City of Los Angeles. On 10 October 1993, the USAF, the State of California, and the Unified School District of Los Angeles County (LAUSD) signed a 50-year lease for the use of 23 acres of land on the Fort MacArthur Upper Military Reservation for the development of up to 150 MFH units.

A public scoping meeting is scheduled for 7:00 p.m. on Tuesday, August 2, 1994 at the Doubletree Hotel and Marina, Madeo Ballroom, 2800 Via Cabrillo Marina, San Pedro, California. Notice of the meeting will also be published in the local news media.

Public input is requested to assist in defining the scope of issues to be addressed, concerning the environmental impacts of the proposed action and reasonable alternatives. The Air Force is open to public comments on this EIS throughout the Environmental Impact Analysis Process (EIAP).

The USAF point of contact is Mr. Howard Antelis, Public Affairs Officer, Department of the Air Force, Space and Missile Systems Center, SMC/PA, 2430 E. EL Segundo Blvd., Suite 4049, Los Angeles AFB, CA 90245–4687.

List of Subjects

Environmental Protection, Environmental Impact Statement, US Air Force, Fort MacArthur Upper Reservation, Construction, San Predro, California, and Military Family Housing.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–17601 Filed 7–19–94; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army

Domestic Personal Property Rate Solicitation—Proposed Changes

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of proposed change.

SUMMARY: The Military Traffic Management Command is proposing changes to the Domestic Personal Property Rate Solicitation. This solicitation is the guidelines for interstate and intrastate household services for Department of Defense sponsored shipments.

DATES: Comments must be received by September 19, 1994.

ADDRESSES: Military Traffic Management Command, Attn: MTOP–T–NP, Room 621, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Nemier, (703) 756–1190.

SUPPLEMENTARY INFORMATION: There have been considerable changes in the geographical operating areas where personal property shipments have been traditionally picked up and delivered. These changes have been caused by a myriad of operational revisions within the DOD infrastructure, to include military base closures and realignments and the growth of suburban areas surrounding military installations which have resulted in DOD personnel relocating to areas which are more distant from military installations. Requirements such as those necessitate change to storage-in-transit (SIT) rules in the delivery of domestic household goods.

The following changes are proposed to section 7. All related items in D–3 impacted by this provision will be changed accordingly.

a. Paragraph 3. Change 30 miles or less to 50 miles or less.

b. Note 1. Change 30 milies or less to 50 miles or less.

c. Note 5. The carrier should use a DOD-approved agent's available storage facility within a 50-mile radius of the location shown in Block 18 on the personal property Government Bill of Lading (PPGBL). If no agent's facility is available within a 50-mile radius, the carrier must obtain authorization from the PPSO to use a more distant facility.

(1) If no authorization is given, the charges will be assessed as if the shipment was placed in SIT at the location shown in Block 18 of the PPGBL.

(2) If an alternate location to Bock 18 on the PPGBL is used for carrier convenience, as shown on the DD Form 619, the Government will pay the lower of the SIT and related service charges.

(3) A DOD-approved facility is defined as follows: An agent's storage facility which has DOD approval and is accepting DOD traffic from a carrier. If the agent refuses to accept a shipment, e.g., because of the carrier's refusal to provide a waiver and/or to the carrier's poor payment history, the agent's facility will be considered "available" for purpose of determining charges irrespective of what destination warehouse the carrier uses.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–17572 Filed 7–19–94; 8:45 am]

BILLING CODE 3710–08–M

Availability of Exclusive Licensing of U.S. Patent of a Hyperproducing Cellulase Microoganism

AGENCY: U.S. Army Aviation and Troop Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.7(a)(1), announcement is made of prospective exclusive licenses of a hyperproducing cellulase microorganism, Patent Number 4,472,504, issued September 19, 1984.

ADDRESSES: U.S. Aviation and Troop Command, ATTN: AMSAT–C–JGP, 4300 Goodfellow Blvd., St. Louis, MO 63120–1798.

DATES: Written objections must be filed on or before September 19, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Lamming, Patent Counsel, telephone: (314) 263–9150.

SUPPLEMENTARY INFORMATION: The hyperproducing cellulase microorganism was invented by Mr. Benedict J. Gallo (U.S. Patent 4,472,504, issued September 19, 1984). Rights to this invention are owned by the U.S. Government as represented by the U.S. Army Natick Research, Development and Engineering Center (Natick RD&E Center). Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 92–502) and section 207 of title 35, U.S. Code, the Department of the Army as represented by Natick RD&E Center intends to grant an exclusive license on the hyperproducing cellulase

microorganism to Solvay Enzymes, Inc., P.O. Box 4859, 1003 Industrial Parkway, Elkhart, Indiana 45616.

Pursuant to 37 CFR 404.(a)(1), any interested party may file written objections to this prospective exclusive license arrangements. Written objections should be directed to the above address.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–17575 Filed 7–19–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by July 15, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Information Resources Management Service, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: July 14, 1994.

Mary P. Liggett,

Acting Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Emergency
Title: Performance Report for the Training Program for Special Program Staff and Leadership Personnel
Abstract: The Department will use the data to evaluate projects, assess technical assistance needs, determine future funding levels for new awards, and assign scores to projects in competition for new grants.
Additional Information: An emergency review is requested from OMB, in order to collect data for the last year of this program's cycle. ED is requesting an OMB approval date of July 15, 1994.
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 15
Burden Hours: 45
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0.

[FR Doc. 94–17581 Filed 7–19–94; 8:45 am]

BILLING CODE 4000–1–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award a Grant to National Urban Coalition

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criteria set forth at 10 CFR 600.7(b)(2)(i)(D) to National Urban Coalition, Washington, DC under grant number DE–FG01–94MI10319. The DOE intends to make a noncompetitive financial assistance award in establishing the Say Yes to a Youngster's Future Program (Say Yes) in the Oakland, California Public School System. The Say Yes program is an educational and training program for elementary school students, parents, teachers, and school administrators. The period of performance contemplated is for three years. DOE will provide funding in the amount of $120,000 for the first budget period estimated to be August 30, 1994–August 29, 1995. There will be no cost sharing.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rosemarie Marshall, HR–531.11, 1000 Independence Avenue SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The proposed grant will provide funding to National Urban Coalition (NUC), a nonprofit organization of business, civil rights, religious and government leaders founded in 1967 to seek workable answers to urban problems. The Say Yes program was started in 1985 by the NUC because of the growing realization that, in a world where jobs, higher education and everyday life are increasingly dependent on math, science and technology, the children of minority groups—African Americans, Hispanic American and Native Americans, as well as females of all races—are being left further and further behind. The Say Yes program is reaching out with a national network of school districts, teachers, administrators, families, churches, civic organizations and businesses committed to improving mathematics and science education for minority children. The project to be funded is for the Oakland School district, and will include the six most economically disadvantaged school communities.

The program is meritorious because the program combines student interest development activities with family involvement and teacher training into a program which prepares students early at the Kindergarten to Sixth Grade educational level to be receptive to further study in the technical fields. The DOE knows of no other entity which is conducting or is planning to conduct such an activity.

Based on the evaluation of relevance to the accomplishment of a public purpose, it is determined that the application is highly likely of achieving its objective through the completion of some supporting objectives, including fostering the development of natural student interest in math and science,

enhancing family involvement in the students' learning process and providing more comprehensive teacher training which focuses on math and science. A recent study reported that over 78% of responding student program participants indicated that they like math and science better than before.

Craig S. Frame,

Contracting Officer, Operations Branch A–1, Office of Placement and Administration.

[FR Doc. 94–17652 Filed 7–19–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award: Gentrex-Nevada, Inc.

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a financial assistance award under Grant Number DE-FG01–94CE15548 to Gentrex-Nevada, Inc. The proposed grant will provide funding in the estimated amount of $97,351 by the Department of Energy for the purpose of saving energy through development of a foundation insulation system, the "Forms PLUS™" system of Mr. M. Dean Gardner, the inventor.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(e)(1) that the unsolicited application for financial assistance submitted by Gentrex-Nevada, Inc., is meritorious based on the general evaluation required by 10 CFR 600.14(d) and the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The inventor, Mr. M. Dean Gardner, who will be principal investigator, will use his skills, experience and equipment to analyze an existing initial prototype, improve the prototype, and test it in a wide range of climactic and construction conditions. For new construction annual savings are estimated to be 119,000 barrels of oil equivalent. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, HR–531.23, 1000 Independence Ave., S.W., Washington, D.C. 20585.

The anticipated term of the proposed grant is 24 months from the date of award.

Issued in Washington, D.C. on July 15, 1994

Richard G. Lewis,

Contracting Officer, Office of Placement and Administration

[FR Doc. 94–17654 Filed 7–19–94; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance Award: Dr. Carl A. MacCarley

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a financial assistance award under Grant Number DE–FG01–94CE15583 to Dr. Carl A. MacCarley. The proposed grant will provide funding in the estimated amount of $99,886 by the Department of Energy for the purpose of saving energy through development of an indirect sensing technique for closed-loop diesel fuel quantity control.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(e)(1) that the unsolicited application for financial assistance submitted by Dr. Carl A. MacCarley is meritorious based on the general evaluation required by 10 CFR 600.14(d) and the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The inventor, Dr. Carl A. MacCarley, who will be principal investigator, will use his existing facilities for electronics development and vehicle system fitting. In addition preliminary testing will be done at California State Polytechnic University by special arrangements. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, HR–531.23, 1000 Independence Ave., S.W., Washington, D.C. 20585.

The anticipated term of the proposed grant is 18 months from the date of award.

Issued in Washington, D.C. on July 15, 1994.

Richard G. Lewis,

Contracting Officer, Office of Placement and Administration.

[FR Doc. 94–17655 Filed 7–19–94; 8:45 am]

BILLING CODE 6450–01–P

Public Meetings on National Energy Policy

AGENCY: Office of Policy, Energy.

ACTION: Notice of public meetings.

SUMMARY: The U.S. Department of Energy is announcing a series of public meetings around the country to solicit public input in the development of the President's National Energy Policy Plan. The Department is also requesting that interested parties submit written input for use in developing the Plan.

DATES AND LOCATIONS: The following are dates and locations that are presently scheduled. Additional information on meetings will be available in future **Federal Register** notices:

Washington, DC. August 2, 1994. Marvin Theater, George Washington University, 800 21st Street NW.

Austin, Texas. August 12, 1994. Lyndon B. Johnson Auditorium, University of Texas at Austin, 2315 Red River Street.

Denver, Colorado. September 29, 1994. Location TBD.

Athens, Georgia. Location and Date TBD.

Boston, Massachusetts. Location and Date TBD.

Chicago, Illinois. Location and Date TBD.

New Orleans, Louisiana. Location and Date TBD.

San Francisco, California. Location and Date TBD.

FOR FURTHER INFORMATION CONTACT: For questions regarding the public meetings, participation or written submissions, please call the National Energy Policy Plan Public Information Hotline: (615) 241–2545. For other information, contact Terri Walters, U.S. Department of Energy, Office of Policy, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–5800.

SUPPLEMENTARY INFORMATION: Section 801 of the Department of Energy Organization Act of 1977 requires the President to submit a National Energy Policy Plan to Congress every two years.

The 1993 requirement was waived because of the change of Administration, and the next National Energy Policy Plan is required in 1995. In developing this Plan, the Administration will solicit input from the public on all issues involved with energy. In order to gain input from a diverse set of stakeholders, the Department will conduct a series of regional town meetings and roundtable discussions. Information from related outreach efforts of the Administration will also be compiled to expand the record of public input.

The concept of sustainable development will provide a framework for developing a 1995 National Energy Policy Plan. The most common definition of sustainable development is "to meet the needs of the present without compromising the ability of future generations to meet their own needs" (Bruntland Commission—Our Common Future 1987). The Administration intends to use this guiding principle to evaluate energy policy options, recognizing the interdependence of economic growth and environmental progress, and considering how the production, distribution, and consumption of energy affects current and future generations.

In developing the National Energy Policy Plan, the Administration will also consider the recommendations of the Energy and Transportation Task Force of the President's Council on Sustainable Development. The Council is an advisory committee comprised of several cabinet-level Administration officials and senior representatives of industry and interest groups. By charter, the Council shall "advise the President on matters involving sustainable development. In furtherance of the mission, the Council will develop and recommend to the President a national sustainable development action strategy that will foster economic vitality."

A kick-off meeting for the National Energy Policy Plan is scheduled for Washington, DC and will be followed by seven public meetings in cities across the United States. All meetings will be open to the general public. Additionally, written comments on any subject area related to energy are welcome and will be considered valuable input to the formulation of the National Energy Policy Plan.

All stakeholders are invited to participate in the meetings as well as to submit written input. This includes state, local, territorial and tribal governments; industry; interest groups; minority groups and the general public.

An initial meeting in Washington, DC will begin the national outreach effort. The Secretary of Energy will host a town meeting on energy with the public and conduct a plenary session on energy policy with representatives of a broad section of stakeholders.

AGENDA: August 2, 1994; 1:30–5:00 p.m.

George Washington University, Marvin Center
1:30 p.m.—Welcome/Introduction
2:00 p.m.—Town Meeting on Energy with Secretary Hazel R. O'Leary
3:15 p.m.—Plenary Discussion: "Energy Policy in a Sustainable Future" (Panel to be announced)
5:00 p.m.—Conclusion

Each of the one-day regional meetings will begin with a town-meeting format discussion on general energy issues followed by roundtable discussion(s) on specific issues of particular interest to the regions. A period for general public comment and short public presentations will generally be available at the end of each meeting.

Sample Agenda—Regional Meeting

9:00 a.m.—Introduction
9:15 a.m.—Town Meeting on Energy
10:30 a.m.—Roundtable Discussion: Topic I
12:30 p.m.—Lunch Break
1:30 p.m.—Roundtable Discussion: Topic II
3:30 p.m.—Public Presentations—General Topics
4:30 p.m.—Closing Remarks

Meeting Sites and Roundtable Topics

The following have been scheduled as topics for roundtable discussions in each of the indicated meeting locations:

Region and Topics

Athens, GA—Energy and Sustainable Rural Economies, Nuclear Power at the Crossroads
Austin, TX—Domestic Energy Production and Sustainable Development, International Trade Issues in Energy Resources and Technology
Boston, MA—Energy and the Environment, Energy and Industrial Competitiveness
Chicago, IL—Energy Issues in Urban Areas, The Future of Coal as an Energy Resource
Denver, CO—Renewable Energy: Progress and Prospects, Competition in Electric Power Sectors
New Orleans, LA—Oil and Gas and the Domestic Economy, Natural Gas
San Francisco, CA—Science and Technology: National Laboratories and Sustainable Development
The Transportation Future: Emerging Challenges and Choices.

Submission of Written Comments

Written comments are requested before October 31, 1994. Mail submission to Oak Ridge Institute for Science and Education, P.O. Box 117, Oak Ridge, Tennessee, 37381–0117, ATTN: Mary Jean Brewer. Please submit a DOS or Macintosh diskette copy (ASCII format preferred) and a typed copy of input. Submissions can also be sent electronically through Internet at NEPP@ORAU.GOV. For all submissions, please include your name, address, and a day-time telephone number.

Susan F. Tierney,

Assistant Secretary of Energy, Office of Policy.

[FR Doc. 94–17653 Filed 7–19–94; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 19, 1994.

FOR FURTHER INFORMATION OR A COPY OF THIS ICR CONTACT: Sandy Farmer at EPA, (202), 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Reporting Requirements Under EPA WasteWise Voluntary Challenge Program (ICR No. 1698.01). This ICR requests approval for a new collection.

Abstract: EPA's Office of Solid Waste (OSW) is requesting approval to collect information from respondents that participate in EPA's voluntary WasteWise program. The program encourages businesses to engage in waste reduction activities and focuses on three waste reduction areas: waste prevention, recycling collection, and purchasing or manufacturing items with recycled content.

To participate in the program, an organization must complete and submit

a registration form to EPA. The registration form provides EPA with general company information and specifies the facilities committed to the WasteWise program: it must be signed by a senior official who has authority to commit the company to the program. In addition, each participant must develop waste reduction goals and complete and submit a one-time Goals Identification Form to EPA; participants must also report annually on the progress made toward achieving those goals in the Annual Reporting Form.

The information collected will be used by EPA to develop and provide targeted technical information to assist organizations' waste reduction programs, identify and exchange waste reduction opportunities, and gauge the program's progress.

Burden Statement: The respondent burden for this collection is estimated to average 16 hours per response for the Registration Form; 48 hours per response for the Goals Identification Form; and 78 hours per response for the Annual Reporting Form: for an estimated annual respondent burden of 142 hours in the first year and 78 hours each subsequent year. These estimates include all aspects of the information collection including the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information.

Respondents: Businesses and non-governmental organizations.

Estimated Number of Respondents: 200 in Year 1; 300 in year 2; and 400 in year 3.

Estimated Number of Responses per Respondent: 3 during first year of program participation; 1 in subsequent years.

Estimated Total Annual Burden on Respondents: 28,500 hours in Year 1; 29,850 in Year 2; and 37,650 in Year 3.

Frequency of Collection: One-time and annual.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW, Washington, DC 20460.

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW, Washington, DC 20503.

Dates: July 8, 1994.

Jane Stewart,

Regulatory Management Division.

[FR Doc. 94–17559 Filed 7–19–94; 8:45 am]

BILLING CODE 6560–50–M02

[OPP–00376; FRL–4769–5]

FIFRA Scientific Advisory Panel; Appointments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is given of the appointment of two new members and the reappointment of one member to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel established pursuant to section 25(d) of FIFRA, as amended (86 Stat. 973 and 89 Stat. 751; 7 U.S.C. 136 et seq.). Public notice of nominees along with a request for public comments appeared in the **Federal Register** of February 24, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: Robert B. Jaeger, Designated Federal Official, FIFRA Scientific Advisory Panel (7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 819, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305–5369.

SUPPLEMENTARY INFORMATION: Congress mandated that the Scientific Advisory Panel would consist of seven members, selected from candidates nominated by the National Science Foundation (NSF) and the National Institutes of Health (NIH). Congress also mandated that the terms of appointment would be staggered. List of nominees, including biographical data, appeared in the **Federal Register** of February 24, 1993 (58 FR 11229). Six comments were received in response to the Notice.

I appoint Dr. Mary S. Thrall and Dr. Charles C. Capen to serve as members of the FIFRA Scientific Advisory Panel. Dr. Thrall is Professor of Pathology at the College of Veterinary at Medicine and Biomedical Sciences at Colorado State University. She will provide the experience and technical background needed in the area of clinical pathology. Dr. Capen is Professor and Chair, Department of Veterinary Pathobiology, Ohio State University and will provide expertise in endocrinology. My decision to appoint Drs. Thrall and Capen is based upon several factors, including comments received, their expertise in many facets of laboratory animal bioassays, particularly interpretation of clinical chemistries, hematology, clinical pathology and endocrinology, the consequences of such effects in relation to potential adverse effects in humans, the need for a disciplinary mix, and the need for broader scientific views.

Furthermore, I reappoint Dr. John T. Wilson to an additional year on the Panel. Dr. Wilson is a pediatrician and pharmacologist with an extensive background in developmental and clinical pharmacology, clinical toxicology, immunology, and endocrinology as they relate to laboratory animals and to human infants and young children. He has provided invaluable scientific counsel to the Agency in addressing the concerns for pesticide residues in food and exposure to infants.

Meetings of the Scientific Advisory Panel are always announced in the **Federal Register** at least 15 days prior to each meeting, in accordance with the directives of the Federal Advisory Committee Act.

List of Subjects

Environmental protection.

Dated: June 29, 1994.

Robert M. Sussman,

Deputy Administrator.

[FR Doc. 94–17562 Filed 7–19–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–42074A; FRL–4874–8]

State of Nebraska Plan for Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval, on a contingent basis, a certification plan.

SUMMARY: In the **Federal Register** of April 21, 1994, notice was published of the intent of the Regional Administrator, EPA Region VII, to approve, on a contingency basis, the State of Nebraska's "A Plan for the Certification of Pesticide Applicators." Copies of the plan were made available to the public. Comments were received on the State of Nebraska plan during the allowed comment period. This notice announces the contingent approval of the Plan. A notice will be published at a later date announcing the full approval of the plan.

DATES: Contingent approval is effective July 20, 1994, and will expire on January 1, 1995, if the outlined terms and conditions are not satisfied.

FOR FURTHER INFORMATION CONTACT: Richard O. Jacobson, Lincoln Field Office, Environmental Protection Agency, 100 Centennial Mall North, Rm. 289, Lincoln, NE 65808, Telephone: 402–437–5080.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of section 4(a)(2) of the Federal Insecticide,

Fungicide, and Rodenticide Act (FIFRA), as amended, and 40 CFR part 171, the Governor of the State of Nebraska, E. Benjamin Nelson, has submitted the State of Nebraska's "A Plan for Certification of Pesticide Applicators" to EPA for approval.

In the **Federal Register** of April 21, 1994 (59 FR 19010), notice was published of the intent of the Regional Administrator, EPA Region VII, to approve, on a contingency basis, the State of Nebraska's "A Plan for the Certification of Pesticide Applicators."

Approval was requested by the State of Nebraska. Contingent approval is being established by EPA pending the promulgation of appropriate regulations, the development of agreements by the State Lead Agency with the Cooperating State Agencies which are involved in the certification process, and the development of certain specific standards of competency for commercial applicators required at 40 CFR 171.4(c)(7).

Copies of the State of Nebraska Plan were made available for public inspection at the Nebraska Department of Agriculture office in Lincoln, Nebraska, the USEPA Region VII Lincoln, Nebraska field office, and the Office of Pesticide Programs, EPA Headquarters, Arlington, Virginia.

Comments were received from the University of Nebraska-Lincoln Cooperative Extension concerning the State of Nebraska Plan during the allowed comment period. The commenter expressed three concerns. Each of those has been discussed between the cooperating parties and the responses indicated here are consistent with those discussed.

The commenter's first concern is that the two new categories (01A—Fumigation of Soil and 12—Aerial Pest Control) will require the development of new training materials for the Nebraska certification and training program. As part of the contingency approval, a Memorandum of Understanding (MOU) is being established with the Nebraska Department of Aeronautics to train applicators in aerial pest control which will alleviate the need for additional resources. States have been identified that have developed training materials for applicators who fumigate soil. The training materials developed by those States will be used with little or no modification. The resources required for this minimal modification will be addressed in the MOU between the University of Nebraska Cooperative Extension and the Nebraska Department of Agriculture.

The commenter also was concerned that reconstructed categories will require resources to accomplish substantial revisions to the training program. This concern will be addressed in the MOU that is being developed between the University of Nebraska Cooperative Extension and the Nebraska Department of Agriculture.

Lastly, the commenter was concerned that the restriction allowing a noncertified applicator to work under the direct supervision of a certified applicator for only 60 days before needing to become certified would require additional resources for training to be provided on an ongoing basis. The commenter suggested that self-study be available prior to the certification examination during periods when formal training is not accessible. This suggestion is a present option that will continue to be available to applicators and will not require additional resources.

Therefore, it has been determined that the State of Nebraska Plan will satisfy the requirements of FIFRA and of 40 CFR part 171, if the proposed State of Nebraska pesticide regulations are promulgated, and agreements by the State Lead Agency with the Cooperating State Agencies, and certain specific standards of competency for commercial applicators required at 40 CFR 171.4 are developed.

This contingent approval shall expire January 1, 1995, if these terms and conditions are not satisfied by that time. If the terms and conditions are satisfied, EPA will publish a notice in the **Federal Register** announcing full approval of the plan.

Pursuant to section 4(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), the Agency finds that there is good cause for providing that the contingent approval granted herein to the State of Nebraska Plan shall be effective immediately. Neither the State of Nebraska Plan nor this Agency's contingent approval of the Plan create any new obligations on pesticide applicators or other persons in the State of Nebraska. Delays in starting the work necessary to implement the Plan, such as may be occasioned by providing some later effective date for this contingent approval, are inconsistent with the public interest. Accordingly, this contingent approval is effective July 20, 1994.

Dated: July 7, 1994.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 94–17563 Filed 7–19–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66195; FRL 4897–4]

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 October 18, 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 41 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
000100 NJ–89–0001	Triumph 4E Insecticide	*O,O*-Dimethyl *O*-(1-isopropyl-5-chloro-1,2,4-triazol-3-yl)phosphorothioate
000150–00035	Anderson's Flyga Kvist	*N*-Octyl bicycloheptene dicarboximide
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
		2,2-Dichlorovinyl dimethyl phosphate
000239–02529	Ortho Roach Killer Powder	Boric acid
000475–00142	Sani-Flush Form F. New Blue Bubbling Action	Sodium bisulfate
000475–00177	Sani Flush Blue Bubbling Action for Toilet Bowls	Sodium bisulfate
000475–00191	Sani-Flush Blue Bubbling Action Cleans, Disinfects, Deo	Sodium bisulfate
000475–00195	Sani-Flush Blue Bubbling Action for Toilet Bowls	Sodium bisulfate
000475–00196	Sani-Flush Blue Bubbling Action - Formula 'C'	Sodium bisulfate
001100–00007	Nuodex Copper 8	Copper naphthenate
001100–00030	Nuodex Copper 6%	Copper naphthenate
001258–00890	Olin HTH Brand Plus Sc	Trichloro-*s*-triazinetrione
001270–00181	ZEP Checkmate Detergent Sanitizer	Sodium dichloroisocyanurate dihydrate
001677–00076	Soilax Liquid Pool Sanitizer	Sodium hypochlorite
002217–00761	3M Vistar 2-S Postemergence Soybean Herbicide	*N*-(2,4-Dimethyl-5-(((trifluoromethyl)sulfonyl)amino)phenyl)acetamide, diethanolamine
002217–00762	Destun 3M 50 WP Tobacco Herbicide	1,1,1-Trifluoro-*N*-(2-methyl-4-(phenylsulfonyl)phenyl)methanesulfonamide
003125–00025	Guthion 25% Wettable Powder Crop Insecticide	*O,O*-Dimethyl *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl) phosphorodithioate
003125–00138	Guthion Fruit Tree and Garden Spray	*O,O*-Dimethyl *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl) phosphorodithioate
003125–00153	Guthion 25% Wettable Powder Repackaging Only	*O,O*-Dimethyl *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl) phosphorodithioate
003125–00223	Guthion 22 Concentrate	*O,O*-Dimethyl *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl) phosphorodithioate
003125–00225	Guthion Garden Spray Insecticide for Repackaging	*O,O*-Dimethyl *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl) phosphorodithioate
004581–00350	Knox Out Yellowjacket Control	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate
004581–00353	Knox-Out Formula One	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate
005185–00369	Bio-Guard Lithium Hypochlorite II	Lithium hypochlorite
005185–00384	Bio-Guard Lithium Hypochlorite Shock	Lithium hypochlorite
005185–00385	Bio-Guard Lithium Hypochlorite Concentrate	Lithium hypochlorite
005185–00431	Guardex Super Chlorinator 35	Lithium hypochlorite
005383–00003	Troysan Copper 8	Copper naphthenate
007350–00001	Chlor-12	Sodium hypochlorite
007350–00020	Chlor-12	Sodium hypochlorite
010598–00013	Pool Doctor Liquid Chlor	Sodium hypochlorite
021139–20002	Sodium Hypochlorite 10%	Sodium hypochlorite
021139–20004	Sodium Hypochlorite 5.25%	Sodium hypochlorite
021139–20007	Sodium Hypochlorite 12.5%	Sodium hypochlorite
028293–00117	Unicorn Now Flea & Tick Spray	Butoxypolypropylene glycol
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		Pyrethrins
042177–00024	Olympic Chlor-O-Rings 100	Trichloro-*s*-triazinetrione
042177–00036	Olympic Clorinator Sticks	Trichloro-*s*-triazinetrione
042177–00057	York's Roman Springs	Sodium dichloro-*s*-triazinetrione
046506–00001	Bionox	Sodium hypochlorite
051790–20004	Clo White Bleach	Sodium hypochlorite
051793–20203	Elite Roach and Ant Powder	Boric acid
062499–00039	Valent Lime Sulfur Solution	Calcium polysulfide

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
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000150	Anderson Chemical Co., Box 1041, Litchfield, MN 55355.
000239	Solaris Group, The, A Div of The Agricultural Group of Monsa, Box 5006, San Ramon, CA 94583.
000475	Reckitt & Coleman Household Products, 1655 Valley Rd, Wayne, NJ 07474.
001100	HULS America, Inc., Box 365, Piscataway, NJ 08855.
001258	Olin Corp., Box 586, Cheshire, CT 06410.
001270	ZEP Mfg. Co., Box 2015, Atlanta, GA 30301.
001677	Ecolab Inc., 370 Wabasha St., Ecolab Center, St Paul, MN 55102.
002217	PBI/Gordon Corp., c/o James Armbruster, Reg. Svcs., PBI/Gordon, Box 014090, Kansas City, MO 64101.
003125	Miles Inc., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
004581	Elf Atochem North America Inc., Agrichemicals Div, 2000 Market St., 21st Floor, Philadelphia, PA 19103.
005185	Bio-Labs Inc., Box 1489, Decatur, GA 30031.
005383	Troy Chemical Corp., Inc., c/o Pazianos Assoc., 1338 G St., SE, Washington, DC 20003.
007350	Chaska Chemical Co., 12502 Xenwood Ave. South, Savage, MN 55378.
010598	World Industries International, Inc., 17955 Arenth Ave., City Of Industry, CA 91748.
021139	LCP Chemicals, Hanlin Group, Inc., Box 484, Linden, NJ 07036.
028293	Unicorn Labs & Phaeton Corp., 1000 118th Ave N, St. Petersburg, FL 33716.
042177	York Chemical Corp., 3309 E. John W. Carpenter Freeway, Irving, TX 75062.
046506	Bionox Co., Inc., 10270 S. Progress Way, Parker, CO 80134.
051790	The Clowhite Co., Box 456, Hampton, GA 30228.
051793	RSR Laboratories, Inc., 501 Fifth St, Bristol, TN 37620.
062499	Chevron Chemical Co, c/o Thomas H. Pickens, Box 5047, San Ramon, CA 94583.

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 October 18, 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: July 1, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 94–17294 Filed 7–20–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before September 19, 1994.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Donald Arbuckle, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: Extension of 3067–0194.

Title: National Fire Academy Executive Fire Officer Program Application for Admission

Abstract: FEMA Form 95–22, National Fire Academy Executive Fire Officer Program Application for Admission, is used by senior level executive fire officers to apply to the Executive Fire Officer Program. FEMA uses the application form to select the best qualified applicants for admission to the program.

The program is offered by FEMA's United States Fire Administration, National Fire Academy. Applicants selected to the program will complete four senior level courses over a four-year period.

Type of Respondents: Individuals or households, State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 300 hours.

Number of Respondents: 300.

Estimated Average Burden Time per Response: 1 hour.

Frequency of Response: On occasion.

Dated: July 12, 1994.

Linda S. Borror,

Acting Division Director, Administrative Service Division, Operations Support Directorate.

[FR Doc. 94–17629 Filed 7–19–94; 8:45 am]

BILLING CODE 6718–01–M

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before September 19, 1994.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Donald Arbuckle, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: New collection.

Title: Report to Submit Technical Data to Correct Mapping Deficiencies Unrelated to Community-wide Elevation Determinations for a Single Residential Lot or Structure (Amendments and Revisions to National Flood Insurance Program Maps).

Abstract: The Application Form for Single Residential Lot or Structure will be used by individual property owners to request amendments and revisions to National Flood Insurance Program Maps. Approved requests will be used by FEMA to remove a single residential structure or a legally recorded parcel of land or portions thereof from a designated Special Flood Hazard Area, an area that would be inundated by the 100-year flood. FEMA will issue a Letter of Map Amendment (LOMA) or a Letter of Map Revision Based on Fill (LOMR–F) to effect approved changes.

Type of Respondents: Individuals or households.

Estimate of Total Annual Reporting and Recordkeeping Burden: 7,025 hours.

Number of Respondents: 2,927.

Estimated Average Burden Time per Response: 2.4 hours.

Frequency of Response: On occasion.

Dated: July 12, 1994.

Linda S. Borror,

Acting Division Director, Administrative Services Division, Operations Support Directorate.

[FR Doc. 94–17630 Filed 7–19–94; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–1034–DR]

Alabama; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama, (FEMA–1034–DR), dated July 8, 1994, and related determinations.

EFFECTIVE DATE: July 14, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Alabama dated July 8, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 8, 1994:

Conecuh and Russell Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–17627 Filed 7–19–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1035–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1035–DR), dated July 10, 1994, and related determinations.

EFFECTIVE DATE: July 13, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida dated July 10, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 10, 1994:

Bay, Franklin, Gadsden, Liberty, Okaloosa and Santa Rosa Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Frank Thomas,

Deputy Associate Director, Policy and Planning.

[FR Doc. 94–17628 Filed 7–19–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Eritrean Air & Sea Services, Inc., 7524 Old Coaling Road, Harmans, MD 21077, Officers: Tekie G. Meskel, President, Bihon F. Debessai, Secretary, Ajay Gandhi, Treasurer, Andebrhan Biede, Vice President

Excel Forwarders, Inc., 2915 Stockholm Avenue, Cooper City, FL 33026, Officer: Loretta Malins-Smith, President

Elteha International U.S.A., Ltd. dba, LTH International (USA) Ltd., 316 West Florence Avenue, Inglewood, CA 90302, Officer: Philippus Herkata, President

Anthem Express World Transport Inc., St. 1 No. 2, Suite 304, Metro Office Park, Guaynabo, Puerto Rico 00968–1705, Officers: Anthony D. Emposimato, President, Leopoldo Melendez, Vice President, Tracey Emposimato, Secretary

Express Ocean Freight Unlimited, Inc., 182–17 150th Street, Jamaica, NY 11413–4010, Officers: David Marx, President, Ronald Marx, Vice President, Mara Robinson, Vice President

Premier Freight Forwarders, Inc., 9600 N.W. 25th Street, Suite 4E, Miami, FL 33172, Officers: David G. Smith, President, Maria Gavito-Hernandez, Vice President

Dated: July 15, 1994.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–17684 Filed 7–19–94; 8:45 am]

BILLING CODE 6730–01–M

Performance Review Board

AGENCY: Federal Maritime Commission.
ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: William J. Herron, Jr., Director of Personnel, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

William D. Hathaway,

Chairman.

The Members of the Performance Review Board Are:

1. Ming Chen Hsu, Commissioner
2. Francis J. Ivancie, Commissioner
3. Joe Scroggins, Jr., Commissioner
4. Norman D. Kline, Chief Administrative Law Judge
5. Frederick M. Dolan, Jr., Administrative Law Judge
6. Charles E. Morgan, Administrative Law Judge
7. Robert D. Bourgoin, General Counsel
8. Joseph C. Polking, Secretary
9. Edward P. Walsh, Managing Director
10. Bruce A. Dombrowski, Deputy Managing Director
11. Wm. Jarrel Smith, Jr., Director, Bureau of Hearing Counsel
12. Sandra L. Kusumoto, Director, Bureau of Administration
13. Austin L. Schmitt, Director, Bureau of Trade Monitoring and Analysis
14. Norman W. Littlejohn, Director, Bureau of Investigations
15. Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing

[FR Doc. 94–17685 Filed 7–19–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Geoffrey J. Gempeler; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12

CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 9, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Geoffrey J. Gempeler, St. Cloud, Minnesota; to acquire an additional 7.28 percent for a total of 30.53 percent, of the voting shares of Chisago Bancorporation, Inc., Chisago City, Minnesota, and thereby indirectly acquire Chisago State Bank, Chisago City, Minnesota.

Board of Governors of the Federal Reserve System, July 14, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-17624 Filed 7-19-94; 8:45 am]

BILLING CODE 6210-01-F

SOLO; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 12, 1994.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. SOLO, Colorado Springs, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Cheyenne Mountain Bank, Colorado Springs, Colorado.

Board of Governors of the Federal Reserve System, July 14, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-17623 Filed 7-19-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[Dkt. C-3498]

Community Associations Institute; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Virginia-based association, whose members are managers of residential community associations, from interfering in any way with the truthful advertising and solicitation efforts of its members, and requires the respondent to remove from its codes of ethics any provisions inconsistent with the order's prohibition, and to make the changes known by publishing the revised code and the Commission's order in two of the respondent's publications.

DATES: Complaint and Order issued June 6, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Michael McNeely, FTC/S-3308, Washington, DC 20580, (202) 326-2904.

SUPPLEMENTARY INFORMATION: On Monday, March 21, 1994, there was published in the **Federal Register**, 59 FR 13327, a proposed consent agreement with analysis In the Matter of Community Associations Institute, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.)

Donald S. Clark,

Secretary.

[FR Doc. 94-17619 Filed 7-19-94; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW , Washington, DC 20580.

[Dkt. C-3499]

El Portal Luggage, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Nevada-based retailer of luggage and other leather goods from misrepresenting the identity of the country of origin of any product it sells, and from removing, altering, obliterating, or concealing any country of origin designation attached to a product that it receives or offers for sale.

DATES: Complaint and Order issued June 20, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Sylvia Kundig, FTC/San Francisco Regional Office, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744-7920.

SUPPLEMENTARY INFORMATION: On Monday, April 4, 1994, there was published in the **Federal Register**, 59 FR 15733, a proposed consent agreement with analysis In the Matte of El Portal Luggage, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45).

Donald S. Clark,

Secretary.

[FR Doc. 94–17616 Filed 7–19–94; 8:45 am]

BILLING CODE 6750–01–M

[Docket No. C–3500]

Martin Marietta Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the respondent's Expendable Launch Vehicle (ELV) division from disclosing to its satellite division any non-public information that its ELV division receives from a satellite manufacturer, and requires the respondent to give a copy of the consent order to U.S. satellite owners or manufacturers before obtaining any non-public information from them.

DATES: Complaint and Order issued June 22, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Ann Malester, FTC/S–2224, Washington, DC 20580. (202) 326–2682.

SUPPLEMENTARY INFORMATION: On Tuesday, April 12, 1994, there was published in the **Federal Register**, 59 FR 17379, a proposed consent agreement with analysis In the Matter of Martin Marietta Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 94–17617 Filed 7–19–94; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint, the Decision and Order, and Commissioner Owen's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[Docket No. 9071]

Service Corporation International; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: This order reopens the proceeding and modifies the Commission's 1976 consent order by deleting the administrative provisions that required the respondent to distribute a copy of the 1976 order to its funeral homes and affected employees; provide prior notice to the Commission of certain changes in its corporate organization; and periodically notify the Commission regarding the acquisition or sale of any funeral homes. The Commission concluded that these provisions were no longer warranted or were essentially duplicative of requirements in provisions in more recent Commission orders against the respondent and therefore, warranted reopening and modifying the order.

DATES: Consent Order issued October 12, 1976. Modifying Order issued May 12, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Justin Dingfelder or Robert Frisby, FTC/S–4631, Washington, DC 20580. (202) 326–3017 or 326–2098.

SUPPLEMENTARY INFORMATION: In the Matter of Service Corporation International. The prohibited trade practices and/or corrective actions as set forth at 41 FR 53468, are changed, in part, as indicated in the summary.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 94–17614 Filed 7–19–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt 9252]

Sonic Technology Products, Inc., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a California company and its officers from representing that any ultrasonic pest control device can eliminate rodent or flea infestations, and from misrepresenting the results of any scientific studies regarding their ultrasonic pest control products.

DATES: Complaint issued February 25, 1992. Order issues June 21, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Matthew Gold or David Newman, FTC/San Francisco Regional Office, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: On Friday, March 4, 1994, there was published in the **Federal Register**, 59 FR 10394, a proposed consent agreement with analysis In the Matter of Sonic Technology Products, Inc., et al., for the purpose of soliciting public comment Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 94–17615 Filed 7–19–94; 8:45 am]

BILLING CODE 6750–01–M

[Docket No. 9258]

W.D.I.A. Corporation, et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, an Ohio-based information corporation and two of its officers from furnishing any consumer report for any purposes not permitted under the Fair Credit Reporting Act, and requires the respondents to take certain steps to ensure subscribers have permissible purposes for accessing consumer reports in the future. In addition, the respondents are required to maintain a toll-free telephone number available to

[1] Copies of the Modifying Order and Commissioner Azcuenaga and Starek's statements are available from the Commission's Public Reference Branch, H–130, 6th & Pa. Ave., NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

consumers who have questions regarding the purpose for which a consumer report on them was furnished.

DATES: Complaint issued May 4, 1993. Order issued May 27, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Ronald Isaac or David Grimes, Jr., FTC/S–4429, Washington, DC 20580. (202) 326–3231 or 326–3171.

SUPPLEMENTARY INFORMATION: On Monday, March 21, 1994, there was published in the **Federal Register**, 59 FR 13334, a proposed consent agreement with analysis In the Matter of W.D.I.A. Corporation, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 84 Stat. 1128–36; 15 U.S.C. 1681–1681(f))

Donald S. Clark,

Secretary.

[FR Doc. 94–17618 Filed 7–19–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Reallotment of Funds for FY 1993 Low-Income Home Energy Assistance Program (LIHEAP)

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Notice of Determination Concerning Funds Available for Reallotment.

SUMMARY: In accordance with section 2607(b)(1) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 8621 et seq.), as amended, a notice was published in the **Federal Register** on June 6, 1994 announcing the Secretary's preliminary determination that $22,591 in FY 1993 LIHEAP funds may be reallotted. After further evaluation, the Secretary has determined that no funds from FY 1993 would be reallotted. This determination was based on the fact that a large number of grantees would receive grant awards of less than one dollar ($1.00). Other grantees would receive grant awards of less than one hundred dollars ($100.00). It would not be cost effective to reallot these small amounts of funds.

FOR FURTHER INFORMATION CONTACT: Janet M. Fox, Director, Division of Energy Assistance, Office of Community Services, 370 L'Enfant Promenade, SW., Washington, DC 20447; telephone (202) 401–9351.

Dated: July 13, 1994.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 94–17667 Filed 7–19–94; 8:45 am]

BILLING CODE 4184–01–M

HEALTH CARE FINANCING ADMINISTRATION

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration.

The Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS), has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96–511).

1. *Type of Request:* Reinstatement; *Title of Information Collection*: Procedures for determining whether providers, practitioners, or other suppliers of services are liable for certain noncovered services; *Form No.:* HCF–A–R–77; *Use:* The notification provides providers, practitioners or suppliers with knowledge that Medicare will not pay for items or services mentioned in the notification. After this notification, any future claim for the same or similar services will not be paid. *Frequency:* Semi-annually; *Respondents:* Small business or organizations; *Estimated Number of Responses:* 16,150; *Average Hours Per Response:* 5 minutes; *Total Estimated Burden Hours:* 1,346.

2. *Type of Request:* Reinstatement; *Title of Information Collection:* Medical Review of Part B Intermediary Outpatient Therapy claims; *Form No.:* HCFA–700–701; *Use:* Medicare contractors require certain medical information to determine that requirements for Medicare coverage are met. The information is used to determine if billed services are payable in accordance with Medicare law, regulations, and guidelines. These services may be provided by hospitals, SNFs, CORFs, RHC, Hospices, ESRD facilities and Christian Science hospitals; *Frequency:* Annually; *Respondents:* Businesses or other for-profit, Non-profit institutions, and Small businesses or organizations; *Estimated Number of Responses:* 2,190,000; *Average Hours Per Response:* .25; *Total Estimated Burden Hours:* 547,000.

3. *Type of Request:* New; *Title of Information Collection:* End Stage Renal Disease Network Cost Report Forms; *Form No.:* HCFA–685; *Use:* Submission of quarterly cost reports will enable HCFA to review,, compare and project network costs. The reports will be used as an early warning system to determine if the networks are in danger of exceeding the total cost of the contract. In addition, HCFA will be able to analyze line item costs; *Frequency:* quarterly; *Respondents:* Nonprofit institutions; *Estimated Number of Responses:* 72; *Average Hours Per Response:* 3; *Total Estimated Burden Hours:* 216.

4. *Type of Request:* Revision; *Title of Information Collection:* Hospital Request for Certification in the Medicare/Medicaid Program; *Form No.:* HCFA–1514; *Use:* Section 1861 of the Social Security Act requires hospitals to be certified to participate in the Medicare and Medicaid programs. These providers must complete this form which concerns information collection requirements and their uses; *Frequency:* Annually; *Respondents:* State or local governments; *Estimated Number of Responses:* 2,548; *Average Hours Per Response:* .25; *Total Estimated Burden Hours:* 637.

5. *Type of Request:* New; *Title of Information Collection:* End Stage Renal Disease Network Business Proposal Forms; *Form Nos.:* HCFA–684, 684 A-J; *Use:* Submission of proposal information by current ESRD networks and other bidders according to the business proposal instructions will satisfy HCFA's need for meaningful, consistent and verifiable data with which to evaluate contract proposals; *Frequency:* Once every three years; *Respondents:* Nonprofit institutions; *Estimated Number of Responses:* 36; *Average Hours Per Response:* 30; *Total Estimated Burden Hours:* 1,080.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 3001, Washington, D.C. 20503.

Date: July 13, 1994.

Kathleen Larson,

Acting Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 94–17579 Filed 7–19–94; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 58 FR 64408–9, December 7, 1993), is amended to implement section 404A of the Public Health Service Act, 42 U.S.C. 283c, as amended by the NIH Revitalizaiton Act of 1993 (Pub. L. 103–43), pertaining to the establishment of the Office of Behavioral and Social Sciences Research within the Office of the Director, National Institutes of Health (OD/NIH). This Office will serve as the NIH focal point for coordinating activities undertaken within the framework of behavioral and social sciences research.

Section HN–B Organization and Functions, is amended as follows: (1) After the heading *Office of Research on Women's Health (HNAG),* insert the following:

Office of Behavioral and Social Sciences Research (HNAH). (1) Advises the NIH Director and other key officials on matters relating to research on the role of human behavior in the development of health, prevention of disease, and therapeutic intervention; (2) coordinates research projects in the behavioral and social sciences conducted or supported by the NIH national institutes and centers (IC); (3) identifies research projects that deserve expanded effort and support by the ICs; and (4) develops research projects in cooperation with the ICs.

Delegations of Authority Statement

All delegations and redelegations of authority to offices and employees of the NIH which were in effect immediately prior to the effective date of this reorganization will be continued in effect in them or their successors, pending further redelegation, provided they are consistent with this reorganzation.

Dated: July 13, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–17642 Filed 7–19–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Gabrielino Tongva Tribal Council, c/o Martin Alcala, P.O. Box 693, San Gabriel, California 91778, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on March 21, 1994, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, NW., Washington, D.C. 20240, Phone: (202) 208–3592.

Dated: June 27, 1994

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–17688 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–02–M

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that The Langley Band of the Chickamogee Cherokee Indians of the Southeastern United States, c/o Marion Willis, Jr., 2105 Lorna Ridge Lane, Birmingham, Alabama 35216, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on April 20, 1994, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petition and other interested parties at the appropriate time.

Under § 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

Dated: June 29, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–17689 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[OR–088–04–6332–02; GP–4–211]

Boundary Establishment, Descriptions, etc.: Sandy and Salmon Rivers, OR

ACTION: Notice of Corridor Boundaries for Sandy and Salmon Rivers, Components of the National Wild and Scenic Rivers System.

SUMMARY: In compliance with the Wild and Scenic Rivers Act, this notice announces the availability of Final Management Plans and Corridor boundaries for designated segments of the Sandy and Salmon Rivers, components of the National Wild and Scenic Rivers System. The final corridor boundary for the designated segment of the Sandy River lies entirely within the general legal description below:

Willamette Meridian

T. 1 S., R. 4 E.,
Portions of Sections: 3, 4, 5, 6, 8, 9, 10, 11, 14, 15, 22, 23, 24, 25, 26, and 36.
T. 1 S., R. 5 E.,
Portions of Sections: 30 and 31.

The final corridor boundary for the designated segment of the Salmon River lies entirely within the general legal description below:

Willamette Meridian

T. 2 S., R. 6 E.,
Portions of Sections: 23, 24, 25, 26, and 36
T. 2 S., R. 7 E.,
Portions of Sections: 30, 31, and 32.
T. 2½ S., R. 6 E.,
Portions of Sections: 36.
T. 3 S., R. 7 E.,
Portions of Sections: 4, 5, 6, 8, and 9.

More detailed legal descriptions are available upon request.

EFFECTIVE DATE: July 27, 1994.

For further information contact: Bob Ratcliffe, Recreation Planner, Clackamas Resource Area, Salem District Office, Bureau of Land Management, (503) 375–5646.

Dated: July 5, 1994.

Van W. Manning,

District Manager.

[FR Doc. 94–17634 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–33–M

[CA–017–4210–03; CACA 30669]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; California

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The following public lands in Mono County, California have been examined and found suitable for classification for lease to the County of Mono, State of California under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The County of Mono proposes to use the lands for a Public Gun Range facility.

Mount Diablo Meridian

T. 5 N., R. 25 E.,
Sec. 10, S½S½NW¼NW¼NW¼, SW¼NW¼NW¼, W½SW¼NW¼, S½SE¼SW¼NW¼, N½NE¼NW¼SW¼ excepting therefrom those public lands south of WSA CA–010–102 boundary shown on the Bureau of Land Management Master Title Plats.

Containing 40 acres more or less.

The lands are not needed for Federal Purposes. The lease is consistent with current BLM land use planning and would be in the public interest. The decision to lease is based on the Finding of No Significant Impact and Decision Record signed July 8, 1994 for Environmental Assessment CA–017–94–20. The Decision Record found Alternative 2 the Modified Proposed Action with mitigation as the acceptable alternative.

The lease, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. A right-of-way for streets, roads, and utilities in accordance with the transportation plan for Mono County.

5. A utility line right-of-way CAS 059135 with width of 15 feet from centerline.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Bishop Resource Area Office, 787 North Main St. Suite P, Bishop, California 93514. Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease or classification of the lands to the District Manager, Bureau of Land Management Bakersfield District Office, 3801 Pegasus Drive Bakersfield, California 93308.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a public gun range facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a public gun range facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: July 8, 1994.

Richard E. Hafenfield,

Acting Area Manager, Bishop Resource Area.

[FR Doc. 94–17594 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–40–M

[AZ–930–4210–06; A–25613]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation (BOR) proposes to withdraw for a period of 50 years, 1,988.27 acres of public land in Maricopa and Yavapai counties contiguous to existing Lake Pleasant which is an integral part of the Central Arizona Project. The purpose of the withdrawal is to reserve, from all forms of settlement, sale, location, or entry, the lands lying within the normal operating levels of the New Waddell Dam which are/would be prone to periodic inundation and/or water storage regimes. Any form of entry onto these lands, except for temporary uses of extremely short duration, could be hazardous to the health and safety of the public land users. Additionally, the

enlarged lake will allow for increased recreational use and the BOR proposes to construct several new recreational developments to meet this demand. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by October 18, 1994.

ADDRESSES: Comments and meeting requests should be sent to the Arizona State Director, BLM, P.O. Box 16563, Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, 602–650–0509.

SUPPLEMENTARY INFORMATION: On June 24, 1994, the petition was approved allowing the BOR to file the application to withdraw the following described public land from settlement, sale, location, and entry under the general land laws and the mining laws, but not the mineral leasing laws. The withdrawal would be issued subject to valid existing rights. Lands proposed for withdrawal are described as follows:

Gila and Salt River Meridian

T. 7 N., R. 1 E.,
Sec. 12, ptn of the N½NW¼ of lot 2.
T. 6 N., R. 1 E.,
Sec. 3, W½ of lot 10;
Sec. 10, S½NW¼;
Sec. 15, SW¼NE¼.
T. 6 N., R. 1 W.,
Sec. 1, lots 1–3 and 5–7, SW¼NE¼, E½W½SE¼;
Sec. 12, lot 1, E½NW¼NE¼;
Sec. 13, E½ and that portion of the W½ lying east of the east right-of-way boundary of the Castle Hot Springs Road.
T. 7 N., R. 1 W.,
Sec. 13, W½SW¼SE¼, SW¼NW¼SE¼;
Sec. 23, E½NE¼, E½W½NE¼, NE¼SE¼, E½NW¼SE¼, SE¼SE¼, SW¼SE¼;
Sec. 24, NW¼, W½W½NE¼;
Sec. 25, W½,NE¼.

The areas described aggregate approximately 1,988.27 acres in Maricopa and Yavapai Counties, Arizona.

The purpose of the withdrawal is to reserve the lands within the normal operating levels of New Waddell Dam which are/will be prone to periodic inundation and/or water storage regimes and to protect the Federal investment in the Lake Pleasant project.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the BLM.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the subject must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon a determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting. The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are only those temporary land uses which are compatible with the proposed use of the land by the BOR.

The temporary segregation of the land in connection with the withdrawal application or proposal shall not affect administrative jurisdiction over the land, and the segregation shall not have the effect of authorizing any use of the land by the BOR.

Dated: July 7, 1994.

Herman L. Kast,

Deputy State Director, Lands and Renewable Resources.

[FR Doc. 94–17638 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–32–P

[CO–930–4214–10; COC–57004]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

July 8, 1994.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 14.46 acres of National Forest System land for 20 years. This withdrawal would protect seven constructed huts/lodges which are a part of a chain of overnight ski lodges between Aspen and Vail, Colorado. This notice closes these lands to location and entry under the mining laws for up to two years. The lands remain open to mineral leasing and to such forms of disposition as may by law be made of National Forest System lands.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before October 18, 1994.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On June 28, 1994, the Department of Agriculture, Forest Service, filed an application to withdraw the following described parcels of National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch 2):

Each parcel of National Forest System land is occupied by a Hut/Lodge of the Tenth Mountain Trail System or the Summit Association System. The geographical position at the center of the Hut/Lodge facility at each site has been determined with a 2-channel, sequencing, code phase Global Positioning System, nonsurvey quality receiver. The position is based on North American Datum-1927 (NAD27). The dimensions and relationship of the boundaries of each parcel to the Hut/Lodge is identical:

Beginning at Corner No. 1, from which the northeast corner of the hut/lodge bears S. 45 °W. 212 feet.
From Corner No. 1, by metes and bounds,
W. 300 feet to corner No. 2;
S. 300 feet to corner No. 3;
E. 300 feet to corner No. 4;
N. 300 feet to corner No. 1, the place of beginning.

Each parcel as described contains 2.09 acres.

Sixth Principal Meridian
White River National Forest
Betty Bear Hut/Lodge

At approximately Latitude 39°15′22.18″ N. and Longitude 106°31′22.34″ W. Said parcel lies in approximately NE¼NW¼ of section 23, T. 9 S., R. 82 W. (Unsurveyed).

Arapaho National Forest
Francie's Hut/Lodge

At approximately Latitude 39°26′18.79″ N. and Longitude 106°04′21.26″ W. Said parcel lies in approximately SE¼ of section 14, T. 7 S., R. 78 W. (Unsurveyed).

Arapaho National Forest
Janet's Hut/Lodge

At approximately Latitude 39°27′50.63″ N. and Longitude 106°13′46.63″ W. Said parcel lies in approximately SW¼SW¼ of section 4 and NW¼NW¼ if section 9, T. 7 S., R 79 W. (Unsurveyed).

White River National Forest
Margy's Hut/Lodge

At approximately Latitude 39°16′31.198″ N. and Longitude 106°42′46.214″ W. Said

parcel lies in approximately SE¼SE¼SE¼ of section 12, T. 9 S., R. 84 W. (Unsurveyed)

White River National Forest
McNamara Hut/Lodge

At approximately Latitude 39°13'59.10" N. and Longitude 106°44'17.57" W. Said parcel lies in approximately SW¼SE¼ of section 26, T. 9 S., R. 84 W. (Unsurveyed).

San Isabel National Forest
Skinner Hut/Lodge

At approximately Latitude 39°15'58.97" N. and Longitude 106°27'45.97" W. Said parcel lies in approximately NW¼NE¼SW¼ of section 17, T. 9 S., R. 81 W. (Unsurveyed).

San Isabel National Forest
10th Mountain Division Hut/Lodge

At approximately Latitude 39°22'08.53" N. and Longitude 106°23'10.84" W. Said parcel lies in approximately NE¼NE¼ of section 12, T. 8 S., R. 81 W. (Unsurveyed).

The areas described aggregate approximately 14.46 acres of National Forest System lands in White River, Arapaho and San Isabel National Forests in Lake, Pitkin, and Summit Counties.

The purpose of this withdrawal is to protect existing cross-country ski huts/lodges which are a part of a chain of overnight facilities between Aspen and Vail, Colorado.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of two years from the date of publication in the **Federal Register**, these lands will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage these lands.

Doris E. Chelius,

Acting Chief, Branch of Realty Programs.

[FR Doc. 94–17639 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–JB–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: Oakhill Center for Rare and Endangered Species, Oklahoma City, OK, PRT–791652

The applicant requests a permit to import one female captive born Persian leopard (*Panthera pardus saxicolor*) from the Chester Zoo, Chester, England for the purpose of enhancement of the survival of the species through propagation.

Applicant: Mike Anderson , Kodiak, AK, PRT–791369

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. H.P. Steenkamp at Noortgeclacht, Riebeeckstad, Orange Free State, Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Richard D'Angelo, West Orange, NJ, PRT–792240

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. P.J. Louw at Bankfontein, Springfontein, Orange Free State, Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: The Golden Lion Tamarin Conservation Program, c/o National Zoological Park, Washington D.C., PRT–792347

The applicant requests a permit to import 19 captive-bred golden lion tamarins (*Leontopithecus rosalia*) from 3 zoos in Germany and 4 zoos in the United Kingdom for the purpose of enhancement of survival of the species through propagation and conditioning of the tamarins for eventual release into the wild.

Applicant: Miami Metrozoo, Miami, FL, PRT–792233

The applicant requests a permit to import one pair of komodo monitors (*Varanus komodensis*) from Taman Safari, Indonesia, for the purpose of the enhancement of the survival of the species through propagation.

Applicant: Minnesota Zoological Garden, PRT–792235

The applicant requests a permit to import one pair of komodo monitors (*Varanus komodensis*) from Taman Safari, Indonesia, for the purpose of the enhancement of the survival of the species through propagation.

Applicant: Ringling Bros. and Barnum and Bailey Circus, Vienna, VA, PRT–791084

The applicant requests a permit to export and reimport 14 Bengal tigers (*Panthera tigris*), 2 Siberian tigers (*Panthera tigris altaica*), and 17 Asian elephants (*Elephas maximus*) to and from Canada for the purpose of enhancement of survival through conservation education.

Applicant: U.S. Fish and Wildlife Service, Division of Law Enforcement, Arlington, VA, PRT–691650

The applicant requests a permit to import and export any Endangered or Threatened species for the purpose of enhancement of the survival of the affected species through enhanced law enforcement capabilities.

Applicant: U.S. Fish and Wildlife Service, Assistant Regional Director, Region 6 Endangered Species, Lakewood, CO, PRT–792540.

The applicant requests a permit for multiple imports of male, female and juvenile black-footed ferrets (*Mustela nigripes*) from the Toronto Metro Zoo, Toronto, Canada, for reintroduction into the wild in Montana and South Dakota for a nonessential experimental population in those two states, if and when such a nonessential experimental population is Federally established.

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 420(c), 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: July 15, 1994.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–17682 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Underground Railroad Advisory Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. that a meeting of the Underground Railroad Advisory Committee will be held in Washington, DC, at the Channel Inn located at 650 Water Street, SW. on August 17 and 18, 1994. The meeting will begin at 9 a.m. and will adjourn at approximately 4 p.m. both days.

The Underground Railroad Advisory Committee was established by Public Law 101–628 to advise the Secretary of the Interior in preparation of a study of alternatives for commemorating and interpreting the Underground Railroad used by slaves escaping to freedom before the conclusion of the Civil War.

This will be the fourth meeting of the Committee. The matters to be discussed at the meeting include:

—The study's progress by the National Park Service including the National Historic Landmark theme study and the working draft Special Resource Study;
—Committee comment on the expanded concepts for resource protection; interpretation and commemoration of the Underground Railroad;
—Schedule for the coming fiscal year;
—Development of the interpretive handbook.

The meeting will be open to the public. However, space and facilities to accommodate members of the public are limited and people will be accommodated on a first-come, first-served basis. Anyone may file a written statement concerning the matters to be discussed at the committee meetings. For further information about the meeting or submitting statements, contact Mr. John Paige, Underground Railroad Study Team Captain, National Park Service, Denver Service Center-TEA, P.O. Box 25287, Denver, CO 80225–0287, telephone 303/969–2356.

Dated: July 12, 1994.

Denis P. Galvin,

Associate Director, Planning and Development, Washington Office.

[FR Doc. 94–17573 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 9, 1994. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by August 4, 1994.

Antoinette J. Lee,

Acting Chief of Registration, National Register.

ARIZONA

Yavapai County

Prescott Armory Historic District, Roughly bounded by E. Gurley, W. Willis, N. Arizona, E. Sheldon and N. Rush Sts., Prescott, 94000829

ARKANSAS

Clark County

Hoo Hoo Monument, First St., Gurdon, 94000821

Crittenden County

Washington, George Berry, Memorial, AR 149 N. of Earle, Earle vicinity, 94000824

Izard County

Jeffrey, A. C, Farmstead, Co. Rd. 18 N. of Mt. Olive, Mt. Olive vicinity, 94000825

Lee County

Marianna Missouri—Pacific Depot (Historic Railroad Depots of Arkansas MPS), Carolina St. S., Marianna, 94000827

Miller County

Neif, Charles J., House, 1410 Pecan St., Taxarkana, 94000822

Pulaski County

First Baptist Church, Jct. of 12th and Louisana Sts., SW corner, Little Rock, 940008823
Lincoln Building, 1423–1425 S. Main St., Little Rock, 94000826

CALIFORNIA

Orange County

Porter—French House, 248 S. Batavia St., Orange, 94000818

Riverside County

Perris Depot, 120 W. Fourth St., Perris, 94000819

CONNECTICUT

Fairfield County

Rockrimmon Rockshelter, Address Restricted, Stamford vicinity, 94000847

Hartford County

Pinney, David, House and Barn (Boundary Increase), 58 West St., Windsor Locks, 94000846

Middlesex County

James Pharmacy, 2 Pennywise Ln., Old Saybrook, 94000845

KENTUCKY

Anderson County

Lawrenceburg Commercial Historic District, Roughly, Main St. from North Alley to Court St. and Court from Main to the Southern RR tracks, Lawrenceburg vicinity, 94000837

Boyd County

Ashland Commercial Historic District, Roughly bounded by 13th St., Carter Ave., 18th St. and Front St., Ashland, 94000838

Fayette County

Boone Creek Rural Historic District, Roughly bounded by I–75, Cleveland Rd., Athens—Boonesboro Rd. and Grimes Rd., Lexington vicinity, 94000839

Jessamine County

East Main Street Historic District, Roughly, E. Main St. from S. Walnut St. to Rice St., Wilmore vicinity, 94000840
Kenyon Avenue Historic District, 401, 403, 405, 406, 407 and 408 Kenyon Ave., Wilmore vicinity, 94000841
Lexington and Main Historic District, 100, 101, 102, 103 and 105 N. Lexington Ave. and 101 E. Main St., Wilmore vicinity, 94000842
North Lexington Avenue Historic District, Roughly, N. Lexington Ave. from College Ave. to Bauta Ln., Wilmore vicinity, 94000843

Madison County

Battle of Richmond Historic Areas, Two discontiguous areas, one NE of jct. of US 25 and US 421 and one SE of jct. of US 25 and Rose Ln., Richmond vicinity, 94000844

MARYLAND

Carroll County

Union Bridge Historic District, Roughly bounded by Bellevue, E. Locust, Butterburg Alley, Church, Whyte, W. Locust and the Western Maryland RR tracks, Union Bridge, 94000820

MASSACHUSETTS

Dukes County

Arcade, The, 134 Circuit Ave., Oak Bluffs, 94000813

Middlesex County

Pepperell Center Historic District, Roughly, along Park, Main, Elm, Townsend and Heald Sts. Pepperell, 94000812

MINNESOTA

Fillmore County

Wykoff Commercial Historic District, 100 S. Gold–123 N. Gold St., Wykoff, 94000831

Houston County

Caledonia Commercial Historic District, 101–205 E. Main St. and 101–108 S. Kingston St., Caledonia, 94000830

Steele County

Blooming Prairie Commercial Historic District, Main St. E. between Highway Ave. and 2nd Ave. NE., Blooming Prairie, 94000832

NEW JERSEY

Bergen County

Terhune House (Stone Houses of Bergen County TR), 470 Paramus, Rd., Paramus, 82005390

NEW YORK

Monroe County

Windom Hall, 28 Main St., Scottsville, 94000803

Wayne County

Grace Episcopal Church Complex, 7–9 Phelps St. and 12 Lawrence St., Lyons, 94000802

OREGON

Curry County

Blacklock Point Lithic Site, Address Restricted, Port Orford vicinity, 94000805
Blacklock Point Shell Midden, Address Restricted, Port Orford vicinity, 94000804

Jackson County

Root—Banks House, 11 N. Peach St. (1000 W. Main St.), Medford, 94000807

Sherman County

Moore, John and Helen, House, 66432 US 97, Moro vicinity, 94000806

Umatilla County

Adams Odd Fellows Hall, 190 Main St., Adams, 94000810
Reese and Redman General Merchandise Store, 130 S. Main St., Adams, 94000811

Wasco County

Imperial Stock Ranch Headquarters Complex, Hinton Rd. 3 mi. E of jct. with Bakeoven Rd., Shaniko vicinity, 94000808

Yamhill County

Fernwood Pioneer Cemetery, Everest Rd., 0.5 mi. S of jct. with OR 219, Newberg vicinity, 94000809

PENNSYLVANIA

Montour County

Danville Historic District, Roughly bounded by Bloom St., Cedar St., the Susquehanna R. and Chestnut St., Danville, 94000828

SOUTH CAROLINA

Horry County

Conway Downtown Historic District, Roughly bounded by Fourth Ave., Kingston St., Third Ave. and Laurel St., Conway, 94000815

Sumter County

Carnegie Public Library, 219 W. Liberty St., Sumter, 94000814

TEXAS

Jackson County

Archeological Site No. 41JK9, Address Restricted, Lolita vicinity, 94000833

Lubbock county

Holden, William Curry and Olive Price, House, 3109 20th St., Lubbock, 94000834

VERMONT

Washington County

Mad River Valley Rural Historic District, Roughly, along VT 100 and 1008 from Waitsfield to Moretown and parts of North and River Rds., Waitsfield, 94000836

WISCONSIN

Ashland County

PRETORIA (schooner—barge) Shipwreck Site, Address Restricted, Bayfield vicinity, 94000835

Vilas County

Archeological Site No. 47VI197, Address Restricted, St. Germain vicinity, 94000816

In order to assist in its preservation, a proposed move is being considered for the following property:

SOUTH CAROLINA

Pickens County

Hanover House, Clemson University campus, Clemson, 70000594

[FR Doc. 94–17571 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains from Maine in the Possession of the Robert Abbe Museum, Bar Harbor, ME

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of an inventory of human remains from four sites in Hancock County, ME, in the possession of the Robert Abbe Museum, Bar Harbor, ME.

A detailed inventory and assessment of these human remains has been made by the curatorial staff of the Robert Abbe Museum and contracted specialists in physical anthropology, in consultation with representatives of the Penobscot Nation, Aroostook Bank of Micmac, Houlton Band of Maliseet, and the Passamaquoddy Nation, collectively identified hereafter as the Wabanaki Tribes of Maine.

The partial remains of six individuals were acquired by the Robert Abbe Museum between 1931 and 1945 in archeological excavations of three prehistoric shell middens in Hancock County, ME. Partial remains from three individuals were recovered between 1931 and 1936 from ME Site 44.12A. The partial remains of one individual were recovered in 1939 from ME Site 44.25. Partial remains of two individuals were recovered between 1941 and 1945 from ME Site 44.6. Radiocarbon dates from ME Site 44.6 yielded dates of 955 BP +/- 75 years and 1,120 BP +/- 80 years. The radiocarbon dates and other archeological evidence indicate that all six individuals lived during the Late Prehistoric Period (1000 AD—1500 AD).

A human cranium and maxilla were acquired via donation from H. Lawrence Angel in 1946. Mr. Angel indicated that he had collected the human remains from ME Site 31.31, another prehistoric shell midden in Hancock County, ME. These remains are also judged to be associated with the Late Prehistoric Period occupation of ME Site 31.31.

Inventory of the human remains and review of the accompanying documentation indicates that no funerary objects associated with the above mentioned human remains are part of the collections of the Robert Abbe Museum. No known individuals were identifiable.

The Archaeological Advisory Committee of the Maine Historic Preservation Program has found it reasonable to trace a shared group identity from the Late Prehistoric Period inhabitants of Maine as an undivided whole to the four modern Indian tribes known collectively as the Wabanaki Tribes of Maine on the basis of geographic proximity; survivals of stone, ceramic and perishable material culture skills; and probable linguistic continuity across the Late Prehistoric/Contact Period boundary.

Based on the above mentioned information, officials of the Robert Abbe Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these human remains and the Wabanaki Tribes of Maine.

This notice has been sent to officials of the Wabanaki Tribes of Maine. Representatives of any other Indian tribe which believes itself to be culturally affiliated with these human remains should contact Rebecca Cole-Will, Curator, The Robert Abbe Museum, P.O. Box 286, Bar Harbor, ME 04609, telephone: (207) 288–3519 before August 19, 1994.

Dated: July 14, 1994

Francis P. McManamon, Ph.D.

Departmental Consulting Archeologist, Chief, Archeological Assistance Division

[FR Doc. 94–17582 Filed 7-19-94; 8:45 am]

BILLING CODE 4310–70–F

Notice of Intent to Repatriate a Cultural Item in the Possession of the Denver Art Museum

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act of 1990 of the intent to repatriate a cultural item in the

possession of the Denver Art Museum, Denver, CO, that meets the definition of "sacred object" under section 2 of the act.

The Elk Tongue Beaver Bundle consists of animal bodies or skins, a beaver tail, a buffalo tail, a feather fan, a pipe stem and catlinite bowl, beaded bags, forked sticks, split sticks, and eight rawhide rattles in a corn husk bag, all surrounded by a painted leather wrapping and a red plaid shawl. The original owner was Elk Tongue, a northern Piegan. The bundle was subsequently transferred through a series of bundle keepers—Hairy Belly, Not Good, Scraping White, Wolf Bull, and Little Dog—before being sold to Madge Hardin Walters of San Diego, CA. The Denver Art Museum purchased the bundle from Ms. Walters in 1940.

Evidence provided by the Blackfeet Tribal Business Council, on the behalf of Mr. George G. Kipp, III, and Mrs. Melinda Kipp, confirms that the Elk Tongue Beaver Bundle is needed by traditional Blackfeet religious leaders for the practice of traditional Blackfeet religion by present day adherents. The Pikuni Traditionalist Association, Chief Leonard Bastien of the Piegan Nation, Alberta, Canada, and the Blackfeet Tribal Business Council unanimously support Mr. and Mrs. Kipp as the appropriate bundle keepers. The Denver Art Museum's Collection Committee and Board of Trustees has reviewed the request for repatriation and has no objection. The Elk Tongue Beaver Bundle has been loaned to the Blackfeet Tribal Business Council, on the behalf of Mr. and Mrs. Kipp, pending publication of this notice.

Authorities of the United States Fish and Wildlife Service have been contacted regarding applicability of Federal endangered species statutes to this transfer and have concurred in the conclusion that the object is not covered due to its age.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Dr. Nancy J. Blomberg, Curator of Native Arts, Denver Art Museum, 100 W. 14th Avenue Parkway, Denver, CO 80204, telephone: (303) 839–4806 before August 19, 1994. Repatriation of the object to the Blackfeet Nation, on behalf of George and Melinda Kipp, may begin after that date if no additional claimants come forward.

Dated: July 14, 1994

Dr. Francis P. McManamon,

Departmental Consulting Archeologist Chief, Archeological Assistance Division.

[FR Doc. 94–17583 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information, related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0094), Washington, DC 20503, telephone 202–395–7340.

Title: Surface Coal Mining and Reclamation Operation; General—30 CFR 700

OMB Number: 1029–0094

Abstract: Information is used to determine when regulatory jurisdiction ends over a surface coal mining and reclamation operation; to consider the need, costs, and benefits of a petition to conduct rulemaking; and identifies the person and nature of a citizen's suit.

Bureau Form Number: None

Frequency: On Occasion

Description of Respondents: Surface Coal Mining Operators, Members of the Public

Estimated Completion Time: .4 hours.

Annual Responses: 105

Annual Burden Hours: 41

Bureau Clearance officer: John A. Trelease (202) 343–1475.

Dated: May 16, 1994.

Andrew F. DeVito,

Chief, Branch of Environmental and Economic Analysis.

[FR Doc. 94–17599 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information, the related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0040), Washington, D.C. 20503, telephone 202–395–7340.

Title: Requirements for Permits for Special Categories of Mining—30 CFR Part 785

OMB approval number: 1029–0040

Abstract: Sections 711 and 515 of Public Law 95–87 require applicants for special types of mining activities to provide description, maps, and plans of the proposed activity. This information is used by the regulatory authority in determining whether the applicant meets the applicable performance and environmental standards for the specific type of mining activity

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: Surface coal mine operators

Estimated completion time: 19 hours

Annual Responses: 621

Annual Burden Hours: 11,743.

Bureau clearance officer: John A. Trelease (202) 343–1475.

Dated: May 4, 1994.

Andrew F. DeVito,

Chief, Branch of Environmental and Economic Analysis.

[FR Doc. 94–17600 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–324]

In the Matter of Certain Acid-Washed Denim Garments and Accessories, Including Jeans, Jackets, Bags, and Skirts; Commission Determination to Rescind a Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to grant a joint petition to rescind a consent order issued against Bugle Boy Industries, Inc. (Bugle Boy), a respondent in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jean H. Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone 202–205–3104.

ADDRESSES: Copies of the joint petition, the Commission's order, and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1000.

SUPPLEMENTARY INFORMATION: On April 4, 1994, complainants Golden Trade S.r.l. (Golden Trade) and Greater Texas Finishing Corporation (Greater Texas), and respondent Bugle Boy filed a joint petition to rescind a consent order which was previously entered against Bugle Boy. The petition was filed in view of a settlement agreement among the parties that resulted in a license to Bugle Boy to manufacture, have manufactured, use, and sell garments under U.S. Letters Patent 4,740,213, owned by Golden Trade, and the patent's foreign counterparts.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337, 19 U.S.C. § 1335).

Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: July 12, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–17645 Filed 7–19–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 701–TA–360 and 361 (Final)]

Certain Carbon Steel Butt-Weld Pipe Fittings from India and Israel

AGENCY: United States International Trade Commission.

ACTION: Institution of final countervailing duty investigations.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigations Nos. 701–TA–360 and 361 (Final) under section 705(b) of the Tariff Act of 1930, as amended (19 U.S.C. § 1671d(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 India and Israel of certain carbon steel butt-weld pipe fittings,[1] provided for in subheading 7307.93.30 of the Harmonized Tariff Schedule of the United States.

Pursuant to a request from petitioner under section 705(a)(1) of the Act (19 U.S.C. § 1671d(a)(1)), Commerce has extended the date for its final determinations to coincide with those to be made in the ongoing antidumping investigations on certain carbon steel butt-weld pipe fittings from France, India, Israel, Malaysia, the Republic of Korea, Thailand, the United Kingdom, and Venezuela. Accordingly, the Commission will not establish a schedule for the conduct of the countervailing duty investigations until Commerce makes preliminary determinations in the antidumping investigations (currently scheduled for August 8, 1994).

For further information concerning the conduct of these investigations, 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 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: June 1, 1994.

FOR FURTHER INFORMATION CONTACT: George Deyman (202–205–3197), 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 as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. § 1671b) are being provided to manufacturers, producers, or exporters in India and Israel of certain carbon steel butt-weld pipe fittings. The investigations were requested in a petition filed on February 28, 1994, by the U.S. Fittings Group, Washington, DC, an ad hoc trade association consisting of five domestic firms: Hackney, Inc., Dallas, TX; Ladish Co., Inc., Cudahy, WS; Mills Iron Works, Inc., Gardena, CA; Steel Forgings, Inc., Shreveport, LA; and Tube Forgings of America, Inc., Portland, OR.

Participation in the Investigations and Public Service List

Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 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 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 final investigations available to authorized applicants under the APO issued in the investigations, 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.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII, as amended. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: July 14, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–17647 Filed 7–19–94; 8:45 am]

BILLING CODE 7020–02–P

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[1] The imported products covered by the scope of these investigations consist of carbon steel butt-weld pipe fittings having an inside diameter of less than 14 inches (355 millimeters), imported in either finished or unfinished condition. Such pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (e.g., threaded, grooved, or bolted fittings). The subject pipe fittings come in a variety of shapes which include "elbows", "tees", "caps", and "reducers". The edges of the finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe.

[Investigation 332–344]

The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements

AGENCY: United States International Trade Commission.

ACTION: Scheduling of public hearing.

EFFECTIVE DATE: July 11, 1994.

SUMMARY: Following receipt of a letter dated June 9, 1993, from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–344, The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) on July 1, 1993 (Fed. Reg., Vol. 58, No. 133, July 14, 1993, pp. 37966–37967). The Commission was requested to submit its report by June 30, 1995.

FOR FURTHER INFORMATION: General information may be obtained from Ms. Arona Butcher (202–205–2230), Office of Operations, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation contact Mr. William Gearhart of the Office of the General Counsel (202–205–3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

As requested by USTR, the Commission will investigate the economic effects of such orders and suspension agreements, and the economic effects of the dumping and subsidy practices that such orders and agreements address. The investigation will include a comprehensive empirical analysis of the economic condition of U.S. domestic industries impacted (including upstream and downstream industries) by unfairly traded imports both before and after relief was granted. This analysis will include relevant industry information on employment, wages, production, prices, investment, trade and other factors internal and external to the industry including but not limited to the relevant unfair foreign trade practices affecting the general health and competitiveness of such industries. Also, the USTR has requested that a standard comparative static model be employed to estimate the economic effects of the unfair trade practices and remedies on selected U.S. industries.

The USTR noted that the process of relief from unfair trade practices entails real costs to firms, to individual workers and to taxpayers. The USTR has requested the Commission to complement the empirical analysis above with quantitative and other estimates of the labor and other domestic adjustment costs involved. Also as requested by the USTR, the Commission will seek to provide an assessment of the economy-wide net economic welfare effects of unfair trade practices and the remedies provided.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on September 29, 1994 and September 30, 1994 (if required). All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m., September 13, 1994. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., September 13, 1994; the deadline for filing post-hearing briefs or statements is 5:15 p.m., October 14, 1994.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on October 14, 1994. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

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.

Issued: July 13, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–17646 Filed 07–19–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–352]

In the Matter of Certain Personal Computers With Memory Management Information Stored in External Memory and Related Materials: Commission Determination Not To Review an Initial Determination Terminating the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) in the above-captioned investigation terminating the investigation because of the collateral estoppel effect of the district court judgment in *Cyrix Corp.* v. *Intel Corp.* v. *Texas Instruments*, No. 4:92cv52 (E.D. Texas, Sherman Division).

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104.

SUPPLEMENTARY INFORMATION: On April 12, 1994, respondent-intervenor Advanced Micro Devices, Inc. (AMD) and respondents Twinhead Int'l Corp. and Twinhead Corp. (Twinhead) filed a motion for summary determination terminating the investigation in view of a U.S. district judgment which collateral estops complainant Intel Corporation (Intel) from asserting its claims against AMD and Twinhead in the subject investigation. On May 16, 1994, Intel filed an opposition to the motion. The Commission investigative attorney (IA) filed a response supporting the motion on May 16, 1994. On May 24, 1994, AMD and Twinhead filed a motion to file a reply and a reply. The presiding ALJ granted the motion to file a reply.

On June 6, 1994, the ALJ issued an ID (Order No. 25) granting the motion of AMD and Twinhead. Intel filed a petition for review of the ID on June 15, 1994, which was opposed by Twinhead, AMD, and the IA on June 22, 1994. No agency 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 section 210.53(h) of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are 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 persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: July 11, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–17644 Filed 7–19–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–675 (Final)]

Saccharin From China

AGENCY: United States 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–675 (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 China of saccharin, provided for in subheading 2925.11.00 of the Harmonized Tariff Schedule of the United States.

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 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–205–3172), 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 saccharin 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 November 18, 1993, by PMC Specialties Group, Cincinnati, OH.

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 October 28, 1994, and a public version will be issued thereafter, pursuant to section 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 November 10, 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 November 4, 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 November 8, 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 November 4, 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 November 21 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 November 21, 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: July 15, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–17648 Filed 7–19–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32545]

Wisconsin & Southern Railroad Co.—Trackage Rights Exemption—Wisconsin Central Ltd.

Wisconsin Central Ltd. has agreed to grant to Wisconsin & Southern Railroad Co. (WSOR) overhead trackage rights over approximately 25.3 miles of rail line, between milepost 122.5, at Slinger, WI, and milepost 97.2, at Waukesha, WI, where the line connects with the main line of WSOR's affiliate, the Wisconsin & Calumet Railroad Company (WICT). The trackage rights will enable WSOR to interchange cars directly with WICT. The trackage rights were to become effective on July 7, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Robert A. Wimbish, Rea, Cross & Auchincloss, 1920 N Street NW., Suite 420, Washington, DC 20036.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: July 12, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–17670 Filed 7–19–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *AND* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *AND* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *AND* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Application for Waiver of Grounds of Excludability Form I–690.

(2) Form N–426. Immigration and Naturalization Service.

(3) One-Time only.

(4) Individuals or households. The information on the I–690 application is used by the Immigration and Naturalization Service in considering eligibility for legalization under sections 210 and 245A of the Immigration and Naturalization Act, during the processing of both the application for temporary resident status and the application for permanent resident status.

(5) 52,000 annual respondents at .250 hours per response.

(6) −12,000 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comments on this item is encouraged.

Dated: July 15, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–17597 Filed 7–19–94; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare

such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Application for Employment Authorization (Form I–765)
(2) I–765. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. The information will be used by the Immigration and Naturalization Service to determine eligibility for work authorization and for issuance of the employment document.
(5) 1,000,000 annual respondents at 1 hour per response.
(6) 1,000,000 annual burden hours.
(7) Not applicable under Section 3504(h).

Public comment on this item is encouraged.

Dated: July 15, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–17595 Filed 7–19–94; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection

(1) Supplementary Statement for Graduate Medical Trainees. Form I–644

(2) Form I–644. Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. This form is used by foreign exchange visitors who are seeking an extension of stay in order to complete a program of graduate education and training.

(5) 3,000 annual respondents at .83 hours per response.

(6) – 187 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 15, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–17596 Filed 7–19–94; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–001]

Issuance of Final Design Approval Pursuant to 10 CFR Part 52, Appendix O; U.S. Advanced Boiling Water Reactor Design; GE Nuclear Energy

The U.S. Nuclear Regulatory Commission has issued a final design approval (FDA) to GE Nuclear Energy (GE) pursuant to 10 CFR Part 52, Appendix O. This FDA allows the U.S. advanced boiling water reactor (ABWR) standard design to be referenced in an application for a construction permit or operating license pursuant to 10 CFR Part 50, or in an application for a combined license pursuant to 10 CFR Part 52.

In addition, GE has completed the technical review stage of design certification pursuant to the applicable requirements of Subpart B of 10 CFR Part 52. The staff performed its technical review of the U.S. ABWR standard safety analysis report, certified design material, and technical specifications in accordance with the standards for review of design certification applications set forth in 10 CFR Section 52.48 that are applicable and technically relevant to the U.S. ABWR standard design, including the exemptions and applicable regulations identified in Section 1.6 of the final safety evaluation report (FSER). On the basis of its evaluation and independent analyses, as discussed in the FSER, the staff concludes that, subject to satisfactory completion of the ABWR design control document and certified design material, GE's application for design certification meets those portions of 10 CFR Section 52.47 that are applicable and technically relevant to the U.S. ABWR standard design.

Therefore, the staff and the Advisory Committee on Reactor Safeguards will utilize the U.S. ABWR standard design and will reply on it in the administrative review phase of the design certification process in accordance with 10 CFR 52.51.

A copy of the FDA has been placed in the NRC's Public Docket Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555, for review by interested persons.

Dated at Rockville, Maryland, this 13th day of July 1994.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Associate Director for Advanced Reactors and License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 94–17609 Filed 7–19–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–346]

Toledo Edison Company, et al.; Davis-Besse Nuclear Power Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3, issued to the Toledo Edison Company, Centerior Service Company, and the Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

Environmental Assessment

Indentification of Proposed Action

The proposed action would revise the operating license to reflect the proposed merger of the Toledo Edison Company into the Cleveland Electric Illuminating Company. These companies are currently wholly owned subsidiaries of the Centerior Energy Corporation. As described in the application, the company formed from the merger is intended to be renamed. The name of the combined operating company has yet to be determined (hereinafter referred to as "NEWCO") and the licensees indicate it will be provided by supplemental letter. The proposed amendment would (1) replace the Toledo Edison Company and Cleveland Electric Illuminating Company with NEWCO as a licensee, (2) designate NEWCO as owner of Davis-Besse Nuclear Power Station, Unit 1, and (3) make other associated changes to the license as indicated in the amendment application. Centerior Service Company would be unaffected by the amendment and would remain in a licensee.

The proposed action is in accordance with the licensee's amendment application dated June 6, 1994.

The Need for the Proposed Action

The proposed action in the form of an amendment application is needed to reflect the result of the proposed merger of the Toledo Edison Company into the Cleveland Electric Illuminating Company. This action is also intended to maximize the operating efficiencies of the two affiliated companies.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there will be no changes to the facility or to the operating, maintenance, engineering or other nuclear-related personnel as a result of the proposed merger and license amendment. The proposed merger would not change the technical qualifications and responsibilities of personnel. All of the Toledo Edision Company personnel in the Davis-Besse organization would be transferred to NEWCO upon completion of the merger. This organization would continue to report to Centerior Service Company. After the merger, NEWCO and Centerior Service Company would be required to continue to operate, manage, and maintain the Davis-Besse Nuclear Power Station in accordance with the conditions and requirements of the NRC. No changes resulting from merger are expected with regard to the following: lines on authority and responsibility, essential nuclear support functions provided to Davis-Besse, effectiveness of the organization, priorities and ongoing plant improvement projects, technical qualifications, and corporate financial resources presently available in support of Davis-Besse operations.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impact associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect the nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the action would be to deny the request. Such action would not enhance the protection of the environmental and would result in the Facility Operating License No. NPF–3 not appropriately reflecting the effect of the merger.

Alternate Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Davis-Besse Nuclear Power Station, Unit 1, documented in NUREG–75/097 (October 1975).

Agencies and Persons Consulted

The NRC staff consulted with the Ohio State Official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement of the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 6, 1994, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 13th day of July 1994.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Acting Director, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–17611 Filed 7–19–94; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Materials and Metallurgy; Meeting

The ACRS Subcommittee on Materials and Metallurgy will hold a meeting on August 3, 1994, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Wednesday, August 3, 1994—8:30 a.m. until the conclusion of business.*

The Subcommittee will review the NRC staff's proposed generic letter on steam generator tube integrity matters and the advance notice of proposed rulemaking for steam generator

surveillance and maintenance. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, nuclear industry, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel Dudley (telephone 301/415–7000) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: July 14, 1994.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 94–17612 Filed 7–19–94; 8:45 am]

BILLING CODE 7590–01–M

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 24, 1994, through July 8, 1994. The last biweekly notice was published on July 6, 1994 (59 FR 34657).

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, 11545 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 August 19, 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 (PVNGS), Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: June 17, 1994.

Description of amendment requests: The proposed changes would enhance the PVNGS technical specifications (TS) by removing five tables of component lists in accordance with NRC Generic Letter (GL) 91–08, "Removal of Component Lists from Technical Specifications." The affected tables are 3.3–9B, 3.3–9C, 3.6–1, 3.8–2, and 3.8–3. The references to these five tables will also be removed from the text of the TS in accordance with the sample TS change amendment provided by the NRC in GL 91–08. These five removed tables will be incorporated into a new document, which will be administratively controlled according to the change controls provisions of the TS.

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 consequence of an accident previously evaluated:

The proposed amendment will remove five tables of component lists from the TS and add them to an administratively controlled document which is subject to the change controls provisions of the TS. The new location of the affected component lists is easily retrievable. The existing TS requirements and those components to which they apply are not altered by this TS amendment. There are no changes to the operations, maintenance, surveillance, and/or qualification of any component on the removed lists. Therefore, the probability of occurrence and the consequences of any previously evaluated accident is [sic] not changed.

Standard 2—Create the possibility of a new or different kind of accident from any accident previously evaluated:

The TS requirements and the components to which they apply are not altered by this amendment. The removed component lists are added to a controlled and easily retrievable document. This amendment has no impact on plant operations, maintenance, testing, or component qualification. Therefore, the possibility of a new or different kind of accident is not created by this amendment.

Standard 3—Involve a significant reduction in a margin of safety:

The removal of these five component lists from the TS does not alter existing TS requirements or those components to which they apply. These lists will be added to an administratively controlled document which is subject to the controls provisions of the TS. More specifically, there is no impact on safe plant shutdown, maintenance or hot standby, containment isolation capability, containment leakage rate, and/or the operability of safety related valves. Therefore, removal of these five component lists from the TS will not involve a reduction in the 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.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: May 27, 1994.

Description of amendments request: The proposed amendment would revise the Technical Specification surveillance test interval from monthly to quarterly for several channel functional tests for the Reactor Protective System and the Engineered Safety Feature Actuation System (ESFAS). In addition, an administrative change to the ESFAS table would remove an out-of-date footnote concerning the emergency diesel generator logic circuit modifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Reactor Protective System (RPS) and the Engineered Safety Features Actuation System (ESFAS) provide the actuation signals to safety equipment necessary to mitigate design basis accidents and transients. The proposed change would increase the surveillance test interval from monthly to quarterly for several of the RPS and ESFAS instrumentation channel functional tests. The RPS/ESFAS instruments are not an initiator in any previously evaluated accidents. Therefore, the proposed changed does not involve an increase in the probability of an accident previously evaluated. The required plant-specific setpoint drift analysis for Calvert Cliffs demonstrated that the observed changes in instrument uncertainties for the extended surveillance test interval do not exceed the current 30-day setpoint assumptions. This provides confidence the 90-day test interval will not impact the ability to detect and monitor system degradation. Therefore, the proposed change will not change the ability of the RPS/ESFAS instrumentation to respond to and mitigate the consequences of any previously evaluated accident. In addition, an obsolete footnote is removed from ESFAS Table 4.3–2.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed extended surveillance test interval for the RPS and ESFAS and the removal of the obsolete footnote does not involve any changes in equipment or the function of these instruments. The proposed change does not represent a change in the configuration or operation of the plant. The RPS and ESFAS setpoints will not be changed as the instrument uncertainties resulting from the proposed surveillance test interval (calculated using actual plant data) are less than the instrument uncertainties assumed for the current surveillance interval. Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The proposed change will not affect the functions of the RPS or the ESFAS instruments. The CEN–327 and CEN–327, Supplement 1, topical reports quantified the corresponding changes in core melt frequency for the representative fault tree models that were developed for Calvert Cliffs. The proposed change has two principal effects with opposing impacts on core melt frequency. The first impact is a slight increase in core melt frequency that results from the increased unavailability of the instrumentation in question. This assumed unavailability results from less frequent testing. The unavailability of the tested instrumentation components represents the potential for the failure of the reactor to trip, an Anticipated Transient Without Scram, or a failure of the appropriate engineered safety features to actuate when required. The opposing impact on core melt risk is the corresponding reduction in core melt frequency that would result due to the reduced exposure of the plant to test-induced transients. The two changes are nearly equal and the net result is no distinguishable effect on plant safety. The NRC issued a Safety Evaluation Report which found that these evaluations were acceptable for justifying the extensions in the surveillance test intervals for the RPS and ESFAS from 30 days to 90 days.

The RPS and ESFAS setpoints will not be changed since the instrument drift resulting from the proposed surveillance test interval is less than the instrument drift presently assumed for the current surveillance interval. This provides confidence the 90-day test interval will not impact the ability to detect and monitor system degradation. The removal of the ESFAS Table footnote only removes obsolete information from the Technical Specifications. The conclusions of the accident analyses in the Calvert Cliffs Updated Safety Analysis Report remain valid and the safety limits continue to be met. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Michael L. Boyle.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: June 8, 1994.

Description of amendments request: The proposed amendments would revise the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 (CC1/2), Technical Specifications (TS) 4.6.2.2.b to extend the surveillance interval for the containment fan coolers from 18 months to 24 months. The requested changes have been submitted in accordance with Generic Letter (GL) 91–04, "Guidance on Preparation of a License Amendment Request for Changes in Surveillance Intervals to Accommodate a 24-Month Fuel Cycle." These proposed amendments are part of a series of requests that will eliminate the need for mid-cycle surveillance outages to accommodate the existing 18 month surveillance requirements since CC1–2 is operating on 24-month fuel cycles.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The purpose of the Containment Air Cooling (CAC) System is to cool the containment atmosphere, and thereby limit containment pressure and temperature, following a Loss of Coolant Accident (LOCA) or Main Stream Line Break in containment. Failure of the CAC System is not an initiator for any previously analyzed accident. Therefore, the proposed change does not involve an increase in the probability of an accident previously evaluated.

Historical CAC System reliability, monthly surveillances and monitoring of CAC-related plant parameters provide assurance that undetected system degradation will not occur between 24-month surveillances, and the system will continue to perform its safety function. Therefore, there will be no significant increase in the consequences of accidents previously evaluated. Therefore, the proposed Technical Specification change does not increase the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

This requested revision to increase the interval for a CAC surveillance from 18 to 24 months does not involve a significant change in the design or operation of the plant. No hardware is being added to the plant as part of the proposed change. The proposed change will not introduce any new accident initiators. Therefore, the proposed change would not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Does operation of the facility in accordance with the proposed amendment involve a significant reduction in a margin of safety.

The CAC System provides a margin of safety by providing a means by which containment pressure can be limited following a LOCA or Main Steam Line Break. The proposed change does not affect the operation or design of the CAC System. Historical monthly surveillances and Control Room indications give assurance that the reduction in surveillance frequency will not adversely affect our ability to detect degradation in the system. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Michael L. Boyle.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: June 8, 1994.

Description of amendments request: The proposed amendments would revise the Calvert Cliffs Nuclear Power Plant, Units 1 and 2, Technical Specifications 4.8.1.1.1.b to extend the alternate 69 kV offsite power circuit surveillance frequency from 18 to 24 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The purpose of the 69 kV Southern Maryland Electric Cooperative (SMECO) power source is to act as an independent energy source for achieving and maintaining safe shutdown of the plant if the 500 kV system is not available. Failure of the 69 kV SMECO system is not an initiator for any existing accident. Therefore, the proposed change does not involve an increase in the probability of an accident.

The 69 kV SMECO system could be used to mitigate the consequences of accidents involving a loss of primary offsite power. However, the accident analyses assume that if the 500 kV circuits were not available, the Emergency Diesel Generators would be used to provide power to maintain the plant in a safe shutdown condition. A historical review of surveillance test results indicates the system has experienced only one significant failure in the last ten years. In addition, the system is routinely used.

However, the SMECO system is not assumed to function in our accident analysis, so this change will result in no significant increase in the consequences of accidents previously evaluated. Therefore, the proposed Technical Specification change does not increase the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated?

This requested increase in the interval for a 69 kV SMECO surveillance from 18 to 24 months does not involve a significant change in the design or operation of the plant. No hardware is being added to the plant of the proposed change. The proposed change will not introduce any new accident initiators. Therefore, the proposed change would not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Does operation of the facility in accordance with the proposed amendment involve a significant reduction in a margin of safety?

The 69 kV SMECO system provides a margin of safety by providing an alternate offsite electrical power source. The proposed change does not affect the operation or design of the 69 kV SMECO system. Historical surveillance data and routine use indicates that the reduction in surveillance frequency will not adversely affect our ability to detect degradation in the system. Therefore, the proposed change does not involve a

significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Michael L. Boyle

Baltimore Gas and Electric Company, Docket No. 50–318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of amendment request: May 27, 1994.

Description of amendment request: This amendment would revise the existing heatup and cooldown curves and rates to increase their applicability to 30 Effective Full-Power Years (EFPY). The fluence value that was used to determine the heatup and cooldown curves was based on the peak fluence and EFPY at the end of Cycle 9 and the peak predicted fluence for Cycles 10 and beyond. In addition, a variable-setpoint low-temperature overpressure protection (VLTOP) system is being installed to increase the allowable operating pressure band in the Low-Temperature Overpressure Protection (LTOP) region. The VLTOP system uses a variable power-operated relief valve setpoint to take advantage of increased Appendix G pressure limits at increased reactor coolant system (RCS) temperatures. This system will increase the operating window in which the plant may operate during heatup and cooldown.

Specifically, this amendment would revise the Unit No. 2 heatup and cooldown curves and rates for the following Technical Specification (TS) sections. TS Section 3.4.9.1.a would be revised to decrease the maximum heatup rate from a fixed value of 75 °F/hr to a more conservative variable heatup rate of 30 °F to 60 °F/hr which varies with RCS temperature range from 70 °F to greater than 246 °F. TS Section 3.4.9.1.b would be revised to increase the RCS temperatures for the maximum allowable cooldown rates. TS Figures 3.4.9–1 and 3.4.9–2 would be replaced by new RCS pressure Temperature Limits. The revised curves and rates are based on the predicted fluence value for Cycle 10 and beyond.

The following TS sections would be revised to support modifications to the LTOP system. TS sections 3.4.9.3.a.1 and 3.4.9.3.a.2 would be changed to "trip setpoint below the curve in Figure 3.4.9–3*" to account for the VLTOP system. The footnote, "When on shutdown cooling, the PORV trip setpoint shall be less than or equal to 443 psia," has been added for Shutdown Cooling Operation to maintain an extra setpoint that is independent of RCS temperature and is equal to the lowest variable setpoint. The Minimum Pressure and Temperature (MPT) Enable would be changed from 305 °F to 301 °F. This change would effect TS sections 3.1.2.1, 3.1.2.3, Table 3.3–3, 3.4.1.2, 3.4.1.3, 3.4.3, 3.4.9.3, 4.5.2, and 3.5.3. Due to the lower MPT Enable temperature, the transition region at which the high pressure safety injection pumps are placed under manual control on cooldown and restored to automatic status on heatup would be changed from a temperatue range of 305 °F–350 °F, to 301 °F–325 °F. This affects TS 3.5.3 and Table 3.3–3. TS Bases Sections B3/4.4.1, B3/4.4.9, and 3/4.5.2 would change to be consistent with the proposed change and to provide additional clarification of some of the existing 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:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Low Temperature Overpressure Protection (LTOP) system, including the administrative controls, ensures that the 10 CFR Part 50, Appendix G, Pressure-Temperature (P–T) limits for the reactor pressure vessel will not be violated while operating at low temperatures. The heatup and cooldown curves are conservatively developed in accordance with the fracture toughness requirements of 10 CFR Part 50, Appendix G, as supplemented by the American Society of Mechanical Engineers Boiler and Pressure Vessel Code Section III, Appendix G. The reactor vessel material Adjusted RT_{NDT} values are based on the conservative methodology provided in Regulatory Guide 1.99, Revision 2.

Analyses show that the proposed use of a variable LTOP system will not result in a significant increase in the probability of an inadvertent opening of a Power-Operated Relief Valve (PORV) causing a small break Loss-of-Coolant-Accident. The proposed heatup and cooldown curves and associated limits continue to provide conservative restrictions on Reactor Coolant System (RCS) pressure to minimize material stresses in the RCS due to normal operating transients, thus minimizing the likelihood of a rapidly propagating fracture due to pressure transients at low temperatures. Because the proposed heatup and cooldown curves and rates are based on conservative Appendix G methods, and because the LTOP controls protect the Appendix G P–T limits, the proposed curves and limits do not involve an increase in the probability of accidents previously evaluated.

The proposed use of a variable PORV trip setpoint and the increase in the allowable fluence at the reactor vessel wall results in the changes to the heatup and cooldown curves and rates, the Minimum Pressure and Temperature (MPT) Enable temperature, and high pressure safety injection pump manual control transition temperature. These proposed changes continue to provide sufficient margin to accommodate postulated pressurization from mass and energy addition transients. Calculations have been performed that predict the response to such transients. Because the results of the analyses remain well within the conservative acceptance limits of Appendix G, these changes do not increase the consequences of accidents previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The new variable LTOP control system along with the proposed changes to the Technical Specifications will ensure that the Appendix G P–T limits will not be violated during low temperature operations. While setpoints and curves have changed, this proposed change does not introduce any operator actions that are significantly different from current operator actions used at the plant. The variable LTOP system will continue to have redundant channels to ensure that no single equipment failure or operator error will result in violation of the P–T limits. The use of a variable LTOP system does not create a new failure mechanism for the PORV. The failure mechanism for the PORV continues to be an inadvertent opening or the failure to open during a pressure transient which has been previously evaluated. Therefore, the proposed change does not create the

possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

This change will ensure that the margin of safety is maintained with respect to energy or mass addition events in that none of the events postulated could challenge the Appendix G limits. The proposed use of a variable PORV trip setpoint and the increase in the allowable fluence at the reactor vessel wall necessitate the changes to the heatup and cooldown curves and rates, the MPT Enable temperature, and high pressure safety injection pump manual control transition temperature. These changes ensure that the margin of safety is maintained by protecting the Appendix G limits for all postulated transients. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Michael L. Boyle.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: June 17, 1994.

Description of amendments request: The proposed amendments would revise the Technical Specifications (TS) to (1) remove the heatup and cooldown curves from TS 3/4.4.6 and relocate them to a newly created Pressure and Temperature Limits Report, and (2) remove the reactor vessel material surveillance program withdrawal schedule from TS Table 4.4.6.3–1 and relocate it to the Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment [sic] does not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes are administrative in nature. These changes do not alter the configuration or operation of the facility. The Limiting Safety Systems Settings and Safety Limits specified in the current Technical Specifications remain unchanged.

2. The proposed amendment [sic] does not create the possibility of a new or different kind of accident from any accident previously evaluated. The safety analysis of the facility remains complete and accurate. There are no physical changes to the facility and the plant conditions for which the design basis accidents have been evaluated are still valid. The operating procedures and emergency procedures are unaffected.

3. The proposed amendment [sic] does not involve a significant reduction in the margin of safety because these margins are established through the Limiting Conditions of Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications, and since there are no changes to the physical design or operation of the facility, these margins will not be changed.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William H. Bateman.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: January 19, 1994.

Description of amendment request: The proposed amendment would revise the Technical Specifications by increasing the minimum reactor coolant system temperature required for criticality from 500 degrees Fahrenheit to 530 degrees Fahrenheit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not result in a significant increase in the probability or consequences of accidents previously evaluated. The probability for an accident is independent of the changes being proposed. Reactor criticality at 530 degrees Fahrenheit instead of the nominal no-load T_{avg} of 547 degrees Fahrenheit does not affect any of the accident initiators in the analyses, but does change one of the initial conditions assumed in the Safety Analysis. However, the change in initial conditions from the nominal no-load temperature of 547 degrees Fahrenheit to 530 degrees Fahrenheit does not increase the probability of any of the events considered in the Safety Analysis. The proposed Minimum Temperature for Criticality specification (530 degrees Fahrenheit) will be more restrictive than the current specification which allows reactor criticality at a temperature as low as 500 degrees Fahrenheit. In addition, the Action Statement will require operator response to place the reactor in a subcritical condition (Mode 3) with 15 minutes should the temperature drop below the limit for greater than a specified amount of time (15 minutes).

Likewise, the proposed change does not significantly increase the consequences of an accident previously evaluated. In the reanalysis of the Zero Power accidents (Rod Withdrawal From Subcritical, Rod Ejection, Main Steamline Break, Boron Dilution During Startup, and Feedwater Malfunction) from an initial condition of 530 degrees Fahrenheit, it was concluded that the results and conclusions in the current Safety Analysis remain valid based on the fact that the current analysis results are conservative and bounding for reactor criticality at 530 degrees Fahrenheit. The LOCA transient analyses are unaffected by the proposed change since they are initiated from the limiting condition of 102 percent. Since the full power T_{avg} value is unchanged by this proposed amendment, the LOCA analyses are unaffected. The proposed change will ensure that plant parameters are within their analyzed ranges prior to reactor criticality and appropriate operator actions are taken should the temperature drop below the temperature limit after reaching criticality.

The proposed administrative changes delete requirements which are no longer

applicable and will have no affect on the probability or consequences of any accident previously evaluated in the analyses.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The change does not involve the addition of any new or different type of equipment, nor does it 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 proposed change will ensure that plant parameters are within their analyzed ranges prior to reactor criticality. The proposed administrative changes delete requirements which are no longer applicable and will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a significant reduction in a margin of safety. The proposed change does not affect any safety related system or component operation or operability, instrument operation, or safety system setpoints, and does not result in increased severity of any of the accidents considered in the analysis. Operator response to a drop in temperature after reaching criticality for a specified period of time (greater than 15 minutes) will place the reactor in a subcritical condition which is inherently more stable than when critical below the Point of Adding Heat. The proposed administrative changes are being made to clarify Technical Specifications with no change of intent. Therefore, the proposed changes do not create a significant reduction in a margin of safety.

In conclusion, based on the previous considerations, Commonwealth Edison Company believes that the activities associated with this Technical Specification amendment request satisfy the Significant Hazards Consideration standards of 10 CFR 50.92(c) and, accordingly, a finding that this Technical Specification amendment does not represent a Significant Hazards Consideration is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Robert A. Capra.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: June 24, 1994.

Description of amendment request: The proposed amendment would revise the Technical Specifications by removing the containment recirculation sump level instrumentation.

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 of occurrence or consequences of any accident previously evaluated.

This change does not affect the initiators or precursors of any accident previously evaluated. This change will not increase the likelihood that a transient initiating event will occur because transients are initiated by equipment malfunction and/or catastrophic system failure. Since the proposed change does not involve the introduction of new or redesigned plant equipment, failure mechanisms are not impacted. As a result, the probability of occurrence of accidents previously evaluated is not increased.

The consequences of accidents previously evaluated are not increased. Removal of [containment recirculation sump level] CRSL instrumentation requirements from Technical Specifications does not affect the ability to mitigate the consequences of any accident previously evaluated. The CRSL instrumentation is used to verify that [residual heat removal] RHR pumps have adequate [net positive suction head] NPSH to operate in the recirculation mode following a Loss of Coolant Accident (LOCA).

As stated in the Zion Updated Final Safety Analysis Report (UFSAR), the changeover from the injection mode to the recirculation mode of emergency core cooling is initiated when the low level alarm on the RWST annunciates. This occurs when the RWST level drops to 13′-7″ (145,600 gallons).

At this point, sufficient water has been delivered to the containment, from the Containment Spray (CS) system and, by Emergency Core Cooling System (ECCS) injection, through the [reactor coolant system] RCS break, to provide at least one foot of water above the containment floor. One foot of water above the containment floor provides sufficient volume to sustain the required NPSH of the RHR pumps in the recirculation mode of operation. The water level in the Containment Building during the recirculation phase will be approximately 5 feet above the floor elevation (568′) based on the volume of the RCS, accumulators, and the minimum required volume of the RWST. Minimum RWST volume of 350,000 gallons is required by Technical Specification 3.8.1.F.

In summary, RWST level instrumentation, which satisfies Regulatory Guide 1.97 qualification requirements for a Type A, Category 1 variable, provides the operator with the primary indication of the appropriate time to initiate switchover to the recirculation mode, as well as indication of adequate NPSH for the RHR pumps. Containment Water Level (wide range) instrumentation which is qualified as a Type B variable provides confirmatory indication of water level in containment.

The proposed change does not affect the procedures controlling operation of equipment, or systems required to mitigate the accidents considered in the UFSAR. As such, there will be no 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 previously analyzed.

The proposed change does not involve the addition of any new or different types of equipment, nor does it involve the operation of equipment required for safe operation of the facility in a manner different from those addressed in the UFSAR. No safety related equipment or function will be altered as a result of this proposed change. Because no new failure modes are introduced, the proposed amendment does not create a new or different kind of accident from any previously analyzed in the UFSAR. Also, the methods of recovery from accidents described in the UFSAR are not affected.

Based on the above discussion, the proposed amendment does not create a new or different kind of accident from any previously analyzed in the UFSAR.

3. The proposed changes do not involve a significant reduction in a margin of safety.

No design margins are impacted and the newly chosen primary indicator (RWST level) is both consistent with

plant emergency procedures and appropriately qualified. The proposed change will not adversely impact the peak clad temperature, amount of fuel damage, or offsite dose projected to occur from the design basis accidents. Thus, the margin of safety is not diminished.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Robert A. Capra.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: June 16, 1994.

Description of amendment request: The proposed amendment will remove a footnote applicable for Cycle 18 only regarding the surveillance of the automatic bus transfer (ABT) system and add surveillance requirement 4.8.3.1.2, to test the ABT once per refueling.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve an SHC [significant hazards consideration] because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to delete a note from the limiting condition for operation for the MCC–5 ABT scheme and to add the surveillance requirement has no impact on the probability or consequences of an accident previously evaluated. By removing the requirement to test the scheme on-line, the probability of failure to mitigate an accident while the Haddam Neck Plant is operational is incrementally decreased.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes remove the requirements to disable the subject ABT feature for testing, leaving the scheme undisturbed throughout normal plant operation, and therefore does not create the possibility of a new accident or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The proposed changes require that the MCC–5 ABT feature be tested during a plant shutdown rather than during normal operation. This will place the ABT scheme in a test environment that has no significant reduction in a margin of safety. The plant configuration that is required to perform this test (refueling) would clearly place the Haddam Neck Plant in a state that would be able to accept all possible ABT scheme test outcomes, normal and abnormal. Therefore, these proposed changes do not result in 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: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: John F. Stolz.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: October 29, 1993, as supplemented on March 28, 1994.

Description of amendment request: This amendment is an additional followup to the amendment request of May 29, 1992, published in the **Federal Register** (57 FR 30242) on July 8, 1992, which changed the Technical Specifications Section 1.0, Definitions, to accommodate a 24-month fuel cycle and which proposed the extension of the test intervals for specific surveillance tests. This amendment proposes extending the surveillance intervals to 24 months for the following additional surveillance tests:

(1) Volume Control Tank Level Transmitter
(2) Containment High Range Area Radiation Monitors, R–25 and R–26
(3) Safety Injection System Electrical Loading
(4) Safety Injection (SI) System
(5) Reactor Coolant System Sub-Cooling Margin Monitor

The changes requested by the licensee are in accordance with Generic Letter 91–04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle."

The October 29, 1993, submittal included surveillance tests for the Auxiliary Feedwater System which duplicated a previous request which was subsequently approved. The March 28, 1994, submittal withdrew the duplicated request.

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 hazard consideration, which is presented below:

(1) Volume Control Tank Transmitter:

The proposed change does not involve a significant hazard consideration since:

1. A significant increase in the probability or consequences of an accident previously evaluated will not occur.

It is proposed that the channel calibration frequency for the volume control tank level instrumentation be changed from every 18 months (+25%) to every 24 months (+25%).

A statistical analysis of channel uncertainty for a 30 month operating cycle has been performed. Based upon this analysis it has been concluded that sufficient margin exists between the existing Technical Specification limits and the licensing basis Safety Analysis limits to accommodate the channel statistical error resulting from a 30 month operating cycle. The existing margin between the Technical Specification limit and the Safety Analysis limit provides assurance that plant protective actions will occur as required. It is therefore concluded that changing the surveillance interval from 18 months (+25%) to 24 months (+25%) will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any accident previously evaluated has not been created.

The proposed change is operating cycle length from a maximum of 22.5 months to 30 months resulting from an increased surveillance interval will not result in a channel statistical allowance which exceeds the current margin between the existing Technical Specification limits and the Safety Analysis limits. Plant equipment, which

will be set at (or more conservatively than) Technical Specification limits, will therefore provide protective functions to assure that Safety Analysis limits are not exceeded. This will prevent the possibility of any new or different kind of accident from that previously evaluated from occurring.

3. A significant reduction in a margin of safety is not involved.

The change in surveillance interval from a maximum of 22.5 months to 30 months resulting from an increased operating cycle will not result in a channel statistical allowance which exceeds the margin which exists between the current Technical Specification limit and the licensing basis Safety Analysis limit. This margin, which is equivalent to the existing margin, is necessary to assure that protective safety functions will occur so that Safety Analysis limits are not exceeded.

(2) Containment High Range Area Radiation Monitors, R–25 and R–26:

The proposed change does not involve a significant hazard consideration since:

1. There is no significant increase in the probability or consequences of an accident.

It is proposed that the calibration frequency for the high-range Containment Radiation Monitors (R–25 and R–26) be revised from every 18 months (+25%) to every 24 months (+25%).

These two monitors are redundant to each other and are used for post accident monitoring purposes. They serve no function during normal plant operation. Furthermore, they serve no purpose in preventing accident initiation or mitigation. They are used for Emergency Planning purposes to indicate a release of radioactivity to containment.

Review of past test results indicates that the devices have proven reliable during past surveillances and there was no indication that they would not remain operable for an extended operating cycle. In addition, the devices are essentially redundant to each other. Each device would respond to a release of radioactivity to Containment.

In consideration that the monitors are redundant, and in view of the past test history of the monitors, there would be no significant increase in the probability or consequences of an accident due to an extended operating cycle.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The role of R–25 and R–26 is in the assessment of radiological releases to Containment. In this function it is important that one of the instruments, being high range, respond to a radiological release. Indications from the devices are not used in a quantitative manner. Rather they are used for qualitative purposes. Due to redundancy and past test history, continued operability is expected. In addition, the instruments serve no function in preventing accident initiation or accident mitigation. Therefore, it is concluded that an extended operating cycle for these monitors would not result in the possibility of a new or different kind of accident from any previously analyzed.

3. There has been no significant reduction in the margin of safety.

Due to the qualitative function served by these two instruments as well as their redundancy and acceptable past test history, no significant reduction in the margin of safety due to an extended operating cycle is expected.

(3) Safety Injection System Electrical Loading

The proposed change does not involve a significant hazard consideration since:

1. There is no significant increase in the probability or consequences of an accident.

The test procedure under consideration is one of the more complicated surveillance procedures accomplished at a refueling interval. Considering the vast number of components that are tested it is highly improbable that some deficiencies will not occur. When such problems are encountered it is important to note whether the failure is time dependent and, in addition, whether the corrective maintenance implemented prevents recurrences in the future. In consideration of the evaluation of past test observations it is important to note that the problems which occurred were not time dependent and that maintenance practices have been effective in precluding future failures of the same type. Equally important is whether the emergency power system would have performed its intended safety function if the situation was not a test but represented an actual demand upon the system. Test acceptance criteria are always more stringent than required by accident scenarios to provide margin. As discussed above the two most significant findings were a failure of a CCW [Component Cooling Water] pump to strip from the bus during the 1989 test and a relay which did not function within its timing sequence. In the first instance, the diesel generator was not overloaded. In the second instance, the relay did function albeit not within the allotted time. In both cases, safety functions would have been performed.

Thus, it is concluded that an extended period between surveillances will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The deficiencies noted in the test data taken during the last several refueling outage surveillances were not substantial in number and would not have impacted the capability of the Safety Injection System and its emergency power supply to perform its intended safety function. The effectiveness of maintenance practices, both preventive and corrective, has been proven in that deficiencies noted in one test are not repeated in subsequent tests. The last refueling surveillance test was completely successful where no new test failures were noted. Because past test deficiencies do not appear to be time dependent, extending the surveillance interval by 7.5 months is not expected to create the possibility of a new or different kind of accident from any accident previously created.

3. There has been no reduction in the margin of safety.

Because previous tests indicate that the engineered safety features power supply would have performed its safety function if called upon over the past several years, it is concluded that extending the operating cycle by several months will not involve a significant reduction in a margin of safety.

(4) Safety Injection System

The proposed change does not involve a significant hazard consideration since:

1. There is no significant increase in the probability or consequences of an accident.

The central safety objective in reactor design and operation is the control of reactor fission products from the fuel. Four methods are used to ensure this objective. Two of these methods are: (1) Retention of fission products in the reactor coolant for whatever leakage occurs; and (2) retention of fission products by the containment for operational and accidental releases beyond the reactor coolant boundary. The engineered safety features are the provisions in the plant that embody these two methods to prevent the occurrence or to ameliorate the effects of serious accidents.

The engineered safety features systems are the containment system, the safety injection system, the containment

spray system, the containment air recirculation cooling and filtration system, the isolation valve seal-water system, and the containment penetration and weld channel pressurization system. Each engineered safety feature provides sufficient performance capability to accommodate any single failure of an active component and still function in a manner to avoid undue risk to the health and safety of the public.

A comprehensive program of plant testing is formulated for all equipment, systems, and system control vital to the functioning of engineered safety features. The program consists, in part, of integrated tests of the systems as a whole and periodic tests of the actuation circuitry and mechanical components.

An assessment has been performed of the test results from the last five refueling outages, covering a period in excess of seven years. In reviewing the test results particular attention was directed towards those test anomalies which directly impacted test acceptance criteria and, thus, influence the capability of the safety injection system to perform its intended safety function. Although in each test a problem area was identified, the number of such events were minimal. Furthermore, after corrective action these events were not repeated in subsequent system tests. In all instances the problems were not identified to be time dependent. Furthermore, the consequence from a system safety function perspective was minimal. Thus, it is concluded that extending the surveillance interval by several months will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The number of problem areas in each test have been few and of minimal to nonexistent safety significance. In 1986, a valve failure occurred which would have been detected by alternate means during an extended operating cycle. In another instance, lack of valve movement could not be repeated in a second test, leading to the conclusion that the valve malfunction was not induced by the system but was the result of the test process. In the last problem area, manual SI initiation, no credit is taken within the FSAR [Final Safety Analysis Report] accident analysis for this function. In 1989, a series of containment isolation valves failed to stroke as required. In three instances the valves failed closed, which is the correct position. In the other instances, either the redundant valve did stroke to the correct position or the valve was located in a closed system. In all these events there was minimal impact upon safety. More importantly, after corrective action, these failures were not repeated in the 1991 or 1993 tests. In 1991, one breaker failed to perform within specifications and thus was considered defective. In 1993 there were no major equipment malfunctions, although one containment isolation valve failed to perform as required.

In summary, although there have been anomalies in all of the tests evaluated, none were deemed serious enough to impact the safety function of the safety injection system or to be considered as having a negative affect upon an increased interval of several months between surveillances. Therefore, it has been concluded that an increased operating cycle will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. There has been no reduction in the margin of safety.

The results of the previous five cycles of test data have been evaluated. None of the anomalies observed were sufficiently serious to impact the performance of the Safety Injection System or to weigh against an extended operating cycle. As there are no other changes to the safety analysis parameters which are impacted by an extended interval between surveillances, it is concluded that this change will not involve a significant reduction in the margin of safety.

(5) Reactor Coolant System Sub-Cooling Margin Monitor:

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the possibility or consequences of an accident.

It is proposed that the channel calibration frequency for the volume control tank instrumentation be changed from every 18 months (+25%) to every 24 months (+25%).

The sub-cooling margin monitoring function is not relied upon during normal operation. There is no reference to its use in the Indian Point Unit 2 standard operating procedures. No credit is taken for this monitoring function within the safety analysis for either the prevention or mitigation of an accident. The increase in "normal" operating uncertainty, due to the longer operating cycle, as well as "adverse" uncertainties, is being incorporated in the EOPs [Emergency Operating Procedures]. Therefore, the slight increase in uncertainty associated with a longer operating cycle between surveillances will not cause a significant increase in the probability or consequences of an accident.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The sub-cooling margin serves no purpose during normal operation for prevention of an accident. No credit is taken within the FSAR Safety Analysis for accident mitigation. The sub-cooling margin monitor is relied upon within the Emergency Operating Procedures. Thus, the normal uncertainty due to a 30 month operating cycle, as supplemented by the instrument loop error due to a post-accident harsh environment, is being factored into the Emergency Operation Procedures in accordance with Emergency Response Guidelines. Thus, it is concluded that the possibility of a new or different kind of accident from any previously analyzed has not been created.

3. There has been no reduction in the margin of safety.

Because the sub-cooling margin monitor serves no purpose during normal operation and appropriate measures have been implemented to reflect the additional uncertainty due to a 30 month operating cycle into the EOPs, it is concluded that there will be no 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 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Michael L. Boyle, Acting.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: June 1, 1994.

Description of amendment request: The proposed amendment would revise the Technical Specifications to allow extended Rod Position Indication (RPI) deviation limits and on-line calibration of the RPI channels. Specifically, Section 3.10.6.1 would be changed to allow extended RPI deviation limits,

and Section 3.10.4.4 would be changed to allow on-line calibration of the RPI channels. The Basis for Section 10 would be changed to reflect the above, and in addition, Section 3.10.6.2 would be changed to clarify the operability requirements during calibration. The proposed changes to Sections 3.10.6.1 and 3.10.4.4 include power limits to be included in the Core Operating Limit Report (COLR). The use of a COLR for cycle specific core operating limits was proposed by the licensee by submittal of October 29, 1993, and is currently under review by the NRC staff.

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: Neither the probability nor the consequences of an accident previously analyzed is increased due to the proposed changes. All peaking factors will remain within the limits of the Technical Specifications. Both the shutdown margin and the axial flux difference will be maintained within the limits of the Technical Specifications. There will be no fuel damage due to the changes. All design and safety criteria will be met.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: The changes will not create the possibility of a new or different kind of accident. The calibration will be performed using plant procedures that have been reviewed and approved by Con Edison's Safety Committees. It has been shown that even with the new RPI deviation bands and on-line calibration, all power distribution limits will be met.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: The proposed amendment does not involve a significant reduction in the margin of safety. There will be no change in the power distribution limits used in the design and safety analyses and the required shutdown margin will be maintained. It has been shown that there is no fuel failure as a result of this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Michael L. Boyle.

Detroit Edison Company, Docket No. 50–16, Enrico Fermi Power Plant, Unit 1, Monroe County, Michigan

Date of application for amendment: December 9, 1993 (Reference NRC–93–0143)

Brief description of amendment: This Licensee Amendment Request (LAR) proposes to revise the Enrico Fermi Power Plant, Unit 1, Technical Specifications (TS) to bring the TS into conformance with a revision of 10 CFR Part 20 (56 FR 23360).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes are administrative in nature and do not impact the SAFSTOR status or design of any plant structures, systems or components. As a result, this proposed change cannot increase the probability or the consequences of any accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not affect the plant SAFSTOR status as defined. As a result, the proposed changes cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The proposed changes do not affect the plant SAFSTOR status. The changes will not increase the amounts or change the types of effluents that may be released offsite. These changes only ensure compliance with revised 10 CFR 20. These changes do not alter any of the requirements or responsibilities for protection of the public against radiation hazards. As a result, these changes do not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 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: 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 Branch Chief: John H. Austin.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: September 16, 1992, as superseded February 4, 1994.

Description of amendment request: The proposed amendment would supersede in its entirety a previous proposed amendment which was submitted by letter dated September 16, 1992. A notice of application and proposed no significant hazards consideration determination for the September 16, 1992, submittal was published in the **Federal Register** on January 21, 1993 (58 FR 5429); this notice supersedes the January 21, 1993, notice in its entirety.

The proposed amendment would modify the Technical Specifications (TSs) related to containment air locks to make them as close to the Improved Standard TSs in NUREG–1431 as the plant-specific design will permit. The proposed changes in TS 3.6.1.1 and 3.6.1.3 would modify surveillance requirements and limiting conditions of operation and effect numerous administrative and format changes. The changes relate to air lock operability, leak testing, and door interlocks.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The probability of occurrence of a previously evaluated accident is not increased because the containment air locks do not effect the initiation of any design basis accident [DBA]. The

consequences of an accident are also not significantly increased because the proposed revisions to the action statements will continue to ensure that at least one door in each air lock is maintained closed. A single door in each air lock is capable of withstanding a pressure in excess of the maximum expected pressure following a DBA. The structural integrity and leak tightness of the containment will not be changed by this proposed revision. For the brief period of time that the operable air lock door is open and the inoperable door is providing the single containment barrier, the consequences of [2an] accident may be increased. However, the probability of an event occurring requiring containment integrity is sufficiently remote to justify limited access when required.

Therefore, based on the continued ability of the containment air locks to provide a barrier to limit leakage from containment during a DBA, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Air lock operation does not interface with the reactor coolant pressure boundary or any other mechanical or electrical controls which could impact the operations of the reactor or its direct support systems.

Containment air locks are designed for the purpose of containment entry and exit. During this operation, the air lock maintains containment integrity by providing at least one door which is capable of providing a leak tight barrier during a DBA.

The proposed changes will continue to ensure that air lock operation is performed as assumed in the original design of the plant. During the period when the operable door is open and the other door inoperable, at least one door is being maintained closed as designed. This condition is ensured due to the subatmospheric conditions that exist during plant operation. The operable air lock door cannot be safely opened unless the inoperable door is closed due to the approximately 5 psi pressure differential that exists. The operable air lock door would only be opened long enough to allow personnel to enter the air lock.

Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The applicable margin of safety consists of maintaining the primary containment leak rates within the assumptions of the DBA analysis. These leak rates are maintained provided at least one operable air lock door remains closed during the event.

The proposed revisions will continue to ensure that at least one air lock door is maintained closed. During the brief period of time that an operable air lock door is open and the inoperable door is providing the single containment barrier, the margin of safety is decreased. The inoperable door may not limit containment leak rates within the assumptions of the DBA analysis. However, the probability of an event requiring the inoperable air lock door to limit containment leakage occurring during this time period is sufficiently low and the overall margin of safety would not be decreased by a significant amount. The proposed increase in allowable door seal leakage will not affect the overall ability of the containment air locks to restrict the release of fission products to the environment. The overall air lock leakage limit of less than or equal to .05 L_a remain unchanged. The amount of leakage which the air lock(s) are permitted to contribute to the combined containment leakage limit of 0.60 L_a remain unchanged. Therefore, the margin of safety due to increasing the door seal leakage limit remains unchanged.

Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Walter R. Butler.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: March 31, 1994.

Description of amendment request: The proposed amendments would change Technical Specification 3/4.7.1.1 and its Bases regarding maximum allowed reactor thermal power operation with inoperable main steam safety valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The new power range neutron flux high setpoint values will ensure that the secondary side steam pressure will remain below 110 percent of its design value following a loss of load/turbine trip (LOL/TT) when one or more main steam safety valves (MSSVs) are declared inoperable. Therefore, this transient will remain classified as a Condition II probability event (faults of moderate frequency) per ANSI—N18.2, 1973 as discussed in Section 15.0.1 of the VEGP Final Safety Analysis Report (FSAR). Accordingly, since the new power range setpoints will maintain the capability of the MSSVs to perform their pressure relief function associated with a LOL/TT event, there will be no effect on the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve any change to the configuration or method of operation of any plant equipment, and no new failure modes have been defined for any plant system or component. The new power range neutron flux high setpoints will maintain the capability of the MSSVs to perform their pressure relief function to ensure the secondary side steam design pressure is not exceeded following a LOL/TT. Therefore, since the function of the MSSVs is unaffected by the proposed changes, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. The proposed changes do not involve a significant reduction in a margin of safety. The algorithm methodology used to calculate the new power range neutron flux high setpoints is conservative and bounding since it is based on a number of inoperable MSSVs per loop; i.e., if only one MSSV in one loop is out of service, the applicable power range setpoint would be the same as if one MSSV in each loop were out of service. Another conservatism with the algorithm methodology is with the assumed minimum total steam flow rate capability of the operable MSSVs. The assumption is that if one or more MSSVs are inoperable per loop, the inoperable MSSVs are the largest capacity MSSVs, regardless of which capacity MSSVs are actually inoperable. Therefore, since the power range setpoints calculated for the proposed changes using the algorithm methodology are more conservative and ensure the secondary side steam design pressure is not exceeded following a LOL/TT, there will not be a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

NRC Project Director: David B. Matthews.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: May 20, 1994.

Description of amendment request: The proposed amendments would relocate the heat flux hot channel factor penalty of 2 percent in Specification 4.2.2.2.f to the cycle-specific Core Operating Limits Report to allow burnup-dependent values of the penalty in excess of 2 percent. The licensee also proposes to revise the reference in Specification 6.8.1.6 to the Westinghouse $F_Q(Z)$ surveillance methodology in order to reflect Revision 1 of WCAP–10216–P, "Relaxation of Constant Axial Offset Control—F_Q Surveillance Technical Specification," approved by the NRC on November 26, 1993.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves only the manner in which the penalty factors for $F_Q(Z)$ would be specified (i. e., a burnup-dependent factor specified in the Core Operating Limits Report (COLR) versus a constant factor specified in the TS [Technical Specification]). This is simply used to account for the fact that $F_Q(Z)$ may increase between surveillance intervals. These penalty factors are not assumed in any of the initiating events for the accident analyses. Therefore, the proposed change will have no effect on the probability of any accidents previously evaluated. The penalty factors specified in the COLR will be calculated using NRC-approved methodology and will therefore continue to provide an equivalent level of protection as the existing TS requirement. Therefore, the proposed change will not affect the consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration to the plant (no new or different kind of equipment will be installed) or alter the manner in which the plant would be operated. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will continue to ensure that potential increases in $F_Q(Z)$ over a surveillance interval will be properly accounted for. The penalty factors will be calculated using NRC-approved methodology. Therefore the proposed change will not involve a reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308.

NRC Project Director: David B. Matthews.

GPU Nuclear Corporation, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: June 22, 1994.

Description of amendment request: The proposed amendment changes Technical Specification Sections 1.6, 3.2.A, 3.9.F.5, and 4.2.A which specify the Shutdown Margin (SDM) requirements that ensure the reactor can be made subcritical and can be maintained sufficiently subcritical to preclude inadvertent criticality in any core condition. The amendment also proposes a new definition, Shutdown Margin, Section 1.45. The proposed changes address the requirements for SDM demonstration and provide clarification for actions if SDM is not met.

The amendment also proposes administrative changes to Sections 1.7 and 3.2.B.2 (b). The definition, COLD SHUTDOWN CONDITION, was simplified by stating the reactor is in the SHUTDOWN CONDITION which eliminates the need of repeating the requirements for this condition. The note which permitted unlimited reactor startups without the Rod Worth Minimizer during Cycle 11 is no longer applicable. The note and its reference are deleted from the new page 3.2–2. Starting with page 3.2–2 in Section 3.2, the pages were renumbered and repaginated to accommodate the changes in text.

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:

GPU Nuclear has determined that operation of the Oyster Creek Nuclear Generating Station in accordance with the proposed Technical Specifications does not involve a significant hazard. The changes do not:

1. Involve a significant increase in the probability or the consequence of an accident previously evaluated.

The proposed SDM Limits are more restrictive and provide adequate shutdown margin for various modes of reactor operation. Since the new SDM

limits do not modify any initial conditions for the accidents previously evaluated in the SAR [Safety Analysis Report], the proposed changes do not involve a significant increase in the probability or consequences of these accidents.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed TS changes do not modify the function of any structure, system or component. The new Shutdown Margin requirements will still meet the basic criterion that the core in its maximum reactivity condition be subcritical with the control rod of highest worth fully withdrawn and all operable rods fully inserted. Based on these facts, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not reduce the margin of safety, because the new SDM limits where the highest worth control rod is determined analytically (0.38% delta k) or by measurement (0.28% delta k) are more restrictive than the current Oyster Creek limit (0.25% delta k).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

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: June 6, 1994.

Description of amendment request: The licensee proposes to modify the South Texas Project, Units 1 and 2, Technical Specification 3/4.8.1.1, "A.C. Sources," to revise the action statements and surveillance requirements for testing of the standby diesel generators (SDGs). The proposed amendment would eliminate excessive and unnecessary testing of the SDGs consistent with the guidance provided in NUREG–1366, "Improvements to Technical Specifications Surveillance Requirements," NUREG–1431, "Standard Technical Specifications for Westinghouse Plants," Generic Letter 84–15, "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability," and Generic Letter 93–05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation." This request replaces a request for amendment dated November 23, 1993, which was noticed on January 5, 1994 (59 FR 621). This revised amendment request includes elimination of additional identified unnecessary testing discovered since the original submittal. The changes include: (1) eliminating the requirement to demonstrate the operability of an operable SDG whenever an offsite AC power source is determined to be inoperable, or whenever a support system or an independently testable component of another SDG is inoperable, (2) eliminating the requirement to load the diesel in 10 minutes during testing, (3) replacing the minimum required loading for testing with a load band, (4) relocating some surveillance requirements to the Diesel Fuel Oil Testing Program, and (5) eliminating unnecessary loss of offsite power tests.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Standby Diesel Generators do not initiate any accidents, therefore these changes do not increase the probability or [of] an accident previously evaluated. The proposed changes will permit the elimination of the unnecessary mechanical stress and wear on the diesel engine and generator while ensuring that the diesel generators will perform their designed function. The elimination of this mechanical stress and wear will improve the reliability and availability of the Standby Diesel Generators which will have a positive effect on the ability of the diesel generators to perform their design function. Therefore, the consequences of an accident previously evaluated are not increased. The proposed changes are consistent with NUREG–1366, NUREG–1431, Generic Letter 93–05, and Generic Letter 84–15.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The elimination of these unnecessary tests does not affect the design bases of the SDGs, or any of the accident evaluations involving the SDGs. The SDGs are designed to provide electrical power to the equipment important for safety during all modes and plant conditions following a loss of offsite power. The test schedule established in accordance with GL 84–15 assures that operable SDGs are capable of performing their intended safety function. The proposed changes to the surveillance requirements are consistent with NUREG–1431, NUREG–1366, Generic Letter 93–05, industry operating experience, and South Texas Project operating experience. These changes are intended to improve plant safety, decrease equipment degradation, and remove unnecessary burden on personnel resources by reducing the amount of testing that the Technical Specification requires during power operation. Relocating the diesel fuel oil testing requirement to the STP Fuel Oil Monitoring Program outside of the Technical Specifications is an administrative change consistent with NUREG–1431 and consequently has no effect on accident probability, consequences, or margin. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes extend testing frequency and eliminate unnecessary mechanical stress and wear on the diesel generator in an effort to improve plant reliability and safety. These changes are consistent with NUREG–1431, NUREG–1366, industry operating experience, and STP operating experience and do not adversely affect the design bases, accident analysis, reliability or capability of the SDGs to perform their intended safety function. Relocating the diesel fuel oil testing requirements to the STP Fuel Oil Monitoring Program outside of the Technical Specifications is an administrative change consistent with NUREG–1431 and consequently has no effect on accident probability, consequences, or margin. Therefore the proposed changes do not involve any reduction in a margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of

10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involve 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: William D. Beckner.

IES Utilities Inc., Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: June 18, 1993 as supplemented on December 17, 1993 and May 5, 1994.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) by clarifying TS wording for the Low Pressure Coolant Injection (LPCI) and Containment Spray modes of the Residual Heat Removal (RHR) system to assure consistency with requirements of the DAEC Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The probability or consequences of a previously-analyzed accident will not be increased by these proposed changes to the LPCI and Containment Spray LCOs and BASES because they merely clarify existing TS requirements and are consistent with the DAEC UFSAR accident analysis. The addition of the footnote clarifying LPCI OPERABILITY during RHR system operation in the Shutdown Cooling mode is consistent with the requirements in the NRC Standard TS (NUREG–1433). No changes in either system design or operating strategies will be made as a result of these changes, thus no opportunity exists to increase the probability or consequences of a previously-analyzed accident.

(2) The possibility of a new or different kind of accident from those previously analyzed will not be created by these changes to the LPCI and Containment Spray LCOs and BASES because they merely clarify existing requirements. The addition of the footnote clarifying LPCI OPERABILITY during RHR system operation in the Shutdown Cooling mode is consistent with the requirements in the NRC Standard TS (NUREG–1433). No changes in either system design or operating strategies will be made as a result of these changes, thus no possibility exists to introduce a new or different kind of accident.

(3) The margin of safety will not be decreased as a result of these changes because they merely clarify existing TS requirements and are consistent with the UFSAR accident analysis. The addition of the footnote clarifying LPCI OPERABILITY during RHR system operation in the Shutdown Cooling mode is consistent with the requirements in the NRC Standard TS (NUREG–1433). No changes in either system design or operating strategies will be made as a result of these changes, thus no possibility exists to 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: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street NW., Washington, DC 20036.

NRC Project Director: John N. Hannon.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: July 1, 1994.

Description of amendment request: The proposed amendment would revise the drawdown time testing requirement of Technical Specification (TS) 4.6.5.1.c.1 and the secondary containment inleakage testing requirement of TS 4.6.5.1.c.2. These revisions would support a revised design basis radiological analysis which would support an increase in secondary containment drawdown time from 6 to 60 minutes by taking credit for fission product scrubbing and retention in the suppression pool. The current design basis radiological analysis does not take credit for the pressure suppression pool as a fission product cleanup system as permitted in NUREG–0800, Section 6.5.5, "Pressure Suppression Pool as a Fission Product Cleanup System." The proposed amendment would also take credit for additional mixing of primary containment and engineered safety feature systems leakage with 50 percent of the secondary containment free air volume prior to the release of radioactivity to the environment. In the revised analysis, mixing is assumed to occur at the onset of a Design Basis Loss-of-Coolant Accident as the primary containment and the engineered safety feature systems leak into secondary containment. The current analysis takes credit for mixing within secondary containment only after achieving a −0.25 inch water gauge (WG) pressure in secondary containment with respect to the outside surrounding atmosphere. The licensee's radiological evaluation for this accident, which reflects these proposed changes and an assumed drawdown time of 60 minutes, has determined that the radiological doses remain below 10 CFR Part 100 guidelines values and General Design Criterion 19 criteria. The revised radiological doses, as calculated by the licensee, are lower than the doses currently presented in the Updated Safety Analysis Report (USAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of the Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Secondary containment and the SGTS [Standby Gas Treatment System] are not initiators or precursors to an accident. Secondary containment provides a pressure boundary, with limited inleakage, for the purpose of establishing a negative pressure to prevent a ground level unfiltered release of radioactivity. SGTS responds to accidents involving a release of radioactivity to the secondary containment by establishing and maintaining a negative pressure inside secondary containment and by providing an elevated filtered release. Therefore, changes to SECONDARY CONTAINMENT INTEGRITY surveillances cannot affect the probability of a previously evaluated accident.

The suppression pool and secondary containment are largely passive in nature, and the active components are suitably redundant. Therefore, their fission product attenuation functions can be accomplished assuming a single failure.

Currently, using an assumed drawdown time of 6 minutes, the

radiological doses for a DBA–LOCA [Design Bases Accident—Loss-of-Coolant Accident] are below the guidelines of 10 CFR Part 100 and GDC [General Design Criterion] 19 criteria. The calculated doses, considering the pressure suppression pool as a fission product cleanup system, additional mixing within secondary containment and an assumed secondary containment drawdown time of 60 minutes, are lower than the previously calculated doses. The new doses are below 10 CFR Part 100 guideline values and GDC 19 criteria. The revised radiological analysis follows the source term assumptions of RG [Regulatory Guide] 1.3, with the exception of regulatory position C.1.f as permitted by SRP [Standard Review Plan] Section 6.5.5, and continues to provide a conservative representation of the timing and the composition of the release of radioactivity from secondary containment during a DBA–LOCA.

The Technical Specification SRs [Surveillance Requirements] will ensure a continued state of readiness for the SGTS, the secondary containment, the suppression pool and the suppression chamber/drywell vacuum breakers. Therefore, the assumptions used in the dose assessment will continue to bound the actual bypass of the suppression pool and the mixing in secondary containment during a DBA–LOCA. The proposed changes to the surveillances provide assurance that the performance of the SGTS and secondary containment supports the radiological analysis. Accordingly, as shown in Table 1, page 14 of 20, [of the July 1, 1994, amendment request] operation with the SGTS and the proposed change to the surveillances for secondary containment will not significantly increase the consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the surveillances ensures that the SGTS and secondary containment will be available to respond to an accident such that the guidelines of 10 CFR Part 100 and the limits of GDC 19 are not exceeded. The proposed change to the surveillances reflect consideration of the pressure suppression pool as a fission product cleanup system and credit for additional mixing in secondary containment. The suppression pool will continue to perform its safety functions as a pressure suppression pool and as a source of water to support emergency core cooling system operation during a DBA–LOCA. In addition, secondary containment will continue to perform its safety function of controlling and minimizing radioactive leakage to the outside atmosphere during a DBA–LOCA. Safety related equipment will continue to be OPERABLE in the radioactive environment of secondary containment to mitigate the consequences of a DBA–LOCA. Accordingly, the proposed Technical Specification change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with proposed amendment, will not involve a significant reduction in a margin of safety.

The SGTS exhausts the secondary containment atmosphere to the environment through the filtration system. To verify the SGTS has not degraded, SR 4.6.5.1.c.1 verifies that each SGTS subsystem will establish and maintain a pressure in the secondary containment that is equal to or more negative than −0.25 inch WG within the required time limit. To verify secondary containment is intact, SR 4.6.5.1.c.2 demonstrates that one SGTS subsystem can maintain a pressure which is equal to or more negative than −0.25 inch WG for 1 hour at a flow rate less than or equal to the maximum allowed inleakage. The 1 hour test period allows secondary containment to be in thermal equilibrium at steady state conditions. Furthermore, as an interim measure, NMPC [Niagara Mohawk Power Corporation] implemented certain compensatory measures through administrative controls to ensure that the radiological consequences of a DBA–LOCA would remain within regulatory criteria. Together, these tests and the compensatory measures assure SGTS performance and secondary containment boundary integrity.

The proposed change to these surveillances incorporate changes to the design basis, i.e., credit for fission product scrubbing and retention by the suppression pool and credit for additional mixing within secondary containment. The new inleakage is 2670 cfm which is loss [less] than one change of the secondary containment free air volume per day. The new drawdown time limit reflects consideration of the proposed change in the secondary containment inleakage limit. Due to the effects of service water temperature, inside and outside temperature, flow measurement inaccuracies and actual test pressures, meeting the current SRs does not by itself assure adequate SGTS performance. Therefore, the surveillances' results are adjusted to account for actual test conditions. Compliance with the proposed surveillances assures that the SGTS can achieve and maintain −0.25 inch WG in less than 60 minutes following a postulated DBA–LOCA. Achieving −0.25 inch WG within 60 minutes assures that radiological doses will remain below regulatory limits (see Table 1 [of the July 1, 1994, amendment request]). Therefore, the proposed surveillances, together with the proposed adjustments, provide adequate assurance of SGTS performance and secondary containment boundary integrity. Accordingly, the proposed Technical Specification change will not involve a significant reduction in a margin of safety.

Therefore, as determined by the analysis above, this proposed amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street NW., Washington, DC 20005–3502.

NRC Project Director: Michael L. Boyle.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: June 8, 1994.

Description of amendment request: The proposed amendment would revise sections 3.7/4.7, which pertain to the Standby Gas Treatment System (SGTS) and Secondary Containment. The proposed amendment would revise the surveillance requirements for both SGTS and secondary containment and revise the performance requirements for the SGTS filters and process stream electric heaters.

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 will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The function of the SGTS and secondary containment is to mitigate the consequences of a loss of coolant accident and fuel handling accidents. The proposed changes maintain or improve this capability. Therefore, this amendment will not cause a significant increase in the probability or consequences of an accident previously evaluated for the Monticello plant.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed changes to Technical Specifications for the standby gas treatment system and secondary containment do not alter the function of the systems or its interrelationships with other systems. The proposed changes provide requirements to ensure the systems are capable of performing the required functions or that actions are taken to minimize the potential for its function being required consistent with regulatory guidance; therefore, this amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

Improvements in the margin of safety are provided via the permanent elimination of a potential single failure which could adversely affect both standby gas treatment systems by deleting the reference to the standby gas system room heaters in the technical specification bases and providing appropriate surveillance requirements to assure system operability. A review of the performance history of the Standby Gas Treatment System and licensing basis assumptions has determined that the proposed changes do not adversely affect plant safety. Changes to the SGTS performance requirements provide greater assurance of SGTS operability. The proposed change for the completion time to place the plant in a cold shutdown condition if limiting conditions for operation can not be satisfied is consistent with the time frame specified in the current specification and is consistent with Standard Technical Specifications. The proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW, Washington, DC 20037.

NRC Project Director: Ledyard B. Marsh.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: February 12, 1993, as supplemented by letters dated August 20, 1993 and June 6, 1994.

Description of amendment request: This amendment request was previously noticed in the **Federal Register** on April 14, 1993 (58 FR 19485). The June 6, 1994, submittal supplements the February 12, 1993, application for amendment, and includes and incorporates the NRC staff comments. The proposed amendment would modify the Technical Specifications (TS) to implement the reactor coolant system (RCS) leak before break (LBB) methodology detection criteria, in accordance with the recommendations listed in Generic Letter (GL) 84–04.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will require additional leak detection instruments be operable to close Unresolved Safety Issue A–2, "Asymmetrical Blowdown Loads on Reactor Primary Coolant System," for the Fort Calhoun Station. Requiring additional instruments to be operable does not increase the probability or consequences of an accident since the safety function of the instruments is not being altered.

The proposed changes require at least two different types of RCS leak detection instruments, of diverse monitoring principles, be operable or corrective actions be taken to restore the instrumentation to operable status. Currently the Technical Specifications require only one RCS leak detection instrument to be operable.

The probability of leaks occurring due to thermal or normal fatigue is not affected as indicated in the fracture mechanics analysis referenced in Generic Letter 84–04. No changes are proposed to primary RCS piping systems or supports as a result of the proposed revision. The proposed changes will ensure that a potential significant failure does not go undetected within the Regulatory Guide 1.45 criteria as noted in Generic Letter 84–04.

The Loss of Coolant Accident (LOCA) analysis will not be impacted by the proposed change. The results of the current Fort Calhoun LOCA analyses cited in Section 14.15 of the Updated Safety Analysis Report (USAR) will not be impacted as a result of these changes.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

It has been determined that a new or different kind of accident will not be created due to the proposed changes since no new or different modes of operation are created by this change. The existing operating procedures were established to support an enhanced RCS leak detection program. Operation of RCS leak detection instruments will not differ from existing conditions.

(3) Involve a significant reduction in a margin of safety.

The margin of safety as defined in the basis for the Technical Specifications is not changed or reduced by this proposed change. Defining adequate RCS LBB monitoring is required to meet recommendations provided in Generic Letter 84–04.

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: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1875 Connecticut Avenue NW., Washington, DC 20009–5728.

NRC Project Director: William D. Beckner.

Philadelphia Electric Company, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: June 6, 1994.

Description of amendment request: The amendment would remove the controls for a remote shutdown system control valve and delete the isolation

signal for certain primary containment isolation valves from TS Tables 3.3.7.4–1 and 3.6.3–1 respectively, as a result of eliminating the steam condensing mode of the Redidual Heat Removal 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. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The RHR system steam condensing mode is a non-safety related function of the RHR system and has been eliminated at Limerick Generating Station, Unit 1. These proposed changes will not affect any components required to perform the safety-related function of the RHR system.

The ability of the RHR system to respond to an accident will not be degraded by the proposed changes. Valve HV–51–1F011A is locked closed with the electrical power removed. The valve's handswitch which is part of the remote shutdown panel (RSP) controls, does not perform any function and will be physically removed from the RSP. The deletion of the isolation signal for valves HV–C–51–1F103A and HV–C–51–1F104B will not affect the ability of these valves to function as primary containment isolation valves (PCIVs), since they are locked closed already in their safety-related position, providing containment isolation as manual PCIVs. Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new failure modes of RHR system are created by the proposed TS changes. All valves associated with the proposed changes are dedicated specifically for the RHR system steam condensing mode, and will not impact the operation of any components or piping required for other modes of operation of the RHR system. These valves are locked-closed in their safety-related position with the electrical power removed. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The steam condensing mode is a non-safety related function of the RHR system and, therefore, is not addressed in the TS. The controls for remote shutdown system control valve HV–51–1F011A are not being used. Presently, the valve is locked closed with the electrical power removed and the valve's handswitch will be removed from the RSP, since it does not perform any function. The proposed changes will not impact the safe operation of LGS Unit 1. The deletion of the isolation signal for valves HV–C–51–1F103A and HV–C–51–1F104B will not affect the ability of these valves to function as primary containment isolation valves (PCIVs), since they are locked closed already in their safety-related position. Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101.

NRC Project Director: Charles L. Miller.

Philadelphia Electric Company, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: June 10, 1994.

Description of amendment request: The amendment involves a one-time change affecting the Allowed Outage Time (AOT) for the Emergency Service Water (ESW) System, Residual Heat Removal Service Water (RHRSW) System, Suppression Pool Cooling, Suppression Pool Spray, and Low Pressure Coolant Injection modes of the Residual Heat Removal System, and Core Spray System to be extended from 3 and 7 days to 14 days during the Limerick Generating Station (LGS), Unit 2 third refueling outage scheduled to begin in January 1995. This proposed extended AOT would allow adequate time to install isolation valves and cross-ties on the ESW and RHRSW Systems to facilitate future inspections or maintenance.

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 changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed one-time TS changes will not increase the probability of an accident since it will only extend the time period that the 'B' ESW and RHRSW loops and the affected equipment can be out-of-service. The extension of the time duration that certain equipment is out-of-service has no direct physical impact on the plant. The proposed inoperable systems are normally in a standby mode while the unit is in OPCON 1 or 2 and are not directly supporting plant operation. Therefore, they can have no impact on the plant that would make an accident more likely to occur due to their inoperability.

During transients or events which require these systems to be operating, there is sufficient capacity in the operable loops to support plant operation or shutdown, in-so-much that failures that are accident initiators will not occur more frequently than previously postulated.

In addition, the consequences of an accident previously evaluated in the SAR will not be increased. With the 'B' loops of ESW and RHRSW inoperable, a known quantity of equipment is either inoperable or the equipment is not fully capable of fulfilling its design function under all design conditions due to certain support systems not being operable. Based on the support functions of the ESW and RHRSW systems, a review of the plant was performed to determine the impacts that the inoperable ESW and RHRSW 'B' loops would have on other systems. The impacts were identified for each system, as discussed in the preceding Safety Assessment, and it was determined whether there were any adverse [effects] on the systems. It was then determined how the adverse [effects] would impact each system's design basis and overall plant safety. The consequences of any postulated accidents occurring on Unit 1 during this AOT extension was found to be bounded by the previous analyses as described in the SAR.

The existing AOTs limit the amount of time that the plant can operate with certain equipment inoperable, where single failure criteria is still met. The minimum equipment required to mitigate the consequences of an accident and/or safely shutdown the plant will be operable or the plant will

be shutdown. Therefore, by extending certain AOTs and extending the assumptions concerning the combinations of events and single failures for the longer duration of each extended AOT, we conclude, based on the evaluations above, that at least the minimum equipment required to mitigate the consequences of an accident and/or safely shutdown the plant will still be operable during the extended AOT. Therefore, the consequences of an accident previously evaluated in the SAR will not be increased.

Therefore, these proposed one-time TS changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed one-time TS changes will not create the possibility of a different type of accident since it will only extend the time period that the 'B' ESW and RHRSW loops and the affected equipment can be out-of-service. The extension of the time duration that certain equipment is out-of-service has no direct physical impact on the plant and does not create any new accident initiators. The systems involved are either accident mitigation systems, safe shutdown systems or systems that support plant operation. All of the possible impacts that the inoperable equipment may have on its supported systems were previously analyzed in the SAR and are the basis for the present TS ACTION statements and AOTs. The impact of inoperable support systems for a given time duration was previously evaluated and any accident initiators created by the inoperable systems was evaluated. The lengthening of the time duration does not create any additional accident initiators for the plant.

Therefore, the proposed one-time TS changes will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The ESW and RHRSW systems and their supported systems are designed with sufficient independence and redundancy such that the removal from service of a component/subsystem will not prevent the systems from performing their required safety functions. Since removal of an ESW and a RHRSW loop from service with one unit in operation and the other unit in a refueling outage is allowed by the current Technical Specifications, then the concern is the reduced margin of safety incurred by extending the affected AOTs.

The present ESW and RHRSW AOT limits were set to ensure that sufficient safety-related equipment is available for response to all accident conditions and that sufficient decay heat removal capability is available for a LOCA/LOOP on one unit and simultaneous safe shutdown of the other unit. A slight reduction in the margin of safety is incurred during the proposed extended AOT due to the increased risk that an event could occur in a fourteen day period versus a three or seven day period. This increased risk is judged to be minimal due to the low probability of an event occurring during the extended AOT and based on the following discussion of minimum ECCS/decay heat removal requirements.

The reduction in the margin of safety is not significant since the remaining operable ECCS equipment is adequate to mitigate the consequences of any accident. This conclusion is based on the information contained in documents NEDO–24708A and NEDC–30936–A. These documents described the minimum requirements to successfully terminate a transient or LOCA initiating event (with scram), assuming multiple failures with realistic conditions and were used to justify certain TS AOTs per UFSAR sections 6.3.1.1.2.o and 6.3.3.1. The minimum requirements for short term response to an accident would be either one LPCI pump or one Core Spray loop in conjunction with ADS, which would be adequate to re-flood the vessel and maintain core cooling sufficient to preclude fuel damage. For long term response, the minimum requirements would be one loop of RHR for decay heat removal, along with another low pressure ECCS loop. These minimum requirements will be met since implementation of the proposed TS changes will require the operability of HPCI, ADS, two LPCI subsystems (or one LPCI subsystem and one RHR subsystem during decay heat removal) and one Core Spray subsystem be maintained during the 14 day period.

In addition, measures will be taken prior to or during the proposed extended AOT for those fire regions that rely on one or more safe shutdown methods which would all be unable to safely shutdown the plant with inoperable loops of the ESW and RHRSW systems or the inoperable systems that ESW or RHRSW support. These measures will offset the increased risk of a fire event occurring in the vulnerable areas, during the fourteen day versus three day AOT period. Therefore, the proposed extended AOT does not adversely affect the approved level of fire protection as described in UFSAR Appendix 9A (Fire Protection Evaluation Report).

A special procedure will be written to administratively control the requirement to maintain the operability of specified components and implementation of any appropriate compensatory measures which are deemed necessary during the proposed AOT. In addition, operations personnel are fully qualified by normal periodic training to respond to and mitigate a Design Basis Accident, including the actions needed to ensure decay heat removal while LGS Unit 1 and Unit 2 are in the operational configurations described within this submittal. Accordingly, procedures are already in place that cover safe plant shutdown and decay heat removal for situations applicable to those in the proposed AOTs.

A Probabilistic Safety Assessment (PSA) Study was performed for an ESW and RHRSW loop being out-of-service for 14 days on an operating unit. This analysis includes EDG D12 being aligned to 'A' ESW and HPCI and RCIC not requiring room cooling. No other deviations from the bounding assumptions used in the base PSA model were made. The Core Damage Frequency (CDF) increased by 2.7×10^{-6}, from 5.11×10^{-6}/reactor-year to 7.8×10^{-6} /reactor-year. In absolute terms, this is not a significant increase in risk. In addition, the modifications to be installed during this proposed extended AOT will allow for future maintenance and inspections to be performed on the ESW and RHRSW loops without removing an entire loop from service, which will reduce risk in the future. For example, if the ESW loop unavailability, due to testing or maintenance, is reduced by half, the CDF will decrease by more than four percent. It will also minimize the potential need for future AOT extensions on these systems.

Therefore, the implementation of the proposed one-time TS changes will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: 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: May 10, 1994.

Description of amendment request: The licensee is proposing to revise the Technical Specifications (TS) requirements governing the minimum low pressure cooling availability when irradiated fuel is in the reactor vessel and the reactor is in the cold condition. Specifically, the proposed changes are: (1) Revise the TS section titles in the Table of Contents to agree with the TS section titles in the body of the TS. (2) Revise TS Section 3.5.A.1 to provide proper reference to the revised TS Section 3.5.F. (3) Revise TS Section 3.5.A.3 to provide proper reference to the revised TS Section 3.5.F. (4) Revise TS Section 3.5.B.1 to delete the reference to TS Section 3.5.F.3. (5) Revise TS Section 3.5.F to require the limiting condition for operation (LCO) governing minimum low pressure cooling availability when irradiated fuel is in the reactor vessel and the reactor is in the cold condition to be identical with the corresponding LCO in NUREG–1433, "Standard Technical Specifications General Electric Plants, BWR/4." (6) Revise TS Section 4.5.F to require the surveillance requirements (SR) governing minimum low pressure cooling availability when irradiated fuel is in the reactor vessel and the reactor is in the cold condition to be identical with the corresponding SR in NUREG–1433. (7) Revise TS BASES 3.5.A to delete the reference to the core spray subsystem as also providing a source for flooding of the core in case of accidental draining because the information is being added to TS BASES 3.5.F. (8) Revise TS BASES 3.5.F to be consistent with the corresponding TS BASES in NUREG–1433. (9) Revise TS BASES 4.5 to be consistent with the corresponding TS BASES in NUREG–1433. (10) Revise TS Section 3.7.A.1 to provide proper reference to the revised TS Section 3.5.F.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Proposed changes 1, 2, 3, 4, 7, 8, 9 and 10 are administrative in nature and involve no technical changes to the TS. These proposed changes do not impact initiators of analyzed events or the assumed mitigation of accidents or transients events. Therefore, these changes do not involve an increase in the probability or consequences of an accident previously evaluated.

Proposed changes 5 and 6 will not increase the probability of initiating an analyzed event or alter assumptions relative to mitigation of an accident or transient event. These changes will not alter the operation of process variables or systems, structures, or components (SSC) as described in the safety analyses. These changes do not involve any physical changes to plant SSC. TS requirements that govern Operability or routine testing and verification of plant components and variables are not assumed to be initiators of any analyzed event. The proposed changes will not alter the operation of equipment assumed to be available for the mitigation of accidents or transients by the plant safety analysis or licensing basis. The proposed changes establish or maintain adequate assurance that components are operable when necessary for the prevention or mitigation of accidents or transients and that plant variables are maintained within limits necessary to satisfy the assumptions for initial conditions in the safety analysis. These changes have been confirmed to ensure no previously evaluated accident has been adversely affected. These changes will not allow continuous plant operation with plant conditions during a unit outage such that a single failure will result in a loss of any safety function. Therefore, the changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed or removed) and will not alter the method used by any system to perform its design function. The proposed changes do not allow plant operation in any mode that is not already evaluated. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

Proposed changes 1, 2, 3, 4, 7, 8, 9 and 10 are administrative in nature and will not involve any technical changes. These proposed changes will not reduce a margin of safety because they have no impact on any safety analysis assumptions. Because these changes are administrative in nature, no question of safety is involved. Therefore, these changes do not reduce the margin of safety.

Proposed changes 5 and 6 add some new requirements and make some existing requirements more restrictive. These changes will not impact any safety analysis assumptions. Adding new requirements and making existing ones more restrictive either increases or does not affect the margin of safety. As such, no question of safety is involved. Therefore, these changes will not involve a significant reduction in a margin of safety.

Proposed changes 5 and 6 also make three less restrictive changes. The first change deletes the requirements for the containment cooling system when the reactor is in the Cold Condition. The containment cooling system is necessary to maintain primary containment Operable to mitigate the release of radioactive material following a DBA [design basis accident].

However, primary containment is not required to be Operable with the reactor in the Cold Condition. As a result, the containment cooling system is not needed to maintain the primary containment Operable with the reactor in the Cold Condition. This change does not affect any safety limits, operating limits, or design assumptions. This [change] provides the benefit of allowing maintenance to be performed on the containment cooling systems during a unit outage to ensure their reliability during power operation. Therefore, this change does not involve a significant reduction in a margin of safety.

The current TS requirement that both core spray systems and the LPCI system be Operable during a refueling outage is being relaxed by the second change to require one core spray subsystem and one LPCI subsystem or two core spray subsystems to be Operable. This [change] does not adversely affect any accident or transient analyses because the change ensures adequate vessel inventory makeup is available in the event of an inadvertent vessel draindown. The long term cooling analysis following a design bases LOCA

[loss of coolant accident] demonstrates only one low pressure ECCS [emergency core cooling system] injection/spray subsystem is required, post LOCA, to maintain the peak cladding temperature below the allowable limit. This change will not affect any safety limits, operating limits, or design assumptions. This change provides the benefit of allowing maintenance to be performed on the low pressure ECCS subsystems not required to be operable to ensure their reliability during plant operation. Therefore, this change does not involve a significant reduction in a margin of safety.

The final less restrictive change will allow low pressure injection/spray subsystems to be inoperable during a refueling outage if the spent fuel storage gates are removed and the water level is at the required height over the top of the reactor pressure vessel flange. This is acceptable because the water level requirement provides sufficient coolant inventory to allow operator action to terminate any inventory loss prior to fuel uncovery in the event of an inadvertent draindown. This change will not affect any safety limits, operating limits, or design assumptions. This change provides the benefit of allowing maintenance to be performed on the low pressure ECCS subsystems to ensure their continued reliability during plant operation. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for Licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: June 9, 1994.

Description of amendment request: The licensee proposed the following changes to its Technical Specifications (TS): (1) Revise TS 4.3.C.1 to require that each control rod be scram time tested after each refueling outage or after a reactor shutdown that is greater than 120 days with reactor steam dome pressure greater than or equal to 800 psig prior to exceeding 40% of rated power. Scram time testing is not required for control rods inserted per TS 3.3.B.1. (2) Replace TS 4.3.C.2 with the requirement to perform scram time testing with the reactor steam dome pressure greater than or equal to 800 psig prior to exceeding 40% of rated power for only those control rods associated with the core cells affected by any fuel movement within the reactor pressure vessel. (3) Add TS 4.3.C.3 to perform scram time testing for a representative sample of control rods at least once per 120 days of power operation with the reactor steam dome pressure greater than or equal to 800 psig. (4) Add TS 4.3.C.4 to perform scram time testing at any reactor steam dome pressure for individual control rods prior to declaring them operable after work on the control rod or control rod drive system is performed that could affect scram insertion time. (5) Revise TS Bases 3.3.C and 4.3.C to describe: the rational for performing scram time testing with reactor pressure greater than or equal to 800 psig; the rationale for requiring control rods to be scram time tested once per 120 days; what constitutes a representative sample of control rods; examples of work that could affect scram times; and the rational and methods for performing scram time testing following work that could affect the scram insertion times. (6) Add TS 4.3.C.5 to perform scram time testing with the reactor steam dome pressure greater than or equal to 800 psig prior to exceeding 40% of rated power after work on the control rod or control rod drive system that could affect scram insertion time. (7) Revise TS 4.5.K.2 from performing scram time testing of 19 or more control rods on a rotation basis to performing scram time testing of a representative sample of control 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 an accident previously evaluated.

The proposed changes will not involve any physical changes to plant systems, structures, or components (SSC). These proposed changes will not alter operation of process variables or SSC as described in the safety analysis. The proposed changes establish or maintain adequate assurance that components are operable when necessary for the prevention or mitigation of accidents or transients and that plant variables are maintained within limits necessary to satisfy the assumptions for initial conditions in the safety analysis. In particular, proposed change 1 is acceptable based on industry experience with control rod scram time testing coupled with the additional requirement in proposed change 4 that scram time testing of any control rod on which work was performed must be satisfactorily completed before that control rod can be declared operable. The proposed changes will not allow continuous plant operation with plant conditions such that a single failure will result in a loss of any safety function. Therefore, the changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the plant configuration (no new or different type of equipment will be installed or removed) and will not alter the method used by any system to perform its design function. The proposed changes do not allow plant operation in any mode that is not already evaluated. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed changes do not involve a significant reduction in a margin of safety.

Following a refueling outage, control rod scram time testing for all control rods is currently required to be performed during operational hydrostatic testing or during startup prior to synchronizing the main turbine generator. Any control rods not tested

during operational hydrostatic testing must be tested at greater than 30% power but less than 40% power. Proposed change 1 will require that scram time testing for all control rods be completed prior to exceeding 40% Reactor Power. This change is acceptable based on industry experience with control rod scram time testing coupled with the additional requirement in proposed change 4 that scram time testing of any control rod on which work was performed must be satisfactorily completed before that control rod can be declared operable. Proposed changes 2, 3, 4 and 6 add some new requirements and make some existing requirements more restrictive. The margin of safety is not reduced by more restrictive changes. If anything, the margin of safety may increase. Proposed change 5 revises the BASES to provide consistency with the previously discussed SR [surveillance requirements] changes. Proposed change 7 is administrative in nature and does not involve any technical changes. Proposed changes 5 and 7 will not reduce a margin of safety because they have no impact on any safety analysis assumptions. Therefore, these changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: 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 Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: June 29, 1994.

Description of amendment request: The proposed changes would alter the Plant Operating Review Committee's (PORC's) membership requirements and would delegate a portion of PORC's procedure review responsibilities for nuclear safety related procedures and procedure changes to the line organizations. Section 6.5, "Review and Audit," of the Technical Specifications (TSs) would be revised to modify the composition of the PORC and delete review and audit responsibilities for the Emergency and Security Plans from the TSs. The review and audit responsibilities would be relocated to the respective Emergency and Security Plans consistent with Generic Letter 93–07, "Modification of the Technical Specification Administrative Control Requirements for Emergency and Security Plans." The proposed changes would also revise Section 6.5 and Section 6.8, "Procedures," of the TSs to delegate a portion of the PORC's procedure review responsibilities for nuclear safety related procedures to the line organizations. The PORC would continue to perform safety reviews associated with procedures that are of safety significance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the criteria of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously analyzed?

Response: The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated since: (1) PORC will continue to review environmental impact and 10 CFR 50.59 safety evaluations associated with procedures and procedure changes; (2) Only personnel knowledgeable in the affected functional areas will review procedures and procedure changes; (3) Review and approval personnel (designated technical reviewers, qualified safety reviewers and responsible procedure owners) will be identified in the appropriate administrative procedures; (4) Designated technical reviewers shall meet or exceed the qualifications described in Section 4 of ANSI N18.1–1971 [* * *] for applicable positions and are designated by the Department Managers; 5) The designated technical reviewers will be responsible for identifying whether additional cross disciplinary reviews are required; (6) The qualified safety reviewers will be responsible for reviewing the procedure changes from a safety perspective; (7) The responsible procedure owners are designated by the Resident Manager; and (8) The responsible procedure owners will be responsible for verifying that procedure reviews are performed in accordance with the administrative procedure governing the procedure review and approval process.

The proposed changes (1) will add more detailed requirements regarding procedure review and approval to the Technical Specifications which will strengthen the controls over the process, and (2) will free PORC from reviewing items that are outside the charter of a "safety review" committee [* * *] [because non-safety significant items can reduce the time that PORC members can spend on matters that are safety significant. The proposed Technical Specification change establishes a highly structured review and approval program for procedures.]

The proposed change to the PORC membership requirements would not significantly increase the probability or consequences of an accident because it does not adversely affect the level of expertise applied to the PORC review function or its effectiveness. The PORC quorum is currently composed of five members including up to two designated alternates and a Chairman. [* * *] [This composition is not changed by the proposed amendment.]

The miscellaneous administrative changes not related to the procedure review and approval process or the PORC membership requirements cannot affect the probability or consequences of an accident because they do not affect plant operations[,] [* * *] equipment[, or any safety-related activity.]

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: [* * *] [No physical changes to the plant or changes in plant equipment operating procedures are being proposed.] The changes are administrative and will not have any direct effect on equipment important to safety. Changing the process by which procedures are reviewed and approved cannot in itself create the possibility of a new or different kind of accident. Furthermore, a documented safety review, utilizing screening criteria, will be performed for all nuclear safety related procedures and procedure changes. The proposed change establishes detailed controls while allowing PORC to spend more time on safety significant issues.

The proposed change to the PORC membership requirements would not create the possibility of a new or different kind of accident from any

previously evaluated since no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

The miscellaneous administrative changes not related to the procedure review and approval or the PORC Membership requirements cannot create the possibility of an accident because they do not affect plant operations[,] [* * *] equipment [or any safety-related activity.]

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: The proposed amendment does not involve a significant reduction in the margin of safety because a program controlled by Administrative Procedures using designated technical reviewers approved by the Department Managers will be in place to review new procedures and procedure changes. A 10 CFR 50.59 screening of each new procedure and permanent procedure change will be performed by a qualified safety reviewer, and PORC will continue to review 10 CFR 50.59 Safety and Environmental Impact Evaluations associated with procedures and procedure changes. Cross disciplinary reviews will be conducted as appropriate. Thus, the margin of safety will be maintained by implementing the new procedure review and approval process.

The proposed change to the PORC membership requirements would not involve a significant reduction in the margin of safety since the level and quality of PORC review will be maintained and there will not be an adverse change to the collective educational background and work experience of PORC. [There will not be an adverse loss of PORC effectiveness as a result of this change.] The PORC quorum is currently composed of five members including up to two designated alternates and a Chairman. [* * *] [This composition is not changed by the proposed changes.]

The miscellaneous administrative changes not related to the procedure review and approval process or PORC membership program cannot reduce any margin of safety because they do not affect any safety related activity or equipment. These changes increase the probability that the Technical Specifications are correctly interpreted by clarifying information.

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.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: June 17, 1994.

Description of amendment request: The proposed changes would revise Section 6.5, "Review and Audit," of the Technical Specifications (TSs) to modify the composition of the Plant Operating Review Committee (PORC) and delete review and audit responsibilities for the Emergency and Security Plans from the TSs. The review and audit responsibilities would be relocated to the respective Emergency and Security Plans consistent with Generic Letter 93–07, "Modification of the Technical Specification Administrative Control Requirements for Emergency and Security Plans." The proposed changes would also revise Section 6.5 and Section 6.8, "Procedures," of the TSs to delegate a portion of the PORC's procedure review responsibilities for nuclear safety related procedures to the line organizations. The PORC would continue to perform safety reviews associated with procedures that are of safety significance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since the proposed changes would not:

1. involve a significant increase in the probability of an accident or consequence previously evaluated.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated since: 1) PORC will continue to review environmental impact and 10 CFR 50.59 safety evaluations associated with procedures and procedure changes; 2) Only personnel knowledgeable in the affected functional areas will review procedures and procedure changes; 3) Review and approval personnel (designated technical reviewers, and responsible procedure owners) will be identified in the appropriate administrative procedures. Designated technical reviewers shall meet or exceed the qualifications described in section 4 of ANSI N18.1–1971 for applicable positions. Designated technical reviewers are designated by the Department Managers. The responsible procedure owners are designated by the Resident Manager; 4) The designated technical reviewers will be responsible for identifying whether additional cross-disciplinary reviews are required; 5) The qualified safety reviewers will be responsible for reviewing the procedure changes from a safety perspective; and 6) The responsible procedure owners will be responsible for verifying that procedure reviews are performed in accordance with the administrative procedure governing the procedure review and approval process.

The proposed changes (1) will add more detailed requirements regarding procedure review and approval to the Technical Specifications which will strengthen the controls over the process, and (2) will free PORC from reviewing items that are outside the charter of a "safety review" committee because non-safety significant items can reduce the time that PORC members can spend on matters that are safety significant. The proposed Technical Specification change establishes a highly structured review and approval program for procedures.

The proposed change to the PORC Membership requirements would not significantly increase the probability or consequences of an accident because it does not adversely affect the level of expertise applied to the PORC review function. There will not be an adverse loss of PORC effectiveness as a result of this change. The PORC quorum is currently composed of five members including up to two designated alternates and a Chairman. This composition is not changed by the proposed amendment.

The miscellaneous administrative changes not related to the procedure review and approval process or the PORC Membership requirements cannot affect the probability or consequences of an accident because they do not affect operations, equipment, or any safety-related activity.

2. Create the possibility of a new or different kind of accident from those previously evaluated.

No physical changes to the plant or changes in plant equipment operating

procedures are being proposed. The changes are administrative and will not have any direct effect on equipment important to safety. Changing the process by which procedures are reviewed and approved cannot in itself create the possibility of a new or different kind of accident. Furthermore, a documented safety review, utilizing screening criteria, will be performed for all nuclear safety related procedures and procedure changes. The proposed change establishes detailed controls while allowing PORC to spend more time on safety significant issues.

The proposed change to the PORC Membership requirements would not create the possibility of a new or different kind of accident from any previously evaluated since no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

The miscellaneous administrative changes not related to the procedure review and approval or the PORC Membership requirements cannot create the possibility of an accident because they do not affect operations, equipment or any safety-related activity.

3. Involve a significant reduction in the margin of safety.

The proposed amendment does not involve a significant reduction in the margin of safety because a program controlled by Administrative Procedures using designated technical reviewers approved by the Department Managers will be in place to review new procedures and procedure changes. A 10 CFR 50.59 screening of each new procedure and permanent procedure change will be performed by a qualified safety reviewer and PORC will continue to review 10 CFR 50.59 Safety and Environmental Impact Evaluations associated with procedures and procedure changes. Cross-disciplinary reviews will be conducted as appropriate. Thus the margin of safety will be maintained by implementing the new procedure review and approval process.

The proposed change to the PORC Membership requirements would not involve a significant reduction in the margin of safety since the level and quality of PORC review will be maintained and there will not be an adverse change to the collective educational background and work experience of PORC. There will not be an adverse loss of PORC effectiveness as a result of this change. The PORC quorum is currently composed of five members including up to two designated alternates and a Chairman. This composition is not changed by the proposed changes.

The miscellaneous administrative changes not related to the procedure review and approval process or PORC Membership program cannot reduce any margin of safety because they do not affect any safety-related activity or equipment. These changes increase the probability that the Technical Specifications are correctly interpreted by clarifying information.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Michael L. Boyle.

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 requests: February 18, 1994, as supplemented by letter dated April 6, 1994 for Salem Unit 1; and March 28, 1994 for Salem Unit 2.

Description of amendment request: The proposed change to Salem Unit 1 Technical Specifications (TS) replaces the main feedwater control and control bypass valves with the main feedwater stop check valves for the Containment Isolation Function. The proposed change to Salem Unit 2 TS adds a footnote to the 21–24 BF22 (main feedwater stop check valves) on Table 3.6–1, "Containment Isolation valves." This note identifies those containment isolation valves that are not subject to 10 CFR 50 Appendix J, Type C leakage testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. Do not involve a significant increase in the probability or consequence of an accident previously evaluated.

The Salem Unit 1 main feedwater stop check valves provide the same isolation function presently accomplished by the main feedwater control and control bypass valves, without reliance on an actuation signal. Positive closure is assured during all postulated accident scenarios, through remote-manual controls in the main control room. These valves satisfy the requirements of GDC 57 for Containment Isolation.

A previous amendment request for Salem Unit 2 neglected to designate the main feedwater stop check valves as exempt from Type C leakage testing. That request was subsequently approved as Salem Unit 2 Amendment 128. The amended Technical Specifications are now inconsistent with the Salem Updated Final Safety Analysis Report, which correctly shows that these valves are exempt from Type C leakage testing. Valve functionality and operation are not affected by this change.

Therefore, it may be concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The Salem Unit 1 main feedwater stop check valves were originally intended to perform the Containment Isolation Function. The only changes to the original plant design were the addition of motor operators and the upgrading of associated controls to safety-related. These changes bring the stop check valves into compliances with GDC 57 requirements, and ensure positive valve closure during all postulated accident scenarios. As stated above, a previous amendment request for Salem Unit 2 neglected to designate the main feedwater stop check valves as exempt from Type C leakage testing. The Salem Updated Final Safety Analysis Report correctly shows that these valves are exempt from Type C leakage testing. Valve functionality and operation are not affected by these changes.

The changes do not involve modifications to plant equipment or operation. Therefore, no new or different accident can be created by these changes.

3. Do not involve a significant reduction in a margin of safety.

Check valves provide inherent isolation from reverse flow conditions. Stop check valves provide increased safety due to the positive closure feature. Motor operators with remote-manual closure capability, allow positive closure from the main control room during all postulated accident scenarios. These features ensure that an adequate margin of safety is maintained.

Additionally, feedwater isolation, utilizing the main feedwater control and control bypass valves, occurs through Reactor Trip and/or Engineered Safety Features actuation. This feature is unaffected by the proposed changes and redundant to the stop check valves for Containment Isolation. There are no modifications to plant equipment or operation involved. Feedwater system operation during normal and accident conditions remains the same.

Therefore, it may be concluded that the proposed changes do not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve 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.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: May 13, 1994, as supplemented June 24, 1994.

Description of amendment request: The proposed amendment would revise the Ginna Station Technical Specifications (TSs) Section 6.0 "Administrative Controls," to be consistent with the criteria contained in the NRC Final Policy Statement of Technical Specifications Improvements for Nuclear Power Reactors, and NUREG–1431 "Standard Technical Specifications, Westinghouse Plants," September 1993. The proposed amendment would also relocate to other programs and documents, several TS requirements in accordance with this criteria.

The May 13, 1994, request supersedes the request of March 23, 1992, published in the Federal Register on November 25, 1992 (57 FR 55589).

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 Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes are consistent with the Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors and NUREG–1431 and have therefore, been previously evaluated by the NRC. Implementation of these changes is expected to result in a significant human factors improvement and enable RG&E [Rochester Gas & Electric] and the NRC to focus on the most important requirements without any reduction in safety. The changes which do not duplicate NRC guidance in NUREG–1431 are currently addressed by existing technical specifications and regulations, the Ginna Station license, plant procedures, or the QA [Quality Assurance] program.

2. Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The Administrative Controls section contains those requirements that are not covered by other technical specifications which are considered necessary to assure safe operation of the facility. The majority of changes are consistent with the Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors and NUREG–1431 and have therefore, been previously evaluated by the NRC. [* * *].

3. Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. All requirements removed from technical specifications are relocated to other programs and documents. These alternative programs and documents are controlled by existing regulations which provide a more appropriate vehicle for addressing changes and compliance. There were no administrative control requirements which were removed from technical specifications and not addressed by other regulations. Therefore, there is no 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: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Project Director: Walter R. Butler.

Tennessee Valley Authority, Docket No. 50–328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of amendment request: June 28, 1994 (TS 94–09).

Description of amendment request: The proposed amendment would revise the Sequoyah Nuclear Plant Unit 2 Technical Specifications (TS) surveillance requirements, bases, and a Limiting Condition For Operation to incorporate alternate steam generator tube plugging criteria at tube support plate intersections. The proposed changes would be implemented for Fuel Cycle 7 only and would affect: (1) TS 4.4.5.2.c.2 to address bobbin probe inspections; (2) TS 4.4.5.3.d to address future inspections of tubes where the interim criteria is used; (3) TS 4.4.5.4.a.6 to address application of the interim criteria for indications found within the thickness of the tube support plate; (4) TS 4.4.5.4.a.10 to address application of the tube plugging alternate criteria and evaluation of indications; (5) TS 4.4.5.5.d and 4.4.5.5.e to address reporting requirements and information to be reported to the Commission regarding application of the criteria; (6) TS 3.4.6.2.c to reduce the allowable reactor coolant system total primary-to-secondary leakage through all steam generators from 1 gallon per minute to 600 gallons per day and from any one steam generator from 500 gallons per day to 150 gallons per day; and (7) Bases 3/4.4.5 and 3/4.4.6.2 to reflect the new primary-to-secondary leakage limits and add a reference.

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:

TVA has evaluated the proposed TS change and 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.

Testing of model boiler specimens for free-span tubing (no tube support plate restraint) at room temperature conditions shows burst pressures in excess of 500 pounds per square inch (psi) for indications of outer-diameter stress corrosion cracking with voltage

measurements as high as 19 volts. Burst testing performed on intersections pulled from SQN with up to a 1.9-volt indication shows measured burst pressure in excess of 6,600 psi at room temperature. Burst testing performed on pulled tubes from other plants with up to 7.5-volt indications shows burst pressures in excess of 6,300 psi at room temperatures. Correcting for the effects of temperature on material properties and minimum strength levels (as the burst testing was done at room temperature), tube burst capability significantly exceeds the safety-factor requirements of NRC Regulatory Guide (RG) 1.121.

Tube burst criteria are inherently satisfied during normal operating conditions because of the proximity of the tube support plate (TSP). Test data indicates that tube burst cannot occur within the TSP, even for tubes that have 100 percent throughwall electrodischarge machining notches, 0.75-inch long, provided that the TSP is adjacent to the notched area. Since tube-to-tube support plate proximity precludes tube burst during normal operating conditions, use of the criteria must retain tube integrity characteristics that maintain a margin of safety of 1.43 times the bounding faulted condition steam line break (SLB) pressure differential. During a postulated SLB, the TSP has the potential to deflect during blowdown following a main SLB, thereby uncovering the TSP intersections.

Based on the existing database, the RG 1.121 criterion requiring maintenance of a safety factor of 1.43 times the SLB pressure differential on tube burst is satisfied by 7/8-inch-diameter tubing with bobbin coil indications with signal amplitudes less than 8.82 volts, regardless of the indicated depth measurement. A 2.0-volt plugging criterion (resulting in a projected end-of-cycle (EOC) voltage) compares favorably with the 8.82-volt structural limit considering the extremely slow apparent voltage growth rates and few numbers of indications at SQN. Using the established methodology of RG 1.121, the structural limit is reduced by allowances for uncertainty and growth to develop a beginning of cycle (BOC) repair limit that would preclude indications at EOC conditions that exceed the structural limit. The nondestructive examination (NDE) uncertainty component is 20.5 percent, and is based on the Electric Power Research Institute (EPRI) alternate repair criteria (ARC).

Because of the few number of indications at SQN, the EPRI methodology of applying a growth component of 35 percent per effective full power year (EFPY) will be used. Near-term operating cycles at SQN are expected to be bounded by 1.23 years, therefore, a 43 percent growth component is appropriate. When these allowances are added to the BOC interim plugging criteria of 2.0 volts in a deterministic bounding EOC voltage of approximately 3.26 volts for Cycle 7, operation can be established. A 5.56-volt deterministic safety margin exists (8.82 structural limit—3.26-volt EOC equal 5.56-volt margin).

For the voltage/burst correlation, the EOC structural limit is supported by a voltage of 8.82 volts. Using this structural limit of 8.82 volts, a BOC maximum allowable repair limit can be established using the guidance of RG 1.121. The BOC maximum allowable repair limit should not permit the existence of EOC indications that exceed the 8.82-volt structural limit. By adding NDE uncertainty allowances and an allowance for crack growth to the repair limit, the structural limit can be validated. Therefore, the maximum allowable BOC repair limit (RL) based on the structural limit of 8.82 volts can be represented by the expression:

$RL + (0.205 \times RL) + (0.43 \times RL) = 8.82$ volts, or,

the maximum allowable BOC repair limit can be expressed as,

$RL = 8.82\text{-volt structural limit}/1.64 = 5.4$ volts.

It is reasonable that this RL (5.4 volts) could be applied for interim plugging criteria (IPC) implementation to repair bobbin indications greater than 2.0 volts independent of rotating pancake coil (RPC) confirmation of the indication. Conservatively, an upper limit of 3.6 volts will be used to assess tube integrity for those bobbin indications that are above 2.0 volts but do not have confirming RPC calls. This 3.6-volt upper limit for nonconfirmed RPC calls is consistent with other recently approved IPC programs.

The conservatism of the growth allowance used to develop the repair limit is shown by the most recent SQN eddy current data. Two tubes plugged in Unit 1 during the last outage had less than one volt of growth over the past five operating cycles. Only one tube in Unit 2 required repair because of outer-diameter stress corrosion (ODSCC) at the TSP intersections.

Relative to the expected leakage during accident condition loadings, it has been previously established that a postulated main SLB outside of containment, but upstream of the main steam isolation valve (MSIV), represents the most limiting radiological condition relative to the IPC. In support of implementation of the IPC, it will determine whether the distribution of cracking indications at the TSP intersections at the end of Cycle 7 for Unit 2 is projected to be such that primary-to-secondary leakage would result in site boundary doses within a small fraction of the 10 CFR 100 guidelines. A separate analysis has determined this allowable SLB leakage limit to be 4.3 gallons per minute (gpm) in the faulted loop. This limit uses the TS reactor coolant system (RCS) Iodine-131 activity level of 1.0 microcuries per gram dose equivalent Iodine-131 and the recommended Iodine-131 transient spiking values consistent with NUREG–0800. The projected SLB leakage rate calculation methodology prescribed in Section 3.3 of draft NUREG–1477 is used to calculate EOC leakage. Because of the relatively low number of indications at SQN, it is expected that the actual leakage values will be far less than this limit. Additionally, the current Iodine-131 levels at SQN range from about 25 to 100 times less than the TS limit of 1.0.

Application of the criteria requires the projection of postulated SLB leakage, based on the projected EOC voltage distribution for Cycle 7. Projected EOC voltage distribution is developed using the most recent EOC eddy current results and a voltage measurement uncertainty. Data indicates that a threshold voltage of 2.8 volts would result in throughwall cracks long enough to leak at SLB condition. Draft NUREG–1477 requires that all indications to which the IPC are applied must be included in the voltage projection. Tube pull results from another plant with 7/8-inch tubing with a substantial voltage growth database have shown that tube wall degradation of greater than 40 percent throughwall was readily detectable either by the bobbin or RPC probe. The tube with the maximum throughwall penetration of 56 percent (42 average) had a voltage of 2.02 volts. This indication also was the largest recorded bobbin voltage from the EOC eddy current data. Based on the SQN pulled tube and industry pulled tube data supporting a lower threshold for SLB leakage of 2.8 volts, inclusion of all IPC intersections in the leakage model is quite conservative. The ODSCC occurring at SQN is in its earliest stages of development. The conservative bounding growth estimations to be applied to the expected small number of indications for the upcoming inspection should result in very small levels of predicted SLB leakage. Historically, SQN has not identified ODSCC as a

contributor to operational leakage. The current leakage level at SQN is less than 1.0 gallon per day (gpd).

In order to assess the sensitivity of an indication's BOC voltage to EOC leakage potential, a Monte Carlo simulation was performed for a 2.0-volt BOC indication. The maximum EOC voltage (at 99.8 percent cumulative probability) was found to be 4.8 volts. Using NUREG–1477 and EPRI leakage models, the leakage component from an indication of this magnitude is 0.12 and 0.028 gpm, respectively.

Therefore, as implementation of the 2.0-volt IPC criterion during Cycle 7 in Unit 2 does not adversely affect steam generator (S/G) tube integrity and implementation will be shown to result in acceptable dose consequences, the proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

Implementation of the proposed S/G tube IPC criteria does not introduce any significant changes to the plant design basis. Use of the criteria does not provide a mechanism that could result in an accident outside of the region of the TSP elevations; no ODSCC is occurring outside the thickness of the TSP. Neither a single or multiple tube rupture event would be expected in a S/G in which the plugging criteria have been applied (during all plant conditions).

TVA will implement a maximum leakage rate limit of 150 gpd per S/G to help preclude the potential for excessive leakage during all plant conditions. The SQN TS limits on primary-to-secondary leakage at operating conditions are to be a maximum of 0.42 gpm (600 gpd) for all S/Gs, or, a maximum of 150 gpd for any one S/G. The RG 1.121 criterion for establishing operational leakage rate limits that require plant shutdown is based upon leak-before-break considerations to detect a free-span crack before potential tube rupture during faulted plant conditions. The 150-gpd limit should provide for leakage detection and plant shutdown in the event of the occurrence of an unexpected single crack resulting in leakage that is associated with the longest permissible crack length. RG 1.121 acceptance criteria for establishing operating leakage limits are based on leak-before-break considerations such that plant shutdown is initiated if the leakage associated with the longest permissible crack is exceeded. The longest permissible crack is the length that provides a factor of safety of 1.43 against bursting at faulted conditions maximum pressure differential. A voltage amplitude of 8.82 volts for typical ODSCC corresponds to meeting this tube burst requirement at a lower 95 percent prediction limit on the burst correlation coupled with 95/95 lower tolerance limit material properties. Alternate crack morphologies can correspond to 8.82 volts so that a unique crack length is not defined by the burst pressure versus voltage correlation. Consequently, typical burst pressure versus through-wall crack length correlations are used below to define the "longest permissible crack" for evaluating operating leakage limits.

The single through-wall crack lengths that result in tube burst at 1.42 times the SLB pressure differential and the SLB pressure differential alone are approximately 0.57 inch and 0.84 inch, respectively. A leak rate of 150 gpd will provide for detection of 0.4-inch-long cracks at nominal leak rates and 0.6-inch-long cracks at the lower 95 percent confidence level leak rates. Since tube burst is precluded during normal operation because of the proximity of the TSP to the tube and the potential exists for the crevice to become uncovered during SLB conditions, the leakage from the maximum permissible crack must preclude tube burst at SLB conditions. Thus, the 150-gpd limit provides for plant shutdown before reaching critical crack lengths for SLB conditions. Additionally, this leak-before-break evaluation assumes that the entire crevice area is uncovered during blowdown. Partial uncover will provide benefit to the burst capacity of the intersection.

As S/G tube integrity upon implementation of the 2.0-volt IPC continues to be maintained through in-service inspection and primary-to-secondary leakage monitoring, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Involve a significant reduction in a margin of safety. The use of the voltage based bobbin probe interim TSP elevation plugging criteria at SQN is demonstrated to maintain S/G tube integrity commensurate with the criteria of RG 1.121. RG 1.121 describes a method acceptable to the NRC staff for meeting General Design Criteria (GDC) 14, 15, 31, and 32 by reducing the probability or the consequences of S/G tube rupture. This is accomplished by determining the limiting conditions of degradation of S/G tubing, as established by in-service inspection, for which tubes with unacceptable cracking should be removed from service. Upon implementation of the criteria, even under the worst-case conditions, the occurrence of ODSCC at the TSP elevations is not expected to lead to a S/G tube rupture event during normal or faulted plant conditions. The EOC distribution of crack indications at the TSP elevations will be confirmed to result in acceptable primary-to-secondary leakage during all plant conditions and that radiological consequences are not adversely impacted.

In addressing the combined effects of loss-of-coolant accident (LOCA), plus safe shutdown earthquake (SSE) on the S/G component (as required by GDC 2), it has been determined that tube collapse may occur in the S/Gs at some plants. This is the case as the TSP may become deformed as a result of lateral loads at the wedge supports at the periphery of the plate because of the combined effects of the LOCA rarefraction wave and SSE loadings. Then, the resulting pressure differential on the deformed tubes may cause some of the tubes to collapse.

There are two issues associated with S/G tube collapse. First, the collapse of S/G tubing reduces the RCS flow area through the tubes. The reduction in flow area increases the resistance to flow of steam from the core during a LOCA, which in turn, may potentially increase the peak clad temperature (PCT). Second, there is a potential that partial through-wall cracks in tubes could progress to through-wall cracks during tube deformation or collapse.

Consequently, since the leak-before-break methodology is applicable to the SQN reactor coolant loop piping, the probability of breaks in the primary loop piping is sufficiently low that they need not be considered in the structural design of the plant. The limiting LOCA event becomes either the accumulator line break or the pressurizer surge line break. LOCA loads for the primary pipe breaks were used to bound the conditions at SQN for smaller breaks. The results of the analysis using the larger break inputs show that the LOCA loads were found to be of insufficient magnitude to result in S/G tube collapse or significant deformation. The LOCA, plus SSE tube collapse evaluation performed for another plant with Series 51 S/Gs using bounding input conditions (large-break loadings), is considered applicable to SQN.

Addressing RG 1.83 considerations, implementation of the bobbin probe voltage based interim tube plugging criteria of 2.0 volt is supplemented by: (1) enhanced eddy current inspection guidelines to provide consistency in voltage normalization, (2) a 100 percent

eddy current inspection sample size at the TSP elevations, and (3) RPC inspection requirements for the larger indications left in service to characterize the principal degradation as ODSCC.

As noted previously, implementation of the TSP elevation plugging criteria will decrease the number of tubes that must be repaired. The installation of S/G tube plugs reduces the RCS flow margin. Thus, implementation of the alternate plugging criteria will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging.

Based on the above, it is concluded that the proposed license amendment request does not result in a significant reduction in margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: 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.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: February 14, 1994, as supplemented by letter dated May 17, 1994.

Brief description of amendments: The proposed changes revise the Technical Specifications to allow power ascension above 50% rated thermal power (RTP) with a quadrant power tilt ratio greater than 1.02 provided the assumptions of affected safety analyses are confirmed to be satisfied.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not increase the probability or consequences of a previously evaluated accident.

The proposed changes affect the Action Statements which are to be taken when it is discovered that the Quadrant Power Tilt Ratio (QPTR) is greater than the value specified in the Limiting Condition for Operation. The frequency for determining QPTR has been reduced. The requirements to reduce power to below 50% RTP and to reduce the power range flux trip setpoints based on QPTR have been replaced by similar requirements based on $F_Q(Z)$ and $F^N_{\Delta H}$. The requirement to correct the cause prior to increasing power and verifying QPTR hourly is replaced with specific requirements to verify that $F_Q(Z)$ and $F^N_{\Delta H}$ are within their limits, the safety analyses remain valid, and the excore detectors are re-normalized to indicate zero quadrant power tilt. If the proposed actions are not met, a requirement to reduce power to ≤50% RTP within 4 hours was added.

The only item above that could affect the probability of an accident is the removal of the requirement to reduce the power range neutron flux setpoints. However, because the Protection Cabinets must be entered to make these adjustments, eliminating the requirement to adjust these setpoints actually slightly reduces the probability of an inadvertent plant trip. Thus, the changes do not increase the probability of an accident previously evaluated and may reduce the probability of a plant trip.

The proposed Action Statements, require that accident analyses be re-evaluated to confirm that the results remain valid within 24 hours. Prior to completion of this confirmation, the plant is not permitted to operate at a power level higher than is permitted under the current specification. If the re-evaluation of accident analyses cannot confirm that the plant is within the accident analyses results, the required actions are similar to the requirements of the current specification. Although higher initial power levels generally increase accident consequences, once the accident analyses are confirmed to be valid, the consequences of any accident will be within analyzed acceptable limits. Thus, the higher plant power levels permitted by the proposed changes do not significantly increase the consequences of any accidents previously evaluated.

The proposed specification does not require a reduction in Power Range Neutron Flux—High reactor trip setpoints during the time the appropriate peaking factor surveillances are being performed. The interval during which the proposed specification permits operation without reduced setpoints (and unverified peaking factors) is longer than is permitted under the current specification. However, the consequences of any accident which could occur during this interval are the same as for the conditions prior to resetting the trip setpoints in the current specification. Therefore the change does not increase the consequences of any accident which could occur during this interval. The impact of the extended interval is addressed in response to question (3) below.

Based on the discussions above, the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated accident.

The proposed changes do not involve any hardware changes. System operation has not been changed to create any new system configurations which were not previously allowed. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The limits for the parameters of concern (QPTR, $F_Q(Z)$ and $F^N_{\Delta H}$) remain unchanged. The acceptance criteria for analyzed events also remain the same. The margin of safety established by the LCOs [Limiting Conditions for Operation] remains unchanged.

The only impact of the proposed changes is an increase in the allowed duration of operation above 50% RTP without a reduction in the Power Range Neutron Flux—High trip setpoint. This could potentially affect a margin of safety by allowing operation at conditions which are potentially outside the assumptions of the accident analyses for an interval longer than is permitted under the current specification. The impact on safety margin is not considered to be significant, however, because: the allowed interval is still small (24 hours versus the current 6 hours); the likelihood of an accident during the interval is small; and, it is considered unlikely that the peaking factors would be outside their limits without outer indications.

Thus, it is concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at

Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, NW., Suite 1000, Washington, DC 20036.

NRC Project Director: William D. Beckner.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: March 28, 1994.

Brief description of amendments: The proposed amendment would revise Section 6 of the Technical Specifications (TS) by deleting a reference to a no longer used loss of coolant accident (LOCA) topical report and adding a reference to a new steamline break methodology topical report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve an increase in the probability or consequences of a previously evaluated accident.

The NRC assures that appropriate core operating limits are established by requiring that they be determined using NRC approved analytical methods. These approved methods are described in the documents listed in TS Section 6.9.1.6b. TU Electric has developed the analysis capability to evaluate the core operating limits. The methodologies used by TU Electric have been documented in a series of TU Electric submittals which were reviewed and approved by the NRC. This TS revision adds the topical report which describes the TU Electric steamline break analysis methodology to TS Section 6.9.1.6b.

Also, the Westinghouse report which describes the methodology previously used in the analysis of Unit 1 large break LOCAs is no longer used and is being deleted. Large break LOCA analyses for Unit 1 are now performed using NRC approved TU Electric methodology.

Because the revisions are administrative only, they cannot directly affect the probability or the consequences of any previously evaluated accident. The steamline break analysis methodology is part of a group [of] methodologies which are authorized by the technical specifications to be used to verify that each reload cycle continues to satisfy the core operating limits. The core operating limits are set to assure that relevant plant parameters are maintained such that potential accidents are within the bounds of the accident analyses. Because the applicable limits of the safety analyses will be verified to be satisfied using authorized methodologies, there is no significant impact on the consequences of an accident previously evaluated. In addition, since the core operating limits do not affect any accident initiators, the change has no impact on the probability of any accident previously analyzed.

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 involve a change in the permissible analysis methodologies for determining core operating limits. As such, the changes play an important role in the analysis of postulated accidents but none of the changes affect plant hardware or the operation of plant systems in a way that could initiate an accident. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

In reviewing and approving the methods used for safety analyses, the NRC has approved the safety analysis limits which establish the margin of safety to be maintained. Satisfaction of event-specific acceptance criteria ensures that the approved safety analysis limits are met and thus provides the margin of safety. The methodology being added to the TS demonstrates, in a conservative manner, that the event acceptance criteria are satisfied. Therefore, including this method in the TS does not change the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, NW., Suite 1000, Washington, DC 20036.

NRC Project Director: William D. Beckner.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: June 9, 1994.

Description of amendment request: The proposed change would revise the Technical Specifications (TS) for the North Anna Power Station, Units No. 1 and No. 2 (NA–1&2). Specifically, the proposed change would relocate the TS tables of the response time limits for the Reactor Trip System (RTS) and the Engineered Safety Feature Actuation System (ESFAS) to station-controlled documents.

On December 29, 1993, the NRC issued Generic Letter 93–08 titled "Relocation of Technical Specification Tables of Instrument Response Time Limits." This generic letter provides guidance for preparing a proposed license amendment to relocate the tables of response time limits for the RTS and the Engineered ESFAS instruments from TS to station-controlled documents.

The RTS and the ESFAS provides the signals needed to actuate the safety equipment necessary to mitigate accidents and transients. Consistent with Generic Letter 93–08 the licensee is requesting license amendments for NA–1&2 to relocate the RTS and ESFAS tables of instrument response time limits from TS to station-controlled documents.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of North Anna Power Station in accordance with the proposed Technical Specification[s] changes will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The Reactor Trip System and the Engineered Safety Features Actuation System provide the signals needed to actuate the safety equipment necessary to mitigate accidents and transients. The proposed changes relocate the RTS and ESFAS instrument response time limits from the Technical Specifications to station controlled documents but will not change the operability or surveillance requirements for these instruments. With these proposed changes, revisions to the response times for these instruments can be made pursuant to 10 CFR 50.59 without Nuclear Regulatory Commission

approval unless the revision involves an unreviewed safety question.

The proposed changes will not change any accident initiators or the consequences of any analyzed accident. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes relocate the RTS and ESFAS instrument response time limits from the Technical Specifications to station controlled documents but will not change the functions of these instruments. The proposed change does not represent a change in the configuration or operation of the plant. No new hardware is being added to the plant as part of the proposed changes. The Technical Specifications will continue to require the same operability and surveillance requirements to be met for these instruments. Therefore, the proposed changes do 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.

The proposed changes will not affect the functions of the RTS or the ESFAS instruments. Relocating the response time limits will not alter the operability or the surveillance requirements of these instruments. The administrative change control provisions for plant procedures written pursuant to 10 CFR 50.59 are adequate to control revisions to the response time limits. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: June 9, 1994.

Description of amendment request: The proposed changes to the Technical Specifications include: (1) modification of the high head charging pumps seal cooling subsystem, (2) restructuring of the Chemical and Volume Control System and Safety Injection System Specifications, (3) relocation of certain specification requirements within existing specifications, (4) specification of a minimum boric acid solution temperature in lieu of heat tracing channel operability, and (5) minor wording changes which are administrative in nature for consistency in terminology, capitalization of defined terms and clarification.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of Surry Power Station in accordance with the proposed Technical Specifications changes will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The modifications to the charging pumps and elimination of the charging pump component cooling subsystem do not increase the probability of occurrence of any accident or malfunction previously evaluated in the safety analysis report. The charging pump modifications utilize a passively designed process flow cooling arrangement to reduce exposure, improve reliability, and improve operability. The charging pump modifications will not decrease the pumps ability or the associated subsystems ability to perform their design function.

The restructuring of the Chemical and Volume Control System and Safety Injection System specifications on a subsystem basis continues to ensure that the reactor can be made subcritical from any operating condition and provide sufficient shutdown margin to preclude inadvertent criticality when in the shutdown condition. The Safety Injection System subsystems continue to maintain sufficient boration capability to mitigate reactivity transients within the design limits associated with postulated accident conditions. The Safety Injection System subsystems ensure that sufficient emergency core cooling capability will be available in the event of a LOCA [loss-of-coolant accident] assuming the loss of one subsystem through any single failure consideration. Either subsystem operating in conjunction with the accumulators remains capable of supplying sufficient core cooling to limit the peak cladding temperatures within acceptable limits in accordance with the loss-of-coolant accident analyses.

The Chemical and Volume Control System remains capable of achieving Cold Shutdown of both units during any operating conditions in accordance with the safety analysis with a minimum specified solution temperature of 112 degrees F. Heat tracing is not required for operability of the Safety Injection System nor does it affect the ability of the Safety Injection System to mitigate the consequences of any postulated accident identified in the safety analysis.

The changes ensure that the refueling water storage tank remains capable of providing a sufficient supply of borated water for injection by the emergency core cooling system in the event of a LOCA. The limits specified for refueling water storage tank volume and boron concentration continue to ensure that sufficient solution is available within containment for recirculation cooling flow to the core, and that the reactor will remain subcritical in Cold Shutdown consistent with the LOCA analyses.

The specified allowed outage time of 72 hours for an inoperable Chemical and Volume Control System subsystem or Safety Injection System subsystem is reasonable for the repair of affected components and is consistent with NRC Memorandum, "Recommended Interim Revisions to LCO's for ECCS Components," dated December 1, 1975, and NUREG–1431, Standard Technical Specifications for Westinghouse Pressurized Water Reactors. A reliability analysis (reference NRC memo above) has shown that the impact of having one subsystem inoperable is sufficiently small to justify continued operation for 72 hours. Engineering evaluation of the proposed changes determined that they are bounded by existing safety analyses. Furthermore, the proposed changes do not increase the allowed outage times to achieve Cold Shutdown presently specified in the Technical Specifications.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The passively designed once-through process flow cooling arrangement for the charging pumps' seals are recommended by the pump manufacturer with the pump seal manufacturer's concurrence and result in no decrease in the pumps ability to perform their safety function. Our Engineering evaluation has determined that the affected systems ability to mitigate the consequences of any accident as described in the safety analyses is not reduced. The restructuring and relocation of specifications has not reduced any limiting condition for operation or surveillance specification requirements. Changes in allowed outage times are consistent with NUREG–0452, NUREG–1431, or Generic Letter 93–05 and our accident analyses. Consequently, the possibility of a new or different kind of accident is not created.

3. Involve a significant reduction in a margin of safety.

The modifications to the charging pumps result in improved reliability and improved operability of the CVCS [chemical and volume control system] and SI [safety injection] subsystems. Our Engineering evaluation of the manufacturer's proposed modification and the pump seal manufacturer's concurrence with the modification, have determined this modification to be acceptable with no reduction in the pump's safety-related function. The charging pump modification does not reduce the margin of safety in any part of Technical Specifications or the accident analyses.

The restructuring of the Chemical and Volume Control System specifications continue to ensure that the reactor can be made subcritical from any operating condition and provide sufficient shutdown margin to preclude inadvertent criticality when in the shutdown condition. The Chemical Volume and Control System remains capable of achieving Cold Shutdown of both units during any operating conditions in accordance with the safety analysis with a minimum specified solution temperature of 112 degrees F. The revised allowed outage times for the Safety Injection System subsystems do not impact the margin of safety * * * in the Technical Specifications bases or the accident analyses.

The Safety Injection System subsystems continue to maintain sufficient boration capability to mitigate reactivity transients within the design limits associated with postulated accident conditions described within the safety analysis report. The Safety Injection System subsystems ensure that sufficient emergency core cooling capability will be available in the event of a LOCA assuming the loss of one subsystem through any single failure consideration. Either subsystem operating in conjunction with the accumulators remains capable of supplying sufficient core cooling to limit the peak cladding temperatures within acceptable limits in accordance with the loss-of-coolant accident analyses.

The changes ensure that the refueling water storage tank remains capable of providing a sufficient supply of borated water for injection by the emergency core cooling system in the event of a LOCA. The limits specified for refueling water storage tank volume and boron concentration continue to ensure that sufficient solution is available within containment for recirculation cooling flow to the core, and that the reactor will remain subcritical in Cold Shutdown consistent with the LOCA analyses. Consequently, the proposed change to Technical Specifications does not involve a significant reduction [in] the margin of safety within the accident analyses.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: May 17, 1994.

Description of amendment request: The proposed amendment would revise Kewaunee Nuclear Power Plant (KNPP) Technical Specification (TS) 3.3.c by separating the Internal Containment Spray (ICS) and Spray Additive Systems into two distinct specifications. The proposed amendment would also remove the requirement that for a spray train to be operable, a spray pump suction flow path from the additive tank is needed. In addition, the allowable out of service time for the Spray Additive System would be increased from 48 hours to 72 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed changes were reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed changes will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The likelihood that an accident will occur is neither increased nor decreased by these TS changes. These TS 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 these changes. No systems, equipment, or components are affected by the proposed changes. Thus, the consequences of the malfunction of equipment important to safety previously evaluated in the Updated Safety Analysis Report (USAR) are not increased by these changes.

The proposed changes have no impact on accident initiators or plant equipment, and thus, do not affect the probabilities or consequences of an accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes would 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 these changes do not contribute to accident initiation, they do not produce a new accident scenario or produce a new type of equipment malfunction. Also, these changes do not alter any existing accident scenarios; they do not affect equipment or its operation, and thus, do not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in the margin of safety.

Operation of the facility in accordance with the proposed TS would not involve a significant reduction in a margin of safety. The proposed changes do not affect plant equipment or operation. Safety limits and limiting safety system settings are not affected by these proposed changes. Extending the time the Spray Additive System may be out of service from 48 hours to 72 hours and removing the requirement to have a spray pump suction flow path from the additive tank for a spray train to be operable is consistent with STS. The

STS only require that the spray system be capable of taking suction from the refueling water storage tank and the containment sump.

The Containment Spray System would still be available and would remove some iodine from the containment atmosphere in the event of a Design Basis Accident. The 72 hour completion time takes into account the Containment Spray System redundant flow path capabilities and the low probability of the worst case Design Basis Accident occurring during this period.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701–1497.

NRC Project Director: John N. Hannon.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: March 29, 1994.

Description of amendment request: The proposed amendment would modify Point Beach Nuclear Plant Technical Specification (TS) 15.3.2, "Chemical and Volume Control System," by eliminating the necessity for high concentration boric acid and removing the operability requirements for the associated heat tracing. The basis for Section 15.3.2 and applicable surveillances in Table 15.4.1–2 would also be revised to support the above changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of this facility under the proposed Technical Specifications change will not create a significant increase in the probability or consequences of an accident previously evaluated.

Reduced boron concentration in the boric acid storage tank (BAST) is offset by increasing the volume of boric acid solution that must be contained in the tanks. The heat tracing requirements are used to ensure that the dissolved boric acid is maintained in solution and available for injection into the RCS to adjust core reactivity throughout core life and to meet GDC requirements. Chemical analyses of boron concentrations of ≤4.0 weight percent have shown that the boric acid does not crystallize at temperatures above 57 °F. Ambient temperatures in the areas of the primary auxiliary building where these components are located will normally remain above this temperature. Hence, heat tracing will no longer be needed for boric acid concentrations with corresponding solubility temperatures less than ambient temperatures. The proposed Technical Specifications requirements for boron concentration, volume, and temperature of the BASTs and boration paths ensure that the capability to inject boric acid is maintained. Since the components (and their function) necessary to achieve a safe shutdown have not been changed or modified, this change does not significantly increase the probability or consequences of any accident previously evaluated.

The proposed changes to the boric acid system Technical Specifications requirements for the chemical and volume control system (CVCS) do not affect the requirements for the emergency core cooling system (ECCS). The original design of the high head safety injection (SI) system used the BASTs as its initial suction source. Westinghouse WCAP–12602, "Report For The Reduction of SI System Boron Concentration," and a 10 CFR 50.59 Safety Evaluation Report performed by Wisconsin Electric justifies the design change to use the refueling water storage tank (RWST) as the initial suction source of SI fluid rather than the BAST. The affected FSAR Chapter 14 accident analyses include the Loss of Coolant Accident (LOCA) events and the Steamline Break (SLB) events. The LOCA events are affected with respect to the large-break post-LOCA long-term core cooling subcriticality requirement. The SLB events are affected with respect to core integrity. The events were analyzed assuming the elimination of the logic which automatically opened the valves in the flow path from the BASTs to the SI pumps upon the receipt of a safety injection signal. The results show that we remain within the acceptance criteria of the aforementioned FSAR Chapter 14 accident analyses. Therefore, the proposed changes will not create a significant increase in the probability or consequences of a[n] accident previously evaluated.

2. Operation of this facility under the proposed Technical Specifications change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The reactivity control function of the boron in the CVCS and SI systems is not being changed. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of this facility under the proposed Technical Specifications change will not create a significant reduction in a margin of safety.

The intent of the proposed Technical Specifications is to ensure that two independent flow paths from the borated water source(s) (BASTs and/or RWST) to the reactor coolant system are maintained whenever a unit is taken critical. This requires that sufficient quantities of boric acid be stored in the tanks, and that this borated water can be delivered to the reactor coolant system when required. Although we presently require diverse sources of borated water (BAST *and* RWST), the proposed reduction in diversity will be offset by the significant increase in reliability of the boric acid system due to operation with lower boric acid concentrations and, hence, a much lower probability of boron precipitation and system "freeze-up." Reducing the boric acid concentration in the BASTs has been compensated for by increasing the required volume of boric acid.

The proposed Technical Specifications requirements for boric acid concentration and volume include the additional specification of minimum temperature that must be maintained to assure boric acid solubility. The minimum temperature requirement is more appropriate than the requirement for heat tracing because it is a more precise means of verifying and assuring solubility. Therefore, the proposed boric acid concentration table, which includes the volume and temperature requirements, is an appropriate substitute for the heat tracing requirements. Although the heat tracing requirement is being eliminated, the boric acid heat tracing system will be available during our transition to the lower boric acid concentration to assist in maintaining boric acid system temperature if necessary. Since our analyses have shown that the existing FSAR Chapter 14 accident analyses remain bounded under the proposed specifications, the margin of safety for the plant is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: May 26, 1994.

Description of amendment request: Point Beach Nuclear Plant is installing two additional emergency diesel generators and reconfigure portions of the 4160 Volt emergency electrical power system. The proposed amendment would revise the Point Beach Nuclear Plant Technical Specifications (TS) to establish the requirements for the electrical systems at Point Beach such that the TS will provide the appropriate guidance for all interim configurations and the final configuration. The majority of changes are incorporated in TS Section 15.3.7, "Auxiliary Electrical Systems." Other Sections modified are 15.3.0, "General Considerations," 15.3.14, "Fire Protection System," and 15.4.6, "Emergency Power System Periodic Tests."

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 this facility under the proposed Technical Specifications will not create a significant increase in the probability or consequences of an accident previously evaluated.

The Point Beach Nuclear Plant Final Safety Analysis Report (PBNP FSAR) shows that the original emergency diesel generators and the associated support systems and connections do not cause or affect the probability of any accident evaluated in the PBNP FSAR. The additional emergency diesel generators, the associated support systems and connections, and reconfiguration of the emergency AC power system will not change this. The emergency AC power system does not initiate any accident previously evaluated in the PBNP FSAR.

The limiting conditions for operation and allowable outage times proposed in this license amendment request are consistent with the current requirements in the PBNP Technical Specifications. The proposed change in the required emergency diesel generator (EDG) inspection interval, from annually to the time as recommended by the EDG manufacturer, will continue to maintain the operability and reliability of the EDGs. Therefore, the probability of occurrence of an accident previously evaluated in the FSAR is not increased by the proposed Technical Specifications.

The consequences of the accidents previously evaluated in the PBNP FSAR are determined by the results of analyses that are based on initial conditions of the plant, the type of accident, transient response of the plant, and the operation and failure of equipment and systems. The new emergency diesel generator installation will meet the requirements for emergency power sources for PBNP.

General Design Criterion (GDC) 39 as described in the PBNP FSAR, states, "An emergency power source shall be provided and designed with adequate independency, redundancy, capacity, and testability to permit the functioning of the engineered safety features and protection systems required to avoid undue risk to the health and safety of the public. This power source shall provide this capacity assuming a failure of a single component."

The limiting conditions for operation and allowable outage times proposed in this license amendment request are consistent with the requirements in GDC–39 and the current Technical Specifications for PBNP. Therefore, this proposed license amendment does not affect the consequences of any accident previously evaluated in the PBNP FSAR, because the factors that are used to determine the consequences of accidents are not being changed.

(2) Operation of this facility under the proposed Technical Specifications change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The PBNP FSAR shows that the original emergency diesel generators and the associated support systems and connections do not cause any accident evaluated in the PBNP FSAR. The additional emergency diesel generators, the associated support systems and connections, and reconfiguration of the emergency AC power system will not change this, because the new emergency diesel generators will meet the requirements for emergency power sources for PBNP. Additionally, these changes do not introduce any type of system or component malfunction that would create the possibility of a new or different kind of accident from any accident previously evaluated.

The limiting conditions for operation and allowable outage times proposed in this license amendment request are consistent with the requirements in GDC–39 and the current Technical Specifications for PBNP. The proposed change in the required EDG inspection interval, from annually to the time as recommended by the EDG manufacturer, will continue to maintain the operability and reliability of the EDGs.

Therefore, the proposed Technical Specification changes for the addition of two diesel generators and changing the required EDG inspection interval do not create the possibility of an accident of a different type than any previously evaluated in the FSAR.

(3) Operation of this facility under the proposed Technical Specifications change will not create a significant reduction in a margin of safety.

The new diesel generator and emergency AC power system reconfiguration design and installation are being and have been performed to meet or exceed the original system design requirements. The emergency diesel generators provide power to the safety equipment that operates to maintain the margins of safety. The new diesel generators and emergency AC power configuration will continue to satisfy this requirement.

The limiting conditions for operation and allowable outage times proposed in this license amendment request are consistent with the requirements in GDC–39 and the current Technical Specifications for PBNP. The proposed change in the required EDG inspection interval, from annually to the time as recommended by the EDG manufacturer, will continue to maintain the operability and reliability of the EDGs.

Therefore, the proposed Technical Specification changes for the addition of two diesel generators and changing the required EDG inspection interval do not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516

Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Power Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: May 26, 1994.

Description of amendment request: The proposed amendment would revise the Point Beach Nuclear Plant Technical Specifications (TSs) by extending the operation of both units with the current heatup and cooldown limit curves to 23.6 effective full power years (EFPY). The proposal also would revise the bases for TS Section 15.3.1.B, "Pressure/Temperature Limits," to reflect the methodology for the curve compilation.

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:

We have evaluated these proposed amendments in accordance with the requirements of 10 CFR 50.91(a), against the standards of 10 CFR 50.92, and have determined that these modifications will not result in a significant hazards consideration. A proposed amendment will not involve a significant hazards consideration if it does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The proposed heatup and cooldown curves are identical to the current heatup and cooldown curves except for their projected expiration. The curves were calculated using the most limiting weld and fluence information from either unit as input to the acceptable methodology of Regulatory Guide 1.99, Revision 2. The consequences or probability of a previously evaluated accident will, therefore, not significantly be increased or a margin of safety reduced.

The underlying purpose of these curves is to define an acceptable operating range of pressures and temperatures to protect the reactor vessels against non-ductile failure. Since this purpose remains unchanged, a new or different kind of accident cannot be created.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

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.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: June 20, 1994.

Brief description of amendment request: The proposed amendment would modify Technical Specification 3/4.4.3.1, "Reactor Coolant Leakage—Leakage Detection Systems," to permit continued plant operation with inoperable drywell floor drain sump flow rate monitoring instrumentation. Continued plant operation would be permitted until the first time the plant is required to be brought to COLD SHUTDOWN after July 10, 1994.

Date of publication of individual notice in **Federal Register:** June 22, 1994 (59 FR 32247).

Expiration date of individual notice: July 22, 1994.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

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.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: October 19, 1993.

Brief description of amendment: This amendment removes the scram and Group I isolation valve closure functions associated with the main steamline radiation monitors.

Date of issuance: June 21, 1994.

Effective date: June 21, 1994.

Amendment No.: 154.

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 24, 1993 (58 FR 62151).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 21, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: March 7, 1994, as superseded by your submittal dated March 24, 1994.

Brief description of amendments: The amendments change Technical Specification (TS) 4.6.1.2, "Containment Leakage," by removing the specific requirement that containment Type A leak testing be performed at 40± 10 month intervals. The revised TS now references Appendix J to 10 CFR 50 as governing the performance of Type A testing.

Date of issuance: June 30, 1994.

Effective date: June 30, 1994.

Amendment Nos.: 62, 62, 52, and 52.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 28, 1994 (59 FR 22002).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 30, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: March 11, 1994.

Brief description of amendments: The proposed amendments revise Technical Specification 3/4.7.D, "Primary Containment Isolation Valves" by adding check valves installed in the reference leg instrumentation line to the Limiting Condition for Operation (LCO) statement of the Technical Specifications. The valves have been installed as part of the modifications required to meet NRC Bulletin 93–03, "Resolution of Issues Related to Reactor Vessel Water Level Instrumentation in BWRs," dated May 28, 1993.

Date of issuance: July 6, 1994.

Effective date: For Dresden, Unit 2: the license amendment is effective as of the date of its issuance; to be implemented when the modifications are complete and prior to restart from any cold shutdown after June 30, 1994, or restart from the 14th refuel outage, which ever is first. For Dresden, Unit 3: the license amendment is effective as of the date of its issuance; to be implemented within 30 days. For Quad Cities, Unit 1: the license amendment is effective as of the date of its issuance; to be implemented within 30 days. For Quad Cities, Unit 2: the license amendment is effective as of the date of its issuance; to be implemented prior to restart following the 13th refueling outage.

Amendment Nos.: For Dresden, Unit 2: Amendment No. 128; for Dresden, Unit 3: Amendment No. 122; for Quad Cities, Unit 1: Amendment No. 148; for Quad Cities, Unit 2: Amendment No. 144.

Facility Operating License Nos. DPR–19, DPR–25, DPR–29 and DPR–30. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 13, 1994 (59 FR 17593).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 6, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Dresden, the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: January 28, 1994.

Brief description of amendment: The amendment modifies Surveillance Requirement 4.6.1.2.d, regarding the Appendix J testing requirements for the purge supply and exhaust valves, and removes surveillance requirement 4.6.1.2.f regarding the purge and exhaust valves.

Date of issuance: June 27, 1994.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 173.

Facility Operating License No. DPR–61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 25, 1994 (59 FR 27051).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 27, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Consolidated Edison Company of New York, Docket No. 50–003 and Docket No. 50–247, Indian Point Nuclear Generating Unit Nos. 1 and 2, Westchester County, New York

Date of application for amendments: September 29, 1993.

Brief description of amendments: The amendments revise the Technical Specifications (TSs) Administrative sections dealing with the administrative control of keys for doors preventing unauthorized access to High Radiation Areas in which the intensity of radiation exceeds 1000 mrem/hr. Specifically, the amendments revise TS Section 4.1.8.1.b for Indian Point Generating Unit No. 1 and TS Section 6.12.1.b for Indian Point Generating Unit No. 2 to add the Radiation Protection Manager as one of the two positions which can administratively control the keys.

Date of issuance: July 7, 1994.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 43 and 171.

Facility Operating License Nos. DPR–5 and DRP–26: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 24, 1993 (58 FR 62153).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 7, 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.

Detroit Edison Company, Docket No. 50–341, Fermi-2, Monroe County, Michigan

Date of application for amendment: March 29, 1994, as corrected April 26, 1994.

Brief description of amendment: The amendment revises the surveillance requirements for scram discharge volume vent and drain valves and isolation actuation instrumentation and modifies the required actions and surveillance requirements for the emergency diesel generators to reduce testing during power operation. These changes are in accordance with guidance contained in Generic Letter (GL) 93–05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation," dated September 27, 1993.

Date of issuance: June 28, 1994.

Effective date: June 28, 1994, with full implementation within 45 days.

Amendment No.: 99.

Facility Operating License No. NPF–43. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: May 25, 1994 (59 FR 27053).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50–341, Fermi-2, Monroe County, Michigan

Date of application for amendment: April 26, 1994.

Brief description of amendment: The amendment revises the limiting conditions for operation and surveillance requirements in the Technical Specifications (TS) to delete reference to instrument response time limit tables for the reactor protection system, instrument actuation system and emergency core cooling system. These tables are also being moved from the TS to the updated final safety analysis report.

Date of issuance: June 29, 1994.

Effective date: June 29, 1994, with full implementation within 60 days.

Amendment No.: 100.

Facility Operating License No. NPF–43. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: May 25, 1994 (59 FR 27053).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: March 30, 1994.

Brief description of amendments: The amendments revise Technical Specification Table 4.3–3 to allow the analog channel operational test interval for radiation monitoring instrumentation to be increased from monthly to quarterly and are consistent with the guidance in Generic Letter 93–05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation."

Date of issuance: July 5, 1994.

Effective date: July 5, 1994.

Amendment Nos.: 121/115.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 25, 1994 (59 FR 27054).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 5, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: April 19, 1994.

Brief description of amendments: These amendments change the surveillance interval specified for air or smoke flow test through the containment spray header from once per 5 years to once per 10 years.

Date of issuance: June 28, 1994.

Effective date: June 28, 1994.

Amendment Nos. 165 and 159.

Facility Operating Licenses Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 25, 1994 (59 FR 27055).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 28, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

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: November 25, 1992 as supplemented by letter dated March 4, 1994.

Brief description of amendments: These amendments implement Generic Letter 90–06, "Resolution of Generic Issue 70, 'Power-Operated Relief Valve and Block Valve Reliability,' and Generic Issue 94, 'Additional Low-Temperature Overpressure Protection for Light-Water Reactors,' Pursuant to 10 CFR 50.54(f)."

Date of issuance: June 28, 1994.

Effective date: June 28, 1994.

Amendment Nos. 166 and 160.

Facility Operating Licenses Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 14, 1993 (58 FR 19478).

The licensee's letter of March 4, 1994 did not change the no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 28, 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: June 12, 1991.

Brief description of amendment: The amendment revises the plant Technical Specifications to clarify the setpoint ranges for the pressurizer power-operated relief valve and provides action statements to be satisfied when setpoint ranges are not met.

Date of issuance: June 30, 1994.

Effective date: As of its date of issuance to be implemented within 60 days.

Amendment No.: 186.

Facility Operating License No. DPR–50. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 10, 1991 (56 FR 31435).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 30, 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.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: June 20, 1994.

Brief description of amendment: The amendment revised the Technical Specifications by modifying a footnote to Technical Specification 3/4.4.3.1, "Reactor Coolant System Leakage—Leakage Detection Systems," to permit continued plant operations with inoperable drywell floor drain sump flow monitoring instrumentation until the first time the plant is required to be brought to cold shutdown after July 10, 1994.

Date of issuance: July 8, 1994.

Effective date: July 8, 1994.

Amendment No.: 90.

Facility Operating License No. NPF–62. The amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (59 FR 32247 dated June 22, 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 July 22, 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 July 8, 1994.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: February 10, 1992, as supplemented April 14, 1994.

Brief description of amendment: The amendment removes two tables from the Technical Specifications which list reactor trip system instrumentation response times and engineered safety features actuation system instrumentation response times. These tables will be placed in the Millstone 3 Technical Requirements Manual.

Date of issuance: June 28, 1994.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 91.

Facility Operating License No. NPF–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 25, 1994 (59 FR 27058).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: March 23, 1994.

Brief description of amendment: The amendment modifies Technical Specification Table 3.7–6, "Area Temperature Monitoring," by creating two zones for the main steam valve building (MSVB) and increasing the maximum normal excursion temperature limit for this area from 120 °F to 140 °F. Technical Specification Table 3.7–6 currently identifies the entire MSVB with a temperature limit of 120 °F.

Date of issuance: June 29, 1994.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 92.

Facility Operating License No. NPF–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 28, 1994 (59 FR 22009).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: January 4, 1994, as supplemented March 28, 1994.

Brief description of amendment: The amendment modifies Section 3.11, Reactor Fuel Assemblies, by removing information concerning the analytical method to determine average planar linear heat generation rate and adding a reference to the Core Operating Limits Report. In Section 6.7, Reporting Requirements, the listing of approved analytical methods for developing the Core Operating Limits Report is revised and the specific version of the analytical methods used to develop the report is identified. Also, the Bases for Section 3.11 concerning the calculational methodology for minimum critical power ratio was revised.

Date of issuance: June 30, 1994.

Effective date: June 30, 1994.

Amendment No.: 88.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 2, 1994 (59 FR 10011).

The March 28, 1994, letter provided clarifying information that was within the scope of the March 2, 1994, notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 30, 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.

Pacific Gas and Electric Company, Docket No. 50–133, Humboldt Bay Power Plant, Unit 3, Humboldt County, California

Date of application for amendment: July 7, 1993. (Reference HBL–93–041)

Brief description of amendment: This amendment modified the Technical Specifications incorporated in Facility Operating License No. DPR–7 as Appendix A by revising technical specification VII.H.3, "Semiannual Radioactive Effluent Release Report," to extend the reporting period from semiannually to annually and to change the report submission date from 60 days after January 1 and July 1 of each year to before April 1 of each year.

Date of issuance: June 30, 1994.

Effective date: This license amendment is effective as of the date of its issuance and must be fully

implemented no later than 30 days from the date of issuance.

Amendment No.: 26.

Facility Operating License No. DPR–7: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 19, 1994 (59 FR 2869).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 30, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Humboldt County Library, 636 F Street, Eureka, California 95501.

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: September 1, 1992 and October 15, 1992 as supplemented by letters dated October 30, 1992, March 16, 1993, June 10, 1993, July 28, 1993, September 10, 1993, April 29, 1994, June 2, 1994, June 9, 1994, and June 15, 1994.

Brief description of amendments: The amendments extend the interval for certain Technical Specifications surveillance requirements to 24 months with an additional 25-percent grace period.

Date of issuance: June 28, 1994.

Effective date: As of 30 days after the date of issuance.

Amendment Nos.: 71 and 34.

Facility Operating License Nos. NPF–39 and NPF–85: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 16, 1992 (57 FR 42778) and October 28, 1992 (57 FR 48823).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 28, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: May 6, 1994, as supplemented by letter dated June 3, 1994.

Brief description of amendment: This amendment revised TS Section 5.5.3, "Capacity," to facilitate an interim increase in the Unit 1 Spent Fuel Pool from 2040 fuel assemblies to 2500 fuel assemblies.

Date of issuance: June 30, 1994.

Effective date: June 30, 1994.

Amendment No.: 72.

Facility Operating License No. NPF–39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 25, 1994 (59 FR 27063).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 30, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: December 22, 1993.

Brief description of amendment: The amendment removes the reference to American Society for Testing and Materials (ASTM) Standard D 270–65 from Technical Specification Surveillance Requirement 4.12A.1.i. ASTM D 270–65, which specifies procedures to draw a representative fuel oil sample, has been superseded and is no longer in effect. The amendment will allow ASTM D 4057–88 or subsequent industry standards to be used for the sampling of diesel fire pump fuel oil.

Date of issuance: June 27, 1994.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 214.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 2, 1994 (59 FR 4944).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 27, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: January 31, 1994.

Brief description of amendment: The amendment revises Technical Specification (TS) 3.8, "Miscellaneous Radioactive Materials Sources," to adopt the Limiting Conditions for Operation of Section 3/4.7.6, "Sealed Source Contamination," in NUREG–0123, "Standard Technical Specifications for General Electric Boiling Water Reactors (BWR/5)." The amendment also reformats TSs 3.8 and 4.8 to make them consistent with the remainder of the TSs.

Date of issuance: June 27, 1994.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 215.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 2, 1994 (59 FR 10014).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 27, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Dates of application for amendments: July 19, 1993 (TS–334).

Brief description of amendments: The amendments remove the Technical Specifications (TS) addressing reactor coolant chemistry limits and associated sampling requirements that are applicable when the reactor is defueled. The TS requirements being removed have been conservatively incorporated into the BFN chemistry program as elements of a licensee-controlled procedure. Any future changes to these chemistry requirements must be evaluated in accordance with 10 CFR 50.59 to determine whether the changes involve an unreviewed safety question. A change involving an unreviewed safety question would require a license amendment and NRC review and approval prior to implementation. In addition, changes to the reactor coolant chemistry TS, applicable when fuel is in the reactor, are included in these amendments to provide clarification and to ensure consistency in requirements among units.

Date of issuance: June 28, 1994.

Effective date: June 28, 1994.

Amendment Nos.: 208, 224 and 181.

Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: Amendments revised the Technical Specifications.

Dates of initial notice in **Federal Register:** November 10, 1993 (58 FR 59756).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 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. 50–259 and 50–296, Browns Ferry Nuclear Plant, Units 1 and 3, Limestone County, Alabama

Date of application for amendment: July 2, 1992 (TS 314)

Brief description of amendments: The amendments revise requirements associated with Residual Heat Removal valve pressure switches in the Browns Ferry Units 1 and 3 Technical Specifications.

Date of issuance: June 30, 1994.

Effective date: June 30, 1994.

Amendment Nos.: 209 and 182.

Facility Operating License Nos. DPR–33 and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 28, 1992 (57 FR 48826).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 30, 1994.

No significant hazards consideration comments received: None.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

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: February 28, 1992.

Brief description of amendment: The amendment revises Technical Specification Table 3.3.7.1–1 and Table 4.3.7.1–1 to remove the area criticality monitors for the fuel preparation pool, spent fuel pool, and the upper containment pools and their associated action statements, notes, and surveillance requirements. Editorial changes were made as required in the tables.

Date of issuance: June 28, 1994.

Effective date: June 28, 1994.

Amendment No. 62.

Facility Operating License No. NPF–58 This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 24, 1992 (57 FR 28205).

The Commission's related evaluation of the amendment is contained in an Environmental Assessment dated June 13, 1994, and in a Safety Evaluation dated June 28, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: January 31, 1994.

Brief description of amendment: This amendment revises TS 3/4.1.1.2 to permit the reduction of boron concentration of water within the reactor coolant system (RCS), subject to certain restrictions, when the reactor is in Mode 5 and RCS flow is less than 2800 gpm. This amendment is related to Amendment No. 176, which was issued by the NRC on December 8, 1992, and incorporated a similar revision for Mode 6 operation.

Date of issuance: June 28, 1994.

Effective date: June 28, 1994.

Amendment No. 188.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 16, 1994 (59 FR 12369).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: February 14, 1994.

Brief description of amendments: The amendments revise the technical specifications by replacing the requirements for reporting radiological effluents from semiannual to annual, and the report due dates from 60 days after January 1 and July 1 to prior to May 1. The changes are consistent with the requirements for reporting radioactive effluent releases specified in 10 CFR 50.36a.

Date of issuance: June 1, 1994.

Effective date: June 1, 1994, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 1—Amendment No. 25; Unit 2—Amendment No. 11.

Facility Operating License Nos. NPF–87 and NPF–89. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 28, 1994 (59 FR 22016).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 1, 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.

Washington Public Power Supply System, Docket No. 50–397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: February 17, 1994.

Brief description of amendment: The amendment modifies the administrative section of the technical specifications (TS) to reflect management and organizational changes at the Washington Public Power Supply System (the licensee) for operation of the WNP–2 facility. The proposed changes would (1) modify the reporting responsibility of the quality assurance organization from the Managing Director to the Assistant Managing Director, Operations (AMDO), and (2) modify the appointment authority for the Corporate Nuclear Safety Review Board (CNSRB) from the Managing Director to the AMDO. These changes are proposed to reflect the current designation of the AMDO as the licensee's designated official with corporate responsibility for overall plant nuclear safety and as the direct report for the CNSRB.

In addition, the proposed change would (1) delete the specific requirement for health physics/chemistry program procedures, (2) modify the titles of two positions on the Plant Operations Committee (POC) to reflect revised organizational titles, and (3) delete the requirement that the CNSRB Executive Secretary be designated from the CNSRB membership.

The staff denies the licensee's request to change CNSRB membership requirements from nine personnel to a minimum of nine personnel.

Date of issuance: June 28, 1994.

Effective date: 5 days after the date of issuance.

Amendment No.: 126.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 13, 1994 (59 FR 17609).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 1994.

Public comments on proposed no significant hazards consideration comments received: No.

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: The amendment changes equipment numbering on three primary containment isolation valves.

Date of issuance: June 28, 1994.

Effective date: June 28, 1994.

Amendment No.: 127.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 12, 1994 (59 FR 24762).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas.

Date of amendment request: February 24, 1994.

Brief description of amendment: The amendment revises Technical Specification 3.9.4, Containment Building Penetrations, to allow the use of temporary alternate closure methods for the emergency personnel escape lock and containment wall penetrations, during core alterations or movement of irradiated fuel within the containment.

Date of issuance: July 7, 1994.

Effective date: July 7, 1994, to be implemented within 30 days of issuance.

Amendment No.: 74.

Facility Operating License No. NPF–42. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 13, 1994 (59 FR 17610).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 13th day of July 1994.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–17503 Filed 7–19–94; 8:45 am]

BILLING CODE 7590–01–P

Connecticut Yankee Atomic Power Company; Issuance of Amendment to Facility Operating License

[Docket No. 50–213]

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 174 to Facility Operating License No. DPR–61 issued to Connecticut Yankee Atomic Power Company (the licensee), which revised the Technical Specifications for operation of the Haddam Neck Plant located in Middlesex County, Connecticut. The amendment is effective as of the date of issuance.

The amendment revises Technical Specification Section 3/4.5.1, "ECCS Subsystems—Tavg Greater Than or Equal to 350°F," by adding a new ACTION Statement "a" which increases the allowed outage time for the centrifugal charging pumps from 72 hours to 7 days. In addition, the ACTION statements are relettered to reflect the addition of the new ACTION statement for the centrifugal charging pumps.

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 December 1, 1993 (58 FR 63405). 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 (59 FR 34452).

For further details with respect to the action see (1) the application for amendment dated November 2, 1993, as supplemented February 28, and May 31, 1994, (2) Amendment No. 174 to License No. DPR–61, (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 Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 11th day of July 1994.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Project Directorate I–4, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–17610 Filed 7–19–94; 8:45 am]

BILLING CODE 7590–01–M

PEACE CORPS

Notice of Submission of Public Use Form Review Request to the Office of Management and Budget

Summary: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Peace Corps has submitted to the Office of Management and Budget, a request to approve the use of the Withdrawal Information Card through July 31, 1997. The card's completed voluntarily by those who withdraw their Peace Corps application. The card provides information concerning the reasons for withdrawing from the application process as well as suggestions as to how the Volunteer Delivery System could be improved. This information is necessary for Peace Corps to evaluate the effectiveness of the Volunteer Delivery System. The information provided will not/cannot be used to identify specific individuals who have filled out the card.

Information about the form:

Agency Address: Peace Corps, 1990 K St. N.W., Washington, D.C. 20526

Title: Withdrawal Information Card

Type of Request: Approval of Use

Frequency of Collection: On occasion

General Description of Respondent: Individuals who have withdrawn their Peace Corps Application.

Estimated Number of Responses: 650 annually
Estimated Hours for Respondents To Furnish Information: Ten (10) minutes each.
Respondents Obligation To Reply: Voluntary
Comments: Comments on this form request should be directed to Jeff Hill, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

A copy of the form may be obtained from Paul Davis, Office of Placement, Peace Corps, 1990 K St., N.W., Washington, D.C. 20526. Mr. Davis may be called at 202–606–3112. This is not a request to which 44 U.S.C. 3504(b) applies. This notice is used in Washington, D.C. on July 15, 1994.

Dated: July 15, 1994.

Felice Pelosi,

Director, Research, Reference and Distribution, Office of Administrative Services.

[FR Doc. 94–17666 Filed 7–19–94; 8:45 am]

BILLING CODE 6051–01–M

PENSION BENEFIT GUARANTY CORPORATION

Exemption From Bond/Escrow Requirement Relating to Sale of Assets by an Employer Who Contributes to a Multiemployer Plan; Home Team Limited Partnership

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of Exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted a request from the Home Team Limited Partnership of an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended. A notice of the request for exemption from the requirement was published on April 26, 1994 (59 FR 21791). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESSES: The nonconfidential portions of the request for an exemption and the PBGC response to the request are available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, at the address below, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Karen L. Morris, Attorney, Office of General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; telephone 202–326–4127 (202–326–4179 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, ("ERISA" or "the Act"), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered to result in a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)–(C), are that—

(A) The purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sale rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S.1076, The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Considerations 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1). Such questions are to be decided by the plan sponsor in the first instance, and any disputes are to be resolved in arbitration. 29 U.S.C. 1382, 1399, 1401.

Under the PBGC's regulation on variances for sales of assets (29 CFR Part 2643), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (29 CFR 2643.12–2643.14) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the four regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of 5 U.S.C. section 552(b)(4) (the Freedom of Information Act).

Under section 2643.3 of the regulation, the PBGC shall approve a request for a variance if it determines that approval of the request is warranted, in that it—

(1) would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of the ERISA and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Decision

On April 26, 1994 (59 FR 21791), the PBGC published a request from The Home Team Limited Partnership ("the Buyer") for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its October 4, 1993 purchase of The Orioles, Inc. ("the Seller"). No comments were received in response to the notice.

According to the request, the Major League Baseball Players Benefit Plan (the "Plan") was established and is

maintained pursuant to a collective bargaining agreement between professional major league baseball teams and the Major League Baseball Players Association. The major league clubs have established the Major Leagues Central Fund (the "Central Fund") pursuant to the "Major League Agreement in re Major Leagues Central Fund." Under this agreement, contributions to the Plan for all participating employers are paid by the Office of the Commissioner of Baseball from the Central Fund on behalf of each participating employer in satisfaction of the employer's contribution obligation arising under the Plan's funding agreement. The monies in the Central Fund are derived directly from (i) gate receipts from All-Star games, (ii) radio and television revenues from World Series, League Championships, intradivision play-offs and All-Star games, and (iii) certain other radio and television revenues from regular and exhibition games, including those from foreign broadcasts.

The Buyer and the Seller entered into an Asset Purchase Agreement for the Buyer to purchase substantially all of the assets and assume substantially all of the liabilities of the Seller relating to the business employing the employees covered by the Plan. The final closing of the transaction occurred on October 4, 1993. Under the Asset Purchase Agreement, the Buyer assumed the obligation to contribute to the Plan for substantially the same number of contribution base units as the Seller was obligated to contribute to the Plan. The Seller has agreed to be secondarily liable for any withdrawal liability should the Buyer withdraw from the Plan within five years of the sale.

The amount of the bond/escrow that would be required under section 4204(a)(1)(B) of ERISA beginning as of April 1, 1994, is $1,401,449 (the annual contribution the Seller made for the Plan year preceding the Plan year in which the sale of assets occurred). The estimated amount of the withdrawal liability that the Seller would incur if not for Section 4204 is $7,672,235.

In support of the waiver request the Buyer stated that:

> The Plan is funded directly from the Revenues which are paid from the Central Fund directly to the [Plan's] Trust without first passing through the hands of any of the Employers. Therefore, the Plan enjoys a substantial degree of security * * * A change in ownership of an Employer does not affect the obligation * * * to fund the Plan * * *. Nor does a change in ownership in any way create the possibility that there will be difficulty in collecting Plan contributions due from any new Employer.

Based on the facts of this case and the representations and statements made in connection with the request for an exemption, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of title IV of ERISA and would not significantly increase the risk of financial loss to the Plan. Therefore, the PBGC hereby grants the request for an exemption for the bond/escrow requirement. The granting of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is a determination to be made by the Plan sponsor.

Issued at Washington, D.C., on this 14th day of July 1994.

Martin Slate,

Executive Director.

[FR Doc. 94–17640 Filed 7–19–94; 8:45 am]

BILLING CODE 7708–01–M

Exemption From the Bond/Escrow Requirement Relating to the Sale of Assets by an Employer That Contributes to a Multiemployer Plan; San Francisco Baseball Associates, L.P.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted a request from the San Francisco Baseball Associates, L.P. for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended, with respect to the Major League Baseball Players Benefit Plan. A notice of the request of exemption from the requirement was published on April 14, 1994 (59 FR 17803). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESSES: The non-confidential portions of the request for an exemption, public comments, and the PBGC response to the request are available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, 1200 K Street, NW., Washington, DC 20005–4026, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: D. Bruce Campbell, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; telephone 202–326–4125 (202–326–4179 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 ("ERISA" or "the Act"), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1) (A)–(C), are that—

(A) The purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contribution base units for which the seller was obligated to contribute:

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204

indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S.1076, The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Considerations 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on variances for sales of assets (29 CFR Part 2643), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (§§ 2643.12–2643.14) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the four regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of 5 U.S.C. 552(b)(4) (the Freedom of Information Act).

Under § 2643.3 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and section 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption. The PBGC received one comment on the request for exemption.

The Decision

On April 14, 1994 (59 FR 17803), the PBGC published a notice of the pendency of a request by the San Francisco Baseball Associates, L.P. (the "Buyer") for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its purchase of the San Francisco Giants (the "Seller"). According to the request, the Major League Baseball Players Benefit Plan (the "Plan") was established and is maintained pursuant to a collective bargaining agreement between the professional major league baseball teams (the "Clubs") and the Major League Baseball Players Association (the "Players Association").

The Clubs have established the Major Leagues Central Fund (the "Central Fund") pursuant to the "Major League Agreement in re Major Leagues Central Fund." Under this agreement, contributions to the Plan for all participating employers are paid by the Office of the Commissioner of Baseball from the Central Fund on behalf of each participating employer in satisfaction of the employer's pension liability under the Plan's funding agreement. The monies in the Central Fund are derived directly from (i) gate receipts from All-Star games, (ii) radio and television revenues from World Series, League Championships, intradivision play-offs and All-Star games, and (iii) certain other radio and television revenues, including revenues from foreign broadcasts, of regular and exhibition games. During the 1992 Plan year, approximately $34.1 million was paid into the Plan on behalf of all major league clubs. In that year revenues to the Central Fund exceeded expenses, including contribution to the Plan, by approximately $354 million.

Effective November 20, 1992, the Buyer and Seller entered into an Asset Sale and Contribution agreement under which the Buyer agreed to purchase substantially all of the assets and assume substantially all of the liabilities of the seller relating to the business of employing employees under the Plan. The contract of sale provides that the Buyer agrees "to contribute to the Plan substantially the same number of contribution base units which the Seller had an obligation to contribute to the Plan." The contract of sale further provides that "[i]f the Buyer thereafter, but prior to the end of the fifth plan year commencing after the closing, partially or completely withdraws from the Plan, the Seller will be secondarily liable for any withdrawal liability it would have had to the Plan * * *." the final closing of the transaction occurred on January 14, 1993. The amount of the bond/escrow that would be required under section 4204 (a)(1)(B) of ERISA is $1,412,077. The estimated amount of the withdrawal liability that the Seller would incur if not for Section 4204 is $4,796,483.

The Comment received by the PBGC suggested that the request for exemption be denied based on the possibility that revenues payable to the Central Fund may not be sufficient to provide contributions to the Plan in the future. In support, the commenter cited an expected decrease in revenues under the terms of a new network television contract, the primary source of revenue for the Central Fund; the possibility of a work stoppage during negotiations to implement a salary cap as part of a new collective bargaining agreement; and diminished fan loyalty and attendance due to high player salaries, inflated ticket prices, poor management, and other factors.

The PBGC notes that the bond/escrow requirement is intended to assure the payment of the Buyer's withdrawal liability if the Buyer withdraws from the Plan in the five plan years following the sale of assets, and the Buyer is unable to pay withdrawal liability that would otherwise have been paid by the Seller had section 4204 not applied to the transaction. The factors cited by the commenter do not substantially affect the Plan's ability to collect withdrawal liability from the Buyer, as compared with the Plan's ability to collect withdrawal liability from the Seller had section 4204 not applied to the transaction. We also note that the Seller remains secondarily liable under section 4204(a)(2) for withdrawal liability, regardless of whether the Buyer receives an exemption from the bond/escrow requirement.

In addition, the Plan's public filings indicate that the Plan is financially sound. The Plan's most recent annual return/report (Form 5500) states that the Plan had approximately $708 million in assets as of the close of the plan year on March 31, 1993. While the plan incurred approximately $63 million in expenses for that plan year, the Plan's investment earnings were nearly $100 million.

Accordingly, based on the facts of this case and the representations and statements made in connection with the request for an exemption, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of title IV of ERISA and would not significantly increase the risk of financial loss to the Plan. Therefore, the PBGC hereby grants the request for an exemption for the bond/escrow requirement. The granting of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is a determination to be made by the Plan sponsor.

Issued at Washington, DC, on this 14th day of July, 1994.

Martin Slate,

Executive Director.

[FR Doc. 94–17641 Filed 7–19–94; 8:45 am]

BILLING CODE 7708–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34371; File No. S7–24–89]

Joint Industry Plan; Order Approving Amendment No. 1 to Reporting Plan for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., and the American, Boston, Chicago and Philadelphia Stock Exchanges

July 13, 1994.

On July 12, 1994, the National Association of Securities Dealers, Inc., and the American, Boston, Chicago, and Philadelphia Stock Exchanges (collectively, "Participants")[1] submitted to the Commission Amendment No. 1 to a joint transaction reporting plan ("Plan") for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis.[2] The Commission is approving the proposed amendment to the Plan and trading pursuant to the Plan on a temporary basis to expire on January 12, 1995.

I. Introduction

The Commission originally approved the Plan on June 26, 1990.[3] The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/National Market securities listed on an exchange or traded on an exchange pursuant to a grant of unlisted trading privileges ("UTP").[4] The Commission approved trading pursuant to the Plan on a one-year pilot basis, with the pilot period to commence when transaction reporting pursuant to the Plan commenced. Accordingly, the pilot period commenced on July 12, 1993, and was scheduled to expire on July 12, 1994.[5]

As originally approved by the Commission, the Plan required the Participants to complete their negotiations regarding revenue sharing during the one-year pilot period. The Participants, however, have not yet come to an agreement concerning revenue sharing for transactions effected pursuant to the Plan. Proposed Amendment No. 1 to the Plan extends this negotiation period for an additional six months. In conjunction with the Plan, on a temporary basis also scheduled to expire on July 12, 1994, the Commission granted an exemption from Rule 11Ac1–2 under the Act regarding the calculated best bid and offer ("BBO"), and granted the BSE an exemption from the provision of Rule 11Aa3–1 under the Act that requires transaction reporting plans to include market identifiers for transaction reports and last sale data. At the request of the Participants, this order extends these exemptions through July 12, 1995, provided that the Plan continues in effect through that date pursuant to a Commission order.

II. Background

The Securities Acts Amendments of 1975 ("1975 Amendments") directed the Commission to facilitate the development of a national market system for securities, consistent with certain objectives, including "fair competition * * * between exchange markets and markets other than exchange markets." The legislative history of the 1975 Amendments makes clear that many active OTC stocks were expected to be part of the national market system. The 1975 Amendments also authorized the Commission to grant OTC/UTP to exchanges if certain conditions were met. The Commission generally deferred granting exchanges OTC/UTP pending progress on the development of the national market system.

In 1985, however, the Commission noted that since the enactment of the 1975 Amendments, important developments had occurred in the OTC market; these developments led the Commission to reconsider its position on OTC/UTP.[6] The Commission announced in its 1985 OTC/UTP Release its willingness to grant UTP to national securities exchanges in NMS Securities,[7] conditioned in part on the approval of a plan submitted by interested exchanges and the NASD to consolidate and disseminate exchange and OTC quotation data and transaction data in OTC securities upon which UTP is granted.[8] The exchanges and the NASD have been negotiating the terms of a plan, under the oversight of the Commission staff, since that time.

In its 1985 OTC/UTP Release, the Commission also determined that although it was premature to require any specific type of market linkage prior to the initiation of trading, the exchanges must provide OTC market makers direct telephone access to the exchange specialist in UTP securities to facilitate intermarket trading in those securities. The Commission determined to grant OTC/UTP to an exchange only if the exchange provided Nasdaq market makers access to the exchange market in the subject securities to the same extent that Nasdaq market makers provide specialists access to the Nasdaq market maker trading facilities.

In 1985, the Commission also stated that it expected Nasdaq market makers to provide exchange members with fair and efficient access to the OTC market, and that if the Commission became

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[1] The signatories to the Plan, i.e., the National Association of Securities Dealers, Inc. ("NASD"), and the American Stock Exchange, Inc. ("Amex"), Chicago Stock Exchange, Inc. ("Chx") (previously, the Midwest Stock Exchange, Inc.), Philadelphia Stock Exchange, Inc. ("Phlx"), and the Boston Stock Exchange, Inc. ("BSE"), are the "Participants." The BSE, however, joined the Plan as a "Limited Participant," and reports quotation information and transaction reports only in Nasdaq/National Market (previously referred to as "Nasdaq/NMS") securities listed on the BSE.

[2] *See* letter from T. Grant Callery, Vice President, NASD, to Jonathan G. Katz, Secretary, Commission, dated July 11, 1994 ("1994 Extension Request"). The 1994 Extension Request also requests the Commission to continue to provide exemptive relief, previously granted in connection with the Plan on a temporary basis, from Rules 11Ac1–2 and 11Aa3–1 under the Securities Exchange Act of 1934 ("Act").

[3] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 ("1990 Plan Approval Order").

[4] Section 12(f)(2) of the Act permits the Commission to grant UTP to securities traded over-the-counter ("OTC/UTP"), but requires the Commission, prior to such grant, to consider:

> The public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system and [the Commission] shall not grant any such application if any rule of the national securities exchange making application under this subsection would unreasonably impair the ability of any dealer to solicit or effect transactions in such security for his own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists.

For further background on the statutory history of OTC/UTP, *see* Securities Exchange Act Release No. 21498 (November 16, 1984), 49 FR 46156.

[5] *See* letter from David T. Rusoff, Foley & Lardner, to Betsy Prout, Commission, dated May 9, 1994.

[6] *See* Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38640 ("1985 OTC/UTP Release").

[7] Congress envisioned that National Market System Securities ("NMS Securities") would include those equity securities whose characteristics of size, earnings history, breadth of ownership, and investor interest made them suitable for auction-market trading. *See* Senate Comm. on Banking, Housing & Urb. Affs., Report to Accompany S. 249: Securities Acts Amendments of 1975, S. Rep. No. 75, 94th Cong., 1st Sess. 16 (1975). NMS Securities are designated pursuant to Rule 11Aa2–1, 17 CFR 240.11Ac1–2, adopted in Securities Exchange Act Release No. 16590 (February 19, 1980), 45 FR 12391.

[8] *See* 1985 OTC/UTP Release, *supra* note 6.

aware of any limitation on such access, it would take prompt remedial action. The Commission further noted that it did not believe that a more sophisticated intermarket linkage need be in place during the initial stages of trading OTC/UTP securities, but encouraged the NASD and the exchanges to forge their own initiatives in facilitating computerized intermarket trading linkages and adopting trade-through rules for these securities. The 1985 OTC/UTP Release also conditioned the grant of OTC/UTP on the exchanges not applying their off-board trading restrictions to those securities.

Finally, the Commission stated that it would evaluate trading under the one-year pilot and at the end of the pilot period would determine what further action to take. Because of the potentially significant market structure implications of this new policy, the Commission decided to proceed cautiously by establishing a one-year pilot program under which each exchange requesting UTP would be permitted to trade, on an unlisted basis, up to 25 OTC securities designated as NMS Securities pursuant to Rule 11Aa2–1 under the Act. The Commission stated that it considered this one-year pilot a first step in granting UTP on NMS Securities and that granting UTP on additional NMS Securities might be appropriate if no adverse consequences resulted from the trading of securities under the pilot program.

In 1986, because of protracted negotiations to develop a joint industry plan, the Chx entered into an interim transaction reporting plan ("Interim Plan") with the NASD that was significantly more limited than the Joint Industry Plan. On April 29, 1987, the Commission approved the Chx's application for UTP in 25 NMS securities quoted on the Nasdaq system (generally, "Nasdaq/National Market securities")[9] and simultaneously approved the Interim Plan submitted by the Chx and the NASD.

As discussed more fully below, in 1990, the Commission approved the Plan and the ability for Participants to effect transactions pursuant to the Plan on a one-year pilot basis, to begin when certain enhancements were made to the Nasdaq system and transaction reporting pursuant to the Plan commenced. The Commission also expanded the maximum number of Nasdaq/National Market securities to which a Participant could extend UTP from 25 to 100.

In 1992, the Phlx, prior to the initiation of the Plan pilot, filed with the Commission a proposed rule change to initiate a pilot program to provide for transactions on the Phlx floor in OTC securities pursuant to UTP. The Commission initially approved this pilot program and the accompanying rules for a temporary period ending on December 31, 1993.[10] Thereafter, the Commission extended the Phlx pilot program and the effectiveness of the accompanying Phlx rules through December 31, 1994.[11]

The Chx Interim Plan continued in effect, subject to the 100 security limitation, through July 12, 1993, when trading pursuant to the Plan commenced, thereby superseding the Interim Plan. The Phlx and the Chx, as Participants to the Plan, continue to be limited to extending UTP to a maximum of 100 Nasdaq/National Market securities. The Phlx currently effects transactions in Nasdaq/National Market securities pursuant to the Plan and the Phlx pilot program (*i.e.*, while using the Plan Processor and pursuant to Phlx rules established under the Phlx pilot program).

The Plan provides for the collection from Plan Participants and the consolidation and dissemination to vendors, subscribers and others of quotation and transaction information in "eligible securities," *i.e.*, NMS Securities traded on an exchange on a listed or UTP basis. The Plan contains various provisions concerning the operation of the Plan, which include: Implementation of the Plan; Manner of Collecting, Processing, Sequencing, Making Available, and Disseminating Last Sale Information; Reporting Requirements (including hours of operation); Standards and Methods of Ensuring Promptness, Accuracy, and Completeness of Transaction Reports; Terms and Conditions of Acess (including the 1985 OTC/UTP Order requirement to ensure direct telephone access between dealers and specialists); Description of Operation of Facility Contemplated by the Plan; the Method and Frequency of Processor Evaluation (providing that the Processor's performance is subject to review by an Operating Committee during the fifth year of the Processor's operation); Written Understandings of Agreements Relating to Interpretation of, or Participation in, the Plan; Calculation of the BBO; Dispute Resolution; Method of Determination and Imposition, and Amount of, Fees and Charges.

The provisions affected by the present submission to the Commission, including proposed Amendment No. 1 to the Plan, and the Participants' request for extensions of exemptive relief granted by the Commission in our 1990 Plan Approval Order, are discussed in more detail below.

III. Discussion

The Participants have submitted to the Commission proposed Amendment No. 1 to the Plan, and have requested continued exemptive relief under certain provisions under the Act.[12] The Commission's approval of Amendment No. 1 and the requests for continued exemptive relief are discussed below. In the 1990 Plan Approval Order, the Commission stated that it would review several issues related to the Plan after it had been in operation for one year. These issues are also discussed below. Furthermore, in 1985, 1992, and 1993, the Commission discussed the possible need for an intermarket linkage and a trade-through rule for transactions effected pursuant to extensions of OTC/UTP.[13] As discussed below, the Commission continues to believe that such a linkage and/or rule in this context may be appropriate.

A. Proposed Amendment No. 1 of the Plan

Section XIV of the Plan provides that the NASD shall recover from exchange Participants a sum of money to be negotiated. Specifically, Section XIV of the Plan states:

> [I]t is expressly agreed and understood among the Participants that specific provisions governing the issues of cost allocation and revenue-sharing among the Participants will not be included in the Plan at the time of execution thereof, but will be resolved within one year from the commencement of the Plan's operation. The provisions agreed upon by the Participants will be applied on a retroactive basis by means of an amendment to the Plan. There shall be no retroactive application if the Participants are unable to agree upon a cost allocation and revenue-sharing provision or the amount of recapture. * * *

Even through the Plan has been in operation for one year, the Participants have not yet come to an agreement concerning revenue sharing. Proposed Amendment No. 1 to the Plan, which the Commission is approving today,

[9] *See* Securities Exchange Act Release No. 24407 (April 29, 1987), 52 FR 17349.

[10] *See* Securities Exchange Act Release No. 31672 (December 30, 1992), 58 FR 3054 ("1992 Phlx Pilot Order").

[11] *See* Securities Exchange Act Release No. 33408 (December 30, 1992), 59 FR 1045 ("1993 Phlx Pilot Extension Order").

[12] *See* 1994 Extension Request, *supra* note 2.

[13] *See* 1985 OTC/UTP Order, *supra* note 6; 1992 Phlx Pilot Order, *supra* note 10; and 1993 Phlx Pilot Extension Order, *supra* note 11.

extends the negotiation period for an additional six months. Thus, the Plan will now require the Participants to come to an agreement on these financial matters before January 12, 1995.

To assist the Participants in ensuring compliance with this Plan amendment, the Commission is requesting each Participant (including the BSE) to submit a written report to the Commission on or before September 30, 1994, that describes the status of the negotiations, and the Participant's position with respect to those negotiations.[14]

B. BBO Calculation and Extension of Rule 11Ac2–1 Exemptive Relief

On a temporary basis also scheduled to expire July 12, 1994, the Commission provided an exemption from Rule 11Ac2–1 under the Act regarding the calculated BBO for securities quoted pursuant to the Plan. At the Participants' request, the Commission is extending this exemptive relief through July 12, 1995, provided that the Plan continues in effect through that date pursuant to a Commission order.

The Plan provides that, in calculating the BBO disseminated to vendors, if quotations of more than one Participant are identical in price, then the earliest in time is the best. While the Commission chose not to modify this Plan provision in 1990, the Commission stated in approving both the Chx Interim Plan, and the Plan, that it would continue to reevaluate this BBO calculation. Indeed, the Commission stated that its temporary approval of this BBO calculation would not foreclose a future Commission decision to require size priority pursuant to the Vendor Display Rule,[15] should such a decision be appropriate. The Commission also notes that, in the 1990 Plan Approval Order, the Commission stated that the NASD had represented to the Commission that the Plan Processor would include a "switch" for easy conversion if the Commission determines that the BBO should be calculated using price/size/time priority.[16]

In order to evaluate the effects of this term of the Plan, the Commission is requesting that the Participants each submit to the Commission a written evaluation of any relevant effects of the BBO calculation based on time on or before September 30, 1994.

C. The Boston Stock Exchange's Request for Exemption

The Plan does not provide for market identifiers for Limited Participant transaction reports or Limited Participant consolidated best bid and offer quotations. Subsection (b)(2)(viii) of Rule 11Aa3–1 under the Act, however, requires any transaction reporting plan submitted to the Commission to provide market identifiers for transaction reports or last sale data made available to vendors. The BSE, as the only Limited Participant under the Plan, requested in 1990 that the Commission exempt it from this requirement.

Prior to 1990, the BSE stated that it had signed the Plan only because it seeks to continue providing trading facilities for dually listed (*i.e.*, listed on the BSE and traded in Nasdaq) stocks that it listed prior to the date the Plan was filed with the Commission and does not wish to apply for OTC/UTP.[17] To accommodate the BSE, the Plan Participants created the category of "Limited Participants," which do not pay any of the development costs of modifying NASDAQ to accommodate OTC/UTP and have limited voting rights under the Plan. Limited Participants are not permitted to expand the number of dually listed issues or to apply for OTC/UTP. The Plan provides that the BSE's quotations and trade reports will not have a BSE market identifier, but will instead be identified by Nasdaq's market symbol.

The Participants have requested that the Commission extend, for an additional year, this exemptive relief to the BSE from Rule 11Aa3–1(b)(2)(viii) under the Act. The Commission is unaware of any negative impact that this exemption has had on the marketplace, and believes that the extension of exemptive relief through July 12, 1995, is appropriate under these limited circumstances.

D. Written Understandings of Agreements Relating to Interpretation of, or Participation in, the Plan

The pilot program, as originally approved and memorialized in an Undertaking dated April 1, 1989, provides that, for the one-year period following the date on which the UTP Processor commences operations, each initial entry or update of quotation information in Eligible Securities shall be effected by an individual at a computer terminal and shall not be programmed or automated.[18] No Participant has submitted a request to the Commission that this Undertaking be extended. This agreement, therefore, expired July 12, 1994.

E. Intermarket Trading Linkage and Trade-Through Rule

The Commission has stated in several instances that it believes the Participants should work toward developing an intermarket trading linkage and an accompanying trade-through rule with respect to OTC/UTP.[19] The Commission is unaware of any recent efforts made by the Participants in this regard.

While the Commission understands that the Participant meetings concerning the Plan primarily have dealt with financial matters, the Commission believes that efficient executions of securities transactions and customer protection concerns must be considered with respect to the operation of the Plan. Accordingly, the Commission requests each Participant to submit to the Commission, no later than September 30, 1994, a statement concerning the effects that an intermarket trading linkage and/or a trade-through rule would have on market efficiency and/or customer protection.[20] The Commission will be

[14] The Commission notes that, throughout the Plan negotiations prior to the 1990 Plan Approval Order, the Participants agreed that distributions would be made from net operating revenues, rather than net income, as the basis for determining revenues pursuant to the Plan. In 1990, the Commission expressly approved the language "net operating revenues" in this regard. *See* 1990 Plan Approval Order, *supra* note 3. The Commission reiterates this determination in approving the extension of the Plan.

[15] 17 CFR 240.11Ac1–2.

[16] *See* 1990 Plan Approval Order, *supra* note 3.

[17] *Id.*

[18] In the 1990 Plan Approval Order, the Commission stated that after the pilot program had been operating for one year, the Commission would review the issues presented by this Undertaking. A copy of the Undertaking is attached to the original filing, S7–24–89, that was approved by the Commission in the 1990 Plan Approval Order. Among other matters, this Undertaking operated to forbid exchange Participants from effecting automated quote updates or tracking of inside quotations (*e.g.* by the use of "autoquote" systems) in the Nasdaq system. The Participants, however, have not requested that the Undertaking be extended and have not supplied the Commission with any data or commentary concerning this issue with respect to the Plan. Thus, the Commission has no new information to review in this area, and finds no cause to extend an undertaking for which no request to extend has been submitted to the Commission.

[19] The Commission's most recent statement in this regard was made in 1993:

> The Commission stated in our 1992 Phlx Pilot Order that the Participants should develop an intermarket trading linkage and an accompanying trade-through rule. The Commission believes that the Participants should continue working toward these goals.

1993 Phlx Pilot Extension Order, at n.14, *supra* note 11.

[20] Specifically, the Commission requests that the Participants evaluate the existing pilot and the probable effects that an intermarket linkage and/or trade-through rule would have on the markets with respect to furthering certain Congressional directives, among others, found in Section 11A of the Act: economically efficient execution of

Continued

particularly interested in comments concerning the Participants' experience under the pilot program under the Plan and/or the Chx Interim Plan. The Commission also requests each Participant to include in its submission a statement concerning the appropriate course of action to ensure that the Participants routinely evaluate market quality and customer protection matters as transactions continue to be effected pursuant to the Commission's temporary or permanent approval of the Plan.

F. Commission's Previous Directive for Quantitative Assessment of Plan's Effects

In the 1990 Plan Approval Order, the Commission stated:

> Plan Participants are hereby directed, in connection with any request for extension of the pilot or for permanent approval of the Plan, to provide the Commission with a quantitative assessment of the effects, if any, of unlisted trading privileges and the Plan on the width of quotation spreads and on price continuity in trading in OTC/UTP securities.

The Commission has not received any Participant's assessment of these effects. While the Commission believes that a 6-month extension of the pilot program is warranted and appropriate under the Act, the Commission believes that receipt of the above referenced quantitative assessments is essential to the Commission's evaluation of the pilot program. Thus, the Commission directs the Participants to submit to the Commission, on or before September 30, 1994, the quantitative assessments described above. The Commission expects these assessments to be based on statistical studies.[21]

VI. Conclusion

The Commission finds that proposed Amendment No. 1 to the Plan to extend the financial negotiation period for an additional six months is appropriate and in furtherance of Section 11A of the Act. The Commission also finds that one-year extensions of the exemptive relief requested, and described above, also is consistent with the Act and the Rules thereunder. Specifically, the Commission believes that these extensions should serve to provide the Participants with more time to conclude their financial negotiations and to evaluate the effects of the pilot program and report their findings to the Commission. This, in turn, should further the objects of the Act in general, and specifically those set forth in Section 11A of the Act and in Rules 11Aa3–1 and 11Aa3–2 thereunder.

It is therefore ordered, pursuant to Section 11A of the Act and (c)(2) of Rule 11Aa3–2 thereunder, that Amendment No. 1 to the Joint Transaction Reporting Plan for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis is hereby approved, and trading pursuant to the Plan is hereby approved on a temporary basis through January 12, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(29).

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

securities transactions; fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets; and, the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

[21] In the 1990 Plan Approval Order, the Commission also stated that, at the end of the one year pilot period, the Commission would review the bases on which firms decide to which markets to send customer orders for execution. The Commission directs each Participant to submit to the Commission, on or before September 30, 1994, statements describing the bases on which firms decide to which markets to send customer orders for execution.

[Release No. 34–34365; International Series Release No. 684; File No. SR–Amex–94–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Listing and Trading of Warrants on the Nikkei Stock Index 300

July 13, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 17, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to list and trade under Section 106 of the Amex *Company Guide* warrants based on the Nikkei Stock Index 300 ("Index").

The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

[1] 15 U.S.C. 78s(b)(1) (1982).

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 Amex 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 Amex 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

Under Section 106 (Currency and Index Warrants) of the Amex *Company Guide*, the Exchange may approve for listing warrants based on established foreign and domestic indexes. The Exchange is proposing to list warrants based on the Nikkei 300 Index.[2] The Nikkei 300 Index is comprised of 300 stocks which are representative of the first section of the Tokyo Stock Exchange ("TSE").

The Index was designed and is maintained by Nihon Keizai Shimbun, Inc. ("NKS"). The Index's component securities were selected for their high market capitalization and high degree of liquidity, and are representaitve of the relative distribution of industries within the broader Japanese equity market.

The median capitalization of the companies in the Nikkei 300 Index on March 31, 1994 was ¥340.1 billion ($3.3 billion at the exchange rate of ¥102.75 per US$1.00 prevailing on March 31, 1994). The average market capitalization of these companies was $7.5 billion on the same date and using the same rate of exchange. The individual market capitalization of these companies ranged from $875 million to $75.5 billion on March 31, 1994. The largest stock accounted for 3.41 percent of the total weighting of the Index, while the smallest accounted for 0.04 percent.

The Index is a capitalization weighted index and is calculated by multiplying the price of each component security (in Japanese yen) by its number of shares outstanding, adding those products, and dividing by the current Index divisor. The Index divisor initially was determined to yield a benchmark value of 100 on October 1, 1982. The divisor

[2] The Exchange also has proposed to list and trade options on the Nikkei 300 Index. *See* Securities Exchange Act Release No. 34198 (June 10, 1994), 59 FR 31282 (June 17, 1994).

is adjusted for certain changes described below. The Index's closing value on July 8, 1994 was 301.48. For valuation purposes, one Nikkei 300 Index unit (1.0) is assigned a fixed value of US$1.00.

The Index will be maintained by NKS. To maintain continuity of the Index, the divisor will be adjusted to reflect certain events relating to the component securities. These events include, but are not limited to, changes in the number of shares outstanding, spin-offs, certain rights issuances, and mergers and acquisitions. The competition of the Index will be reviewed periodically by NKS.

Warrant issues on the Index will conform to the listing guidelines under Amex *Company Guide* Section 106, which provide that (1) the issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements of Section 101(a); (2) the term of warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and a minimum aggregate market value of $4,000,000.

Nikkei 300 Index warrants will be direct obligations of their issuer subject to cash settlement in dollars, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Nikkei 300 Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call," upon exercise or at expiration, would receive payment in U.S. dollars to the extent that the Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants likely would expire worthless.

The Amex has adopted suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. Amex Rule 421, Commentary .02, requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in index warrants on the day entered. In addition, the Exchange, prior to the commencement of trading, will distribute a circular to its membership calling attention to specific risks associated with warrants on the Index.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [3] in general, and furthers the objectives of Section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of change, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–24 and should be submitted by August 10, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17665 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78f(b) (1988).

[4] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34366; File No. SR–CBOE–94–21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Exercise Price Intervals on Interest Rate Options

July 13, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), [1] notice is hereby given that on June 30, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to change CBOE Rule 23.5(a) to reduce from $2.50 to $1.00 the fixed interval between strike prices.

The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE 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

[1] 15 U.S.C. 78s(b)(1) (1982).

in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend the Exchange's rules concerning interest rate option contracts to reduce from $2.50 to $1.00 the interval between exercise prices on such contracts.

The Exchange believes that this change, which will establish a minimum spread of $100 ($1.00 times the multiplier of 100) between series, will improve the value and utility of interest rate options. In particular, the Exchange believes that this change should enable traders to construct hedges that correlate closely with interest rates and changes in interest rate measures underlying interest rate options. Under current CBOE Rule 23.5(d), the $2.50 minimum strike price interval is wider than the typical increments of change in interest rates, even during periods of high interest rate volatility. For example, during the most volatile week in recent months, the yield on the 30-year U.S. Treasury bond changed by less than 15 basis points (or $150), while strike price intervals were necessarily set at the minimum of $250 apart. The Exchange believes that that "wide" minimum interval made at- or near-the-money positions unavailable,which in turn limited the ability of traders to construct tight hedges or to use combination orders such as straddles effectively. The Exchange believes that reducing the strike price interval accordingly should improve the value and utility of interest rate options to CBOE members and their customers.

The Exchange believes that the proposed rule change will enhance depth and liquidity in interest rate options. The Exchange believes this proposal is consistent with Section 6(b) of the Act in general, and Section 6(b)(5)[2] in particular, by providing rules that perfect the mechanism of a free and open market, while protecting investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–94–21 and should be submitted by August 10, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17664 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

[2] 15 U.S.C. 78f(b)(5) (1988).

[3] 17 CFR 200.30–3(a)(12) (1993).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Incorporated

July 14, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Grupo Iusacell S.A. De C.V. Series L American Depositary Shares, No Par Value (File No. 7–12660)

Santa Fe Pacific Gold Corp. Common Stock, $.01 Par Value (File No. 7–12661)

American Re Corporation Common Stock, $.01 Par Value (File No. 7–12662)

Borg-Warner Automotive, Inc. Common Stock, $.01 Par Value (File No. 7–12663)

Camco International, Inc. Common Stock, $.01 Par Value (File No. 7–12664)

Crescent Real Estate Equities, Inc. Common Stock, $.01 Par Value (File No. 7–12665)

Sun Healthcare Group, Inc. Common Stock, $.01 Par Value (File No. 7–12666)

Shefield Medical Technologies, Inc. Common Stock, No Par Value (File No. 7–12667)

USA Waste Services, Inc. Common Stock, $.01 Par Value (File No. 7–12668)

Blackrock North American Government Income Trust Common Stock, $.01 Par Value (File No. 7–12669)

CBL & Associates Properties Trust Common Stock, $.01 Par Value (File No. 7–12670)

G.T. Global Developing Markets Fund Common Stock, $.001 Par Value (File No. 7–12671)

United Dominion Realty Trust, Inc. Common Stock, $1.00 Par Value (File No. 7–12672)

Wellpoint Health Networks, Inc. Class A Common Stock, $.01 Par Value (File No. 7–12673)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 4, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make

written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–17661 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34376; File No. SR–CBOE–94–12]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Modification of Fees for Failure To Observe OEX RAES Requirements

July 14, 1994.

On April 1, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal to amend CBOE Rule 24.17, "RAES Eligibility in OEX," to change the eligibility standards under which individuals, member organizations and joint accounts may participate in the CBOE's Retail Automatic Execution System ("RAES") for Standard & Poor's 100 Index ("OEX") options. Among other things, the CBOE proposes to eliminate the automatic disqualification provision from CBOE Rule 24.17 and replace the rule's current $500.00 fee for failures to comply with RAES log-on and log-off requirements with the following fee schedule: a $100.00 fee for each of the first three failures to comply with the log-on or log-off requirements in one calendar year; a $250.00 fee for each of the fourth through sixth such failures in one calendar year; and a $500.00 fee for all subsequent failures to comply with the log-on and log-off requirements in one calendar year.

Notice of the proposed rule change was published for comment in the **Federal Register** in Securities Exchange Act Release No. 34128 (May 27, 1994), 59 FR 28907 (June 3, 1994). No comments were received on the proposal.

In May 1993 Exchange Rule 24.17 was amended to establish, among other things, more rigorous log-on and log-off requirements for participants in OEX RAES.[3] For example, group members who previously were logged on automatically by the Exchange must now log on at their own initiative each time they enter the trading crowd. Likewise, members who previously were not required to log off the system each time they left the trading crowd must now do so.

In view of these additional log-on and log-off requirements, the Exchange believes that the $500.00 fees currently due from members who do not log on or log off as required are excessive. The proposed rule change therefore establishes a new graduated fee schedule, under which the fee amount will increase in relation to the number of times within any one calendar year that a member does not log on or log off as required. Specifically, during each calendar year, a $100.00 fee will be due for each of the first three times that a member fails to observe the log-on or log-off requirements; a $250.00 fee will be due for each of the fourth through sixth such times; and a $500.00 fee will be due for all subsequent times. In addition, the CBOE proposes to assess a $500.00 fee on any member participating in a joint account or nominee account held by a member organization if the member logs onto OEX RAES but thereafter terminates participation prior to the next succeeding expiration date without either joining another OEX RAES account or terminating membership on the Exchange.

In addition, the CBOE proposes to eliminate the automatic disqualification provisions in CBOE Rule 24.17. Specifically, the Exchange proposes to delete the provisions which provide that a individuals's, participating nominee's, or joint account member's failure to meet his RAES obligations will disqualify him from signing onto RAES for such time period as the OEX Floor Procedure Committee ("OFPC") determines. The CBOE also proposes to allow an individual required to sign onto RAES immediately prior to expiration to apply to the OFPC for prospective relief from the log-on requirements during a particular expiration cycle. The proposal states that in deciding such applications, the OFPC may limit the grant of relief by imposing time periods during which the applicant will not be eligible to participate in RAES.

Members who fail to observe CBOE Rule 24.17 can be subject to a variety of sanctions.[4] The CBOE states that the fees suggested in the proposed rule change, like the fees imposed currently under CBOE Rule 24.17, do not constitute disciplinary action. Nevertheless, the review procedures in Chapter 19, "Hearings and Review," of the Exchange's rules will be available with respect to the assessment of the proposed fees. Under those procedures, a member may seek verification of fees charged by the Exchange. If the member is not satisfied with the verification of fees, he may request a hearing before a panel of three or more members of the Exchange's Appeals Committee. At the hearing the appellant may be represented by counsel and may cross examine witnesses.[5]

In addition, the decision of the Exchange's Appeals Committee panel is subject to review by the Board of Directors of the Exchange on the Board's own motion, on the written request of the appellant, or at the request of the Exchange's President or the relevant Exchange Committee Chairman. The review must be conducted by the Board or by a Board Committee consisting of at least three Directors (other than Directors who sat on the Appeals Committee in the matter). An appellant has an opportunity to address issues raided specifically by the Board or the Committee, and in addition may submit oral or written arguments if the Board so allows in its discretion.[6]

The Exchange believes that the proposed fee schedule is appropriate and equitable given the additional requirements imposed on participants in OEX RAES in the RAES Approval

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] See Securities Exchange Act Release No. 32248 (April 30, 1993), 58 FR 27596 ("RAES Approval Order").

[4] Under CBOE Rule 24.17(b)(v), the OFPC may bar, restrict, or condition a joint account's participation in RAES if any member fails to meet the OEX market maker requirements. Under CBOE Rule 24.17(c)(vi), the OFPC may bar, restrict, or condition a member organization's participation in RAES if any nominee on RAES in OEX fails to meet the OEX market maker requirements. CBOE Rule 24.17(e)(ii) provides several sanctions for failures to comply with the requirements of CBOE Rule 24.17, including disciplinary action under, among others, CBOE Rule 6.20, "Admission to and Conduct on the Trading Floor," and Chapter XVII, "Discipline," of the CBOE's rules. In addition, the OFPC may take remedial action, including suspension of a member's eligibility for participation on RAES and other remedies appropriate under Chapter VIII, "Market Makers, Trading Crowds, and Modified Trading Systems," of the CBOE's rules.

[5] See CBOE Rules 19.3, "Procedure Following Applications for Hearing," and 19.4, "Hearing."

[6] See CBOE Rule 19.5, "Review."

Order. Furthermore, to ensure that all members are treated alike under the RAES Approval Order, the Exchange will apply the revised fee schedule retroactively from April 30, 1993, the effective date of the RAES Approval Order.[7]

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5), in particular, in that it is designed to allocate reasonable dues, fees and charges among CBOE members and to promote the efficiency and effectiveness of the CBOE's automatic execution system.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5).[8] The Commission believes that the elimination of the automatic disqualification provisions of CBOE Rule 24.17, the introduction of a graduated fee schedule for failures to comply with the RAES log-on and log-off requirements, and the provision allowing individuals to apply to the OFPC for prospective relief from the requirement to log onto RAES on the business day immediately prior to expiration are designed to make the rules applicable to OEX RAES participation fairer and more flexible while maintaining the integrity of the RAES system for OEX options. The proposal is designed to ensure that there is adequate market maker participation at all times in OEX RAES and that market makers are properly logged onto the system. The presence of an adequate number of market makers protects investors and contributes to the maintenance of fair and orderly markets by helping the Exchange to maintain the continued availability to RAES for OEX, thereby contributing to the effective and efficient execution of public investor orders at the best available prices.

The Commission also believes that it is reasonable for the CBOE to eliminate the provisions of CBOE Rule 24.17 allowing for automatic disqualification from RAES for failures to satisfy RAES obligations because the fees imposed for failing to meet participation requirements should provide a sufficient deterrent to ensure adequate market maker participation in OEX RAES.[9] In this regard, the Commission notes that in addition to the graduated fees for failures to comply with the RAES log-on and log-off requirements, the proposal establishes a $500.00 fee for any member organization who logs onto RAES and later terminates participation on RAES prior to the next expiration cycle without participating in another OEX RAES account or terminating membership with the Exchange. The Commission believes that these fees should deter participating OEX RAES market makers from abandoning their commitment to RAES for other than good cause. Nevertheless, the Commission expects the CBOE to monitor OEX RAES participation and to consider altering the requirements should adequate participation not be maintained after these changes are implemented, particularly during periods of high volatility.

In addition, the Commission believes that the proposal to allow a member to apply to the OFPC for prospective relief from the requirement to log onto RAES on the business day prior to expiration is designed to provide flexibility and to accommodate the needs of individual members while continuing to ensure adequate RAES participation. The Commission notes that the proposal allows the OFPC to limit the grant of relief by imposing time periods during which the applicant will not be eligible to participate in RAES.

The Commission believes that the proposal is also consistent with section 6(b)(5) under the Act in that it is designed to facilitate transactions in securities. The CBOE believes that the current $500.00 fee for failures to comply with the OEX RAES log-on and log-off requirements is excessive in light of the log-on and log-off requirements established under the RAES Approval Order. Based upon this determination, the Commission believes that it is reasonable for the Exchange to replace the current $500.00 fee with a graduated fee schedule and allow the Exchange to impose higher fees for repeated failures, which should encourage compliance with the log-on and log-off requirements and may increase the Exchange's ability to deter repeat offenders. The CBOE has distributed an Exchange Bulletin describing the new fee schedule and the application of the fees to April 30, 1993, the effective date for implementation of the original $500.00 fee. The Commission believes that this notification, and the fact that the graduated fees will be lower than the fees that the CBOE can impose currently under the original $500.00 fee, help to ensure that the fees for failures to comply with the log-on and log-off requirements are imposed fairly.

Moreover, the Commission believes that the right to appeal the fees imposed under CBOE Rule 24.17 pursuant to Chapter 19 of the CBOE's rules should help to safeguard the procedural rights of OEX RAES participants. In summary, under these limited and unusual circumstances, the Commission believes that the CBOE may implement these lower fees as of April 30, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–94–12), is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17656 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34379; File No. SR–CHX–94–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Chicago Stock Exchange, Inc., Relating to Corporate Governance Issues

July 14, 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 June 23, 1994, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On June 30, 1994, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change in order to narrow the scope of the original filing.[1] The Commission is

[7] By an Exchange Bulletin dated May 11, 1994, the CBOE notified its members of the proposed reduction in the fees due for failures to comply with the log-on and log-off requirements of CBOE Rule 24.17 and the retroactive application of the reduced fees.

[8] 15 U.S.C. 78f(b)(5) (1982).

[9] The Commission notes that under CBOE Rule 24.17(e)(i) the chairperson of the OFPC, in consultation with a senior Exchange executive officer, may require members of the trading crowd as defined in CBOE Rule 8.50 to log onto RAES if OEX RAES participation appears to be inadequate. If inadequate, RAES participation continues, then the chairperson of the OFPC, in consultation with a senior Exchange executive officer, may request the participation of all market makers whether or not they are members of the OEX crowd.

[10] 15 U.S.C. 78s(b)(2) (1982).

[11] 17 CFR 200.30–3(a)(12) (1993).

[1] See letter from David T. Rusoff, Attorney, Foley & Lardner, to Sandra Sciole, Special Counsel, Division of Market Regulation, SEC, dated June 29, 1994 ("Amendment No. 1"). The portions of this filing that were withdrawn in Amendment No. 1

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 CHX proposes to submit the following rule proposal to amend Article III, Sec. 2 and Article IV, Secs. 4, 5 and 7 of the Exchange's Constitution relating to corporate governance issues. The text of the proposed rule change is available at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed change is to amend the Exchange's Constitution relating to corporate governance issues. Specifically, the changes concern (i) the creation of a new category of Governor and the addition of one additional non-member Governor and (ii) providing more flexibility by permitting re-categorizations of Governors.

The primary purpose of these proposed amendments, along with corresponding and conforming amendments to the By-Laws of the Midwest Clearing Corporation ("MCC") and the Midwest Securities Trust Company ("MSTC"),[2] is to achieve a governance structure pursuant to which the Exchange and two of its wholly owned subsidiaries, MCC and MSTC, will be able to operate more as a single, coherently run business. Once all the proposed changes are adopted, approved and implemented, the Board of Governors of the Exchange, the Board of Directors of the MCC and the Board of Directors of MSTC would all consist of the same 31 individuals. This would be achieved by, among other things, having the Nominating Committees of MCC and MSTC be the same as the Exchange's Nominating Committee. At the same time, in order to insure fair and meaningful representation of Participants in the governance process of MCC and MSTC, the size of the Board would be increased by four slots to accommodate a new category of Governor that would provide the Board with more expertise on issues affecting MCC and MSTC, as more fully described below.

New Category of Governor/Increased Board Size

The proposed amendment would create a new category of Governor, a Participant Governor. In order to be qualified to be a Participant Governor, a person must be a general partner or officer of a Participant in the MCC or MSTC and must have securities clearance and/or settlement expertise, background or responsibilities. The proposal would call for the addition of four Participant Governors, one each in Class I and Class II and two in Class III. The Exchange does not contemplate that the vacancies in the Participant Governor category would be filled by floor members of the Exchange.[3] The proposed amendment also would add an additional non-member Governor slot, increasing the slots available for non-member Governors from eight to nine. This slot has been added to Class II. This change would maintain the existing balance between the non-member, or "public," Governors and the industry Governors on the Board. In order to accomplish these changes, the amendment would increase the size of the Board of Governors to 31 from its present size of 26. Pursuant to existing Exchange rules, the vacancies created by this amendment (one vacancy in Class I, two vacancies in Class II and two vacancies in Class III) could be filled by the Board, on an interim basis, until the April 1995 annual election. The slots created are as follows:

	Participant governors	Non-member governors
Class I[4]	One slot created.	N/A.
Class II	One slot created.	One slot created.
Class III	Two slots created.	N/A.

[4] Class I expires in April 1995; Class II in April 1996; and Class III in April 1997.

Re-Categorization of Governors

In order to provide increased flexibility in the composition of the new, expanded Board, the proposed amendment also would permit a Participant Governor to be re-categorized (within his or her class) as a Member Governor and permit a Member Governor to be re-categorized as a Participant Governor, if the Governor to be re-categorized otherwise meets the qualifications of his or her new position.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed rule change has been approved by the Exchange's membership.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

have been resubmitted to the Commission as File No. SR-CHX-94-17.

[2] See File Nos. SR-MCC-94-07 and SR-MSTC-94-09 respectively.

[3] The CHX has stated that, in order to ensure that floor members are not over-represented on the Board, management of the Exchange will use its best efforts to ensure that the newly created Participant Governor positions will not initially or thereafter be filled by floor members of the Exchange. The CHX also has agreed to notify the Commission if a floor member is elected to fill a Participant Governor position, and to revisit this issue if its best efforts do not succeed. See letter from David T. Rusoff, Attorney, Foley & Lardner, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated July 8, 1994.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–94–15 and should be submitted by August 9, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17657 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34374; File No. SR–CBOE–94–23]

Self-Regulatory Organizations; The Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a Fee Reduction Plan

July 14, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 7, 1994, the Chicago Board Options Exchange, Incorporated (the "CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its fee reduction plan, which has been in effect since July 1, 1992.

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 CBOE 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 CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend the Exchange's fee reduction plan. The plan, which was initially adopted on July 1, 1992 and subsequently amended in July 1993, provides that if Exchange volume levels exceed a pre-determined threshold at the end of any fiscal quarter, specified fees will be reduced the following quarter in accordance with the schedule. The proposed amendments are the product of the Exchange's annual budget review and are structured to accommodate the capital needs of the Exchange for the coming year. The amendments will take effect for the new fiscal year commencing July 1, 1994.

The proposed rule change amends the current fee reduction thresholds and amounts. The minimum threshold for a fee reduction is raised from 525,000 to 550,000 year to date contract volume. The reduction in the market-maker fees has been lowered $.05 to $.10 for five of the eight thresholds. The member dues fee reduction of 25% to 100% is given at higher thresholds. The proposed rule change also replaces the trade match fee reduction schedule with a fee reduction schedule for floor brokerage fees.[2] In all other respects, the fee reduction program remains unchanged.

The proposed rule change is consistent with Section 6(b) of the Act in general, and Section 6(b)(4) in particular, by providing for the equitable allocation among CBOE members of reasonable dues, fees, and charges.[3]

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believes that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (e)(2) of Securities Exchange Act Rule 19b–4 in that the proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for

[2] The floor broker fee is reduced $.05 for 600,000 to 625,000 year to date contract volume, and is reduced $.10 for 650,000 to 700,000 year to date contract volume.

[3] 15 U.S.C. 78f(b)(4) (1988).

inspection and copying at the principal office of CBOE. All submissions should refer to file number SR–CBOE–94–23 and should be submitted by August 10, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17662 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Incorporated

July 14, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Grupo Iusacell S.A. De C.V.
Series L (rep. 10 Series L shares, American Depositary Shares, No Par Value (File No. 7–12674)
Grupo Iusacell S.A. De C.V.
Series D (rep. 10 Series D Shares, American Depositary Shares, No Par Value (File No. 7–12675)
Capston Capital Corporation
Common Stock, $.001 Par Value (File No. 7–12676)
Case Equipment Corporation
Common Stock, $.01 Par Value (File No. 7–12677)
First Industrial Realty Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–12678)
HS Resources, Inc.
Common Stock, $.001 Par Value (File No. 7–12679)
Kaydon Corporation
Common Stock, $.10 Par Value (File No. 7–12680)
Smith Charles E. Residential Realty, Inc.
Common Stock, $.01 Par Value (File No. 7–12681)
United Wisconsin Services, Inc.
Common Stock, No Par Value (File No. 7–12682
Bankamerica
6.5% Cum. Conv. Pfd., No Par Value (File No. 7–12683
Battle Mountain Gold Company
Conv. Pfd., $1.00 Par Value (File No. 7–12684)
Catellus Development Corp.
$3.75 Cum. Conv. Pfd. A, $.01 Par Value (File No. 7–12685)
First Chicago Corp.
Dep. Shrs. 5.75 Pfd. B, No Par Value (File No. 7–12686)
Hecla Mining Company
Cum. Conv. Pfd. B, $.25 Par Value (File No. 7–12687)
Magma Copper Company
Cum. Conv. Pfd. E, $.01 Par Value (File No. 7–12688)
Maxus Energy
$4.00 Cum. Conv. Pfd., $1.00 Par Value (File No. 7–12689)
Travelers, Inc.
5.50% Conv. Pfd. B, $1.00 Par Value (File No. 7–12690)
Wheeling-Pittsburgh Corporation
Conv. Pfd. A, $.10 Par Value (File No. 7–12691)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 4, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–17660 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

July 14, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Santa Fe Pacific Gold Corp.
Common Stock, $.01 Par Value (File No.7–12692)
Source One Mortgage Services Corp.
8.42% Cm. Pfd. Ser. A, $.01 Par Value (File No. 7–12693)
Grupo Iusacell, S.A. De C.V.
Ser. D American Depositary Shares (rep. 10 Ser. D Sh. of Common Stock, No Par Value (File No. 7–12694)
Grupo Iusacell, S.A. De C.V.
Ser. L American Depository Shares (rep. 10 Ser. L sh. of Common Stock, No Par Value (File No. 7–12695)
Viking Star Shipping, Inc.
Common Stock, No Par Value (File No. 7–12696)
WCI Steel, Inc.
Common Stock, No Par Value (File No. 7–12697)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 4, 1994, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–17659 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34372; File No. SR–MSRB–94–7]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Recordkeeping and Record Retention Requirements Concerning Gifts and Gratuities

July 13, 1994.

On May 26, 1994, the Municipal Securities Rulemaking Board ("Board" or "MSRB") submitted to the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–MSRB–94–7) pursuant to Section 19(b)(1) of the Securities

Exchange Act of 1934 ("Act").[1] The MSRB filed the proposed rule change to require brokers, dealers, and municipal securities dealers (hereinafter "municipal securities dealers" or "dealers") to make and keep records relating to MSRB rule G–20. The Commission published notice of the proposal in the **Federal Register** on June 10, 1994.[2] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposal amends MSRB rules G–8 and G–9 concerning the records to be made and kept by municipal securities dealers. The proposal will require a dealer to make and keep records relating to MSRB rule G–20, concerning gifts and gratuities and contracts of employment. The proposal will become effective 30 days after publication of the approval order in the **Federal Register**.

The proposal requires dealers to keep and retain specific records of (i) gifts and gratuities subject to paragraph (a) of rule G–20, and (ii) contracts of employment or agreements for compensation for services, referred to in paragraph (c) of rule G–20, and compensation paid as a result of those agreements.[3] Rule G–20(a) prohibits dealers from, directly or indirectly, giving or permitting to be given any thing or service of value in excess of $100 per year to any person, other than to an employee or partner of the dealer, in relation to municipal securities activities of the person's employer.[4]

The $100 limitation applies to gifts and gratuities by a dealer and its associated persons to customers, individuals associated with issuers, and employees of other dealers. Rule G–20 also prohibits a dealer from indirectly exceeding the $100 limitation. Thus, if a third party (*e.g.*, a consultant hired by a dealer) gives a gift to any such person at the request of the dealer, the value of the gift would be included in the $100 limitation.

Rule G–20(b) exempts certain gifts from the $100 annual limit. These gifts, called "normal business dealings," include occasional gifts of meals or tickets to theatrical, sporting, and other entertainments, as well as the sponsoring of legitimate business functions that are recognized by the IRS as deductible business expenses, and gifts of reminder advertising. The rule, however, also provides that such gifts cannot be so frequent or so expensive as to raise a suggestion of unethical conduct.

Rule G–20(c) provides that contracts of employment with or compensation for services rendered are not considered gifts or gratuities subject to the $100 limitation. Such arrangements, however, must be in writing and must include the nature of the proposed services, the amount of the proposed compensation, and the written consent of such person's employer.

II. Discussion

The proposed rule change is consistent with the requirements of the Act, and specifically, with Sections 15B(b)(2) (C) and (G) of the Act.[5] Section 15B(b)(2)(C) authorizes the MSRB to adopt rules 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 transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and, in general, to protect investors and the public interest. Section 15B(b)(2)(G) authorizes the MSRB to adopt rules that prescribe the records to be made and kept by municipal securities dealers and the periods for which such records shall be preserved.

Rule G–20 is intended to prevent fraud and inappropriate influence in the municipal securities market by limiting the amount of gifts or gratuities from municipal securities dealers to persons not employed by the dealers, including issuer officials and employees of other dealers, in relation to municipal securities activities.[6] Concerns have arisen recently that political contributions and gifts, made by municipal securities underwriters to officials of municipal securities issuers, may influence the selection process of an underwriting syndicate.[7] The proposal addresses excessive gifts and gratuities by dealers to persons not employed by the dealer, including officials of municipal securities issuers.

Although rule G–20 prohibits dealers from making certain gifts and gratuities, dealers currently are not required to keep a record of such gifts. Recordkeeping and record retention by dealers of gifts and gratuities will better enable dealers to monitor compliance with rule G–20. The proposal also will assist enforcement agencies in monitoring dealer compliance with the rule. In addition, the proposal will enable the MSRB to determine whether rule G–20 should be amended in the future to impose more stringent requirements to prevent influence of the underwriter selection process and to maintain the integrity of the municipal securities market.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act an the rules and regulations thereunder applicable to the MSRB and, in particular, Sections 15B(b)(2) (C) and (G).

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change as described above be, and hereby is, approved and shall be effective August 19, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17585 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34360; International Series Release No. 683; File No. SR–OCC–94–07]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Flexibly Structured Cross-Rate Foreign Currency Options

July 13, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 6, 1994, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 34162 (June 6, 1994), 59 FR 30069.

[3] The proposed rule change also clarifies that dealers complying with Rule 17a–3 of the Act are required to maintain this information.

[4] "Person" has been interpreted by the Board in the context of rule G–20 to apply only to natural persons because the intent of the rule is to discourage dealers from inducing individual employees to act in a manner inconsistent with their obligations to, or contrary to the interests of, their employers. *See* MSRB Interpretations, *MSRB Manual* (CCH) ¶ 3596.10 (March 19, 1980).

[5] Section 15B(b)(2) (C), (G); [15 U.S.C. 78o–4(b)(2) (C), (G)].

[6] Rule G–20, as well as the proposed amendments, are comparable to the National Association of Securities Dealers' ("NASD") rules governing gifts and gratuities by registered broker-dealers. *See* NASD Rules of Fair Practice, Art. III, Sec. 10, *NASD Manual* ¶ 2160.

[7] MSRB rule G–37, approved by the Commission on April 7, 1994, addressed the use of political contributions made by municipal securities dealers to officials of state or local government issuers, where the dealers also are doing business for or seeking business from those issuers. Rule G–37 became effective April 25, 1994. Securities Exchange Act Release No. 33868 (April 7, 1994), 59 FR 17621.

[1] 15 U.S.C. 78s (1988).

change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. 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 purpose of the proposed rule change is to enable OCC to issue, clear, and settle new flexibly structured cross-rate foreign currency option contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to enable OCC to issue, clear, and settle new flexibly structured cross-rate foreign currency option contracts proposed for trading by the Philadelphia Stock Exchange ("PHLX").[2] In OCC's original cross-rate foreign currency options filing, OCC sought and obtained approval to issue, clear, and settle the following cross-rate option contracts: (1) options on German Deutsche marks with exercise prices in Japanese yen ("DM/JY" options); (2) options on British pounds with exercise prices in Japanese yen ("BP/JY options"); and (3) options on British pounds with exercise prices in German Deutsche marks ("BP/DM options").[3] In that filing, OCC advised the Commission that it anticipated clearing additional cross-rate option contracts in the future, including cross-rate option contracts involving different combinations of currencies. OCC stated that it would submit a rule filing with the Commission before issuing any new cross-rate option products.

OCC was recently advised by the PHLX that it is proposing to trade new flexibly structured cross-rate options through the PHLX's customized option facility. Under the PHLX proposal, options may be traded on any combination of currencies underlying existing foreign currency option contracts.[4] For example, options on British pounds with exercise prices in French francs ("BP/FF options") may be traded.

Accordingly, OCC is proposing to issue, clear, and settle these new cross-rate option contracts. OCC has reviewed its By-Laws and Rules and has determined that no changes are necessary to accommodate these new products because they will be margined and settled like the existing cross-rate option contracts.

The proposed rule change is consistent with the purposes and requirements of Section 17A of the Securities Exchange Act of 1934, as amended, because it will provide for the prompt and accurate settlement of transactions in new cross-rate foreign currency option contracts and for the safeguarding of related securities and funds. The proposed rule change meets such requirements by establishing a framework in which existing, reliable OCC systems, rules, and procedures will be extended to the processing of such cross-rate foreign currency options.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization.

All submissions should refer to File No. SR–OCC–94–07 and should be submitted by August 10, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17584 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

July 14, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

United Wisconsin Services, Inc.
Common Stock No. Par Value (File No. 7–12636)

Santa Fe Pacific Gold Corporation
Common Stock, $.01 Par Value (File

[2] For a description of the PHLX proposed rule change, refer to Securities Exchange Act Release No. 34308 (July 5, 1994), 59 FR 35551, [File No. SR–PHLX–94–18] (notice of filing of proposed rule change).

[3] Securities Exchange Act Release No. 29920 (November 7, 1991), 56 FR 58105 [File No. SR–OCC–91–04] (order approving proposed rule change establishing cross-rate foreign currency options).

[4] The following currencies underlie existing foreign currency options contracts: (1) Australian dollars ("AUD"), (2) British pounds ("BP"), (3) Canadian dollars ("CD"), (4) German Deutsche marks ("DM"), (5) European Economic Community currency units ("ECU"), (6) French francs ("FF"), (7) Japanese yen ("JY") and (8) Swiss francs ("SF").

No. 7–12637)
Cambior, Inc.
Common Stock, $.01 Par Value (File No. 7–12638)
Cambior, Inc.
Warrants, Expiring 6/30/95 (File No. 7–12639)
Cambior, Inc.
Warrants, Expiring 6/28/96 (File No. 7–12640)
First Industrial Realty Trust, Inc.
Common Stock, $0.01 Par Value (File No. 7–12641)
Case Equipment Corp.
Common Stock, $0.01 Par Value (File No. 7–12642)
Storage Equities, Inc.
Adj. Rate Cum. Pfd. Stock Series C, $.01 Par Value (File No. 7–12643)
Morgan Stanley Group, Inc.
Common Stock, Performance Equity-Linked Redemption Quarterly-Pay Securities "PERQS" (File No. 7–12644)
Franklin Electronic Publishers, Inc.
Common Stock, No Par Value (File No. 7–12645)
James River Corporation of Virginia
Dep. Shares Each Representing 1/100 of a share of Ser. P 9% Cum. Conv. Pfd Stock Dividend Enhanced Conv. Stock "DECS", $10 Par Value (File No. 7–12646)
Robert Half International
Common Stock, $.01 Par Value (File No. 7–12647)
Vastar Resources, Inc.
Common Stock, $1.00 Par Value (File No. 7–12648)
PinPoint Retail Solutions, Inc.
Common Stock, $.01 Par Value (File No. 7–12649)
Nokia Corporation
American Depositary Shares each Representing ½ of a Preferred Share (File No. 7–12650)
Istituto Nazionale Assicurazioni SPA
American Depositary Share each Representing 10 Ordinary Shares (File No. 7–12651)
NewsCorp Overseas Limited
Adjustable Rate Cum. Preference Shares Series B, $25 Par Value (File No. 7–12652)
Franchise Finance Corp. of America
Common Stock, $.01 Par Value (File No. 7–12653)
Ferrellgas Partners, L.P.
Common Units Representing Limited Partnership Interest (File No. 7–12654)
Laboratorio Chile S.A.
Common Stock, No Par Value (File No. 7–12655)
Grupo Iusacell S.A. De C.V.
Series L, American Depositary Shares each representing 10 Series L Shares of Common Stock, No Par Value (File No. 7–12656)
Grupo Iusacell S.A. De C.V.
Series D, American Depositary Shares each Representing 10 Series D Shares of Common Stock, No Par Value (File No. 7–12657)
Smith Charles E. Residential Realty, Inc.
Common Stock, $.01 Par Value (File No. 7–12658)
Capstone Capital Corporation
Common Stock, $.001 Par Value (File No. 7–12659)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 4, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–17658 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–20405; File No. 812–8994]

First North American Life Assurance Company, et al.

July 13, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: First North American Life Assurance Company ("First North American"), FNAL Variable Account ("Variable Account"), NASL Financial Services, Inc. ("NASL Financial") and Wood Logan Associates Inc. ("Wood Logan").

RELEVANT 1940 ACT SECTIONS: Exemption requested under Section 6(c) from Sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit the deduction from the assets of the Variable Account of a mortality and expense risks charge imposed under certain flexible purchase payment individual deferred variable annuity contracts.

FILING DATE: The application was filed on May 19, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested person may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on August 8, 1994 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of Service. Notification of the date of a hearing may be requested by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington D.C. 20549. Applicants: Kenneth H. Conrad, First North American Life Assurance Company, Corporate Center at Rye, 555 Theodore Fremd Avenue, Rye, New York 10580.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or Michael V. Wible, Special Counsel, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. First North American, a wholly owned subsidiary of North American Security Life Insurance Company ("Security Life"), is a stock life insurance company organized under the laws of New York in 1992. Security Life is a wholly owned subsidiary of North American Life Assurance Company. First North American is the depositor of the Variable Account. The Variable Account is registered under the Act as a unit investment trust and was established under New York law to offer certain variable annuity contracts, including the variable annuity contracts described in the application (the "Contracts"). The Variable Account is divided into sub-accounts which invest in corresponding portfolios of NASL Series Trust (the "Trust").

2. NASL Financial, a wholly owned subsidiary of Security Life, is the principal underwriter of the Contracts. It is a broker-dealer registered under the Securities Exchange Act of 1934 ("1934

Act") and a member of the National Association of Securities Dealers, Inc. NASL Financial also serves as investment adviser to the Trust and is registered as an investment adviser under the Investment Advisers Act of 1940.

3. Wood Logan, a Connecticut corporation registered as a broker-dealer under the 1934 Act, serves as the exclusive promotional agent for the Contracts.

4. The Contracts are flexible purchase payment individual deferred variable annuity contracts which will provide for the accumulation of values and the payment of annuity benefits on a fixed or variable basis. The Contracts are designed for use in connection with retirement plans which may or may not qualify for special income tax treatment under the Internal Revenue Code of 1986, as amended.

5. Prior to the maturity date, First North American will, on the last day of each contract year, deduct from the accumulated value of each Contract an annual administration fee of $30. This annual administration fee will also be deducted when a Contract is surrendered on any date other than a contract anniversary. However, if prior to the maturity date the contract value exceeds $100,000 at the time of the fee's assessment, the fee will be waived. During the annuity period, the fee is deducted on a pro-rata basis from each annuity payment. In addition, First North American will deduct from the sub-accounts each valuation period an administration charge equal to .15% of the sub-account assets on an annualized basis. These fees are intended to compensate First North American for the cost of providing administrative services attributable to the Contracts and the operations of the Variable Account and the Company in connection with the Contracts. The fees are based upon First North American's current estimates of the administrative costs attributable to the Contracts over their lifetime and are not designed or expected to generate a profit. These fees are guaranteed never to be increased. Applicants will rely on Rule 26a–1 under the Act for the necessary exemptive relief to charge such fees.

6. No sales charge will be deducted from purchase payments as they are made. Instead, a withdrawal charge (contingent deferred sales charge) will be assessed in some circumstances when the contract value is completely or partially withdrawn prior to the maturity date. Generally, a withdrawal charge only applies to the withdrawal of purchase payments that have been in the Contract less than seven complete years. The withdrawal charge is a percentage of the amount withdrawn which is subject to the charge, which percentage declines 6–6–5–5–4–3–2% over the first seven years that a purchase payment has been in the Contract. Withdrawals are allocated first to earnings and then to purchase payments on a first-in-first-out basis. There is no withdrawal charge with respect to withdrawals of investment earnings and certain other free withdrawal amounts. Under no circumstances will the total of all withdrawal charges exceed 6% of total purchase payments made. The withdrawal charge is intended to reimburse First North American for compensation paid to cover selling concessions to broker-dealers, preparation of sales literature and other expenses relating to sales activity. Applicants will rely on Rule 6c–8 under the Act for the necessary exemptive relief to permit imposition of the withdrawal charge.

7. First North American assumes mortality and expense risks under the Contracts. The mortality risk is the risk that annuitants may live for a longer period of time than estimated. First North American assumes this mortality risk by virtue of annuity rates incorporated into the Contract, which cannot be changed. This assures each annuitant that his longevity will not have an adverse effect on the amount of annuity payments. Also, First North American guarantees that if the owner dies before the maturity date, it will pay a death benefit. The expense risk assumed by First North American is the risk that the administration fees, which fees cannot be increased, may be insufficient to cover actual expenses. To compensate it for assuming these risks, First North American will deduct from each sub-account a charge each valuation period at an effective annual rate of 1.25%, consisting of .80% for mortality risks and .45% for expense risks. The rate of the mortality and expense risk charge cannot be increased. If the mortality and expense risk charge is insufficient to cover the actual cost of the mortality and expense risk undertaking, First North American will bear the loss. Conversely, if the charge proves more than sufficient, the excess will be profit to First North American and will be available for any proper corporate purpose including, among other things, payment of distribution expenses.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any persons, securities, or transactions from any provision of the 1940 Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Section 27(c)(2) of the 1940 Act prohibits the issuer of a periodic payment plan certificate, and any depositor or underwriter for such issuer, from selling such periodic payment plan certificate unless proceeds of payments on such certificates (other than sales loads) are held under an indenture or agreement containing specified provisions. Section 26(a)(2) and the Rules thereunder do not permit a deduction from the assets of a separate account for mortality and expense risk charges.

3. Applicants represent that the 1.25% mortality and expense risk charge is within the range of industry practice for comparable annuity products. Applicants state that this representation is based upon an analysis of publicly available information about selected similar industry products, taking into consideration such factors as the method used in charging sales loads, any contractual right to increase charges above current levels and the existence of charges against separate account assets for other than mortality and expense risks. First North American will maintain at its principal office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey made.

4. Applicants acknowledge that the withdrawal charge will be insufficient to cover all costs relating to the distribution of the Contracts and that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the withdrawal charge. First North American has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Variable Account and the contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by First North American at its principal office and will be available to the Commission.

5. First North American represents that the Variable Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b–1 to finance distribution expenses, to have

such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the Act.

Conclusion

Applicants submit that for the reasons and upon the facts set forth above, the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17586 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20404; File No. 812–8914]

North American Security Life Insurance Company, et al.

July 13, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: North American Security Life Insurance Company ("Security Life"), NASL Variable Account ("Variable Account"), NASL Financial Services, Inc. ("NASL Financial") and Wood Logan Associates Inc. ("Wood Logan").

RELEVANT 1940 ACT SECTIONS: Exemption requested under Section 6(c) from Sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Variable Account with respect to certain flexible purchase payment individual and group deferred variable annuity contracts.

FILING DATE: The application was filed on March 29, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on August 8, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Notification of the date of a hearing may be requested by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington D.C. 20549. Applicants: John D. DesPrez, III, Esq., North American Security Life Insurance Company, 116 Huntington Avenue, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or Michael V. Wible, Special Counsel, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Security Life, a wholly owned subsidiary of North American Life Assurance Company, is a stock life insurance company organized under the laws of Delaware in 1979. Security Life is the depositor of the Variable Account. The Variable Account is registered under the Act as a unit investment trust and was established, under Delaware law, to offer certain variable annuity contracts, including the variable contracts described in the application (the "Contracts"). The Variable Account is divided into sub-accounts which invest in corresponding portfolios of NASL Series Trust (the "Trust").

2. NASL Financial, a wholly owned subsidiary of Security Life, is the principal underwriter of the Contracts. NASL Financial also serves as investment adviser to the Trust.

3. Wood Logan, a Connecticut corporation registered as a broker-dealer under the 1934 Act, serves as the exclusive promotional agent for the Contracts.

4. The Contracts are flexible purchase payment individual and group deferred variable annuity contracts which will provide for the accumulation of values and the payment of annuity benefits on a fixed or variable basis. The Contracts are designed for use in connection with retirement plans that may or may not qualify for special income tax treatment under the Internal Revenue Code of 1986, as amended.

5. Prior to the maturity date, Security Life will, on the last day of each contract year, deduct from the accumulated value of each Contract an annual administration fee of $30. This annual administration fee will also be deducted when a Contract is surrendered on any date other than a contract anniversary. However, if prior to the maturity date the contract value exceeds $100,000 at the time of the fee's assessment, the fee will be waived. During the annuity period, the fee is deducted on a pro-rata basis from each annuity payment. In addition, Security Life will deduct from the sub-accounts each valuation period an administration charge equal to .15% of the sub-account assets on an annualized basis. These fees are intended to compensate Security Life for the cost of providing administrative services attributable to the Contracts and the operations of the Variable Account and the Company in connection with the Contracts. The fees are based upon Security Life's current estimates of the administrative costs attributable to the Contracts over their lifetime and are not designed or expected to generate a profit. In the case of individual Contracts, these fees are guaranteed never to be increased. For group Contracts, these fees may be modified by Security Life on 60 days notice to the group holder of the Contract, provided that such modification shall apply only to certificates issued under the Contract after the effective date of the modification. Applicants will rely on Rule 26a–1 under the Act for the necessary exemptive relief to charge such fees.

6. No sales charge will be deducted from purchase payments as they are made. Instead, a withdrawal charge (contingent deferred sales charge) will be assessed in some circumstances when the contract value is completely or partially withdrawn prior to the maturity date. Generally, a withdrawal charge only applies to the withdrawal of purchase payments that have been in the Contract less than seven complete years. The withdrawal charge is a percentage of the amount withdrawn which is subject to the charge, which percentage declines 6–6–5–5–4–3–2% over the first seven years that a purchase payment has been in the Contract. Withdrawals are allocated first to earnings and then to purchase payments on a first-in-first-out basis. There is no withdrawal charge with respect to withdrawals of investment earnings and certain other free withdrawal amounts. under no circumstances will the total of all withdrawal charges exceed 6% of total purchase payments made. In the case of group Contracts only, the withdrawal charge may be modified by Security Life on 60 days written notice to the group holder of the Contract, provided that the modification shall apply only to certificates issued under

the Contract after the effective date of the modification. The withdrawal charge is intended to reimburse Security Life for compensation paid to cover selling concessions to broker-dealers, preparation of sales literature and other expenses relating to sales activity. Applicants will rely on Rule 6c–8 under the Act for the necessary exemptive relief to permit imposition of the withdrawal charge.

7. Security Life assumes mortality and expense risks under the Contracts. The mortality risk is the risk that annuitants may live for a longer period of time than estimated. Security Life assumes this mortality risk by virtue of annuity rates incorporated into the Contract, which for individual Contracts cannot be changed and in the case of group Contracts, cannot be changed for outstanding certificates. This assures each annuitant that his longevity will not have an adverse effect on the amount of annuity payments. Also, Security Life guarantees that if the owner dies before the maturity date, it will pay a death benefit. The expense risk assumed by Security Life is the risk that the administration fees, which fees cannot be increased for individual Contracts or outstanding certificates, may be insufficient to cover actual expenses.To compensate it for assuming these risks, Security Life will deduct from each sub-account a charge each valuation period at an effective annual rate of 1.25%, consisting of .80% for mortality risks and .45% for expense risks.

8. The rate of the mortality and expense risk charge cannot be increased for individual Contracts. The rate may be increased for group Contracts but only for certificates issued after the effective date of the Contract. Applicants acknowledge that if the mortality and expense charge is increased, further exemptive relief may be necessary. Security Life reserve the right to issue group Contracts and certificates with a lower mortality and expense risk charge where it determines that the risks of the group involved are less than for the persons for whom the Contracts and certificates were originally designed. If the mortality and expense risk charge is insufficient to cover the actual cost of the mortality and expense risk undertaking, Security Life will bear the loss. Conversely, if the charge proves more than sufficient, the excess will be profit to Security Life and will be available for any proper corporate purpose including, among other things, payment of distribution expenses.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any persons, securities, or transactions from any provision of the 1940 Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Section 27(c)(2) of the 1940 Act prohibits the issuer of a periodic payment plan certificate, and any depositor or underwriter for such issuer, from selling such periodic payment plan certificate unless proceeds of payments on such certificates (other than sales loads) are held under an indenture or agreement containing specified provisions. Section 26(a)(2) and the Rules thereunder do not permit a deduction from the assets of a separate account for mortality and expense risk charges.

3. Applicants represent that the 1.25% mortality and expense risk charge is within the range of industry practice for comparable annuity products. Applicants state that this representation is based upon an analysis of publicly available information about selected similar industry products, taking into consideration such factors as the method used in charging sales loads, any contractual right to increase charges above current levels and the existence of charges against separate account assets for other than mortality and expense risks. Security Life will maintain at its principal office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey made.

4. Applicants acknowledge that the withdrawal charge will be insufficient to cover all costs relating to the distribution of the Contracts and that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the withdrawal charge. Notwithstanding the foregoing, Security Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Variable Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Security Life at its principal office and will be available to the Commission.

5. Security Life represents that the Variable Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b–1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of Section 2(a)(19) of the Act.

Conclusion

Applicants submit that for the reasons and upon the facts set forth above, the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17587 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20406; File No. 812–8948]

North American Security Life Insurance Company, et al.

July 13, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: North American Security Life Insurance Company ("Security Life"), NASL Variable Account ("Variable Account"), NASL Financial Services, Inc. ("NASL Financial") and Wood Logan Associates Inc. ("Wood Logan").

RELEVANT 1940 ACT SECTIONS: Exemption requested under Section 6(c) from Sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit the deduction of a distribution fee and a mortality and expense risk charge from the assets of the Variable Account with respect to certain flexible purchase payment individual deferred variable annuity contracts.

FILING DATE: The application was filed on April 25, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing

to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on August 8, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Notification of the date of a hearing may be requested by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington DC 20549. Applicants: John D. DesPrez, III, Esq., North American Security Life Insurance Company, 116 Huntington Avenue, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or Michael V. Wible, Special Counsel, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION:

Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Security Life, a wholly owned subsidiary of North American Life Assurance Company, is a stock life insurance company organized under the laws of Delaware in 1979. Security Life is the depositor of the Variable Account. The Variable Account is registered under the Act as a unit investment trust and was established, under Delaware law, to offer certain variable annuity contracts, including the variable contracts described in the application (the "Contracts"). The Variable Account is divided into sub-accounts which invest in corresponding portfolios of NASL Series Trust (the "Trust").

2. NASL Financial, a wholly owned subsidiary of Security Life, is the principal underwriter of the Contracts. NASL Financial also serves as investment adviser to the Trust.

3. Wood Logan, a Connecticut corporation registered as a broker-dealer under the 1934 Act, serves as the exclusive promotional agent for the Contracts.

4. The Contracts are flexible purchase payment individual deferred variable annuity contracts which will provide for the accumulation of values on a variable basis and the payment of benefits on a fixed or variable basis. The Contracts are designed for use in connection with retirement plans that may or may not qualify for special income tax treatment under the Internal Revenue Code of 1986, as amended. The minimum initial purchase payment for the Contracts will be $25,000.

5. Security Life reserves the right to charge an annual administration fee if the contract value of a Contract drops below $10,000 as the result of a partial withdrawal. In such event, Security Life may, on the last day of each contract year, deduct from the contract value of such Contract an annual administration fee of $30. This annual administration fee may also be deducted under such a Contract if the Contract is surrendered on any date other than a contract anniversary. In addition, Security Life will deduct from the sub-accounts each valuation period an administration charge equal to .25% of the sub-account assets on an annualized basis. These fees are intended to compensate Security Life for the cost of providing administrative services attributable to the Contracts and the operations of the Variable Account and the Company in connection with the Contracts.

Applicants represent that the fees are based upon Security Life's estimates of the administrative costs for such services over the lifetime of the Contracts, are guaranteed never to be increased, and are not designed or expected to generate a profit. Applicants rely on Rule 26a–1 under the Act to assess such fees.

6. No sales charge will be deducted from purchase payments as they are made. Instead, Security Life will deduct from the sub-accounts each valuation period a distribution fee equal to .15% of sub-account assets on an annualized basis, and prior to the maturity date, a 3% withdrawal charge (contingent deferred sales charge) will be assessed in circumstances where complete or partial withdrawals are attributed to purchase payments made within three years prior to the date of the withdrawal. Applicants represent that the distribution fee and the withdrawal charge are intended to reimburse Security Life for compensation paid to cover selling concessions to broker-dealers, preparation of sales literature and other expenses relating to sales activity. Applicants rely on Rule 6c–8 under the Act to impose the withdrawal charge.

7. To compensate it for assuming mortality and expense risks under the Contracts, Security Life deducts from each sub-account a charge each valuation period at an effective annual rate of 1.25%, consisting of .80% for the mortality risks and .45% for the expense risks. The rate of the mortality and expense risk charge cannot be increased.

8. The Mortality risk assumed by Security Life under the Contracts is the risk that annuitants may live for a longer period of time than estimated. Security Life assumes this mortality risk by virtue of annuity rates incorporated into the Contract which cannot be changed. This assures each annuitant that his longevity will not have an adverse effect on the amount of annuity payments. Also, Security Life guarantees that if the owner dies before the maturity date, it will pay a death benefit. The expense risk assumed by Security Life is the risk that the administration fees, which cannot be increased, may be insufficient to cover actual expenses. If the mortality and expense risk charge is insufficient to cover the actual cost of the mortality and expense risk undertakings, Security Life will bear the loss. Conversely, if the charge proves more than sufficient, the excess will be profit to Security Life and will be available for any proper corporate purpose including, among other things, payment of distribution expenses.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any persons, securities, or transactions from any provision of the 1940 Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Section 27(c)(2) of the 1940 Act prohibits the issuer of a periodic payment plan certificate, and any depositor or underwriter for such issuer, from selling such periodic payment plan certificate unless proceeds of payments on such certificates (other than sales loads) are held under an indenture or agreement containing specified provisions. Section 26(a)(2) and the Rules thereunder do not permit a deduction from the assets of a separate account for mortality and expense risk charges or distribution expense charges.

3. Applicants state that the proposed distribution fee is an appropriate method to help defray Security Life's costs associated with the sale of the Contracts. Applicants represent that Security Life will monitor the performance of the Variable Account to ensure that with respect to any Contract owner the cumulative sum of the distribution fee and the withdrawal charge will not exceed 9% of the total premiums paid. Applicants state that assurance that the sum of such charges will never exceed 9% of premiums paid can be obtained by monitoring the performance of the Variable Account. Applicants represent that if the performance of the Variable Account should be so favorable so that it is

possible that the 9% limit may be reached under any outstanding Contract, Security Life will promptly commence monitoring Contracts on an individual basis to make sure that the limit is not exceeded.

4. Applicants represent that the 1.25% mortality and expense risk charge is within the range of industry practice for comparable annuity products. Applicants state that this representation is based upon an analysis of publicly available information about selected similar industry products, taking into consideration such factors as the method used in charging sales loads, any contractual right to increase charges above current levels and the existence of charges against separate account assets for other than mortality and expense risks. Security Life will maintain at its principal office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey made.

5. Applicants acknowledge that the distribution fee and the withdrawal charge will be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the distribution fee and the withdrawal charge. Notwithstanding the above, Security Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Variable Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Security Life at its principal office and will be available to the Commission.

6. Security Life represents that the Variable Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b–1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of Section 2(a)(19) of the Act.

Conclusion

Applicants submit that for the reasons and upon the facts set forth above, the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–17588 Filed 7–19–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted by August 19, 1994. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: *Agency Clearance Officer:* Cleo Verbillis, Small Business Administration, 409 3RD Street, S.W., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: 13 CFR 112.9 and 113.5 of SBA's Non Discrimination Rules and Regulations.

Form No.: SBA Form 793.

Frequency: On Occasion.

Description of Respondents: SBA loan recipients.

Annual Responses: 72,800.

Annual Burden: 6,607.

Dated: July 13, 1994.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 94–17603 Filed 7–19–94; 8:45 am]

BILLING CODE 8025–01–M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted by August 19, 1994. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: *Agency Clearance Officer:* Cleo Verbillis, Small Business Administration, 409 3RD Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Small Business Development Center Counseling Record.

Form No.: SBA Form 1062.

Frequency: Monthly.

Description of Respondents: Small Business Development Center Counselors.

Annual Responses: 1,150,000.

Annual Burden: 115,000.

Dated: July 13, 1994.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 94–17602 Filed 7–19–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 2035]

Designation and Determination

Pursuant to the authority vested in me by the Foreign Missions Act, 22 U.S.C. § 4301 *et seq.* ("the Act"), and Department of State Delegation of Authority No. 147 of September 13, 1982, I hereby determine that the Palestine Liberation Organization representation in the United States

("PLO Office") is a "foreign mission" within the meaning of Section 202(a)(3) of the Act (22 U.S.C. 4302(a)(3)) and that the provisions of Section 205 of the Act (22 U.S.C. § 4305) apply to the acquisition or disposition of real property by or on behalf of the PLO Office.

Designation of the PLO Office as a foreign mission is based on the following:

—It is an "agency or entity in the United States."

—It holds itself out as representing the PLO, and is acknowledged in that capacity by the U.S. Government; it is involved in "other activities" on behalf of the PLO.

—It is substantially owned and/or effectively controlled by the PLO.

—The PLO is "an organization * * * representing a territory or political entity which has been granted diplomatic or other official privileges and immunities under the laws of the United States [by virtue of its status as an observer to the United Nations] or which engages in some aspect of the conduct of the international affairs of such territory or political entity." (*See Palestine Information Office* v. *Shultz*, 853 F.2d 932, 937 (D.C. Cir. 1988).)

Pursuant to Section 4302(a)(1) of the Act, I hereby designate the acquisition by the PLO Office, or its agents or employees acting on its behalf, of the following goods and services from any person or entity subject to the jurisdiction of the United States, as a benefit for the purposes of the Act:

Goods

(1) Motor vehicles;

(2) Construction equipment and materials;

(3) Equipment and materials for the maintenance of the mission, including typewriters, telephones and other telecommunications equipment, copying machines and related materials;

(4) Computers and automated data processing equipment; and

(5) Furnishings for offices.

Services

(1) Public utilities and services, including telephone, telegraph and other telecommunications services, mail, public transportation and sanitation services; and

(2) Personal services of individuals engaged within the United States for whatever purpose, whether on a temporary or regular basis. Such personal services include:

(a) Services relating to public relations, information, publishing, printing, advertising, distribution of literature, or mailing;

(b) Plumbing, electrical, construction, maintenance, engineering, architectural or related services;

(c) Packing, shipping, cartage and related services, including provision of packing materials; and

(d) Financial services.

In addition, I hereby determine it to be reasonably necessary to accomplish the purposes set forth in section 204(b) of the Act (22 U.S.C. 4304(b)) to require the PLO Office, and its agents or employees acting on its behalf, to comply with the terms and conditions to be specified by the Director of the Office of Foreign Missions as a condition to the execution or performance in the United States of any contract or other agreement, the acquisition, retention, or use of any real property, or the application for or acceptance of any benefit (including any benefit from or authorized by any Federal, State, or municipal governmental authority, or any entity providing public services).

Publication of this notice in the **Federal Register** constitutes notice to persons subject to the jurisdiction of the United States doing business with or providing goods or services to the PLO Office that terms and conditions with respect to benefits as described herein are hereby imposed. Persons wishing clarification as to the applicability of this Designation and Determination may contact the Office of Foreign Missions, U.S. Department of State, Washington, DC 20520 (telephone: (202) 647–5217)).

Dated: June 21, 1994.

Richard M. Moose,

Under Secretary for Management.

[FR Doc. 94–17637 Filed 7–19–94; 8:45 am]

BILLING CODE 4710–44–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

DATE: July 14, 1994.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Annette Wilson, Information Management Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on July 14, 1994:

DOT No: 3960
OMB No: New
Administration: National Highway Traffic Safety Administration
Title: Vehicle Rollover Stability Information Collection
Need for Information: Title 15 USC 1392 authorizes the Secretary of Transportation to establish procedures for NHTSA to collect vehicle rollover stability information from manufacturers, to compute measurements and affix labels on vehicles.
Proposed Use of Information: The information will be used to provide consumers with rollover stability information on each make and model of cars and trucks sold in this country.
Frequency: Annually
Burden Estimate: 192 hours
Respondents: Vehicle manufacturers

Form(s): None
Average Burden Hours Per Response: 8 hours reporting
DOT No: 3961
OMB No: 2115–0017
Administration: U.S. Coast Guard
Title: Application for Approval of Marine Event
Need for Information: Title 33 CFR Part 10 establishes regulations to provide effective control over regattas and marine parades conducted on the navigable waters of the United States to ensure the safety of life and property in the regatta or marine parade area.
Proposed Use of Information: The U.S. Coast Guard will use this information to provide effective control over marine parades and regattas and determine what impact these events may have on navigation and the environment.
Frequency: On occasion
Burden Estimate: 4,000 hours
Respondents: Applicants for marine parades and regattas
Form(s): CG–4423
Average Burden Hours Per Response: 1 hour reporting
DOT No: 3962
OMB No: 2138–0016
Administration: Research and Special Programs Administration
Title: Report of Extension of Credit to Political Candidates
Need for Information: Section 401 of the Federal Election Campaign Act of 1971 promulgated regulations with respect to the extension of credit for air transportation furnished to candidates for Federal office, or any persons acting on their behalf, in connection with political campaigns.
Proposed Use of Information: The information will be used to compile a monthly report, identifying unpaid balances due air carriers from political candidates, which is sent to the Federal Election Commission.
Frequency: On occasion
Burden Estimate: 5 hours
Respondents: Air carriers
Form(s): RSPA Form 183
Average Burden Hours Per Response: 1 hour reporting
DOT No: 3963
OMB No: New
Administration: Federal Highway Administration
Title: Commercial Motor Carrier Operator Sleep Apnea
Need for Information: In the Conference Report to the FY 1993 Appropriations Act for DOT, the Secretary of Transportation was directed to award a study to investigate and assess the incidence of sleep apnea among commercial truck drivers.
Proposed Use of Information: The data collected will be used to identify commercial truck drivers that experience the medical condition known as sleep apnea.
Frequency: One time
Burden Estimate: 2,600 hours
Respondents: Commercial truck drivers
Form(s): Survey
Average Burden Hours Per Response: 30 minutes reporting
DOT No: 3964
OMB No: 2133–0033
Administration: Maritime Administration
Title: Exporter/Importer Data
Need for Information: Section 212 of the Merchant Marine Act of 1936, as amended, prescribes requirements to study maritime problems and to devise and implement policies to induce U.S. importers and exporters to give preference to U.S. registered vessels.
Proposed Use of Information: The information will be used to quantify the marketplace, focus on target markets, set marketing goals, and measure total or regional performance.
Frequency: Weekly
Burden Estimate: 840 hours
Respondents: Shippers and other market entities
Form(s): MA–740
Average Burden Hours Per Response: 30 minutes reporting
DOT No: 3965
OMB No: New
Administration: Federal Aviation Administration
Title: Flight Attendant Duty Limitations and Rest Requirements
Need for Information: This is a recordkeeping activity which will enable the Administrator of the FAA to verify that each airline is in compliance with the flight attendant duty/rest regulations.
Proposed Use of Information: The information will be used to ensure that flight attendants receive sufficient rest to perform safety duties on board airplanes.
Frequency: Recordkeeping
Burden Estimate: 103,708 hours
Respondents: Certificate holders operating under 14 CFR Parts 121, 125 and 135
Form(s): None
Average Burden Hours Per Response: 576 hours and 10 minutes recordkeeping
DOT No: 3966
OMB No: 2130–0010
Administration: Federal Railroad Administration
Title: Designation of Qualified Persons (Track) and Records of Results of Track Inspections
Need for Information: The Federal Railroad Safety Act of 1970 authorized the Secretary of Transportation to prescribe rules, regulations, orders and standards for all areas of railroad safety. The Federal Track Safety Standards, 49 CFR 213, define the responsibilities and qualifications of individuals to inspect and prescribe repairs and set forth standards for roadbed, track geometry, track structure, track appliances and track-related devices and inspection.
Proposed Use of Information: The information will be used to verify that inspections are made by qualified persons and that railroads are in compliance with prescribed safety standards.
Frequency: Recordkeeping
Burden Estimate: 1,653,633 hours
Respondents: Railroads
Form(s): None
Average Burden Hours Per Response: 2,667 hours and 9 minutes recordkeeping
DOT No: 3967
OMB No: 2138–0006
Administration: Research and Special Programs Administration
Title: Part 249 Preservation of Air Carrier Records
Need for Information: Title 14 CFR Part 249 prescribes recordkeeping requirements for all carriers holding certificates of public convenience and necessity under Sections 401 and 418 of the Federal Aviation Act of 1958, as amended, public charter operators, and overseas military personnel charter operators.
Proposed Use of Information: The information will be used to audit the records of certificated air carriers and public charter operators.
Frequency: Recordkeeping
Burden Estimate: 678 hours
Respondents: Certificated air carriers and public charter operators
Form(s): None
Average Burden Hours Per Response: 1 hour and 24 minutes recordkeeping
DOT No: 3968
OMB No: New
Administration: National Highway Traffic Safety Administration
Title: Survey of Occupant Protection Attitudes, Knowledge and Behavior
Need for Information: The National Traffic and Motor Vehicle Safety Act of 1966, Title 15 USC 1395, Section 106(b) gives the Secretary of Transportation authorization to conduct research, testing, development and training.
Proposed Use of Information: NHTSA will use the data collected to assess

current public attitudes, knowledge, and behavior related to occupant protection in the areas of safety belts, child safety seats, air bags and helmet use, since these areas have undergone significant technological development. This survey will attempt to obtain the latest information upon which new programmatic decisions will be made.

Frequency: One time

Burden Estimate: 2,636 hours

Respondents: Individuals

Form(s): Questionnaire

Average Burden Hours Per Response: 20 minutes reporting

DOT No: 3969

OMB No: 2105–0510

Administration: Office of the Secretary

Title: Report of Disadvantaged Business Enterprise (DBE) Awards and Commitments

Need for Information: Title 49 CFR Part 23 requires DOT and its operating administrations to develop a recordkeeping system to monitor, assess and identify contract awards and prime contractors' progress in achieving DBE subcontract goals. The Intermodal Surface Transportation and Efficiency Act of 1991 requires that each State shall annually survey and compile a list of small business concerns and submit a written report to the Secretary of Transportation.

Proposed Use of Information: The information will be used to determine the extent to which DOT financially-assisted State and local transportation agencies are achieving their approved disadvantaged business enterprise goals, and for DBE program monitoring and reporting to Congress on DOT's status in meeting its statutory DBE program requirements.

Frequency: Annually, semi-annually, quarterly

Burden Estimate: 20,824 hours

Respondents: DOT financially-assisted State and local transportation agencies

Form(s): DOT F 4830

Average Burden Hours Per Response: 1 hour reporting; 18 hours recordkeeping

DOT No: 3970

OMB No: 2120–0557

Administration: Federal Aviation Administration

Title: Passenger Facility Charge (PFC) Program

Need for Information: The Aviation Safety and Capacity Expansion Act of 1990 (Public Law 101–508) authorizes airports to impose passenger facility charges. FAR Part 158 implements that Act.

Proposed Use of Information: The passenger facility charge program requires agencies and certain members of the aviation industry to prepare and submit applications and reports to the DOT/FAA. This program provides additional funding for the expansion of airport capacity which is needed now and in the future. DOT/FAA will use any information submitted in response to this program to carry out the intent of Section 9113 of the Aviation Safety and Capacity Expansion Act of 1990.

Frequency: Quarterly, annually

Burden Estimate: 50,742 hours

Respondents: Air carriers, public agencies

Form(s): FAA Form 5500–115 Average Burden Hours Per Response: 5 hours to 160 hours reporting (depending on complexity)

DOT No: 3971

OMB No: 2115–0571

Administration: U.S. Coast Guard

Title: Alternative Provisions for Reinspections of Offshore Supply Vessels in Foreign Ports

Need for Information: The information collection is needed to ensure that offshore supply vessels (OSV), based overseas, are inspected before they are put into service. The owners and operators of OSVs should submit certified examination reports and statements to the Coast Guard as an alternative to the Coast Guard reinspecting these vessels.

Proposed Use of Information: The information will be used by the Coast Guard as an alternative to Coast Guard marine inspectors conducting reinspection examinations on offshore OSVs that operate in overseas locations. Marine inspectors will issue vessels certificates of inspection with a letter or endorsement containing specific information concerning the person who performed the examination; and will ensure that these vessels remain fit for the route and service specified in the certificate of inspection.

Frequency: On occasion

Burden Estimate: 780 hours

Respondents: Owners or operators of offshore supply vessels

Form(s): None

Average Burden Hours Per Response: 7 hours and 30 minutes reporting

Issued in Washington, DC on July 14, 1994.

Paula R. Ewen,

Chief, Information Management Division.

[FR Doc. 94–17672 Filed 7–19–94; 8:45 am]

BILLING CODE 4910–62–P

[Docket 48847]

Application of American International Airways, Inc., TCA, Inc., and Trans Continental Airlines, Inc. For Transfer of Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 94–7–15).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Trans Continental Airlines, Inc., fit, willing, and able, and award it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation of property and mail, subject to conditions, and (2) canceling the certificate authority currently held by TCA, Inc.

DATES: Persons wishing to file objections should do so no later than July 29, 1994.

ADDRESSES: Objections and answers to objections should be filed in Docket 48847 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Delores King, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2343.

Dated: July 14, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–17671 Filed 7–19–94; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

[Docket No. 94–55; Notice 1]

Receipt of Petition for Determination That Nonconforming 1994 Volkswagen Golf III Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1994 Volkswagen Golf III passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1994

Volkswagen Golf III that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is August 19, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

J.K. Motors of Kingsville, Maryland ("J.K.") (Registered Importer No. R–90–006) has petitioned NHTSA to determine whether 1994 Volkswagen Golf III passenger cars are eligible for importation into the United States. The vehicle which J.K. believes is substantially similar is the 1994 Volkswagen Golf III that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Volkswagenwerke A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1994 Volkswagen Golf III to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1994 Volkswagen Golf III, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1994 Volkswagen Golf III is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*; 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 214 *Side Door Strength*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp; (d) replacement of bulb failure modules with U.S.-model components.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a key microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number*: installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 *Occupant Crash Protection*: (a) installation of a seat belt warning buzzer, wired to the seatbelt latch; (b) installation of a passive restraint system consisting of door-anchored automatic belts and a knee bolster. The petitioner notes that the non-U.S. certified 1994 Volkswagen Golf III is supplied with mounting points and bolt holes for the installation of this equipment and that no structural changes are necessary.

Additionally, the petitioner states that bumper shocks must be installed on the non-U.S. certified 1994 Volkswagen Golf III to comply with the Bumper Standard found in 49 CFR Part 581. The petitioner further notes that it may be necessary to install a U.S.-model bumper cover on some vehicles to accommodate the marker lights.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 14, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–17673 Filed 7–19–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–32; Notice 2]

Determination That Nonconforming 1992 Mercedes-Benz 190E Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1992 Mercedes-Benz 190E passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1992 Mercedes-Benz 190E passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1992 Mercedes-Benz 190E), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective July 20, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHSTA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

J.K. Motors, Inc. of Kingsville, Maryland (Registered Importer R–90–006) petitioned NHTSA to determine whether 1992 Mercedes-Benz 190E passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on May 5, 1994 (59 FR 23256) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 71 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1992 Mercedes-Benz 190E (Model ID 201.029) not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1992 Mercedes-Benz 190E originally manufactured for importation into and sale in the United States and certified under 49 U.S.,C. 30115, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 14, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–17674 Filed 7–19–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–54; Notice 1]

Receipt of Petition for Determination That Nonconforming 1992 Ferrari 348TB Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1992 Ferrari 348TB passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1992 Ferrari 348TB that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is August 19, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4:00 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either

manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) has petitioned NHTSA to determine whether 1992 Ferrari 348TB passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1992 Ferrari 348TB that was manufactured for importation into and sale in the United States and certified by its manufacturer, Ferrari S.p.A., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner states that it carefully compared the non-U.S. certified 1992 Ferrari 348TB to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1992 Ferrari 348TB, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1992 Ferrari 348TB is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * * 103 Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 112 *Headlamp Concealment Devices*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the non-U.S. certified 1992 Ferrari 348TB complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the non-U.S. certified 1992 Ferrari 348TB is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps; (b) installation of front and rear sidemarker/reflector assemblies; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* replacement of the passenger side rearview mirror, which is convex but lacks the required warning statement.

Standard No. 114 *Theft Protection:* installation of a buzzer microswitch and a warning buzzer in the steering lock electrical assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power-Operated Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (b) installation of a passive restraint system consisting of driver and passenger side automatic seat belt assemblies, tracks, and a control unit that have part numbers identical to those found on the U.S. certified 1992 Ferrari 348TB. The petitioner claims that the lower dash panel on the non-U.S. certified 1992 Ferrari 348TB is identical to that found on its U.S. certified counterpart, and that a knee bolster is not supplied on the U.S. certified vehicle.

Standard No. 209 *Seat Belt Assemblies:* installation of seat belts labelled in accordance with the standard.

Standard No. 214 *Side Door Strength:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing data indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 14, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–17675 Filed 7–19–94; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Applications For Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications for Modification of Exemptions or Applications to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of

application have been shown in earlier Federal Register publications, they are not repeated here. Requests for modifications of exemptions (e.g., to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before August 4, 1994.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
9781–X	Chlorine Institute, Inc., Washington, DC (See Footnote 1)	9781
10645–X	Essex Cryogenics of Missouri, Inc., St. Louis, MO (See Footnote 2)	10645
10977–X	Federal Industries Corporation, Newport, MN (See Footnote 3)	10977

[1] To modify exemption to provide for cargo vessel as an additional mode of transportation for transporting chlorine cylinders.
[2] To modify exemption to provide for a 1.2 capacity insulated non-DOT Specification cylinder for shipment of oxygen, refrigerated liquid, Division 2.2.
[3] To modify exemption to provide for passenger-aircraft as an additional mode of transportation for transporting various classes of hazardous material in specially designed packaging.

Application No.	Applicant	Parties to exemption
7648–P	Great Western Aviation, Inc., Ogden, UT	7648
8582–P	Gateway Western Railway, Fairview Heights, IL	8582
9275–P	Compar, Inc., Hawthorne, NY	9275
9275–P	Halston Borghese, Inc., Jamesburg, NJ	9275
9275–P	Revlon Consumer Products Corporation, Oxford, NC	9275
9275–P	Estee Lauder, Melville, NY	9275
9628–P	Cometals, Inc., New York, NY	9628
9723–P	Tonawanda Tank Transport Service, Inc., Buffalo, NY	9723
9723–P	General Chemical Corporation, Framingham, MA	9723
9735–P	"K" Line America, Inc., Seattle, WA	9735
9741–P	Sunbelt Services, Seminole, FL	9741
10001–P	Grand Rapids Welding Supply Co., Grand Rapids, MI	10001
10441–P	General Chemical Corporation, Framingham, MA	10441
10933–P	Chemical Waste Management, Inc., Oak Brook, IL	10933
10982–P	Appleton Papers, Inc., Appleton, WI	10982
11119–P	G.H. Brown Automotive, Inc., Perkasie, PA	11119
11119–P	Auto Refinish Distributors, Inc., Tulsa, OK	11119
11135–P	GE Silicones, Waterford, NY	11135
11136–P	International Fireworks Co., Inc., Newton, NJ	11136
11184–P	BP Chemicals, Inc., Cleveland, OH	11184
11249–P	Ashland Chemical Company, Columbus, OH	11249
11253–P	Rhone-Poulenc, Shelton, CT	11253

This notice of receipt of applications for modification of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on July 14, 1994.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 94–17676 Filed 7–19–94; 8:45 am]

BILLING CODE 4910–60–M

Office of Hazardous Materials Safety; Applications For Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1-Motor vehicle, 2-Rail freight, 3-Cargo vessel, 4-Cargo aircraft only, 5-Passenger-carrying aircraft.

DATES: Comments must be received on or before August 19, 1994.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application	Applicant	Regulation(s) affected	Nature of exemption thereof
11270–N	B.F. Goodrich Company, Henry, IL.	49 CFR 174.67 (i) & (j)	To authorize chlorine filled tank cars to remain connected without the physical presence of an unloader. (Mode 2.)
11273–N	Cherry-Air, Inc., Dallas, TX	49 CFR 171.11, 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b).	To authorize the transportation of certain Division 1.1, 1.2, 1.3 and 1.4 explosives that are not permitted for shipment by air, or are in quantities greater than those authorized. (Mode 4.)
11274–N	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.306(c)	To authorize the transportation of personally-owned fire extinguisher bottles in private owned vehicles shipped under military or civilian permanent change of station orders aboard cargo vessel. (Mode 3.)
11275–N	DHE Fabrication and Machining, Vereeniging, RA.	49 CFR 178.245	To authorize the transportation of non-DOT specification portable tanks similar to DOT Specification 51, except they are equipped with openings in various locations on the same end for use in transporting various hazardous materials classed as Division 2.1, 2.2 and 2.3. (Modes 1, 2, 3.)
11276–N	CP Clare Corporation, Wakefield, MA.	49 CFR 171.2, 172.200, 172.202, 172.204, 172.25, 172.300, 172.400, 173.164.	To authorize the transportation of miniature switching devices consisting of two subassemblies joined together in sealed glass tubes with limited quantities of mercury, Class 8, to be shipped without required markings and labelling. (Mode 5.)
11278–N	Regional Hospital Services, Inc., Portsmouth, VA.	49 CFR 171.8	To authorize the transportation of medical waste, classed as Division 6.2, in plastic bags overpacked in polyethylene roll-off type containers equipped with lid hinged with steel bar. (Mode 1.)
11281–N	E.I. du Pont de Nemours and Company, Wilmington, DE.	49 CFR 172.101/SP B–14, B–32 and T–38.	To authorize the transportation of certain Class 8 materials and Division 6.1, PIH material in uninsulated MC 312, 330, 331 and DOT 412 cargo tanks and DOT 51 portable tanks of stainless steel construction. (Mode 1.)
11282–N	Idaho Power Company, Boise, ID.	49 CFR 173.302	To authorize the transportation of air, compressed, Division 2.2 in non-DOT specification cylinders comparable to 3AA and 3AAX equipped with rupture disk pressure relief devices. (Mode 1.)
11283–N	Zesto Therm, Inc., Cincinnati, OH.	49 CFR 171.2, 172.101, 173.1(b), 173.124(c), 173.144.	To authorize the transportation of flameless hearing devices containing small quantities of material classed as Division 4.3 to be transported as consumer commodity, ORM–D. (Modes 1, 2.)
11284–N	Webb Chemical Service Corp., Muskegon, MI.	49 CFR 174.67(i)	To authorize rail cars containing certain hazardous materials, Class 8 and 9 to remain connected without the physical presence of an unloader. (Mode 2.)
11285–N	Akzo Chemicals, Inc., Chicago, IL.	49 CFR 173.225	To authorize the transportation of organic peroxides, classed as Division 5.2, to be transported in non-DOT specification intermediate bulk containers. (Mode 1.)
11286–N	International Sensor Technology, Irvine, CA.	49 CFR 173.4	To authorize the transportation of non-DOT specification permeation devices containing limited quanitites of various hazardous materials classed as Division 1.2, 2.2, 2.3, 6.1 and Class 3 and 9. (Modes 1, 2, 3, 4, 5.)
11287–N	DADCO, Detroit, MI	49 CFR 173.306(f)	To provide for alternative testing criteria for gas spring devices containing small quantities of compressed, nonflammable nitrogen gas pressurized from 250 psi to 2175 psi at 70 degree F. (Modes 1, 2, 3, 4, 5.)
11288–N	Intercontinental Packaging Corporation, Tuckahoe, NY.	49 CFR 173.306	To authorize an alternative testing method for leak detection in specially designed aerosol containers charged with Division 2.2 materials. (Modes 1, 2, 3, 4, 5.)
11289–N	Western Industries, Inc., Milwaukee, WI.	49 CFR 178.65	To authorize an alternative testing method for leak detection of DOT-Specification 39 non-reusable cylinders containing certain compressed gases. (Modes 1, 2, 3, 4.)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53 (e)).

Issued in Washington, DC, on July 15, 1994.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 94–17677 Filed 7–19–94; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax Counseling for the Elderly (TCE) Program; Availability of Application Packages

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Availability of TCE application packages.

SUMMARY: This document provides notice of the availability of Application Packages for the 1995 Tax Counseling for the Elderly (TCE) Program.

DATES: Application packages are available from the IRS at this time. The deadline for submitting an application package to the IRS for the 1995 Tax Counseling for the Elderly (TCE) Program is August 22, 1994.

ADDRESSES: Application Packages may be requested by contacting: Program Manager, Tax Counseling for the Elderly Program, Internal Revenue Service, External Liaison Division (PC:E), 1111 Constitution Ave., NW., Room 7207, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Haag, External Liaison Division (PC:E), Room 1311, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224. The non-toll-free telephone number is: (202) 622–7664.

SUPPLEMENTARY INFORMATION: Authority for the Tax Counseling for the Elderly (TCE) Program is contained in Section 163 of the Revenue Act of 1978, Pub. L. 95–600, (92 Stat. 12810), November 6, 1978. Regulations were published in the **Federal Register** at 44 FR 72113 on December 13, 1979. Section 163 gives Internal Revenue Service authority to enter into cooperative agreements with private or public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individual age 60 and over at the close of their taxable year.

Cooperative agreements will be entered into based upon competition among eligible agencies and organizations. Because applications are being solicited before the FY 1995 budget has been approved, cooperative agreements will be entered into subject to appropriation of funds. Once funded, sponsoring agencies and organizations will receive a grant from the IRS for administrative expenses and to reimburse volunteers for expenses incurred in training and in providing tax return assistance. The Tax Counseling for the Elderly (TCE) Program is referenced in the Catalog of Federal Domestic Assistance in Section 21.006.

Beverly P. Monaco,

Acting Director, External Liaison Division,

[FR Doc. 94–17568 Filed 7–19–94; 8:45 am]

BILLING CODE 4830–01–U

[Delegation Order No. 11 (Rev. 24)]

Deputy Assistant Commissioner (International), et al.; Delegation of Authority

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Delegation of Authority.

SUMMARY: The authority to accept, reject, or acknowledge withdrawal of offers in compromise is delegated to specific service center, compliance center, and district office officials. Depending on the type of action to be taken and the amount of the liability sought to be compromised, the authority may be redelegated (26 U.S.C. 7122).

EFFECTIVE DATE: June 21, 1994.

FOR FURTHER INFORMATION CONTACT: Linda Kelly, Program Analyst, Office of Operations (CP:CO:O), room 7238, 1111 Constitution Avenue, NW., Washington, DC 20224; telephone (202) 622–6933 (not a toll-free call).

Order No. 11 (Rev. 24).

Effective date: June 21, 1994.

Authority to Accept or Reject Offers in Compromise.

The authority vested in the Commissioner of Internal Revenue by Treasury Order Nos. 150–04 and 150–09, 26 CFR 301.7122–1 and 26 CFR 301.7701–9, and Treasury Order No. 150–13 is hereby delegated as follows:

1. The Deputy Assistant Commissioner (International); regional counsel; regional directors of Appeals, and chiefs, assistant chiefs, associate chiefs, and team chiefs or team managers as to their respective cases, in Appeals offices; are delegated authority under section 7122 of the Internal Revenue Code to accept offers in compromise and to reject and acknowledge withdrawal of offers in compromise for matters under their respective jurisdictions regardless of the amount of the liability sought to be compromised.

2. Chiefs, Compliance Division, in service centers and Chief, Collection Division, in Austin Compliance Center are delegated authority under section 7122 of the Internal Revenue Code to accept offers in compromise and to reject and acknowledge withdrawal of offers in compromise for matters under their respective jurisdictions regardless of the amount of the liability sought to be compromised. Division chiefs may redelegate to service center and Austin Compliance Center Collection Branch chiefs the authority to reject and acknowledge withdrawal of all offers in compromise, regardless of the amount of the liability sought to be compromised, and to accept offers in compromise where the amount of the liability (including interest, penalty, additional amount, or addition to tax) is less than $100,000.

3. Division chiefs in districts are delegated authority under section 7122 of the Internal Revenue Code to accept offers in compromise and to reject and acknowledge withdrawal of offers in compromise for matters under their respective jurisdictions regardless of the amount of the liability sought to be compromised. Chiefs, Collection Division, may redelegate to any Collection Branch chief, including Automated Collection and Collection Support Branch chiefs, the authority to reject and acknowledge withdrawals of all offers in compromise regardless of the amount of the liability sought to be compromised and to accept offers in compromise regardless of the amount of the liability sought to be compromised. Chiefs, Collection Division, may redelegate to Automated Collection assistant branch chiefs the authority to reject and acknowledge withdrawals of all offers in compromise regardless of the amount of the liability sought to be compromised. Chiefs, Collection Division, may redelegate to group managers in the Collection Field function; to Chief, Advisory or Insolvency unit, or equivalent, GS–12 or above, in Special Procedures function; and to Automated Collection assistant branch chiefs the authority to accept offers in compromise where the amount of the liability (including interest, penalty, additional amount, or addition to tax) is less than $100,000.

4. Chief, Field Branch, in Collection, and Chief, Special Procedures or equivalent, in blended districts, are delegated the authority to accept offers in compromise where the amount of the liability (including interest, penalty, additional amount, or addition to tax) is less than $100,000 and to reject and acknowledge withdrawal of all offers in compromise regardless of the amount of the liability sought to be compromised.

5. Group managers in Collection Field function and Chief, Advisory or Insolvency unit or equivalent, GS–12 or above, in Special Procedures function in districts are delegated the authority to reject and acknowledge withdrawals of all offers in compromise for matters under their respective jurisdictions regardless of the amount of the liability sought to be compromised.

6. Chiefs, Examination Division, may redelegate to any Chief, Quality Measurement Staff, or Chief, Planning and Special Programs, the authority to reject and acknowledge withdrawals of all offers in compromise regardless of

the amount of the liability sought to be compromised.

7. The authority delegated to division chiefs, branch chiefs, assistant branch chiefs, group managers, and Chief, Advisory or Insolvency unit, GS–12 or above, does not include the authority to reject offers in compromise for public policy reasons. Authority to reject offers in compromise for public policy reasons is restricted to the Deputy Assistant Commissioner (International); associates chief counsel; regional counsel; regional directors of Appeals; chiefs and associate chiefs, Appeals offices; district directors; service center directors; and Director, Austin Compliance Center. This authority may not be redelegated. The authority delegated to regional counsel may not be redelegated, except that the authority to reject offers in compromise for other than public policy reasons may be redelegated, but not lower than to district counsel. Regional directors of Appeals and chiefs and associate chiefs, Appeals offices, may not redelegate this authority.

8. District directors; service center directors; Director, Austin Compliance Center; and regional directors of Appeals are delegated the authority to accept offers in compromise in the event Counsel renders a negative legal opinion, regardless of the amount of the liability sought to be compromised. This applies only to offers in compromise—Doubt as to Collectibility. This authority may not be redelegated.

9. The authority in this delegation order may not be redelegated except as indicated.

10. To the extent that the authority previously exercised consistent with this order may require ratification, it is hereby approved and ratified.

11. Delegation Order No. 11 (Rev. 23), effective December 7, 1993, is superseded.

Dated: June 21, 1994.

Phil Brand,

Chief Compliance Officer.

[FR Doc. 94–17564 Filed 7–19–94; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances (Monochlorobenzene, et al.); Notice of Determinations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces determinations, under Notice 89–61, that the list of taxable substances in section 4672(a)(3) will be modified to include monochlorobenzene and ethyl chloride.

EFFECTIVE DATE: This modification is effective April 1, 1994.

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a), an importer or exporter of any substance may request that the Secretary determine whether such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce such substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On July 12, 1994, the Secretary determined that monochlorobenzene and ethyl chloride should be added to the list of taxable substances in section 4672(a)(3), effective April 1, 1994.

The rate of tax prescribed for monochlorobenzene, under section 4671(b)(3), is $4.22 per ton. This is based upon a conversion factor for chlorine of 0.315 and a conversion factor for benzene of 0.6939.

The rate of tax prescribed for ethyl chloride, under section 4671(b)(3), is $2.29 per ton. This is based upon a conversion factor for ethylene of 0.4379 and a conversion factor for hydrochloric acid of 0.5621.

The petitioner is PPG Industries, Inc., a manufacturer and exporter of these substances. No material comments were received on these petitions. The following information is the basis for the determinations.

Monochlorobenzene

HTS number: 2903.61.10.00
CAS number: 108–90–7

Monochlorobenzene is derived from the taxable chemicals chlorine and benzene. Monochlorobenzene is a liquid produced predominantly by the direct chlorination of benzene. The stoichiometric material consumption formula for monochlorobenzene is:

Cl_2 (chlorine)+C_6H_6 (benzene) ——> C_6H_5Cl (monochlorobenzene)+HCl (hydrogen chloride)

Monochlorobenzene has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 100 percent by weight of the materials used in its production.

Ethyl chloride

HTS number: 2903.11.00.20
CAS number: 75–00–3

Ethyl chloride is derived from the taxable chemicals ethylene and hydrochloric acid. Ethyl chloride is a gas produced predominantly by the hydrochlorination of ethylene.

The stoichiometric material consumption formula for ethyl chloride is:

C_2H_4 (ethylene)+HCl (hydrochloric acid) ——> C_2H_5Cl (ethyl chloride)

Ethyl chloride has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 100 percent by weight of the materials used in its production.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94–17566 Filed 7–19–94; 8:45 am]

BILLING CODE 4830–01–U

Sunshine Act Meetings

Federal Register
Vol. 59, No. 138
Wednesday, July 20, 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: 10:00 a.m., Monday, July 25, 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: July 15, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–17715 Filed 7–18–94; 8:45 am]
BILLING CODE 6210–01–P

federal register

Wednesday
July 20, 1994

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 32

Refuge-Specific Hunting and Fishing Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AC59

Refuge-Specific Hunting and Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to amend certain regulations that pertain to migratory game bird hunting, upland game hunting, big game hunting and sport fishing on individual national wildlife refuges. Refuge hunting and fishing programs are reviewed annually to determine whether the individual refuge regulations governing these programs should be modified, deleted or have additions made to them. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitat may warrant modifications to ensure the continued compatibility of hunting and fishing with the purposes for which the individual refuges were established. Modifications are designed, to the extent practical, to make refuge hunting and fishing programs consistent with State regulations.

DATES: Comments on this proposed rule will be accepted on or before September 19, 1994.

ADDRESSES: Address comments to: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 670 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Esq. at the above address; Telephone (703) 358–1744.

SUPPLEMENTARY INFORMATION: 50 CFR part 32 contains provisions governing hunting and fishing on national wildlife refuges. Hunting and fishing are regulated on refuges to (1) ensure compatibility with refuge purposes, (2) properly manage the wildlife resource, (3) protect other refuge values, and (4) ensure refuge user safety. On many refuges, the Service policy of adopting State hunting regulations is adequate in meeting these objectives. On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to ensure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." Refuge-specific hunting and fishing regulations may be issued only after a wildlife refuge is opened to migratory game bird hunting, upland game hunting, big game hunting or sport fishing through publication in the **Federal Register**. These regulations may list the wildlife species that may be hunted or are subject to sport fishing, seasons, bag limits, methods of hunting or fishing, descriptions of open areas, and other provisions as appropriate. Previously issued refuge-specific regulations for hunting and fishing are contained in 50 CFR part 32. Many of the proposed amendments to these sections are being promulgated to standardize and clarify the existing language of these regulations.

Request for Comments

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. A 60-day comment period is specified in order to facilitate public input. Accordingly, interested persons may submit written comments concerning this proposed rule to the person listed above under the heading **ADDRESSES.** All substantive comments will be reviewed and considered.

Statutory Authority

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to, hunting, fishing and public recreation, accommodations and access, when he determines that such uses are compatible with the major purpose(s) for which the area was established.

The Refuge Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act. Hunting and sport fishing plans are developed for each refuge prior to opening it to hunting or fishing. In many cases, refuge-specific hunting and fishing regulations are included in the hunting and sport fishing plans to ensure the compatibility of the hunting and sport fishing programs with the purposes for which the refuge was established. Initial compliance with the NWRSAA and Refuge Recreation Act is ensured when hunting and sport fishing plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. Continued compliance is ensured by annual review of hunting and sport fishing programs and regulations.

Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 1849 C Street NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20503.

Economic Effect

This rulemaking was not subject to the Office of Management and Budget review under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) has been done to determine whether the rulemaking would have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. This proposed rule would have minimal effect on such entities.

Federalism

This proposed rule 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 rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) is ensured when hunting and sport fishing plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. The amendment of refuge-specific hunting and fishing regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge. The B.(5) Service exclusion is employed here as these amendments are considered "[m]inor changes in the amounts or types of public use on FWS or State-managed lands, in accordance with regulations, management plans, and procedures." These proposed refuge-specific hunting and fishing revisions to existing regulations simply qualify or otherwise define an existing hunting or fishing activity for purposes of resource management. The changes proposed in this rulemaking would not substantially alter the existing uses of the refuges involved. Information regarding hunting and fishing permits and the conditions that apply to individual refuge hunts, sport fishing activities and maps of the respective areas are retained at refuge headquarters and can be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas. Assistant Regional Director—Refuges and Wildlife U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; Telephone (404) 679–7152.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035; Telephone (413) 253–8550.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–8145.

Region 7—Alaska. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3545.

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List of Subjects in 50 CFR Part 32

Hunting, Fishing, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, Part 32 of Chapter I of Title 50 of the *Code of Federal Regulations* is proposed to be amended as follows:

PART 32—[AMENDED]

1. The authority citation for Part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 32.7 is amended by adding the alphabetical listings of "Fergus Falls Wetland Management District" and "Morris Wetland Management District" under the State of Minnesota, "North Platte National Wildlife Refuge" under the State of Nebraska, and "Lake Ilo National Wildlife Refuge" under the State of North Dakota.

3. Section 32.20 *Alabama* is amended by revising paragraphs B., D.2., D.3., D.4., D.5., and adding new paragraphs D.6., D.7. and D.8 of Choctaw National Wildlife Refuge; and by revising paragraphs A. and B. of Eufaula National Wildlife Refuge to read as follows:

§ 32.20 Alabama.

* * * * *

Choctaw National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Fishing is permitted year-round unless otherwise marked by signs as closed to public entry or fishing.

3. Only fish, according to State regulations, may be taken or possessed. Bowfishing is not permitted.

4. Taking, possessing, or attempting to take frogs and turtles is prohibited.

5. The use of trotlines, snag lines, soap lines, set lines, drops, gigs and jugs is not permitted.

6. Entry and use of airboats, hovercraft, and personalized watercraft such as jet skis, watercycles or waterbikes are prohibited.

7. All gill nets must be actively attended at all times.

8. A refuge permit is required for commercial fishing of all nets, traps, baskets, boxes and seine used in refuge waters. Information on harvest data is required.

Eufaula National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks and mourning doves is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of rabbit is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

4. Section 32.22 *Arizona* is amended by adding paragraph B.3. to Bill Williams River National Wildlife Refuge; by revising paragraph B. of Buenos Aires National Wildlife Refuge; by adding paragraph B.4. to Cibola National Wildlife Refuge; by revising paragraphs B.2. and C. of Havasu National Wildlife Refuge; by revising introductory language of paragraph B., and by revising paragraphs B.3. and B.5. of Imperial National Wildlife Refuge; and by revising paragraph B. of Kofa National Wildlife Refuge to read as follows:

§ 32.22 Arizona.

* * * * *

Bill Williams River National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. Hunting of cottontail rabbits is permitted from September 1 to the close of the State quail season.

* * * * *

Buenos Aires National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of cottontail rabbit, coyote, and skunks is permitted on designated areas of the refuge.

* * * * *

Cibola National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

4. Hunting of cottontail rabbits is permitted from September 1 to the end of the State quail season.

* * * * *

Havasu National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. Hunting of cottontail rabbits is permitted from September 1 to the close of the State quail season, except in Pintail Slough where rabbit hunting is permitted only during September.

* * * * *

C. Big Game Hunting. Hunting of desert bighorn sheep is permitted on designated areas of the refuge with a valid State permit.

* * * * *

Imperial National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of quail, cottontail rabbit, coyote, and fox is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

3. Cottontail rabbit hunting is permitted September 1 to the close of the State quail season.

* * * * *

5. Coyote and fox hunting is permitted only during the State quail season, except that it is not permitted during the State general deer season.

* * * * *

Kofa National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of quail, cottontail rabbit, coyote, and fox is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of coyote, fox, and cottontail rabbit is permitted during the State quail season only, except as provided below.

2. Hunting of coyote and fox is not permitted during the deer season except that deer hunters with valid Unit 45A, 45B, and 45C deer permits may take these predators until a deer is taken.

3. Allowed method of take of cottontail rabbits is shotgun only.

* * * * *

5. Section 32.23 *Arkansas* is amended by revising paragraph C. of Big Lake National Wildlife Refuge; by revising paragraphs A., B. and C. of Felsenthal National Wildlife Refuge; by revising paragraphs B. and C. of Holla Bend National Wildlife Refuge; and by revising paragraphs A., B., and C. of Overflow National Wildlife Refuge to read as follows:

§ 32.23 Arkansas.

* * * * *

Big Lake National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Felsenthal National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, coots and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, beaver, raccoon, opossum and nutria is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permit are required.

* * * * *

Holla Bend National Wildlife Refuge

* * * * *

B. *Upland Game Hunting.* Hunting of raccoon, opossum, squirrel, rabbit, beaver and coyote is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Overflow National Wildlife Refuge

A. *Hunting of Migratory Game Birds.* Hunting of ducks, coots and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, beaver raccoon, opossum, and nutria is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

6. Section 32.24 *California* is amended by adding paragraphs A.3. and B.3. to Colusa National Wildlife Refuge; by revising paragraphs A.2. and A.4., and adding new paragraph B.4. to Delevan National Wildlife Refuge; by revising paragraph A. of Kesterson National Wildlife Refuge; by revising paragraphs A.2. and A.7. of Lower Klamath National Wildlife Refuge; by adding new paragraphs A.6 and B.4. to Sacramento National Wildlife Refuge; by removing paragraph A.6. and revising paragraph D.1. of San Francisco Bay National Wildlife Refuge; by removing paragraph A.5. from San Pablo Bay National Wildlife Refuge; by adding paragraphs A.3. and B.3. to Sutter National Wildlife Refuge; by revising paragraphs A.2. and A.3. of Tule Lake National Wildlife Refuge to read as follows:

§ 32.24 California.

* * * * *

Colusa National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not permitted.

B. Upland Game Hunting. * * *

* * * * *

3. Hunters may not possess more than 25 shells while in the field.

* * * * *

Delevan National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Snipe hunting is only permitted in the free roam areas.

* * * * *

4. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not permitted.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

4. Hunters may not possess more than 25 shells while in the field.

* * * * *

Kesterson National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and moorhens is permitted on designated areas of the refuge subject to the following conditions:

1. Only shotguns legal for refuge hunts are permitted, and shotguns must be unloaded while en route to, or from, parking areas or blinds.

2. Vehicles may stop only at designated parking areas; the dropping off of passengers or equipment, or stopping between designated parking areas is prohibited.

3. Hunters may not possess more than 25 shells while in the field.

4. Within the spaced blind area, hunters are restricted to their originally assigned, spaced blind, except while traveling to or from the parking area, placing decoys, or when shooting to retrieve crippled birds.

5. The Freitas Unit is open to waterfowl, coot, and moorhen hunting only.

6. On the Freitas Unit, only portable or temporary blinds are permitted; construction of permanent blinds is prohibited, and portable blinds must be removed from the refuge following each day's hunt.

* * * * *

Lower Klamath National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Shooting hours end at 1:00 p.m. daily on all California portions of the refuge, except that up to three one-day special youth or disabled hunter hunts per season may be designated by the refuge manager after 1:00 p.m.

* * * * *

7. Only nonmotorized boats and boats with electric motors are permitted in Units 4b and 4c.

* * * * *

Sacramento National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

6. Access to the hunt area is by foot traffic only. Bicycle and other conveyances are not permitted.

B. Upland Game Hunting. * * *

* * * * *

4. Hunters may not possess more than 25 shells while in the field.

* * * * *

San Francisco Bay National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing from designated shoreline trail fishing areas and from the Dumbarton Pier is permitted during the hours posted at the pier and refuge headquarters.

* * * * *

Sutter National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not permitted.

B. Upland Game Hunting. * * *

* * * * *

3. Hunters may not possess more than 25 shells while in the field.

* * * * *

Tule Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Hunting is permitted until 1:00 p.m. each day, except that up to three one-day special youth or disabled hunter hunts per season may be designated by the refuge manager after 1:00 p.m.

3. In the designated spaced blind areas, possession of any loaded firearms more than 200 feet from the established blind stakes is not permitted. Hunters select blind sites by lottery at the beginning of each hunt day. Hunters may shoot only from within their assigned blind sites.

* * * * *

7. Section 32.28 *Florida* is amended by revising paragraph A. of Arthur R. Marshall Loxahatchee National Wildlife Refuge; by revising paragraphs A., B. and C. of Chassahowitzka National Wildlife Refuge; and by revising paragraph C. of Lake Woodruff National Wildlife Refuge to read as follows:

§ 32.28 Florida.

* * * * *

Arthur R. Marshall Loxahatchee National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Chassahowitzka National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit and armadillo is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Lake Woodruff National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

8. Section 32.29 *Georgia* is amended by revising paragraph D.1. of Blackbeard Island National Wildlife Refuge to read as follows:

§ 32.29 Georgia.

* * * * *

Blackbeard Island National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Freshwater fishing is permitted from September 1 through February 28 from sunrise to sunset, except during managed deer hunts.

* * * * *

9. Section 32.32 *Illinois* is amended by revising paragraph D.1. of Chautauqua National Wildlife Refuge; by adding a new sentence to the end of paragraph D.1. and revising paragraph D.3, and removing paragraphs D.4. and D.5. and redesignating paragraphs D.6. and D.7. as paragraphs D.4. and D.5, respectively, of Crab Orchard National Wildlife Refuge; by revising paragraph A., the introductory language of paragraph B., and paragraphs B.1. and C. of Cypress Creek National Wildlife Refuge; and by revising paragraph C.2. and adding new paragraph C.3. to Mark Twain National Wildlife Refuge to read as follows:

§ 32.32 Illinois.

* * * * *

Chautauqua National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Sport fishing is allowed on all refuge waters during daylight hours from January 15 through October 15. Sport fishing is not allowed in the Waterfowl Hunting Area during waterfowl hunting season.

* * * * *

Crab Orchard National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. * * * It is unlawful to use jug or trot-lines with any flotation device that has previously contained any petroleum based materials or toxic substances.

* * * * *

3. It is unlawful to jug or trot-line fish in Devils Kitchen or Little Grassy Lakes.

Cypress Creek National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

1. Dove hunting on sunflower fields south of Hogue Woods is allowed by permit only.

2. Duck hunting is not permitted on the Brushy Bottoms moist soil unit which is south of Century School, nor on the Frank Bellrose Waterfowl Reserve.

3. Goose hunting is only allowed in the Frank Bellrose Waterfowl Reserve following the closure of the regular duck hunting season. Special goose hunting conditions for this unit are posted and made available by refuge staff.

4. Boats, decoys and blinds must be removed from the refuge at the conclusion of each day's hunt.

B. Upland Game Hunting. Hunting of bob-white quail, rabbit, squirrel, raccoon, opossum, coyote, red fox and grey fox is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters must report daily harvests if hunter check-in/check-out post is provided.

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Hunters must report harvest at State deer check station and indicate approximate location of deer killed by shotgun on map provided.

* * * * *

Mark Twain National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

2. Hunting of white-tailed deer on the Delair Division is allowed by permit only. Hunters must check in and out of the refuge each day. Stands must be removed each day; the construction or use of permanent blinds, platforms, or ladders is not permitted. Hunting is permitted from one half hour before sunrise to 3 o'clock p.m.

3. Hunting of white-tailed deer on the Clarence Cannon unit is allowed by permit only.

* * * * *

10. Section 32.33 *Indiana* is amended by revising paragraph D.3. of

Muscatatuck National Wildlife Refuge to read as follows:

§ 32.33 Indiana.

* * * * *

Muscatatuck National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

3. Ice fishing is permitted only when indicated by refuge signs.

* * * * *

11. Section 32.34 *Iowa* is amended by revising paragraph A. of De Soto National Wildlife Refuge; and by revising paragraph D.1 of Union Slough National Wildlife Refuge to read as follows:

§ 32.34 Iowa.

* * * * *

De Soto National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted only as posted.

* * * * *

Union Slough National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted from March 1 through November 15.

* * * * *

12. Section 37.37 *Louisiana* is amended by revising paragraphs D.1., D.2., D.3., D.4., D.5., and D.6 of Bayou Sauvage National Wildlife Refuge; by revising paragraph B. of Catahoula National Wildlife Refuge; by revising paragraph C.1. of D'Arbonne National Wildlife Refuge; by revising paragraphs D.1. and D.2. of Delta National Wildlife Refuge; and by revising paragraph C.1. of Upper Ouachita National Wildlife Refuge to read as follows:

§ 37.37 Louisiana.

* * * * *

Bayou Sauvage National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted during daylight hours only.

2. Sport fishing and shellfishing are permitted year round on all refuge lands south of the Intracoastal Waterway; from the banks of U.S. Highway 11; and within the banks of the borrow canal and borrow pits between U.S. Highway 11 and Interstate 10.

3. Only sport fishing with hand-held rod and reel or hand-held rod and line is permitted. Gait shrimp may be taken with cast nets 8 feet in diameter or less. Crawfish and crabs can be taken (up to 100 pounds per person) with wire nets up to 20 inches in diameter. All fishing, crabbing and crawfishing equipment must be attended at all times.

4. The use of trotlines, limblines, slat traps, gar sets, nets or alligator lines is prohibited on the refuge.

5. Only outboard motors 25 horsepower or less are permitted in waterways inside the hurricane protection levee.

6. Airboats, aircraft, motorized pirogues and go-devils are prohibited in refuge waters.

* * * * *

Catahoula National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of raccoon, squirrel and rabbit is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

D'Arbonne National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. Either-sex deer hunting with firearms is permitted for two consecutive days beginning with the second either-sex season in Union Parish and two consecutive days beginning with the third either-sex season.

* * * * *

Delta National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Recreational fishing and crabbing are permitted only from sunrise to sunset.

2. The use of trotlines, limblines, slat traps, gar sets, nets or alligator lines is prohibited.

* * * * *

Upper Ouachita National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. Either-sex deer hunting with firearms is permitted for two consecutive days beginning with the second either-sex season in Union Parish and two consecutive days beginning with the third either-sex season.

* * * * *

13. Section 32.40 *Massachusetts* is amended by revising paragraph C. of Parker River National Wildlife Refuge to read as follows:

§ 32.40 Massachusetts.

* * * * *

Parker River National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions: Hunting will be conducted in compliance with a refuge issued permit and State hunting regulations, as applicable.

* * * * *

14. Section 32.42 *Minnesota* is amended by adding the alphabetical listing of Fergus Falls Wetland Management District; by revising paragraph B. of Minnesota Valley National Wildlife Refuge; and by adding the alphabetical listing of the Morris Wetland Management District to read as follows:

§ 32.42 Minnesota.

* * * * *

Fergus Falls Wetland Management District

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted throughout the district except that no hunting is permitted on the Townsend, Headquarters, or Mavis Waterfowl Production Areas in Otter Tail County.

B. Upland Game Hunting. Upland game hunting is permitted throughout the district except that no hunting is permitted on the Townsend, Headquarters, or Mavis Waterfowl Production Areas in Otter Tail County.

C. Big Game Hunting. Big game hunting is permitted throughout the district except that no hunting is permitted on the Townsend, headquarters, or Mavis Waterfowl Production Areas in Otter Tail County.

D. Sport Fishing. Sport fishing is permitted throughout the district except that no fishing is permitted on the Townsend, Headquarters, or Mavis Waterfowl Production Areas in Otter Tail County.

Minnesota Valley National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of pheasant, grey and fox squirrel, cottontail rabbit, and turkey is permitted on designated areas of the refuge subject to the following conditions:

1. Permits may be required.

2. Only shotguns and bows and arrows are permitted.

* * * * *

Morris Wetland Management District

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted throughout the district except that no hunting is permitted on designated portions of the Edwards-Long Lake Waterfowl Production Area in Stevens County.

B. Upland Game Hunting. Upland game hunting is permitted throughout the district except that no hunting is permitted on designated portions of the Edwards-Long Lake Waterfowl Production Area in Stevens County.

C. Big Game Hunting. Big game hunting is permitted throughout the district except that no hunting is permitted on designated portions of the Edwards-Long Lake Waterfowl Production Area in Stevens County.

D. Sport Fishing. Sport fishing is permitted throughout the district except that no fishing is permitted on designated portions of the Edwards-Long Lake Waterfowl Production Area in Stevens County.

* * * * *

15. Section 32.43 *Mississippi* is amended by revising paragraphs A., B., C., D.4., D.5., D.6., and adding paragraph D.7 to Noxubee National Wildlife Refuge to read as follows:

§ 32.43 Mississippi.

* * * * *

Noxubee National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of waterfowl, coots, and woodcock

is permitted on designated areas of the refuge subject to the following condition: Permits are required except for woodcock.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, beaver, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

1. Only shotguns with shot size no larger than #4 and rifles larger than .22 standard caliber are permitted.

2. Only non-toxic shot is permitted in greentree reservoirs.

3. Squirrel and rabbit dogs are permitted after the last day of the refuge deer hunt.

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required except for turkey.

D. Sport Fishing. * * *

* * * * *

4. All trotline material must be cotton twine. Each trotline must have floats attached at each end with the name and address of the owner. One trotline per person and no more than two trotlines per boat. Trotlines must be tended every 24 hours and removed when not in use.

5. Jug fishing is permitted. Each jug must have the name and address of the owner attached and jugs must be removed after 48 hours.

6. The length limit for largemouth bass taken from Bluff and Loakfoma lakes is 14 inches. Largemouth bass less than 14 inches must be immediately released unharmed.

7. Boats are restricted to a no-wake, idle speed only on all refuge waters. Boats are not permitted in spillways.

* * * * *

16. Section 32.46 *Nebraska* is amended by adding the alphabetical listing of North Platte National Wildlife Refuge to read as follows:

§ 32.46 Nebraska.

* * * * *

North Platte National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved.]

B. Upland Game Hunting. [Reserved.]

C. Big Game Hunting. [Reserved.]

D. Sport Fishing. Designated areas of the refuge are open to sport fishing in accordance with State fishing regulations.

* * * * *

17. Section 32.49 *New Jersey* is amended by adding paragraph C.5. to Supawna Meadows National Wildlife Refuge to read as follows:

§ 32.49 New Jersey.

* * * * *

Sapawna Meadows National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

5. Single projectile ammunition may only be used when hunting from a stand elevated at least six feet above ground level and only in shotguns equipped with adjustable sights or a scope.

* * * * *

18. Section 32.52 *North Carolina* is amended by revising the introductory language of paragraph A. and adding new paragraph A.4. to Cedar Island National Wildlife Refuge; by revising paragraph D.3. of Mattamuskeet National Wildlife Refuge; and by revising the introductory language of paragraph A. and adding new paragraph A.4. to Swanquarter National Wildlife Refuge to read as follows:

§ 32.52 North Carolina.

* * * * *

Cedar Island National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

4. Ducks and coots may be taken only during the State waterfowl seasons occurring during November, December and January.

* * * * *

Mattamuskeet National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

3. Herring (alewife) dipping is permitted from March 1 to May 15 only from ½ hour before sunrise to ½ hour after sunset or as posted.

* * * * *

Swanquarter National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

4. Ducks and coots may be taken only during the State waterfowl seasons occurring during November, December and January.

* * * * *

19. Section 32.53 *North Dakota* is amended by adding the alphabetical listing of Lake Ilo National Wildlife Refuge to read as follows:

§ 32.53 North Dakota.

* * * * *

Lake Ilo National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved.]

B. Upland Game Hunting. [Reserved.]

C. Big Game Hunting. [Reserved.]

D. Sport Fishing. Designated areas of the refuge are open to sport fishing in accordance with State regulations.

* * * * *

20. Section 32.55 *Oklahoma* is amended by revising paragraph C. of Wichita Mountains National Wildlife Refuge to read as follows:

§ 32.55 Oklahoma.

* * * * *

Wichita Mountains National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of elk and white-tailed deer is permitted on designated areas subject to the following condition: Permits and payment of a fee is required.

* * * * *

21. Section 32.56 *Oregon* is amended by revising paragraph D.1. of Upper Klamath National Wildlife Refuge to read as follows:

§ 32.56 Oregon.

* * * * *

Upper Klamath National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted in Pelican Bay, Recreation Creek, Crystal Creek, Odessa Creek, Pelican Cut and that portion of Upper Klamath Lake located on the east side of the refuge.

* * * * *

22. Section 32.57 *Pennsylvania* is amended by adding paragraph B.4. to Erie National Wildlife Refuge to read as follows:

§ 32.57 Pennsylvania.

* * * * *

Erie National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

4. Pheasant hunting is not permitted on the Sugar Lake Division.

* * * * *

23. Section 32.60 *South Carolina* is amended by revising paragraphs B. and C. of Cape Romain National Wildlife Refuge; and by revising paragraphs A. and D.2. of Santee National Wildlife Refuge to read as follows:

§ 32.60 South Carolina.

* * * * *

Cape Romain National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of squirrel and raccoon is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Santee National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of mourning doves, ducks, and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Fishing is permitted in Cantey Bay, Black Bottom, Savannah Branch and refuge ponds and impoundments from March 1 through October 31.

* * * * *

24. Section 32.62 *Tennessee* is amended by revising paragraph D. of Lower Hatchee National Wildlife Refuge to read as follows:

§ 32.62 Tennessee.

* * * * *

Lower Hatchee National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

25. Section 32.63 *Texas* is amended by revising paragraph C.9. of Aransas National Wildlife Refuge to read as follows:

§ 32.63 Texas.

* * * * *

Aransas National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

9. Firearm hunters must wear a total of 400 square-inches of hunter orange including 144 square-inches visible in front and 144 square-inches visible in rear. Some hunter orange must appear on head gear.

* * * * *

26. Section 32.67 *Washington* is amended by removing paragraph A.1., redesignating paragraphs A.2. and A.3. as A.1. and A.2., respectively, by revising redesignated paragraph A.1, revising introductory language of paragraph B., revising paragraphs B.1. and D.2., removing paragraph D.3. and redesignating paragraph D.4. as paragraph D.3. to Columbia National Wildlife Refuge; by revising paragraph D. of Julia Butler Hansen Refuge for the Columbian White-tailed Deer; by revising paragraphs C. and D. of Little Pend Oreille National Wildlife Refuge; and by revising paragraph A.1. of Toppenish National Wildlife Refuge to read as follows:

§ 32.67 Washington.

* * * * *

Columbia National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. In Marsh Unit 1, hunting is permitted only on Wednesdays, Saturdays and Sundays.

* * * * *

B. Upland Game Hunting. Hunting of pheasant, quail, and partridge is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of upland game birds is permitted only during State seasons that run concurrently with the State waterfowl season.

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Motorized boats and nonmotorized boats are permitted on all other refuge waters open to fishing.

* * * * *

Julia Butler Hansen Refuge for the Columbian White-tailed Deer

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge.

Little Pend Oreille National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of big game is permitted on designated areas of the refuge.

D. Sport Fishing. Sport fishing is permitted on designated areas of the refuge.

* * * * *

Toppenish National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. In the designated blind areas, hunting is permitted only within 50 feet of designated blind sites except when shooting to retrieve crippled birds.

* * * * *

27. Section 32.70 *Wyoming* is amended by revising paragraph B. of Seedskadee National Wildlife Refuge to read as follows:

§ 32.70 Wyoming.

* * * * *

Seedskadee National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Designated areas of the refuge are open to upland game hunting.

* * * * *

28. Section 32.71 *Pacific Islands Territory* is amended by revising the introductory language of paragraph D., revising paragraph D.2., and adding new paragraphs D.4., D.5. and D.6. to Johnston Atoll National Wildlife Refuge to read as follows:

§ 32.71 Pacific Islands Territory.

* * * * *

Johnston Atoll National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing, lobstering, and shell collecting are permitted on designated areas of the refuge subject to the following conditions:

* * * * *

2. The use of traps or nets, except throw nets, is prohibited.

* * * * *

4. The collecting or taking of all forms of live or dead coral is prohibited.

5. The export of coral by any means will be prohibited after September 11, 1994.

6. It is prohibited to export any fish or invertebrates except for the following: members of the tuna fish family known as *Scombridae*, dolphin fish family known as *Coryphaenidae*, and sailfish family known as *Istiophoridae*.

Dated: June 27, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–17345 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–55–P

federal register

Wednesday
July 20, 1994

Part III

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Amendment to Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Amendment to the Tribal/State Gaming Compact Between the Nooksack Indian Tribe and the State of Washington executed on April 26, 1994.

DATES: This action is effective July 20, 1994.

FOR FURTHER INFORMATION CONTACT: Joe B. Walker, Acting Director Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: July 11, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–17686 Filed 7–19–94; 8:45 am]

BILLING CODE 4310–02–P

federal register

Wednesday
July 20, 1994

Part IV

Department of the Interior

Bureau of Indian Affairs

The Mohegan Tribe of Indians of Connecticut, Final Determination of Existence as an Indian Tribe; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination That the Mohegan Tribe of Indians of Connecticut, Does Exist as an Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Correction to notice.

SUMMARY: In the above mentioned notice published in the **Federal Register** issue of March 15, 1994, pages 12140–12141, the title of the notice reads incorrectly. "Inc." should not be a part of the title, or included in any part of the notice. The title should be corrected to read as follows: Final Determination That The Mohegan Tribe of Indians of Connecticut, Does Exist as an Indian Tribe.

FOR FURTHER INFORMATION CONTACT: Jonni Dreamer, Program Coordinator, (202) 208–3592.

Dated: July 1, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–17687 Filed 7–20–94; 8:45 am]

BILLING CODE 4310–02–M

federal register

Wednesday
July 20, 1994

Part V

The President

Presidential Determination No. 94–33—Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as Amended

Presidential Determination No. 94–34—Determination To Authorize the Furnishing of Emergency Military Assistance to the Dominican Republic Under the Foreign Assistance Act of 1961

Notice of July 19—Continuation of Iraqi Emergency

Federal Register
Vol. 59, No. 138
Wednesday, July 20, 1994

Presidential Documents

Title 3—

The President

Presidential Determination No. 94–33 of July 14, 1994

Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(b)(2), I hereby designate Palestinian refugees in the Middle East as qualifying for assistance, and determine that such assistance will contribute to the foreign policy interests of the United States.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, July 14, 1994.

[FR Doc. 94–17853
Filed 7–19–94; 11:29 am]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 94–34 of July 15, 1994

Determination To Authorize the Furnishing of Emergency Military Assistance to the Dominican Republic Under the Foreign Assistance Act of 1961

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(1) (the "Act"), I hereby determine that:

(1) an unforeseen emergency exists, which requires immediate military assistance to the Dominican Republic; and

(2) the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except section 506 of the Act.

Therefore, I hereby authorize the furnishing of up to $15 million in defense articles from the stocks of the Department of Defense, and military education and training to the Dominican Republic.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, July 15, 1994.

[FR Doc. 94–17854
Filed 7–19–94; 11:30 am]
Billing code 4710–10–M

Presidential Documents

Notice of July 19, 1994

Continuation of Iraqi Emergency

On August 2, 1990, by Executive Order No. 12722, President Bush declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Iraq. By Executive Orders Nos. 12722 of August 2, 1990, and 12724 of August 9, 1990, President Bush imposed trade sanctions on Iraq and blocked Iraqi government assets. Because the Government of Iraq has continued its activities hostile to United States interests in the Middle East, the national emergency declared on August 2, 1990, and the measures adopted on August 2 and August 9, 1990, to deal with that emergency must continue in effect beyond August 2, 1994. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iraq.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
July 19, 1994.

[FR Doc. 94–17852
Filed 7–19–94; 11:08 am]
Billing code 3195–01–P

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Wednesday, July 20, 1994

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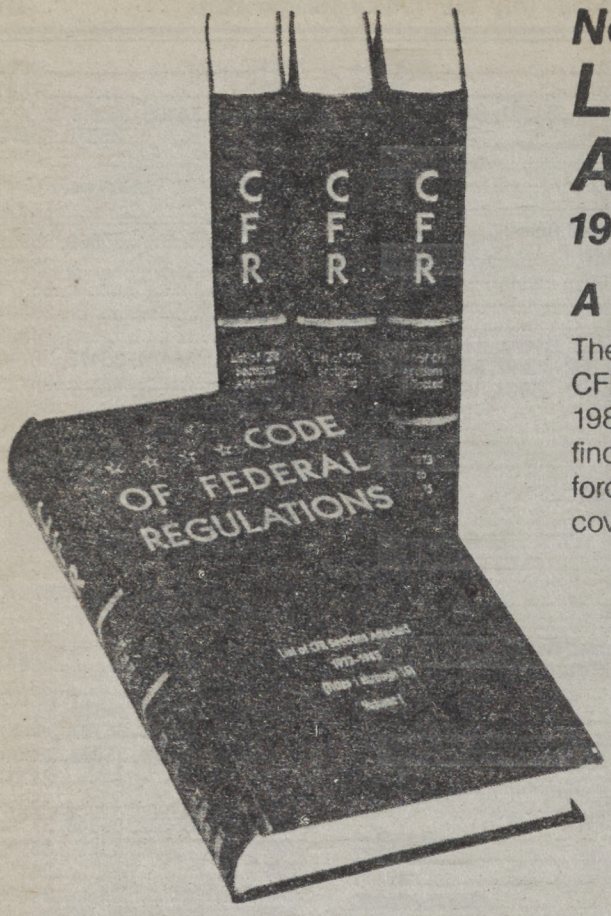
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New Publication

List of CFR Sections Affected

1973-1985

A Research Guide

These four volumes contain a compilation of the "List of CFR Sections Affected (LSA)" for the years 1973 through 1985. Reference to these tables will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

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(Credit card expiration date) ***Thank you for your order!***

(Signature)

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