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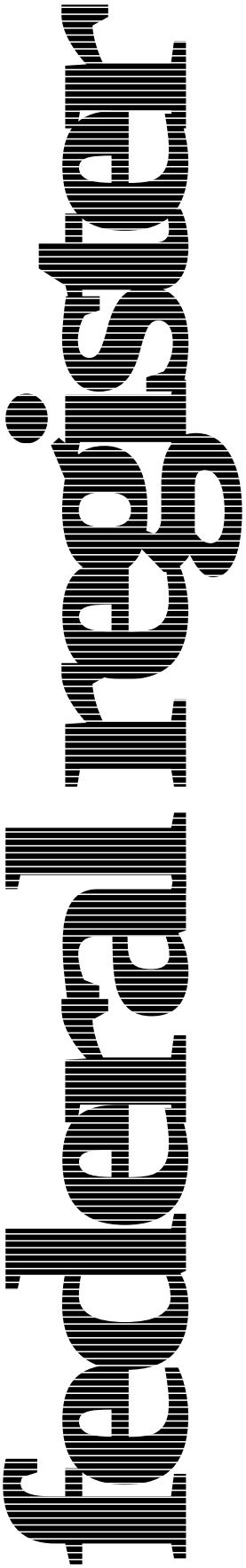

Tuesday
June 6, 1995

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WHEN: June 20 at 9:00 am

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

RIN 0563–AB29

General Crop Insurance Regulations; Florida Citrus Endorsement

AGENCY: Federal Crop Insurance Corporation, Agriculture.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (''FCIC'') hereby amends the Florida Citrus Endorsement that supplements the General Crop Insurance Policy. The intended effect of this interim rule is to require that the insured crop unit suffer at least a fifty percent (50%) average percent of damage before an indemnity would be due for any catastrophic risk protection policy.

DATES: This rule is effective on June 6, 1995. Written comments, data, and opinions on this rule will be accepted until close of business August 7, 1995 and will be considered when the rule is to be made final.

ADDRESSES: Written comments, data, and opinion on this interim rule should be sent to Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, United States Department of Agriculture (USDA), Washington, DC 20250. Hand or messenger delivery may be made to Suite 500, 2101 L Street, NW., Washington, DC. Written comments will be available for public inspection and copying in the Office of the Manager, 2101 L Street, NW., 5th Floor, Washington, DC, during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Federal Crop Insurance Corporation, United States Department of Agriculture, Washington, DC 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agriculture (''USDA'') procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 2000.

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

The information collection requirements contained in these regulations (7 CFR part 401) were previously approved by OMB pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. §§ 3501, *et seq.*), under OMB control numbers 0563–0001, 0563–0003, 0563–0009, 0563–0014, 0563–0029 and 0563–0036. The amendments set forth in this rule do not revise the content or alter the frequency of reporting for any of the forms cleared under the above-referenced dockets. Public reporting burden for the collection of information is estimated to range from 15 to 90 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The policy and procedure contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This regulation will not have a significant impact on a substantial number of small entities. This action neither increases nor decreases the paperwork burden on the insured farmer and the reinsured company. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. § 605) and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance Under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsection 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J or as promulgated by the National Appeals Division, whichever is applicable, must be exhausted before any judicial action may be brought regarding the provisions of this regulation.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

This interim rule implements the catastrophic risk protection plan of insurance mandated by amendments to the Federal Crop Insurance Act by the Federal Crop Insurance Reform Act of 1994 into the Florida Citrus endorsement.

List of Subjects in 7 CFR Part 401

Crop insurance, Florida Citrus Endorsement.

Interim Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1996 and succeeding crop years, to read as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 is revised to read as follows:

Authority: 7 U.S.C. 1506(1).

2. Section 401.143 is amended by revising subsection 9.a., paragraphs (2)

and (3) and adding paragraph (4) to read as follows:

§ 401.143 Florida citrus endorsement.

* * * * *

9. Claim for Indemnity

a. * * *

(1) * * *

(2) For limited and additional coverages, by multiplying the result in excess of 10 percent (e.g., 45% − 10%=35% payable), times the amount of insurance for the unit (the amount of insurance for the unit is determined by multiplying the insured acreage on the unit times the applicable amount of insurance per acre); or

(3) For catastrophic risk protection coverage, the result in excess of 50 percent divided by 50 percent (e.g. if the insured's average percent of damage is 75%; the percentage of the guarantee payable is 50 percent, (75% − 50%)÷50%); if the insured's average percent of damage is 60 percent, the percentage of the guarantee payable is 20 percent, (60% − 50%)÷50%) times the amount of insurance for the unit. The amount of insurance for the unit is determined by multiplying the insured acreage on the unit times the applicable amount of insurance per acre. For any average percentage of damage less than 50%, the insured is not eligible for an indemnity payment; and

(4) Multiplying the product obtained in (2) above for limited and additional coverage, or the product obtained in (3) above for catastrophic risk protection, by your share.

* * * * *

Done in Washington DC, on May 24, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–13747 Filed 6–5–95; 8:45 am]

BILLING CODE 3410–08–P

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV95–947–1IFR]

Oregon-California Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 947 for the 1995–96 fiscal period. Authorization of this budget enables the Oregon-California Potato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective July 1, 1995, through June 30, 1996. Comments received by July 6, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 114 and Order No. 947, both as amended (7 CFR part 947), regulating the handling of Irish potatoes grown in Oregon-California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect Oregon-California potato handlers are subject to assessments. Funds to administer the Oregon-California potato order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes during the 1995–96 fiscal period, which begins July 1, 1995, and ends June 30, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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

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

There are approximately 550 producers of Oregon-California potatoes under this marketing order, and approximately 40 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Oregon-California potato producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 fiscal period was prepared by the Oregon-California Potato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Oregon-California potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and

discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Oregon-California potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met on March 15, 1995, and unanimously recommended a budget of $46,200, $1,100 more than last season. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Annual report, $1,500 ($1,400), audit, $1,000 ($800), inspection fees, $2,500 ($2,000), and miscellaneous, $600 ($300). All other items are budgeted at last year's amounts.

The Committee also unanimously recommended an assessment rate of $0.006 per hundredweight, the same as last season. This rate, when applied to anticipated shipments of 7,920,000 hundredweight, will yield $47,520 in assessment income, which will be adequate to cover budgeted expenses. Funds in the reserve on June 30, 1995, estimated at $27,000, will be within the maximum permitted by the order of one fiscal period's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period begins on July 1, 1995, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 947 is amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR part 947 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 947.246 is added to read as follows:

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

§ 947.246 Expenses and assessment rate.

Expenses of $46,200 by the Oregon-California Potato Committee are authorized, and an assessment rate of $0.006 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1996. Unexpended funds may be carried over as a reserve.

Dated: May 31, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–13792 Filed 6–5–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS No. 1436–94]

RIN 1115–AC71

Immigrant Petitions; Religious Workers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations by providing that all persons, other than ministers, immigrating to the United States as religious workers must immigrate or adjust status to permanent residence before October 1, 1997. This rule implements section 101(a)(27)(C)(ii) of the Immigration and Nationality Act (Act) which provides that religious workers who have 2 years of membership and experience in a religious occupation or vocation qualify as special immigrant religious workers. By statute, this immigrant category for religious workers expires on October 1, 1997. This rule codifies, in regulatory form, the October 1, 1997, statutory deadline.

EFFECTIVE DATE: June 6, 1995.

FOR FURTHER INFORMATION CONTACT: Michael W. Straus, Senior Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION: Section 151(a) of the Immigration Act of 1990 (IMMACT), Public Law 101–649, dated November 29, 1990, created a new special immigrant category for religious workers and ministers by amending section 101(a)(27)(C) of the Act. In order to qualify as a minister, the applicant must be an ordained minister of a religious denomination and have carried on the vocation of minister during the 2 years immediately preceding the application for admission. Section 101(a)(27)(C) of the Act also provided special immigrant status for persons, other than ministers, who will work in a religious occupation or vocation for a religious organization in a professional or other capacity. Unlike the provision for ministers, which does not contain a sunset provision, section 101(a)(27)(C)(ii) (II) and (III) of the Act, as enacted by section 151(a) of IMMACT, provided that the other two types of religious workers must ''seek to enter the United States * * * before October 1, 1994.'' In October of 1994, the Immigration and Nationality Technical Corrections Act (INTCA), Pub. L. 103–416, extended the sunset date to October 1, 1997.

As originally promulgated, the regulations implementing IMMACT provided that petitions for professional religious workers and other religious workers must be filed on or before September 30, 1994. See 56 FR 60897–60913, dated November 29, 1991. The statute, however, requires that immigrant religious workers (with the

exception of ministers) actually enter the United States before October 1, 1994 (now October 1, 1997). In other words, in order to immigrate under the special immigrant religious worker category, aliens who are not ministers must have a petition approved on their behalf and either enter the United States as an immigrant or adjust their status to permanent residence before October 1, 1997.

For the sake of clarification, the Service published an interim regulation in the Federal Register which amended 8 CFR 204.5(m)(1) to provide specifically that aliens must obtain permanent resident status through immigration or adjustment of status on or before September 30, 1994, to qualify under the special immigrant religious worker category. See 59 FR 27228–29, dated May 26, 1994. The public was provided with a 30-day period, ending on June 27, 1994, to comment on the interim regulation. The Service received one comment.

Discussion of the Comment

The commenter stated that the Service misinterpreted the term ''seek to enter the United States before October 1, 1994'' in section 101(a)(27)(C)(ii) (II) and (III) of the Act. The commenter contended that the term ''seek to enter'' means that the religious worker initiate the immigration process before October 1, 1994. The comment urged the Service to allow special immigrant religious workers to meet the cut-off date by filing a petition before October 1, 1994. In the alternative, the commenter stated that the October 1, 1994, cut-off date could be met by applying for an immigrant visa at a U.S. consulate or by applying for adjustment of status under section 245 of the Act before October 1, 1994.

The Service disagrees with the commenter's interpretation of the statutory language. The language of section 101(a)(27)(C)(ii) of the Act requires that a qualifying religious worker seek to enter the United States before October 1, 1997. Section 101(a)(13) of the Act provides that an '' 'entry' means any coming of an alien into the United States.'' Reading section 101(a)(27)(C)(ii) of the Act in conjunction with section 101(a)(13) of the Act, it is clear that not only must the religious worker apply for admission to the United States as an immigrant before October 1, 1997, but he or she must actually seek to ''come into,'' i.e., arrive in the United States with an immigrant visa before October 1, 1997.

As stated in the preamble to the interim rule, a petition must be filed with the Service to establish the alien's eligibility for special immigrant status as a religious worker. See section 204(a)(1)(E) of the Act. At this initial step, an alien is merely seeking to be found classifiable under section 203(b)(4) of the Act. After the Service approves a petition, the next step in this process is an application for an immigrant visa at a U.S. consulate. See section 222 of the Act. After the consulate issues an immigrant visa, the alien must present himself or herself at a Port-of-Entry and apply to enter the United States. See section 221(e) of the Act. It is only at this step in the process that the alien is deemed to be seeking to enter the United States as a special immigrant. Further, it is only when the alien is actually admitted to the United States that he or she affects an ''entry.'' The term ''seek to enter before October 1, 1997,'' therefore, refers only to an alien who is applying for admission to the United States as an immigrant before that date.

This reading of section 101(a)(27)(C) of the Act is consistent with the statutory scheme of the Act. Congress, by using the language ''seek to enter before October 1, 1997,'' evidenced its intent to establish the cut-off date as the time the alien actually enters the United States as an immigrant. Had Congress intended to set the cut-off date as the date a petition was filed with the Service on behalf of the alien religious worker or the date the alien applied for adjustment of status, it would have specifically provided so. Throughout the Act, Congress has enacted provisions using cut-off dates based on the time of application for permanent residence rather than entry. For example, the special immigrant category for certain employees of international organizations and their families requires applicants to apply for an immigrant visa or adjustment of status before a certain date. See section 101(a)(27)(I) of the Act. In addition, the Chinese Student Protection Act of 1992, Pub. L. 102–404, provides that a qualified alien must apply for adjustment of status during a 1-year application period, beginning July 1, 1993. See also section 2(d) of the Immigration Nursing Relief Act of 1989, Pub. L. 101–238.

This interpretation, and consequently the interim rule, is consistent with the Department of State regulation which provides that an immigrant visa issued on behalf of a special immigrant religious worker, other than a minister, shall be valid no later than September 30, 1994. See 22 CFR 42.32(d)(1)(ii). The Service notes that, although the Department of State's regulation erroneously makes reference to a ''religious worker'' as defined in 8 CFR 204.5(l), rather than 8 CFR 204.5(m), it is clear that this provision can only refer to an alien described in section 101(a)(27)(C) of the Act, other than a minister of religion.

Since the sole amendment to section 101(a)(27)(C)(ii) of the Act made by the INTCA was the extension of the sunset date to October 1, 1997, the final regulation will provide that religious workers, other than ministers, must obtain permanent resident status through immigration or adjustment of status before October 1, 1997, in order to immigrate as special immigrant religious workers.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely clarifies a statutory deadline for a limited number of aliens to become special immigrant religious workers.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation 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.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has addressed this rule in light of the criteria in Executive Order 12606 and has determined that it will have no effect on family well-being.

List of Subjects in 8 CFR Part 204

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

Accordingly, the interim rule amending 8 CFR part 204 which was

published at 59 FR 27228–27229 on May 26, 1994, is adopted as a final rule with the following change:

PART 204—IMMIGRANT PETITIONS

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

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

§ 204.5 [Amended]

2. In § 204.5, paragraph (m)(1) is amended in the last sentence by revising the entry for the year ''1994'' to read: ''1997''.

Dated: May 8, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–13805 Filed 6–5–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, 127, 129, and 135

[Docket No. 18510; SFAR No. 38–11]

RIN 2120–AF73

Special Federal Aviation Regulation No. 38–2; Certification and Operating Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment establishes a new termination date for Special Federal Aviation Regulation [SFAR] No. 38–2, which contains the certification and operating requirements for persons transporting passengers or cargo for compensation or hire. The current termination date for SFAR 38–2 is June 1, 1995. Because the FAA has not completed a rulemaking process to consolidate and codify the certification and operations specifications requirements, an extension of the termination date is necessary. If this rulemaking process is completed before the new termination date of June 1, 1996, the FAA intends to rescind SFAR 38–2 as part of that rulemaking.

DATES: Effective June 1, 1995, SFAR 38–2 terminates June 1, 1996.

Comments must be received on or before August 1, 1995.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Docket No. 18510, 800 Independence Avenue, SW., Washington, DC 20591, or deliver comments in triplicate to: Federal Aviation Administration, Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC. Comments may be examined in the Rule Dockets weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Davis, Project Development Branch, AFS–24, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267–8096.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1978, the FAA issued SFAR 38 [43 FR 58366; December 14, 1978] as a consequence of the Airline Deregulation Act of 1978 (ADA or Act) (Pub. L. 95–504, 92 Stat. 1705). That act expresses the Congressional intent that the Federal Government diminish its involvement in regulating the economic aspects of the airline industry. To accomplish this, Congress directed that the Civil Aeronautics Board (CAB) be abolished on December 31, 1984, and that certain of its functions cease before that date. Anticipating its sunset, the CAB itself curtailed or suspended much of its regulatory activity during the period 1979–1984. By January 1, 1985, the remaining CAB functions were transferred to the Department of Transportation (DOT).

Because some aspects of FAA safety regulations relied upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measure to provide for an orderly transition to the change in economic regulatory activities. This action was consistent with the Congressional directive contained in Section 107(a) of the Act that the deregulation of airline economics result in no diminution of the high standard of safety in air transportation that existed when the ADA was enacted. SFAR 38 [43 FR 58366; December 14, 1978] set forth FAA certification and operating requirements applicable to all ''air commerce'' and ''air transportation'' operations for ''compensation or hire.'' (SFAR 38 did not address Part 133 External Load Operations, Part 137 Agriculture Aircraft Operations, or Part 91 training and other special purpose operations.)

On December 27, 1984, the FAA issued SFAR 38–1 [50 FR 450; January 4, 1985], which merely extended the termination date of SFAR 38 and allowed the FAA time to propose and receive comments on revising SFAR 38.

On May 28, 1985, the FAA issued SFAR 38–2 [50 FR 23941; June 7, 1985], which updated SFAR 38 in light of changes since 1978 and clarified provisions stating which FAA regulations apply to each operator (including air carriers) and each type of operation. This action was necessary because of the changes in the air transportation industry brought about by economic deregulation. Before deregulation, economic certificates were rigidly compartmentalized, and each air carrier typically was authorized to conduct only one type of operation (domestic, flag, or charter (e.g., supplemental)). The safety certificate issued to the air carrier by the FAA paralleled the authorization granted in the air carrier's economic certificate. Economic deregulation broke down the barriers between the various types of operations. The economic authority granted an air carrier by the DOT is no longer indicative of the safety regulations applicable to the type of operation authorized by the FAA. Thus, it was necessary for the FAA to establish guidelines to determine what safety standards were applicable to an operator's particular operation.

Since that time, the FAA has proposed rulemaking to codify the certification and operations specifications requirements currently found in SFAR 38–2 into a new part 119 [Notice No. 88–16] [53 FR 39852; October 12, 1988].

On April 11, 1990, the FAA reopened the comment period for Notice No. 88–16 [55 FR 14404; April 17, 1990] for comments on the definition of ''scheduled operation'' and the notification requirement for changes to operations specifications for a period of 30 days. The reopened comment period closed May 17, 1990. Based on the complexity of comments received, the FAA subsequently published an SNPRM on June 8, 1993 [58 FR 32248]; the comment period closed July 23, 1993.

Recently the FAA issued a notice proposing that many part 121 requirements should be imposed on certain part 135 operators [60 FR 16230; March 29, 1995]. If that proposal is adopted, the rules specifying the applicability of parts 121, 125, and 135 would be codified in a new part 119. In that same NPRM, the FAA proposed to rescind SFAR 38–2 if a final rule affecting commuter operators and establishing a new part 119 is issued. However, in the meantime, SFAR 38–2 contains the current requirements for certification and operations

specifications. Thus, the FAA finds it necessary to extend the SFAR until June 1, 1996.

Good Cause Justification for Immediate Adoption

The reasons which justify the adoption, and the subsequent revision, of SFAR 38 still exist. Therefore, it is in the public interest to establish a new termination date for SFAR 38–2 of June 1, 1996. If the FAA publishes a final rule adopting a new part 119 into the Federal Aviation Regulations before the termination date, that rulemaking will rescind SFAR 38–2. This action is necessary to permit continued operations under SFAR 38–2 and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

For this reason, and because this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedures are unnecessary, impracticable, and contrary to the public interest, and that the amendment should be made effective in less than 30 days after publication. However, interested persons are invited to submit such comments as they desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, in the rules docket for examination by interested parties.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have ''a significant economic impact on a substantial number of small entities.''

This rule will not impose any additional incremental costs over those that would have been incurred when SFAR 38–2 was first issued. Therefore, I certify that the amendment will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The FAA finds this amendment will have no impact on international trade.

Paperwork Reduction Act

Information collection requirements in this SFAR have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0008.

Federalism Implications

The amendment 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 amendment would not have sufficient federalism applications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that this action is not significant under Executive Order 12866; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and the anticipated impact is so minimal that a full regulatory evaluation is not required.

List of Subjects

14 CFR Part 121

Air carrier, Aircraft, Airmen, Air transportation, Aviation safety.

14 CFR Part 125

Aircraft, Airmen, Airports, Airspace, Air traffic control, Air transportation, Chemicals, Children, Drugs, Flammable materials, Handicapped, Hazardous materials, Infants, Smoking.

14 CFR Part 127

Air carriers, Aircraft, Airmen, Airworthiness.

14 CFR Part 129

Air carriers, Aircraft, Airmen, Air transportation, Aviation safety, Safety.

14 CFR Part 135

Air carriers, Aircraft, Airmen, Air taxis, Air transportation, Airworthiness, Aviation safety, Safety.

Adoption of the Amendment

In consideration of the foregoing SFAR 38–2 (14 CFR parts 121, 125, 127, 129, and 135) of the Federal Aviation Regulations is amended as follows:

PART 121—[AMENDED]

1. The authority citation for part 121 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40105, 40113, 44701–44702, and 44704–44705.

PART 125—[AMENDED]

2. The authority citation for part 125 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40105, 44113, 44701–44705, 44707–44714, 44716–44717, and 44722.

PART 127—[AMENDED]

3. The authority citation for part 127 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44705, 44710–44711, and 44713.

PART 129—[AMENDED]

4. The authority citation for part 129 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1511–1522, 40101, 40103–40105, 40113, 40119, 44701, 44901–44904, 44906, 44912, 44914, 44935–44939, and 48107.

PART 135—[AMENDED]

5. The authority citation for part 135 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40105, 44113, 44701–44705, 44707–44717, 44722, and 45303.

6. Special Federal Aviation Regulation No. 38–2 is amended by removing the words ''June 1, 1995'' in the last paragraph, and by adding in their place the words ''June 1, 1996.''

Issued in Washington, DC, on May 31, 1995.

David R. Hinson,

Administrator.

[FR Doc. 95–13708 Filed 5–31–95; 4:05 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

Animal Drugs, Feeds, and Related Products; Oxytetracycline Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a hybrid new animal drug application (NADA) filed by Cross Vetpharm Group Ltd. The NADA

provides for the use of oxytetracycline injection in cattle and swine for the treatment of diseases caused by oxytetracycline susceptible organisms.

EFFECTIVE DATE: June 6, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland, has filed ANADA 200–117 (hybrid application) which provides for use of oxytetracycline injection as follows: (1) Intramuscular or intravenous use in beef and nonlactating dairy cattle for the treatment of pneumonia and shipping fever associated with *Pasteurella* spp. and *Hemophilus* spp.; infectious bovine keratoconjunctivitis (pinkeye) caused by *Moraxella bovis*; foot rot and diphtheria caused by *Fusobacterium necrophorum*; bacterial enteritis (scours) caused by *Escherichia coli*; wooden tongue caused by *Actinobacillus lignieresi*; leptospirosis caused by *Leptospira pomona*; and wound infections and acute metritis caused by strains of staphylococci and streptococci organisms sensitive to oxytetracycline; (2) intramuscular use in swine for treatment of bacterial enteritis (scours, colibacillosis) caused by *E. coli*; pneumonia caused by *P. multocida*; and leptospirosis caused by *L. pomona*; and (3) intramuscular use in sows for control of infectious enteritis (baby pig scours, colibacillosis) in suckling pigs caused by *E. coli*.

The data submitted in support of this hybrid NADA satisfy the requirements of section 512(b)(1) and (b)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(b)(1) and (b)(2)) and 21 CFR part 514 of the regulations. The hybrid NADA has been defined in the Center's Seventh Generic Animal Drug Policy Letter, dated March 20, 1991. The hybrid application relies on the approval of a listed (pioneer) animal drug and contains additional data needed to support the change in the generic product. The hybrid applicant is thus relying on the approval of the listed animal drug to the extent that such reliance is allowed under section 512(n) of the act, to establish the safety and effectiveness of the active ingredient. An application that relies in part on the approval of a listed animal drug is, for this purpose, considered an application described in section 512(b)(2).

Cross Vetpharm Group Ltd.'s ANADA 200–117 for oxytetracycline injection (Oxy-Shot™ LA) is approved as a generic copy of Pfizer's NADA 113–232 for oxytetracycline injection (Liquamycin® LA–200). The ANADA is approved as of April 13, 1995, and the regulations are amended in 21 CFR 522.1660(b) and (c)(2)(iii) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Additionally, the regulations are amended in 21 CFR 510.600(c) to add Cross Vetpharm Group Ltd. to the list of sponsors of approved applications.

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

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

Because this hybrid NADA is reviewed in part as an application under section 512(b)(1) of the act, the hybrid application is eligible for 3 years of exclusivity under section 512(c)(2)(F)(iii) of the act. Under section 512(c)(2)(F)(iii) of the act, this approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning on April 13, 1995, because the supplemental application contains reports of new clinical or field investigations (other than bioequivalence or residue studies) essential to the approval of the application and conducted or sponsored by the applicant.

Under the center's supplemental approval policy (21 CFR 514.106(b)(2)(ii)), this is a Category II change. The approval of this change is not expected to have any adverse effect on the safety or effectiveness of this new animal drug.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for ''Cross Vetpharm Group Ltd.'' and in the table in paragraph (c)(2) by numerically adding a new entry for ''061623'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland.	061623
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
061623	Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland.
* * * * *	

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

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

§ 522.1660 [Amended]

4. Section 522.1660 *Oxytetracycline injection* is amended in paragraph (b) by removing the phrase ''000010, 000069, and 059130'' and adding in its place

''000010, 000069, 059130, and 061623'', and in paragraph (c)(2)(iii) by revising the last sentence to read ''Discontinue treatment at least 42 days prior to slaughter when provided by 000010 and 28 days prior to slaughter when provided by 000069, 059130, or 061623.''

Dated: May 26, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–13707 Filed 6–5–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 886

RIN 1029–AB72

Abandoned Mine Reclamation Grant Procedures

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

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final regulations which were published Wednesday, February 22, 1995, (60 FR 9974). The regulations related to State grant closeout reports.

EFFECTIVE DATE: June 6, 1995.

FOR FURTHER INFORMATION CONTACT: Norman J. Hess, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–208–2949.

SUPPLEMENTARY INFORMATION: Both the preamble to the proposed rule published on November 8, 1993 (58 FR 59334), and the preamble to the final rule advised that a revised paragraph 886.23(b) would be added to § 886.23 which would require, at the completion of a grant, agency submission of closeout reports as specified by OSM. Specifically, paragraph 886.23(b) required submission of Form OSM–76 upon project completion. This submission was deemed necessary to comply with the requirement in section 403(c) of the Surface Mining Control and Reclamation Act of 1977, Public Law 95–87, as amended, that on a regular basis OSM note on its inventory those projects completed under Title IV. However, paragraph 886.23(b) of the final rule language was inadvertently published without the reference to ''upon project completion.'' The purpose of this document is to reiterate the intent of the regulation which is that Form OSM–76 and any other closeout reports be filed upon project completion, and to correct paragraph 886.23(b) to include the phrase ''upon project completion.''

Accordingly, the publication on February 22, 1995, of the final regulations which were the subject of FR Doc. 95–4259, is corrected as follows:

§ 886.23 [Corrected]

Paragraph 1. On page 9983, in the first column, in § 886.23, paragraph (b), line one, the words ''At the completion of each grant'' is corrected to read ''Upon project completion.''

Dated: May 30, 1995.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 95–13772 Filed 6–5–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD09–93–009]

RIN 2115–AE46

Special Local Regulations; Macomb Daily Offshore Classic, Lake St. Clair, St. Clair Shores, MI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing Special Local Regulations for the offshore power boat race, Macomb Daily Offshore Classic (formerly Quake On The Lake). This event will be held on Lake St. Clair, St. Clair Shores, MI, Saturday, May 20, 1995, and thereafter annually on the third weekend in May on Lake St. Clair between Masonic Boulevard and Point Huron. This event will have an estimated 30 high performance power boats racing a closed course race on Lake St. Clair which could pose hazards to navigation in the area. Special Local Regulations which would restrict vessel traffic in the area are necessary to ensure the safety of life, limb and property on portions of Lake St. Clair during this event.

EFFECTIVE DATE: July 6, 1995.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Second Class Jeffrey M. Yunker, Ninth Coast Guard District, Aids to Navigation and Waterways Management Branch, Room 2083, 1240 East Ninth Street, Cleveland, Ohio, 44199–2060, (216) 522–3990.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Lieutenant Junior Grade Byron D. Willeford, Project Officer, Ninth Coast Guard District, Aids to Navigation and Waterways Management Branch, and Lieutenant Karen E. Lloyd, Project Attorney, Ninth Coast Guard District Legal Office.

Regulatory History

On June 3, 1993, the Coast Guard published a notice of proposed rulemaking entitled Special Local Regulations, Quake on the Lake, Lake St. Clair, St. Clair Shores, MI in the **Federal Register** (58 FR 31488). The deadline for the submission of comments was July 19, 1993. The Coast Guard received no letters commenting on the proposal. A public hearing was not requested and one was not held. The Commander, Ninth Coast Guard District has decided to publish the final rule as proposed.

Background and Purpose

On April 4, 1995, the Lake St. Clair Offshore Racing Association submitted an Application for Approval of Marine Event for the Macomb Daily Offshore Classic. The sponsor held this event on August 8, 1993, as the ''Quake on the Lake''. A Notice of Proposed Rulemaking was published for this event and no comments were received. The only changes to this event are the name and date it is being held.

Federalism Implications

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

Environment

The Coast Guard is conducting an environmental analysis for this event pursuant to section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, and the Coast Guard Notice of final agency procedures and policy for categorical exclusions found at (59 FR 38654; July 29, 1994).

Economic Assessment and Certification

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review

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 regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of the DOT is unnecessary.

Collection of Information

This regulation will impose no collection of information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 33 CFR Part 100

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

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—[AMENDED]

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

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

2. In part 100, a new § 100.902 is added to read as follows:

§ 100.902 Macomb Daily Offshore Classic, Lake St. Clair, St. Clair Shores, MI.

(a) *Race course.*

Location: That portion of Lake St. Clair enclosed by:

Latitude	*Longitude*
42° 34.2′N	082° 48.3′W, to
42° 33.8′N	082° 47.5′W, to
42° 31.2′N	082° 49.7′W, to
42° 31.5′N	082° 50.5′W, thence to
42° 34.2′N	082° 48.3′W.

Datum: NAD 1983.

(b) *No entry zone.*

Location: That portion of Lake St. Clair, on the outside of the race course area from Point Huron southwest to:

Latitude	*Longitude*
42° 32.9′N	082° 47.8′W, thence to
42° 33.9′N	082° 50.3′W, thence northeast along the shoreline to Point Huron.

Datum: NAD 1983.

(c) *Regulation:* No vessel may enter the ''No Entry Zone'' or ''Race Course'' without prior approval of the Coast Guard Patrol Commander. The ''No Entry Zone'' will include all of the L'anse Creuse Bay area.

(d) *Caution area*—(1) *Location*: That portion of Lake St. Clair, on the outside of the race course area from a west-northwest line between:

Latitude	*Longitude*
42° 32.9′N	082° 47.8′W, and
42° 33.9′N	082° 50.3′W, southwest along the shoreline to:
42° 31.5′N	082° 52.3′W, thence to
42° 30.5′N	082° 49.6′W, thence to
42° 32.9′N	082° 47.8′W.

Datum: NAD 1983.

(2) *Regulation:* All vessels transiting the ''Caution Area'' will be operated at bare steerageway, keeping the vessel's wake at a minimum, and exercise a high degree of caution.

(e) *Vessel spectator areas:* Two Vessel Spectator Areas will be established by the Coast Guard Patrol Commander, on the east and west side of the race course.

(1) *Location:* That portion of Lake St. Clair, rectangular in shape, enclosed by:

Western Spectator Area:

Latitude	*Longitude*
42° 33.6′N	082° 49.5′W, to
42° 33.4′N	082° 49.1′W, to
42° 31.8′N	082° 50.8′W, to
42° 32.0′N	082° 51.2′W, thence to
42° 33.6′N	082° 49.5′W.

Eastern Spectator Area:

Latitude	*Longitude*
42° 32.9′N	082° 47.6′W, to
42° 32.7′N	082° 47.2′W, to
42° 30.9′N	082° 48.4′W, to
42° 31.2′N	082° 48.8′W, thence to
42° 32.9′N	082° 47.6′W.

Datum: NAD 1983.

(2) *Regulation:* Vessels will be permitted to anchor to watch the race. All vessels transiting the ''Vessel Spectator Areas'' will be operated at bare steerageway, keeping the vessel's wake at a minimum, and exercise a high degree of caution.

(f) *Patrol Commander*—(1) The Coast Guard will patrol the regulated areas under the direction of a designated Coast Guard Patrol Commander (Commanding Officer, U.S. Coast Guard Station St. Clair Shores, MI). The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign ''Coast Guard Patrol Commander''.

(2) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life, limb and property.

(g) *General regulations applicable to all areas*—Commercial vessels desiring to transit the regulated areas shall provide prior notification to the Coast Guard Patrol Commander. Any vessel traffic desiring to transit the regulated areas may do so only with prior approval of the Coast Guard Patrol Commander. Vessels in the regulated areas shall comply with the directions of the Coast Guard Patrol Commander.

(h) *Effective date:* These regulations will become effective from 11 A.M. (EDST) until 2 P.M. (EDST), on May 20, 1995, unless otherwise terminated by the Coast Guard Patrol Commander (Commanding Officer, U.S. Coast Guard Station St. Clair Shores, MI), and thereafter annually on the third weekend in May, at the same prescribed times unless otherwise specified in the Coast Guard Local Notice to Mariners.

Dated: May 8, 1995.

Rudy K. Peschel,

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

[FR Doc. 95–13778 Filed 6–5–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD02–95–036]

RIN 2115–AE46

Special Local Regulations; Mississippi Belle II 4th Anniversary Upper Mississippi River Mile 518.5 and 519.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: A special local regulation is being adopted for the Mississippi Belle II 4th Anniversary which will be held on the Upper Mississippi River near Clinton, Iowa on June 12, 1995. This rule is needed to control vessel traffic in the immediate vicinity of the event. The regulation will restrict general navigation in the regulated area for the safety of spectators, participants and through traffic.

EFFECTIVE DATE: This regulation is effective from 10 p.m. to 11 p.m. local time on June 12, 1995.

FOR FURTHER INFORMATION CONTACT:

LCDR J.O. Jaczinski, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103–2832. The telephone number is (314) 539–3971, fax (314) 539–2685.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LCDR J.O. Jaczinski, Project Officer, Second Coast Guard District, Boating Safety Division and LT S. Moody, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this rule and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the sponsor's late submission of the regatta application left insufficient time to publish a notice of proposed rulemaking in advance of the scheduled event. The Coast Guard deems it to be in the public's best interest to issue a regulation immediately.

Background and Purpose

The Mississippi Belle II 4th Anniversary consists of a fireworks display. The fireworks will begin at 10 p.m. local time on June 12, 1995 and will end at 10:30 p.m. The river will be closed from 10 p.m. local time and will reopen 11 p.m. local time. In order to provide for the safety of spectators and participants, and for the safe passage of through traffic, the Coast Guard will restrict vessel movement in the regulated area. The river will be closed during part or all of the effective period to all vessel traffic except official regatta vessels and patrol craft. These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35.

Regulatory Evaluation

This rule 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 been exempted from review by the Office of Management and Budget under that order. It is not 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 rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because of the event's short duration.

Federalism Assessment

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

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.C of Commandant Instruction M16475.1B, (as revised by 59 FR 38654; July 29, 1994) this rule is excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

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

Temporary Regulations

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

PART 100—[AMENDED]

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

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

2. A temporary section 100.35.T02–036 is added, to read as follows:

§ 100.35–T02–036 Upper Mississippi River near Clinton, Iowa.

(a) *Regulated area.* Upper Mississippi River mile 518.5 to 519.0.

(b) *Special local regulations.* (1) Except for official regatta vessels and patrol craft no person or vessel may enter or remain in the regulated area without permission of the Patrol Commander.

(2) The Coast Guard Patrol Commander will be a commissioned or petty officer designated by the Commanding Officer, Marine Safety Office St. Louis, Missouri and may be contacted, during the event, on channel 16 (156.8 MHZ) by the call sign ''Coast Guard Patrol Commander.'' The Patrol Commander may:

(i) Direct the anchoring, mooring, or movement of any vessel within the regulated area,

(ii) Restrict vessel operation within the regulated area to vessels having particular operating characteristics,

(iii) Terminate the marine event or the operation of any vessel when necessary for the protection of life and property, and

(iv) Allow vessels to transit the regulated area whenever an event is not being conducted and the transit can be completed.

(3) Coast Guard commissioned or petty officers will patrol the event on board patrol vessels which display the Coast Guard Ensign. If radio or other voice communications are not available to communicate with a vessel, they will use a series of sharp, short blasts by whistle or horn to signal the operator of any vessel in the vicinity of the regulated area to stop. When signaled, the operator of any vessel in the immediate vicinity of the regulated area shall stop the vessel immediately and shall proceed as directed.

(4) Vessels desiring to transit the regulated area may do so only with the prior approval and direction of the Patrol Commander.

(5) The Patrol Commander will terminate enforcement of this section at the conclusion of the marine event if earlier than the announced termination time.

(c) *Effective Date.* This section is effective from 10 p.m. to 11 p.m. local time on June 12, 1995.

Dated: May 24, 1995.

Frank M. Chliszczyk,

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

[FR Doc. 95–13773 Filed 6–5–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 110

[CGD11–95–001]

RIN 2115–AA98

Anchorage Grounds; Pacific Ocean at Santa Catalina Island, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is reducing the Isthmus Cove Anchorage Grounds of Santa Catalina Island, CA, to exclude the area designated as the Wrigley Marine Science Center Marine Life Refuge, formerly known as the Catalina Marine Science Center Marine Life Refuge, from the Isthmus Cove Anchorage Grounds. The Coast Guard is voluntarily reducing the geographic limits of the Anchorage Grounds at the suggestion of the State of California. In establishing the Marine Life Refuge, California has prohibited unauthorized anchoring in the affected area under state law. By excluding the area encompassed by the Marine Life Refuge from the Anchorage Grounds, this action will reduce confusion among recreational and commercial mariners, and enhance the safety of navigation in support of the efforts of the State of California.

EFFECTIVE DATE: This rule is effective July 6, 1995.

FOR FURTHER INFORMATION CONTACT:

Lieutenant P.C. Barnett, Aids to Navigation and Waterways Management Branch, telephone (310) 980–4300, extension 513

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Lieutenant P.C. Barnett, Eleventh Coast Guard District, Aids to Navigation and Waterways Management Branch, Project Officer, and Lieutenant R.J. Barber, Eleventh Coast Guard District Legal Office, Project Attorney.

Regulatory History

On February 23, 1995, the Coast Guard published a notice of proposed rulemaking for these regulations in the **Federal Register** (60 FR 10043). The comment period ended April 24, 1995. The Coast Guard received no comments on the proposal. A public hearing was not requested and no hearing was held.

Background and Purpose

The Isthmus Cove Anchorage Grounds (the Anchorage) were codified by final rulemaking CGFR 67–46, published in 32 FR 17728 (December 12, 1967). The Wrigley Marine Science Center (the Center) was built during that same year. The Center's primary function was and continues to be to provide an environment that facilitates scientific investigation. It was intentionally located in close proximity to a virtually undisturbed marine environment to allow researchers the opportunity to conduct long-term underwater investigations of sea life under conditions where human influences are minimal.

In 1988, the state of California established the Wrigley Marine Science Center Marine Life Refuge (the Refuge), formerly known as the Catalina Marine Science Center Marine Life Refuge, near the Center. A portion of the waters of the Refuge is located within the waters of the Anchorage.

In order to protect and preserve the delicate ecosystem of the Refuge and to prevent damage caused by anchors to the valuable scientific equipment being used to conduct research within the Refuge, the state of California, as part of the original legislation establishing the Refuge, prohibits unauthorized anchoring and mooring within the Refuge.

This amendment to the Isthmus Cove Anchorage Grounds reduces the size of the Anchorage by removing from it the waters located in Fisherman Cove and those waters shoreward from a line extending approximately 50 yards from shore connecting Blue Cavern Point to Fisherman Cove. It reduces confusion among recreational and commercial mariners, and enhances the safety of navigation in support of the efforts of the State of California, by excluding the area encompassed by the Marine Life Refuge from the Anchorage Grounds.

This amendment also describes the Anchorage more accurately by using coordinates in addition to making reference to well-known landmarks.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under Section 6(a)(3) of that Order. It has been exempted from review 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 rulemaking to be so minimal that a full Regulatory Evaluation under paragraph 10e of the Department of Transportation regulatory policies and procedures is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rulemaking would have significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environmental Assessment

The Coast Guard considered the environmental impact of this rulemaking and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulations

In consideration of the foregoing, the Coast Guard is amending part 110 of title 33, Code of Federal Regulations, as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.216 is amended by revising paragraph (a)(2) to read as follows:

§ 110.216 Pacific Ocean at Santa Catalina Island, CA.

(a) * * *

(2) *Isthmus Cove.* All the waters bounded by a line connecting the following coordinates, beginning at 33°–27′–12″ N, 118°–30′–05″ W (the promontory known as Lion Head); thence southeast to 33°–26′–55.5″ N, 118°–28′–44″ W; thence west-southwest to 33°–26′50″ N, 118°–29′–08″ W; thence southwest to 33°–26′–39″ N, 118°–29′–19″ W; thence along the shoreline returning to the point of origin, excluding the following-described non-anchorage area: an area 300 feet wide (170 feet west and 130 feet east of the centerline of the Catalina Island Steamship Line pier), extending 1600 feet from the foot of the pier, and an area 150 feet seaward of the shoreline extending approximately 1500 feet east and 1500 feet northwest of the centerline of said pier.

Datum: NAD 83

* * * * *

Dated: May 25, 1995.

R. A. Appelbaum,

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

[FR Doc. 95–13779 Filed 6–5–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD01–95–008]

RIN 2115–AE47

Drawbridge Operation Regulations; Apponagansett River, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the rules governing opening of the Padanaram Bridge at mile 1.0 over the Apponagansett River in Dartmouth, Massachusetts. This final rule will allow the Padanaram Bridge to open on signal from 1 May through 31 October, once an hour on the hour, between 9 a.m. and 8 p.m. instead of twice an hour on the hour and half hour. This change should help relieve traffic congestion created when the bridge opens and still provide for the needs of navigation.

EFFECTIVE DATE: June 1, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for copying and inspection at the first Coast Guard District, Bridge Branch office located in the Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, Massachusetts 02110–3350, room 628, between 6:30 a.m. and 3 p.m., Monday through Friday, except federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: Gary Kassof, Bridge Administrator, First Coast Guard District (212) 668–7170.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this final rule are Mr. John W. McDonald, Project Officer, Bridge Branch, and Lieutenant Commander Samuel R. Watkins, Project Counsel, District Legal Office.

Regulatory History

Prior to this rule, this bridge has been the subject of three deviations from its operating regulations. The first deviation for 60 days was published in the **Federal Register** at 58 FR 38056; July 15, 1993. The second deviation for 32 days was published in the **Federal Register** at 58 FR 47067; September 7, 1993. The third deviation for 90 days was published in the **Federal Register** at 59 FR 31931; June 21, 1994.

On February 8, 1995 the Coast Guard published a notice of proposed rulemaking entitled ''Drawbridge Operation Regulations; Apponagansett River, Massachusetts'' in the **Federal Register** 60 FR 10815. The Coast Guard received one letter commenting on the proposal. No public hearing was requested, and none was held.

Background and Purpose

The Padanaram Bridge over the Apponagansett River between Dartmouth and South Dartmouth has a vertical clearance of 9' above mean high water (MHW) and 12' above mean low water (MLW).

The current operating regulations require that the bridge open on signal on the hour and half hour, 5 a.m. to 9 p.m., 1 May through 31 October. At all other times at least six hours advance notice must be given.

In the spring of 1993, the Town of Dartmouth requested a change from the operating regulations to permit opening once an hour rather than twice an hour. The town selectmen felt that the traffic congestion during peak summer months was a result of the bridge opening every 30 minutes and was causing village commerce to suffer. The selectmen also considered the 30 minute opening schedule a serious risk to public safety because emergency vehicles could not travel to and from South Dartmouth during the traffic delays caused by the bridge opening every half hour. The Town of Dartmouth requested that the bridge be required to open only once an hour between 5 a.m. and 9 p.m. for a test period of 60 days to evaluate the effects on vehicular and marine traffic. This request was approved and the first deviation from the permanent regulations was effective from July 1, 1993, through August 29, 1993, and was published in the **Federal Register** at 58 FR 38056; July 15, 1993. It provided an opportunity to evaluate the effects of the hourly openings on marine and vehicular traffic. The Coast Guard implemented a second deviation for 32 days to evaluate a different alternative opening time period for the Padanaram Bridge. This deviation also was published in the **Federal Register** at 58 FR 47067; September 7, 1993. The second deviation added two time periods when the bridge could still open on the hour and half hour: between 5 a.m. and 9 a.m. and between 8 p.m. and 9 p.m. The Coast Guard received 29 letters commenting on the two deviations. Twenty were in favor of the hourly openings and nine were opposed to the change. Most of the letters in opposition indicated that the lack of facilities to tie up vessels while waiting for openings was a main concern. The Town of Dartmouth installed traffic signals, automatic traffic gates, navigational lights and clearance gauges after the two deviation periods expired.

The Coast Guard authorized a third deviation for a period of 90 days to evaluate the effects of the above improvements to the bridge. This third deviation was effective from June 3, 1994 through August 31, 1994. It allowed the Padanaram Bridge to open on signal on the hour and half hour between 5 a.m. to 9 a.m. and between 8 p.m. and 9 p.m. and once an hour on the hour between 9 a.m. and 8 p.m. The Coast Guard received two letters commenting on the third deviation. One letter favored the hourly openings and one letter was opposed to the hourly openings. The entire regulation is being revised for clarity and to remove paragraph (a)(1) which provides for openings for public vessels, vessels used for safety, and vessels in distress. This requirement is now provided under 33 CFR 117.31 as a general operating regulation for all bridges.

The bridge owner will be required by this rule to maintain clearance gauges at the bridge to assist mariners during times that the bridge is not crewed and to reduce unnecessary openings.

The bridge owners will also be required, as a result of comments from mariners, to maintain mooring facilities for vessels to make fast while waiting for bridge openings.

Discussion of Comments and Changes

One comment letter was received in opposition to the proposed rule; however, a petition was submitted to the Coast Guard with hundreds of names and signatures all in favor of the change to the regulations. No changes to the proposed rule have been made.

In order to allow the bridge to begin the new operating hours for the summer season, the Coast Guard is making this rule effective on June 1, 1995 and under 5 USC § 553(d)(3), in the interest of public safety and to provide relief from the traffic delays that occur during the summer season this rule may be made effective in less than 30 days after publication. Traffic delays could impede emergency vehicles from traveling between Dartmouth and South Dartmouth during the tourist season.

Regulatory Evaluation

This rule 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 been exempted from review 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 final rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the regulation will not prevent mariners from passing through the Padanaram Bridge, but will only require mariners to plan their transits.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. Because of the reasons discussed in the Regulatory Evaluation above the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under paragraph 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, this rule 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 in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.587 is revised to read as follows:

§ 117.587 Apponagansett River.

(a) The draw of the Padanaram Bridge mile 1.0 shall open on signal 1 May through 31 October from 5 a.m. to 9 p.m. daily as follows:

(1) The bridge shall open on signal, twice an hour, on the hour and the half hour between 5 a.m. and 9 a.m. and between 8 p.m. and 9 p.m.

(2) The bridge shall open on signal, once an hour, on the hour between 9 a.m. and 8 p.m.

(b) At all other times the bridge shall open if at least four (4) hours advance notice is given.

(c) The owners of this bridge shall provide and maintain mooring facilities for vessels to make fast while waiting for the bridge to open.

(d) The owners of this bridge shall provide and keep in good legible condition, clearance gauges for each draw with figures not less than twelve (12) inches high designed, installed and maintained according to the provisions of section 118.160 of this chapter.

3. Appendix A to Part 117 is amended to add the Apponagansett River entry under the State of Massachusetts subheading to read as follows:

APPENDIX A TO PART 117—DRAWBRIDGES EQUIPPED WITH RADIOTELEPHONES

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
* * *	*	* * *	*		*	
Massachusetts						
* * *	*	* * *	*		*	
Apponagansett River 1.0 Dartmouth	.....	.....	Pandanaram, Dartmouth	.....	13	13
* * *	*	* * *	*		*	

Dated: May 15, 1995.

J.L. Linnon,

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

[FR Doc. 95–13775 Filed 6–5–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Paducah 95–002]

RIN 2115–AA97

Safety Zone; Upper Mississippi River Mile 00.0 to 055.3

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Upper Mississippi River from mile 00.0 to 55.3. This regulation is needed to control vessel traffic in the regulated area to prevent further wake damage to levees and property along the river. The regulations will restrict general navigation in the regulated areas for the safety of vessel traffic and the protection of life and property along the river.

EFFECTIVE DATES: This regulation becomes effective at 11:30 a.m. on May 21, 1995 and terminates at 8 p.m. on June 30, 1995.

FOR FURTHER INFORMATION CONTACT:

LTJG Patrick S. Reilly, Operations Officer, Captain of the Port, Paducah, Kentucky at (502) 442–1621.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Upper Mississippi River and its tributaries have been suffering from high water conditions for a week. This has contributed to unusually wet conditions resulting in the softening of the earth levees which protect the adjacent lowlands. The recent rainfall over the Midwest region has pushed rivers above the flood stage, setting

records for high water. As a result, the waters of the Mississippi River threaten or have already overflowed its banks. The Army Corps of Engineers has reported that additional levees will erode, presenting an imminent danger to ongoing flood relief efforts and to life and property along the river, if the levees are subjected to wakes and wheel wash from passing vessels. The flood conditions also present a hazard to navigation in that the area's rivers are carrying a larger amount of trees and debris which have been washed from the river banks and inundated lowlands; once visible obstructions to navigation are now submerged; and river currents are not following normal patterns. Taken as a whole, these conditions present hazards which greatly hinder the safe navigation of recreational and commercial traffic. The Army Corps of Engineers anticipates that it may take several weeks for the water to recede to normal levels. Subsequently, the Captain of the Port Paducah has closed the Upper Mississippi River from mile 00.0 to 055.3.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this rule and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Following normal rulemaking procedures would have been impracticable. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to prevent injury to human life or damage to property of vessels that would be transiting the area.

Regulatory Evaluation

This rule 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 been exempted from review by the Office of Management and Budget under that order. It is not 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 because of the short duration of the closure.

To avoid any unnecessary adverse economic impact on businesses which use the river for commercial purposes, Captain of the Port Paducah will monitor river conditions and will authorize unrestricted entry into the regulated area as conditions permit. Changes will be announced by Marine Safety Information Radio Broadcast (Broadcast Notice to Mariners) on VHF Marine Band Radio, Channel 22 (157.1 MHz). Mariners may also call the Marine Safety Office Paducah for current information.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2.g[5] of Commandant Instruction M16475.1B, (as revised by 59 FR 38654; July 29, 1994) this rule is categorically excluded from further environmental documentation as an action to protect public safety. A Categorical Exclusion Determination has been prepared and placed in the rulemaking.

List of Subjects in 33 CFR Part 165

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

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

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

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

2. A temporary section 165.T02–017 is added to read as follows:

§ 165.T02–017 Safety Zone; Mississippi River mile 00.0 to 055.3.

(a) *Location.* The following area is a Safety Zone: Mississippi River mile 0.0 to 055.3.

(b) *Effective Dates.* This section becomes effective at 11:30 a.m. on May 21, 1995 and terminates at 8 p.m. on June 30, 1995.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port.

Dated: May 21, 1995.

Robert M. Segovis,

Commander, USCG, Captain of the Port.

[FR Doc. 95–13776 Filed 6–5–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP St. Louis 95–003]

RIN 2115–AA97

Safety Zone; Missouri River, Mile 0.0 to 366.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Missouri River between mile 0.0 and 366.0. This rule is required for the prevention of damage to levees and protection of flooded areas. This rule will restrict general navigation in the regulated area for the protection of life and property along the shore.

EFFECTIVE DATE: This rule is effective on May 16, 1995 and will remain in effect until June 15, 1995 unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT Robert Siddall, Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this rule are LTJG A.B. Cheney, Project Officer, Marine Safety Office, St. Louis, Missouri and LT S.M. Moody, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this rule and good cause exits for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, recent heavy rainfall on already saturated ground in portions of the Missouri River Basin has caused portions of the Missouri River Basin to approach and exceed flood stages, leaving insufficient time to publish a proposed rulemaking.

The Coast Guard deems it to be in the public's interest to issue a rule without waiting for comment period since high water conditions present an immediate hazard.

Background and Purpose

The Missouri River from the mouth, mile 0.0, to mile 366.0, has seen a rapid rise in the water level and is above flood stage. This rule is required to protect saturated levees, therefore, all vessels are restricted from the regulated area.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements.

The Coast Guard expects the impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary. The imposed restrictions are anticipated to be of short duration. Captain of the Port, St. Louis, Missouri will monitor river conditions and will authorize entry into the closed area as conditions permit. Changes will be announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ). Mariners may also call the Port Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823 for current information.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism Assessment

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

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation as an action to protect public safety. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

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

Temporary Regulation

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

PART 165—[AMENDED]

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

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

2. A temporary § 165.T02–029 is added, to read as follows:

§ 165.T02–029 Safety Zone: Missouri River.

(a) *Location*. The Missouri River between mile 0.0 and 366.0 is established as a safety zone.

(b) *Effective Dates*. This section is effective on May 16, 1995 and will terminate on June 15, 1995, unless terminated sooner by the Captain of the Port.

(c) *Regulations*. The general regulations under § 165.23 of this part which prohibit vessel entry within the described zone without authority of the Captain of the Port apply. The Captain of the Port, St. Louis, Missouri will authorize entry into and operations within the described zone under certain conditions and limitations as announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

Dated: May 16, 1995.

S.P. Cooper,

Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.

[FR Doc. 95–13777 Filed 6–5–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL–5216–9]

Determination of Attainment of Ozone Standard for Lewiston-Auburn and Knox and Lincoln Counties, Maine Ozone Nonattainment Areas and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is determining, through direct final procedure, that the Lewiston-Auburn and the Knox and Lincoln Counties moderate ozone nonattainment areas in Maine have attained the National Ambient Air Quality Standard (NAAQS) for ozone. These determinations are based upon three years of complete, quality assured ambient air monitoring data for the years 1992–94 that demonstrate that the ozone NAAQS has been attained in both areas. On the basis of these determinations, EPA is also determining that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of Part D of Title 1 of the Clean Air Act are not applicable to these areas for so long as these areas continue to attain the ozone NAAQS. In the proposed rules section of this **Federal Register**, EPA is proposing these determinations and soliciting public comment on them. If adverse comments are received on this direct final rule, EPA will withdraw this final rule and address these comments in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**.

DATES: This action will be effective July 21, 1995 unless notice is received by July 6, 1995 that any person wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the material relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics

Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Phone: 617–565–3244.

SUPPLEMENTARY INFORMATION:

I. Background

Subpart 2 of Part D of Title I of the Clean Air Act (''CAA'') contains various air quality planning and state implementation plan (''SIP'') submission requirements for ozone nonattainment areas. EPA believes it is reasonable to interpret provisions regarding reasonable further progress (''RFP'') and attainment demonstrations, along with certain other related provisions, so as not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., attainment of the NAAQS demonstrated with three consecutive years of complete, quality assured air quality monitoring data). As described below, EPA has previously interpreted the general provisions of subpart 1 of part D of Title I (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures. As explained in a memorandum dated May 10, 1995 from John Seitz to the Regional Air Division Directors, entitled Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard, EPA believes it is appropriate to interpret the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner.

First, with respect to RFP, section 171(1) states that, for purposes of part D of Title I, RFP ''means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' Thus, whether dealing with the general RFP requirement of section 172(c)(2), or the more specific RFP requirements of subpart 2 for classified ozone nonattainment areas (such as the 15 percent plan requirement of section 182(b)(1)), the stated purpose of RFP is to ensure attainment by the applicable attainment date.[1] If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled and EPA does not believe that the area need submit revisions providing for the further emission reductions described in the RFP provisions of section 182(b)(1).

EPA notes that it took this view with respect to the general RFP requirement of section 172(c)(2) in the General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498 (April 16, 1992)), and it is now extending that interpretation to the specific provisions of subpart 2. In the General Preamble, EPA stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the ''requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.'' (57 FR at 13564.)[2]

Second, with respect to the attainment demonstration requirements of section 182(b)(1) an analogous rationale leads to the same result. Section 182(b)(1) requires that the plan provide for ''such specific annual reductions in emissions * * * as necessary to attain the national primary ambient air quality standard by the attainment date applicable under this Act.'' As with the RFP requirements, if an area has in fact monitored attainment of the standard, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble to Title I, as EPA stated there that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached.'' (57 FR at 13564; *see also* September 1992 Calcagni memorandum at page 6.) Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.

Similar reasoning applies to the contingency measure requirements of section 172(c)(9). EPA has previously interpreted the contingency measure requirement of section 172(c)(9) as no longer being applicable once an area has attained the standard since those ''contingency measures are directed at ensuring RFP and attainment by the applicable date.'' (57 FR at 13564; *see also* September 1992 Calcagni memorandum at page 6.) As the section 172(c)(9) contingency measures are linked with the RFP requirements of section 182(b)(1), the requirement no longer applies once an area has attained the standard.

EPA emphasizes that the lack of a requirement to submit the SIP revisions discussed above exists only for as long as an area designated nonattainment continues to attain the standard. If EPA subsequently determines that such an area has violated the NAAQS, the basis for the determination that the area need not make the pertinent SIP revisions would no longer exist. The EPA would notify the State of that determination and would also provide notice to the public in the **Federal Register**. Such a determination would mean that the area would have to address the pertinent SIP requirements within a reasonable amount of time, which EPA would establish taking into account the individual circumstances surrounding the particular SIP submissions at issue. Thus, a determination that an area need not submit one of the SIP submittals amounts to no more than a suspension of the requirement for so long as the area continues to attain the standard.

The State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR Part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR Part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

The determinations that are being made with this **Federal Register** notice

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[1] EPA notes that paragraph (1) of subsection 182(b) is entitled ''PLAN PROVISIONS FOR REASONABLE FURTHER PROGRESS'' and that subparagraph (B) of paragraph 182(c)(2) is entitled ''REASONABLE FURTHER PROGRESS DEMONSTRATION,'' thereby making it clear that both the 15 percent plan requirement of section 182(b)(1) and the 3 percent per year requirement of section 182(c)(2) are specific varieties of RFP requirements.

[2] *See also* ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, September 4, 1992, at page 6 (stating that the ''requirements for reasonable further progress * * * will not apply for redesignations because they only have meaning for areas not attaining the standard'') (hereinafter referred to as ''September 1992 Calcagni memorandum'').

are not equivalent to the redesignation of the area to attainment. Attainment of the ozone NAAQS is only one of the criteria set forth in section 107(d)(3)(E) that must be satisfied for an area to be redesignated to attainment. To be redesignated the state must submit and receive full approval of a redesignation request for the area that satisfies all of the criteria of that section, including the requirement of a demonstration that the improvement in the area's air quality is due to permanent and enforceable reductions and the requirements that the area have a fully-approved SIP meeting all of the applicable requirements under section 110 and Part D and a fully-approved maintenance plan.

Furthermore, the determinations made in this notice do not shield an area from future EPA action to require emissions reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, other nonattainment areas. EPA has authority under sections 110(a)(2)(A) and 110(a)(2)(D) to require such emission reductions if necessary and appropriate to deal with transport situations.

II. Analysis of Air Quality Data

The EPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR Part 58 and recorded in AIRS) for the Lewiston-Auburn ozone nonattainment area and the Knox and Lincoln Counties ozone nonattainment area in the State of Maine from 1992 through the present time. On the basis of that review, EPA has concluded that these areas attained the ozone standard during the 1992–94 period and continues to attain the standard at this time. The ozone air quality data for the Lewiston-Auburn ozone nonattainment area shows no exceedances of the National Ambient Air Quality Standards since 1992. The ozone air quality data for the Knox and Lincoln Counties ozone nonattainment area shows only one exceedance of the National Ambient Air Quality Standards since 1992. Thus, these areas are no longer recording violations of the air quality standard for ozone. A more detailed summary of the ozone monitoring data for these areas is provided in the EPA technical support document dated May 17, 1995.

III. Final Action

EPA determines that the Lewiston-Auburn ozone nonattainment area and the Knox and Lincoln Counties ozone nonattainment area have attained the ozone standard and continue to attain the standard at this time. As a consequence of EPA's determination that the Lewiston-Auburn area and the Knox and Lincoln Counties area have attained the ozone standard, the requirements of section 182(b)(1) concerning the submission of the 15 percent plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to the area so long as the area does not violate the ozone standard.

In addition, Maine currently does not have conforming transportation improvement programs (TIPs) and transportation plans in the areas discussed in this notice. The previous conforming TIPs and plans lapsed because new conformity determinations using EPA's conformity transitional criteria (40 CFR § 51.448) were required within one year of November 15, 1993. Because Maine had not submitted complete 15% plans, it was not able to meet this criteria. Because EPA is determining in this action that the Lewiston-Auburn area and Knox and Lincoln Counties area have attained the ozone standard and therefore are not required to have 15% plans, conformity can be restored once new conformity determinations by the appropriate metropolitan planning organizations and the United States Department of Transportation have been completed using 40 CFR § 51.410. Because 15% plans are no longer required, the state no longer has to meet the requirements of 40 CFR 51.428, 51.430 and 51.432.

EPA emphasizes that these determinations are contingent upon the continued monitoring and continued attainment and maintenance of the ozone NAAQS in these affected areas. If a violation of the ozone NAAQS is monitored in the Lewiston-Auburn area or the Knox and Lincoln Counties area (consistent with the requirements contained in 40 CFR Part 58 and recorded in AIRS), EPA will provide notice to the public in the **Federal Register**. Such a violation would mean that the applicable area would thereafter have to address the requirements of section 182(b)(1) and section 172(c)(9) since the basis for the determination that they do not apply would no longer exist.

As a consequence of the determinations that these areas in Maine have attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) do not presently apply, the sanctions clock for these two areas started by EPA on January 26, 1994 for the failure to submit a section 182(b)(1) 15 percent plan and associated contingency plan is hereby stopped as the deficiency for which the clock was started no longer exists.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action will become effective on July 21, 1995. However, if the EPA receives adverse comments by July 6, 1995, then the EPA will publish a notice that withdraws the action, and will address those comments in the final rule on the proposed determination of attainment and determination of applicability of RFP and attainment demonstrations which has been proposed for approval in the proposed rules section of this **Federal Register**.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Today's determination does not create any new requirements, but allows suspension of the indicated requirements. Therefore, because the approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State,

local, or tribal governments in the aggregate.

EPA's final action does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act, upon the State. No additional costs to State, local, or tribal governments, or to the private sector, result from this action, which suspends the indicated requirements. Thus, EPA has determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 7, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Volatile organic compounds, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 22, 1995.

John P. DeVillars,

Regional Administrator, Region I.

Part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. Subpart U is amended by adding § 52.1023 to read as follows:

§ 52.1023 Control strategy: Ozone.

(a) *Determination.* EPA is determining that, as of July 21, 1995, the Lewiston-Auburn ozone nonattainment area has attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the area for so long as the area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Lewiston-Auburn ozone nonattainment area, these determinations shall no longer apply.

(b) *Determination.* EPA is determining that, as of July 21, 1995, the Knox and Lincoln Counties ozone nonattainment area has attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the area for so long as the area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Knox and Lincoln Counties ozone nonattainment area, these determinations shall no longer apply.

[FR Doc. 95–13812 Filed 6–5–95; 8:45 am]

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Proposed Rules

Federal Register

Vol. 60, No. 108

Tuesday, June 6, 1995

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

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Part 273

[Amendment No. 365]

RIN 0584–AB98

Food Stamp Program: Monthly Reporting on Reservations Provision of the Food Stamp Program Improvements Act of 1994

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed rulemaking.

SUMMARY: This rulemaking proposes to amend Food Stamp Program regulations to establish procedures for implementing the restrictions concerning use of monthly reporting for households residing on reservations contained in the Food Stamp Program Improvements Act of 1994.

DATES: Comments must be received on or before August 7, 1995 to be assured of consideration.

ADDRESSES: Comments on this proposed rulemaking should be addressed to Margaret Thiel, Acting Supervisor, Eligibility and Certification Regulations Section, Certification and Policy Branch, Program Development Division, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. (Datafax number 703–305–2454). All written comments will be open to public inspection at the office of the Food and Consumer Service, during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday), at 3101 Park Center Drive, Alexandria, Virginia, Room 718.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be addressed to Margaret Thiel at the above address or by telephone at (703) 305–2496.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed 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.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rulemaking and related Notice(s) to 7 CFR 3105, Subpart V (Cite 48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate, and any subsequent notices that apply), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This proposed rulemaking has also been reviewed with respect to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). The Administrator of the Food and Consumer Service (FCS), has certified that this proposal would not have a significant economic impact on substantial number of small entities. The primary impact of the procedures in this rulemaking would be on FCS Regional Offices, State governments, and individuals who might apply for benefits in State agencies that use monthly reporting procedures. To the extent that county or other local governments assist in the administration of the Food Stamp Program, they would also be affected.

Executive Order 12778

This proposed rulemaking has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For Program benefit recipients—state administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to nonquality control (QC) liabilities) or Part 283 (for rules related to QC liabilities); (3) for retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), reporting and recordkeeping requirements for monthly reporting and retrospective budgeting have been approved by the Office of Management and Budget (OMB) under current OMB No. 0584–0064. Although the provisions of the proposed rule change the content of certain notices to households, they do not impose additional reporting and recordkeeping burden requirements.

Background

Section 1723 of the Mickey Leland Memorial Domestic Hunger Relief Act (Title XVII of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, 104 Stat. 3359, November 28, 1990) amended Section 6(c)(1)(A)(i) of the Food Stamp Act of 1977, as amended (the Act), 7 U.S.C. 2015(c)(1)(A)(i), to exempt households residing on reservations from monthly reporting and retrospective budgeting (MRRB) effective February 1, 1992. The Department announced the regulatory adoption of the requirements of Section 1723 in a final rule amending 7 CFR 273.21(b)(4) published on December 4, 1991, 56 FR 63605, and scheduled to take effect on February 1, 1992.

Since that time, several pieces of legislation were enacted, each delaying the effective date of Section 1723. Implementation was initially postponed by Section 908 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Pub. L. 102–237, 105 Stat. 1818, December 13, 1991) until April 1, 1993, and then by Pub. L. 103–11 (107 Stat. 41, April 1, 1993) until February 1, 1994. In response, in a November 1, 1993, rulemaking, the Department proposed at 58 FR 58459 a new implementation date of February 1,

1994. Following publication of that proposed rule, Section 1 of Pub. L. 103–205 (107 Stat. 2418) was enacted on December 17, 1993, again postponing implementation of the prohibition concerning MRRB on reservations until March 15, 1994. State agencies were notified of this delay through an implementing memorandum dated January 6, 1994.

On March 25, 1994, the Food Stamp Program Improvements Act of 1994 (Pub. L. 103–225 (108 Stat. 106)) was enacted. Section 101(a) of that law modified the prohibition against monthly reporting for households residing on reservations that had been added to section 6(c)(1)(A) of the Act (7 U.S.C. 2015(c)(1), by Section 1723 of the Leland Act. Section 6(c)(1)(C)(iii) now prohibits State agencies which were not requiring households residing on reservations to submit monthly reports on March 25, 1994, from establishing monthly reporting requirements for these households. These households may be retrospectively budgeted. State agencies that were using monthly reporting on March 25, 1994, for households residing on reservations may continue to do so if certain enumerated conditions are met. On August 29, 1994, in the Miscellaneous Provisions of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 and Earned Income Tax Credit Amendment final rule (59 FR 44303), the Department addressed the prohibition against establishing new monthly reporting for households residing on reservations if no monthly reporting system was in place on March 25, 1994.

In this rulemaking, the Department is addressing the provisions in Section 101(a) of Pub. L. 103–225 dealing with the one-month grace period afforded reservation households for submitting required reports, 7 U.S.C. 2015(c)(1)(C)(i) and (ii). This subparagraph establishes the following requirements on a State agency if it requires monthly reporting for households residing on reservations:

(1) Reinstate benefits without requiring a new application for any household that submits a report not later than one month after the end of the issuance month; and

(2) do not delay, reduce, suspend, or terminate the allotment of a household that submits a report not later than one month after the end of the month in which the report is due; and

(3) establish two-year certification periods for households on reservations required to submit monthly reports, unless the State agency is granted a waiver for shorter certification periods.

In order to implement these legislative requirements, the Department is proposing a new paragraph § 273.21(t). The specific provisions of this new paragraph are discussed below.

Definition of Residing on a Reservation

Section 3(j) of the Act defines a reservation as ''the geographically defined area or areas over which a tribal organization (as that term is defined in subsection (p) of this section) exercises governmental jurisdiction.'' Section 3(p) of the Act defines a tribal organization as ''the recognized governing body of an Indian tribe (including the tribally recognized intertribal organization of such tribes), * * * , as well as any Indian tribe, band, or community holding a treaty with a State government.'' Section 10(a) of Pub. L. 103–225 did not modify the Act's definition of a reservation or tribal organization. Accordingly, the Department is proposing in § 273.21(t)(1) to adopt these definitions for the purpose of determining whether a household shall be considered to be residing on a reservation.

Certification Periods

In light of the amendments to Section 6(c)(1) of the Act made by Section 101(a) of Pub. L. 103–225, the Act now requires that State agencies establish two (2) year certification periods for households residing on reservations that are required to submit monthly reports (7 U.S.C. 2015(c)(1)(C)(iv)). In order to implement this requirement, the Department is proposing at § 273.21(t)(2) to require that monthly reporting households residing on a reservation be certified for two (2) years.

However, Section 6(c)(1)(C)(iv) allows FCS to permit a State agency to establish certification periods for households residing on reservations shorter than two (2) years if the State agency can show good cause for a shorter certification period. Therefore, the Department is proposing in 7 CFR 273.21(2)(i) that a State agency may request a waiver to allow it to establish shorter certification periods for those households. In considering a request for a waiver to allow shorter certification periods, the Department has been urged by the Congress to consider both the reasons the State desires to implement a shorter certification period and the burden that households on the particular reservation would face in going through the recertification process more often. *Cong. Rec.* S2905, March 11, 1994. Further, Congress has also indicated that the Department should exercise its discretion to waive the two (2) year certification period requirement only after consultation with the appropriate tribal government and when extraordinary circumstances exist, such as widespread fraud, a substantial change in circumstances on a reservation which results in wide fluctuations in income for large numbers of food stamp recipients, or similar changes which require more frequent certification to protect the financial integrity of the Program and to maintain the lowest practicable error rates. *Cong. Rec.* S2906, March 11, 1994. In considering any approval of a waiver, the Department will be taking into account the administrative burdens of the State agency in administering the two (2) year certification periods, the input of the affected tribal organization, the quality control (QC) error rate for the affected households, and the impact on the households of requiring them to be interviewed more frequently than every two years.

Anecdotal information provided to the Department by State agencies affected by this provision indicates that households frequently move off of and on to reservations. With this in mind, the Department is proposing to allow a State agency to opt either to continue the two-year certification period for any household that moves off a reservation or to shorten the certification period as appropriate to the household's reporting requirements off the reservation. The Department is providing this option to increase flexibility for State agencies and to meet potential concerns about QC error rates. Switching households back and forth between two-year and shorter certification periods is administratively complex. However, the Department recognizes that long certification periods could result in increased payment errors, particularly if a household switches to change reporting when it is off a reservation. Accordingly, in 7 CFR 273.21(2)(ii), the Department is proposing that a State agency may opt to continue the two-year certification period for any household that moves off a reservation. If the State agency adopts this option and the household is still living off a reservation at recertification, the household shall be subject to the certification period requirements in 7 CFR 273.10(f)(4). If the State agency does not adopt this option, any household that moves off a reservation shall have its certification period shortened. A household continuing to be subject to monthly reporting shall not have its certification period shortened to less than six months. A household becoming subject to change reporting shall not have its certification period end any earlier than the month following the month in

which the State agency determines that the certification period shall be shortened.

Missing and Incomplete Monthly Reports

Section 101(a) of Pub. L. 103–225 (Section 6(c)(1)(C)(ii), 7 U.S.C. 2015(c)(1)(C)(ii)) prohibits a State agency from delaying, reducing, suspending, or terminating the benefits of a household residing on a reservation that submits a report not later than one month after the end of the month in which the report is due. Normally, if a complete monthly report is not received within the time frames specified in 7 CFR 273.21, the State agency would terminate the household. Under Section 101(a) of Pub. L. 103–225, a State agency must now issue benefits to a household residing on a reservation on its normal issuance date even if it has failed to submit a monthly report. In order to implement this provision, the Department is proposing in § 273.21(t)(3)(i) to require the State agency to provide a household residing on a reservation which does not submit its monthly report by the issuance date with the same benefit amount that the household received the previous month. This issuance must be provided to the household on the household's normal issuance date. If the household's report is received prior to the issuance date, but too late to be processed without delaying the household's issuance, the household shall be issued its benefits on the normal issuance date.

The Department is also proposing in § 273.21(t)(3)(ii) to require a State agency to provide a household residing on a reservation its benefits on the normal issuance date if the household submits an incomplete monthly report that cannot be completed by the normal issuance date. The State agency would be required to attempt to have the household complete the report prior to the normal issuance date, in accordance with the procedures in 7 CFR 273.21(j). Section 101(a) of Pub. L. 103–225 does not address incomplete reports. However, the legislative history indicates that the State agency should not take any action against the household for failing to submit an incomplete report. ''The purpose of this grace period is to provide ample opportunity to resolve misunderstandings and ensure that households do not suffer * * * when they unintentionally submit incomplete reports. * * *'' *Cong. Rec.* S2905, March 11, 1994. Thus, the intent of the legislation is to provide benefits even if an incomplete report has been submitted.

The legislative intent of the grace period is to ensure that households are not penalized for administrative reasons. Therefore, if there is complete and verified information for some of the monthly report, there is no reason for the State agency to not act on that information. Such action would result in more accurate benefits being provided to the household.

In enacting this legislation, Congress did not intend that households residing on reservations participate indefinitely without submitting monthly reports. ''Households that do not submit reports by the end of the grace period would have their benefits suspended.'' *Cong. Rec.* S2905, March 11, 1994. Accordingly, the Department is proposing in § 273.21(t)(3)(iii) that if a household failed to submit a monthly report or submitted an incomplete monthly report that was never completed and then fails to submit the next consecutive monthly report or submits an incomplete report for the next consecutive monthly report that is not completed by the issuance date, the household would be terminated in accordance with the provisions in 7 CFR 273.21(m).

In § 273.21(t)(3)(iii), the Department is also proposing that the household would not be terminated if it fails to ever submit or complete the first missing monthly report so long as it submits the next report by the end of the month in which it is due. The intent of the grace period is to prevent interruptions in benefits for administrative reasons. Receipt of old information as opposed to more current information does not serve the purpose of requiring monthly reports on household circumstances. To require that the missing or incomplete report be submitted/completed at the same time as requiring the next month's monthly report would be confusing to the households. It would also be an unnecessary administrative burden to require the State agency to process the missing report.

Benefit Determination

Despite the one-month grace period provided to households residing on reservations to submit monthly reports by Section 101(a) of Pub. L. 103–225 (7 U.S.C. 2015(c)(1)(C)(ii)), it is the intent of Congress that benefits be issued based on actual household circumstances. *Cong. Rec.* S2905, March 11, 1994. Therefore, to the extent possible, incomplete reports should be completed prior to the issuance of benefits. The Department is proposing that State agencies follow the procedures in 7 CFR 273.21(j)(1) (i) through (v) to attempt to obtain a complete report prior to the issuance date. The Department is proposing in § 273.21(t)(4) that the State agency repeat the previous month's benefit amount if a report is not received by the issuance date. In addition, the Department is proposing in § 273.21(t)(4) that the State agency issue the household's benefits based on the previously submitted report without regard to any changes in the household's circumstances that were not completed or verified. Finally, the Department is proposing in § 273.21(t)(4) that the State agency adjust the amount of the benefits issued if there is any information on the incomplete report that can be used as submitted. As discussed earlier, the grace period was established to ensure that households were not penalized for administrative reasons. However, there is no reason for the State agency not to adjust benefits to reflect information that is complete and verified.

Reinstatement

Section 101(a) of Pub. L. 103–225 (7 U.S.C. 2015(c)(1)(C)(i)) provides that, if a household is terminated for failing to submit or to complete a monthly report, the household shall be reinstated without being required to submit a new application if a monthly report is received no later than the last day of the month following the month the household was terminated. Accordingly, the Department is proposing at § 273.21(t)(5) to require that a State agency reinstate a household terminated in accordance with § 273.21(t)(3)(iii) without the household's being required to submit a new application if a monthly report is received no later than the last day of the month following the month the household was terminated.

Notices

The changes proposed above that provide for separate and different treatment of monthly reporting households residing on reservations require the notice requirements contained in 7 CFR 273.21(j)(2) to be modified for these households. The intent of Congress is that State agencies provide all the notices currently required for monthly reporting households in 7 CFR 273.21(j)(2), modified as necessary to reflect the alternative termination and reinstatement impacts for missing and incomplete reports. *Cong. Rec.* S2905, March 11, 1994. Accordingly the Department is proposing in § 273.21(t)(6) modified notice requirements.

In § 273.21(t)(6)(i), the Department is proposing that all notices regarding changes in a household's benefits meet the definition of adequate notice as defined in 7 CFR 271.2. This will ensure that households receive due process in any action that may negatively impact their Food Stamp Program participation.

The Department is proposing in § 273.21(t)(6)(ii) that the State agency provide a notice to the household about missing or incomplete reports that requests that the household take the action necessary to submit the missing report or to complete an incomplete report. The notification requirements are the same as those in 7 CFR 273.21(j)(3) except that the notice shall advise the household that, if a report is not submitted or if information provided on the incomplete report is not completed or verified as required, the household's benefits would be issued based on the previous month's circumstances.

In order to ensure that the household receives adequate notice of any State agency action affecting the household's benefits, the Department is proposing in 7 CFR 273.21(t)(5)(iii) that the State agency notify a household, if its report has not been received or if it is incomplete, simultaneously with the issuance that the benefits being provided are based on the previously submitted report and that this benefit does not reflect any changes in the household's circumstances that have not been reported or verified as required. This notice shall also advise the household that, if the next monthly report is not filed timely and completely, the household will be terminated. This notice requirement conforms notice requirements for these special circumstances with current notice requirements for monthly reporting.

Under current regulations at 7 CFR 273.21(m), if a household does not submit a complete monthly report, that household is required to be terminated. Under Section 6(c)(1)(C)(i) and (ii) of the Act, as amended by Section 101(a) of Pub. L. 103–225, households residing on reservations were granted a grace period of one month for non-submittal of a complete monthly report. However, if a household residing on a reservation does not submit a monthly report in the consequent month as well or submits an incomplete report, that household is required to be terminated. In order to ensure that the household is aware of the termination and its right to reinstatement, the Department is proposing in 7 CFR 273.21(t)(6)(iv) that, if the household is terminated in the consequent month, the State agency shall send the notice so the household receives it no later than the date benefits would have been received. This notice shall advise the household of its right to reinstatement if a complete monthly report is submitted by the end of the month following termination. This notice requirement is consistent with current notice requirements for monthly reporting.

Supplements and Claims

As noted above, the Department is not proposing to require that households submit the missing report simultaneously with the submittal or after the submittal of the consequent monthly report. Nevertheless, a household's report may be submitted or completed after the household's issuance has been provided. In this circumstance, the intent of Congress is that the State agency would take action based on the eligibility factors contained in the monthly report when it is submitted. *Cong. Rec.* S2905, March 11, 1994. Therefore, the Department is proposing in 7 CFR 273.21(t)(7) that, if the household submits or completes a monthly report after the issuance date but in the issuance month, the State agency provide the household with a supplement if warranted. Also, if the household submits or completes a monthly report or the State agency becomes aware of a change that would have decreased benefits in some other manner at any time after the issuance date, the Department is proposing that the State agency file a claim for any benefits overissued. The Department is not proposing that households which submit reports after the issuance month receive restored benefits. This is consistent with current food stamp policy in 7 CFR 273.17(a) which provides for restored benefits whenever the loss was caused by an error by the State agency or by an administrative disqualification which was subsequently reversed. Under current regulations, restored benefits are not provided for losses caused by a household error. Failure to submit a complete monthly report is a household error.

Quality Control Procedures

The legislative history provides that ''a State [agency] will not be adversely affected in regard to its quality control efforts related to those households whose monthly reports are not submitted until a month after the report is due.'' *Cong. Rec.* S2905, March 11, 1994. To implement this provision, the Department is proposing that those certification errors attributable to missing or incomplete monthly reports covered under the grace period of this legislation shall be excluded from the error determination process.

Implementation

The Food Stamp Program Improvements Act of 1994 was effective upon enactment, March 25, 1994. On March 31, 1994, the Department issued a memorandum notifying State agencies of the provisions of the legislation and the March 25, 1994, effective date. State agencies were directed to implement the requirements immediately. Recognizing that the statutory amendments regarding the monthly reporting on reservations have already been implemented through the above described memorandum and in order to provide for the orderly implementation of the specific provisions of this proposed rule, the Department is proposing to require that this rule be effective in any given State upon implementation by the State agency but in no event later than the first day of the month 60 days after publication of the final rule. Variances resulting from implementation of this provision would be excluded from the payment error rate for 120 days from the required implementation date, in accordance with section 13951 of Pub. L. 103–66, which amended section 16(c)(3)(A) of the Act, 7 U.S.C. 2025(C)(3)(A).

List of Subjects in 7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR part 273 is proposed to be amended as follows:

1. The authority citation of part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. In § 273.21, a new paragraph (t) is added to read as follows:

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).

* * * * *

(t) *Monthly reporting requirements for households residing on reservations.* The following procedures shall be used for households which reside on reservations and are required to submit monthly reports:

(1) For purposes of this section, the term ''reservation'' shall mean the geographically defined area or areas over which a tribal organization exercises governmental jurisdiction. The

term ''tribal organization'' shall mean the recognized governing body of an Indian tribe (including the tribally recognized intertribal organization of such tribes), as well as any Indian tribe, band, or community holding a treaty with a State government.

(2) *Certification periods.* Any household residing on a reservation that is required to submit a monthly report shall be certified for two (2) years.

(i) A State agency may request a waiver from FCS to allow it to establish certification periods of less than two (2) years if it is able to justify the need for the shorter periods. Any request for a waiver shall include input from the affected Indian tribal organization(s) and quality control error rate information for the affected households.

(ii) The State agency may opt to continue the two-year certification period for any household that moves off the reservation. If the State agency adopts this option and the household is still living off the reservation at the time it is subject to required recertification, the household shall be subject to the certification period requirements in § 273.10(f)(4). If the State agency does not adopt this option, any household that moves off the reservation shall have its certification period shortened. A household continuing to be subject to monthly reporting shall not have its certification period shortened to less than six months. A household becoming subject to change reporting shall not have its certification period end any earlier than the month following the month in which the State agency determines that the certification period shall be shortened.

(3) *Missing and incomplete reports.* The State agency shall take the following actions when a household residing on a reservation fails to submit a monthly report or complete a monthly report the State agency has indicated is incomplete:

(i) *Failure to submit a monthly report by the issuance date.* If a household does not submit its monthly report by the issuance date, the State agency shall provide the household with the same issuance that the household received the previous month. This issuance must be provided to the household on the household's normal issuance date. If the household's monthly report is received prior to the issuance date, but too late to be processed without delaying the household's issuance, the household shall be provided its issuance on the normal issuance date.

(ii) *Failure to submit a complete monthly report by the issuance date.* If a household does submit its monthly report prior to the issuance date, but that report is incomplete, the State agency shall attempt to have the household complete the report prior to the normal issuance date, in accordance with the procedures in paragraph (j) of this section. If the report cannot be completed by the normal issuance date, the State agency shall provide the household its issuance on the normal issuance date.

(iii) *Failure to submit two consecutive monthly reports or to complete two consecutive monthly reports.* If a household failed to submit a monthly report or submitted an incomplete monthly report that was never completed and then fails to submit the next consecutive monthly report or submits an incomplete report that is not completed by the issuance date, the household shall be terminated in accordance with the provisions in paragraph (m) of this section. The household shall not be terminated if it fails to ever submit or complete the first missing monthly report but does submit a completed report for the following month.

(4) *Benefit determination.* If a household's report is not completed by the issuance date, the State agency shall issue the household's benefits based on the previously submitted report without regard to any changes in the household's circumstances that were not completed or verified. The State agency shall adjust the benefits issued if there is any information on the incomplete report that can be used as submitted.

(5) *Reinstatement.* If a household is terminated for failing to submit or to complete a monthly report, the household shall be reinstated without being required to submit a new application if a monthly report is submitted no later than the last day of the month following the month the household was terminated.

(6) *Notices.*

(i) All notices regarding changes in a household's benefits shall meet the definition of adequate notice as defined in § 271.2 of this chapter.

(ii) If a household fails to file a monthly report, or files an incomplete report, by the specified filing date, the State agency shall notify the household within five days of the filing date:

(A) That the monthly report is either overdue or incomplete;

(B) What the household must do to complete the form;

(C) If any verification is missing;

(D) That the Social Security number of a new member must be reported, if the household has reported a new member but not the new member's Social Security number;

(E) What the extended filing date is;

(F) That the State agency will assist the household in completing the report; and

(G) That the household's benefits will be issued based on the previous month's submitted report without regard to any changes in the household's circumstances if the missing report is not submitted or if incomplete or unverified information on the incomplete report is not completed or verified as required.

(iii) Simultaneously with the issuance, the State agency shall notify a household, if its report has not been received or if it is incomplete, that the benefits being provided are based on the previous month's submitted report and that this benefit does not reflect any changes in the household's circumstances. This notice shall also advise the household that, if a complete report is not filed timely, the household will be terminated.

(iv) If the household is terminated, the State agency shall send the notice so the household receives it no later than the date benefits would have been received. This notice shall advise the household of its right to reinstatement if a complete monthly report is submitted by the end of the month following termination.

(7) *Supplements and claims.* If the household submits or completes a monthly report after the issuance date but in the issuance month, the State agency shall provide the household with a supplement if warranted. If the household submits or completes a monthly report after the issuance date or the State agency becomes aware of a change that would have decreased benefits in some other manner, the State agency shall file a claim for any benefits overissued.

Dated: May 26, 1995.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 95–13723 Filed 6–5–95; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS No. 1633–93]

RIN 1115–AD55

Employment-Based Immigrants

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service regulations on employment-based immigrant petitions. The promulgation of this proposed rule is necessary to clarify and revise a number of issues concerning employment-based immigrant petitions which have arisen since the enactment of the Immigration Act of 1990. This proposed rule will provide more guidance to the public in filing employment-based immigrant petitions.

DATES: Written comments must be submitted on or before August 7, 1995.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1633–93 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Michael W. Straus, Senior Immigration Examiner, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION: Section 121 of the Immigration Act of 1990 (IMMACT), Public Law 101–649, dated November 29, 1990, amended section 203 of the Immigration and Nationality Act (Act) by creating new classifications and procedures for employment-based immigration. On November 29, 1991, the Immigration and Naturalization Service (Service) promulgated regulations implementing section 121 of IMMACT (see 56 FR 60897–60913). Since the promulgation of its regulation, the Service has encountered a number of issues concerning employment-based petitions which require clarification and revision. On December 12, 1991, the President signed the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA), Public Law 102–232, which modified IMMACT. In light of the changes made by MTINA and the issues which need clarification and revision, the Service proposes to amend 8 CFR 204.5.

Section 203(b) of the Act, as amended by section 121 of IMMACT, created five new employment-based immigrant categories as follows:

1. Priority workers.

A. Aliens with extraordinary ability;

B. Outstanding professors and researchers;

C. Certain multinational executives and managers.

2. Members of the professions holding advanced degrees and aliens of exceptional ability.

3. Skilled workers, professionals, and other workers.

4. Certain special immigrants.

5. Employment creation immigrants.

Since the promulgation of the Service's regulations on employment-based immigrants on November 29, 1991, the Service has encountered a number of issues in adjudicating employment-based petitions which require revision or clarification. This regulation proposes to amend the current regulation on employment-based petitions in order to clarify portions of the regulations which have been problematic for the Service and the public. The proposed rule addresses petitions for employment-based immigrants, as well as priority dates for employment-based petitions, evidence required to show ability to pay the wage offered, and validity of labor certifications and employment-based petitions following changes in employer and job location. The Service will issue a separate proposed regulation on petitions for employment creation aliens at a later date.

Filing of the Petition

Most of the employment-based immigrant categories require that an employer desire and intend to employ an alien within the United States. See section 204(a)(1)(D) of the Act. The present regulation on employment-based petitions does not define the term ''employer'' as used in the statute. The Service has determined that this term should be clarified to provide some guidance to the public and to adjudicators on whether a petitioner qualifies as an employer. The proposed rule provides that the alien beneficiary must have an employer-employee relationship with the petitioner as indicated by the employer's ability to hire, pay, fire, supervise, or otherwise control the work of the employee. This definition of ''United States employer'' is consistent with the definition of this term in the H–1B regulations. See 8 CFR 214.2(h)(4)(ii). It is also consistent with the general definition of employment found in case law. See e.g. *Matter of Pozzoli,* 14 I&N Dec. 569 (Reg. Comm. 1974).

In the case of employers who are persons, the proposed regulation limits qualifying employers to individuals who are United States citizens or lawful permanent residents. Aliens, other than lawful permanent residents, may not offer permanent employment to U.S. or other workers who seek to apply for the job offered. Allowing for aliens other than lawful permanent residents to file an immigrant petition is inconsistent with the overall statutory scheme. Specifically, all nonimmigrants who enter the United States, including those for whom there is no maximum duration of stay, are admitted for a limited period of time and for a particular purpose. Upon completion of their purpose for staying in the United States, they must depart, extend, or change their nonimmigrant status. The limited nature of their stay in the United States precludes them from being able to extend a permanent offer of employment and, therefore, from submitting an employment-based petition to accord immigrant status. Consequently, petitioning employers who are in nonimmigrant status are not competent to offer permanent employment, because their status is neither settled, stabilized, nor permanent. See Matter of Thornhill, 18 I&N Dec. 34, 35–36 (Comm. 1981). The Service notes that this proposed regulation is in accord with Department of Labor policy, which precludes nonimmigrants from filing labor certifications due to their temporary status. See Department of Labor, Technical Assistance Guide No. 656, Labor Certifications, at page 136. Accordingly, the Service proposes to limit the persons who are able to submit employment-based petitions to U.S. citizens and lawful permanent residents.

Priority Date

Following the enactment of IMMACT, the Service issued a proposed rule which provided that the priority date for an employment-based petition would be the date of filing an employment-based petition with the Service. See 56 FR 30703–30714, July 5, 1991. After receipt of comments to the proposed rule, the Service decided to continue the established rule on assignment of priority dates, which set the priority date as the date the office within the employment service system of the Department of Labor received the application for labor certification. See 56 FR 60897–60913. The Service also decided to add a new provision which allowed an alien to retain the priority date of any employment-based petition which the Service approved on his or her behalf, unless it is revoked. See 56 FR 60905; 8 CFR 204.5(e).

Before IMMACT became effective, the Department of Labor permitted an employer to substitute qualified labor certification beneficiaries after issuance of the labor certification. The petitioner

could return the labor certification to the certifying officer and request that another beneficiary be substituted. See Employment and Training Administration, Technical Assistance Guide No. 656, p. 105. In implementing IMMACT, the Department of Labor eliminated substitution of labor certification beneficiaries. See 56 FR 54920–54930; 20 CFR 656.30(c)(2). The Department of Labor determined that substitution of labor certification beneficiaries was unfair to U.S. workers and other aliens seeking to immigrate, was subject to fraud and abuse, and constituted a significant administrative burden. See 56 FR 54926. In 1994, the United States Court of Appeals for the District of Columbia Circuit enjoined enforcement of the Department of Labor's regulation precluding substitution of labor certification beneficiaries, based on the Administrative Procedure Act. *See Kooritzky* v. *Reich,* 17 F.3d 1509 (D.C. Cir. 1994). As a result of this decision, employers may request substitution of labor certification beneficiaries. In light of the court's decision, the Service has reconsidered its regulations on assigning priority dates.

The Service has concluded that it is unfair to other aliens who seek to immigrate to the United States on employment-based petitions if the substituted alien gains the priority date of the original alien beneficiary, since those aliens would receive a later priority date than a substituted alien. Currently, in certain employment-based immigrant categories, such as the third preference ''other worker'' category, an alien who benefits from a labor certification substitution can immigrate ahead of another alien who has been waiting for an immigrant visa for several years. Not only would allowing substituted aliens to receive the earlier priority date be unfair to other intending immigrants, it would also be contrary to the Service's policy of assigning a priority date to the alien rather than to the employer (see 8 CFR 204.5(e)).

Providing a priority date based on an employer's substitution of a labor certification beneficiary also carries the potential for fraud and abuse. Continuing this practice may encourage the creation of a market for labor certifications, particularly in categories in which there is a lengthy wait to receive an immigrant visa. For instance, it is conceivable that the original alien beneficiary might be induced to engage in the fraudulent practice of selling his or her status as a labor certification beneficiary to a substituted alien.

The Service, therefore, proposes to set the priority date for an alien who has been substituted for another alien on a labor certification as the date the employer requested the substitution. This proposed rule will be fair to other aliens who apply under employment-based immigrant categories, and would be consistent with the Service's policy of according a priority date to the alien rather than to the employer, thereby eliminating an inducement to commit fraud.

Retention of Employment-Based Priority Dates

The Service's current regulation provides that an alien retains the priority date of any petition filed under the first, second, or third employment-based categories which the Service approved on his or her behalf. See 8 CFR 204.5(e). A petition revoked under sections 204(e) or 205 of the Act, however, will not confer a priority date. Section 205 of the Act permits the Attorney General to revoke an approved petition for good and sufficient cause. The regulations governing revocation distinguish between automatic revocation and revocation on notice. See 8 CFR part 205. For employment-based petitions, automatic revocation occurs upon invalidation of a labor certification, death of the petitioner, written withdrawal by the petitioner, or by dissolution of the petitioner's business. See 8 CFR 205.1(c). The Service has determined that the current regulation is difficult to administer, because the Service is not usually notified of actions which may result in automatic revocation. In addition, the regulation treats those aliens who fall under the automatic revocation provisions differently from those aliens whom the petitioner no longer seeks to employ for various reasons. For example, under the current regulation, if the petitioning employer dissolves or goes out of business, the petition is automatically revoked and the beneficiary loses his or her priority date. See 8 CFR 205.1(c)(4). However, if the petitioning employer remains in business but later decides not to offer the position to the beneficiary, the beneficiary can use the priority date for any subsequent petition filed on his or her behalf. Accordingly, the Service proposes to amend 8 CFR 204.5(e) to state that only a petition revoked on notice pursuant to 8 CFR 205.2 for fraud or misrepresentation will not confer a priority date for any subsequently filed employment-based petition. This change will allow for consistency and fairness in assignment of priority dates and easier administration for the Service.

Maintaining Priority Dates for Employment-Based Petitions Filed Before October 1, 1991

The current regulation states that any petition filed before October 1, 1991, and approved under section 203(a)(3) or 203(a)(6) of the Act, as in effect before October 1, 1991, shall be deemed a petition approved to accord status under section 203(b)(2) or within the appropriate classification under section 203(b)(3) respectively, of the Act, provided the alien applies for an immigrant visa or adjustment of status within the 2 years following notification that an immigrant visa is immediately available. See 8 CFR 204.5(f). As of October 1, 1991, the priority dates for all employment-based immigrant categories were current. Subsequently, however, visa numbers for the other (unskilled) worker subcategory of section 203(b)(3) of the Act quickly became over-subscribed and retrogressed, as did visa numbers for some employment-based categories for natives of India, China, and the Philippines. Because many aliens who were current on October 1, 1991, were unable to complete the immigration process due to the rapid retrogression of visa numbers, this regulation needs to be amended out of fairness to these aliens. To further Congress' intent in enacting section 161(c)(4) of IMMACT, the Service proposes to amend the regulation to state that a petition filed under section 203(a)(3) or 203(a)(6) of the Act before October 1, 1991, and approved on any date, shall be deemed a petition approved under section 203(b)(2) or 203(b)(3) of the Act, provided the alien applies for an immigrant visa or adjustment of status within a 2-year time period during which the immigrant visa is continuously available.

Section 161(c)(4)(B) of IMMACT provides that the automatic conversion of petitions filed under section 203(a)(3) or 203(a)(6) of the Act before October 1, 1991, shall not occur if the priority date for issuance of a visa has been available for a 2-year period. In the current regulation, the 2-year period commences following notification that an immigrant visa is immediately available. See 8 CFR 204.5(f). Since the promulgation of this regulation in 1991, the Service has had difficulty defining the term ''notification that an immigrant visa is immediately available.'' In the case of beneficiaries of approved petitions who apply for adjustment of status under section 245 of the Act, the Service only notifies the alien of the priority date for the approved petition. For alien beneficiaries who apply for immigrant visas, notification depends

on when the alien received immigrant visa forms from a U.S. consulate, the Transitional Immigrant Visa Processing Facility, or the National Visa Center. This method of determining when notification occurs leads to inconsistencies between those aliens who apply for adjustment of status and those who apply for an immigrant visa. For purposes of uniformity, the 2-year period will commence upon approval of the petition or when the priority date becomes available, whichever is later. A visa number must be continuously available during the 2-year period. Should the priority date retrogress within the 2-year period after which a visa number becomes available, the 2-year period provided for under section 161(c)(4)(B) of IMMACT will commence anew at the time the priority date once again becomes current. This change allows for consistency and adheres to the language of IMMACT.

Additional Evidence

The current regulation requires the petitioner to establish ability to pay the wage offered in the form of an annual report, a Federal tax return, or an audited financial statement. See 8 CFR 204.5(g)(2). In appropriate cases, the petitioner may submit or the Service may request additional evidence such as a profit/loss statement, bank account record, or personnel record. During the past 2 years, the Service has found that other documents such as payroll records and W–2 forms are useful types of evidence in establishing ability to pay the wage offered. Therefore, the Service proposes to add these two types of evidence to the list of examples of additional evidence. The proposed addition of these two types of documents does not suggest that the Service intends to allow these documents as primary evidence of ability to pay.

Validity of Section 203(b) Petitions and Labor Certifications

Following the issuance of a labor certification by the Department of Labor or the approval of an employment-based petition by the Service, the job location or the structure and ownership of the petitioning employer may change. Following the implementation of IMMACT, the Service and the Department of Labor entered into an agreement that the Service will determine the validity of labor certifications once the Department of Labor issues a labor certification. The proposed rule at 8 CFR 204.5(h) essentially restates the Department of Labor's regulation on validity and invalidation of labor certifications. See 20 CFR 656.30. In addition, it states that when an alien immigrates under an employment-based immigrant category, based on a labor certification, the labor certification will no longer be valid. The Service believes that an alien should not be able to immigrate and then re-immigrate using the same labor certification. This provision is consistent with Department of Labor policy, which states that a non-Schedule A labor certification is limited to a specific job opportunity. See Employment and Training Administration, Technical Assistance Guide No. 656 at 104. See Matter of Harry Bailen Builders, 19 I&N Dec. 412 (Comm. 1986) (holding that, based on the advice of the Department of Labor, the specific job opportunity ceases to exist when an alien immigrates based on the labor certification). It is not relevant whether the alien commenced the offered employment upon obtaining permanent resident status based on the labor certification. To allow an alien to use a labor certification twice would enable the alien to circumvent the immigration process if he or she abandons or otherwise loses his or her permanent residence and seeks to reimmigrate to the United States. Specifically, if the alien is able to use the labor certification twice, the alien can circumvent the labor certification requirement. Such a situation is not fair to other aliens who seek to immigrate to the United States. Moreover, it encourages fraud by discouraging the alien beneficiary from actually filling the job offered. Accordingly, the Service proposes to amend this regulation to provide that a labor certification is no longer valid when the alien immigrates to the United States under an employment-based category, based on that labor certification.

In furtherance of the agreement with the Department of Labor, the Service proposes to add a new paragraph on validity of labor certifications, based on changes of employer and job location.

I. Changes in Job Location

For non-Schedule A labor certifications, if the location of the job offered to the alien changes after the labor certification is approved, the Service will determine if the labor certification remains valid. The Service will follow existing Department of Labor regulations which provide that a labor certification is valid within the normal commuting distance of the site of the original offer of employment. See 20 CFR 656.30(c)(2); 20 CFR 656.3 (definition of area of intended employment). Any location within a Metropolitan Statistical Area (MSA) is deemed to be within normal commuting distance. See 20 CFR 656.3. A Schedule A labor certification is valid throughout the United States. See 20 CFR 656.30(c)(1).

In the case of non-Schedule A labor certifications where there is a job location change after the approval of an Immigrant Petition for Alien Worker (Form I–140) or labor certification, the petitioning employer must file an I–140 petition with the service center having jurisdiction over the new location where the alien beneficiary will be employed. For Schedule A labor certifications, if there is a change in job location, the alien must submit a signed job offer Form ETA 750 at his or her interview for adjustment of status or immigrant visa.

II. Successorship in Interest

In cases where a petitioning entity changes ownership, the issue may arise whether the employment relationship has so changed as to render the petition invalid. Based on the above-noted agreement with the Department of Labor, the Service will determine whether there has been a ''successorship in interest'' and, therefore, whether an approved visa petition and/or labor certification remain valid. Generally, if a new employer is a ''successor in interest'' to the original petitioning employer, the Service will reaffirm the validity of the visa petition and/or labor certification. Successorship in interest can occur when the petitioning employer, or a division thereof, is merged, acquired or purchased by another business. A business restructuring or reorganization should not affect the validity of a petition, unless the job and/or wages offered to the beneficiary have changed. To establish successorship in interest, the successor entity must demonstrate substantial continuity with the original petitioner. The Service proposes that, to establish successorship in interest, the new employer must establish that it has substantially assumed the rights, duties, obligations and assets of the original employer and continues to operate the same type of business as the original employer. The new employer must also submit evidence of ability to pay the proffered wage. In addition, the successor in interest must also demonstrate that the original employer had the ability to pay the proffered wage when the labor certification was filed, if the Service did not approve an employment-based petition on behalf of original employer. See Matter of Dial Auto Repair Shop, Inc., 19 I&N Dec. 481 (Comm. 1986). The Service invites comments on whether the ''substantial

assumption'' standard provides sufficient guidance to the public, reflects current business practice, and preserves the integrity of the immigration process. In addition, the Service welcomes comments on alternative ways to define successorship in interest.

To establish successorship in interest, the new employer must submit a Form I–140 with the service center having jurisdiction over the intended place of employment along with documentation of successorship of interest and ability to pay. If the service center determines that the petitioner fails to qualify as a successor in interest, it will deny the I–140 petition. The petitioner may pursue an appeal with the Administrative Appeals Unit. If the service center finds that the petitioner is a successor in interest, it will approve the petition and accord the beneficiary the priority date of the previously approved petition.

Aliens of Extraordinary Ability

The current regulation at 8 CFR 204.5(h)(2) defines extraordinary ability as a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of a field of endeavor. The regulation lists evidence which needs to be presented to establish extraordinary ability. See 8 CFR 204.5(h)(3). Since the implementation of IMMACT, there has arisen some confusion over the role of various types of evidence listed in 8 CFR 204.5(h)(3). The evidence listed is intended to be a guideline for the petitioner and the Service to determine extraordinary ability in order to make the adjudicative process easier for both the petitioner and the Service. The fact that an alien may meet three of the listed criteria does not necessarily mean that he or she meets the standard of extraordinary ability. The Service adjudicator must still determine whether the alien is one of that small percentage who have risen to the very top of his or her field of endeavor. Accordingly, the Service proposes to amend the regulations to state that meeting three of the evidentiary standards is not dispositive of whether the beneficiary is an alien of extraordinary ability.

By statute, aliens who immigrate under this category do not require a labor certification to work in their area of extraordinary ability, since by definition, they will not be competing with the U.S. labor market. The situation is different, however, where the alien's primary source of earned income will be derived from an activity unrelated to his or her field of extraordinary ability. In such a case, the alien may, in fact, be competing primarily with U.S. workers engaged in the unrelated field, thereby necessitating a test of the labor market and a labor certification. While the Service recognizes that aliens having extraordinary ability may reasonably be expected to engage in secondary activities within their field of extraordinary ability, whether or not for pay, the Service is responsible for ensuring that the alien's entry will not have an adverse impact on the U.S. labor market. The Service, therefore, proposes that the alien's primary source of earned income must come from the specific activity or activities for which he or she seeks priority worker classification.

Outstanding Professors and Researchers

Since the implementation of IMMACT, there has been some confusion over the role of various types of evidence listed in 8 CFR 204.5(i)(3). As in the case of the regulations governing petitions for aliens of extraordinary ability, the evidence listed is intended to be a guideline for the petitioner and the Service to determine whether the beneficiary stands apart in the academic community through eminence and distinction based on international recognition. See 56 FR 30703–30714 dated July 5, 1991. This list of evidence makes the adjudicative process easier for both the petitioner and the Service. The fact that the beneficiary may meet two of the listed criteria does not necessarily mean that he or she has the international recognition to be considered an outstanding researcher or professor. The Service adjudicator must still determine whether the alien is recognized internationally as outstanding in the academic field specified in the petition. The Service, therefore, proposes to amend this regulation to specifically state that having two types of the listed evidence does not compel a finding that the beneficiary is recognized internationally as outstanding.

The Service has also reviewed the five types of evidence listed in 8 CFR 204.5(i)(3)(i). The Service has determined that two of the paragraphs need to be reworded. Paragraph (i)(3)(i)(C) states that the petitioner may submit published material written by others about the beneficiary's work in the academic field. Some petitioners have interpreted this paragraph to mean that any reference to the beneficiary's work, including a reference in a footnote or bibliography, meets the evidentiary criteria of this paragraph. The Service proposes to amend the language of paragraph (i)(3)(i)(C) to require that the publication discuss or analyze the beneficiary's work in the academic field. A short reference to the beneficiary's work in a professional publication does not demonstrate that he or she is recognized as outstanding. A much better indicator of the importance of the alien's work in the academic community is a thorough discussion or analysis of the beneficiary's work.

In 8 CFR 204.5(i)(3)(i)(D), the petitioner may submit evidence of the beneficiary's participation, either individually or on a panel, as the judge of the work of others in the same or related academic field. The Service believes that most college or university professors are involved in judging the work of others, and the Service has found that meeting the criteria under this paragraph is not a good indicator of whether the beneficiary is recognized as outstanding. Judging the work of other authorities and experts in the alien's academic field is a better measure of the beneficiary's international recognition. Therefore, the Service proposes to amend the paragraph to specify that the alien can meet the criteria in paragraph (i)(3)(i)(D) by submitting evidence that the beneficiary has judged the work of other professors, researchers, and Ph.D. candidates in the alien's academic field.

Section 203(b)(1)(B)(iii)(III) of the Act allows a private employer to petition an outstanding professor or researcher to conduct research if the employer has at least three persons engaged in research activities and has achieved documented accomplishments in the academic field. One issue that has arisen is whether a government agency which conducts research can petition an outstanding professor or researcher. It is the position of the Service that some government agencies such as the National Institutes of Health and the Food and Drug Administration should be able to file petitions on behalf of outstanding alien researchers, who may have valuable contributions to bring to the agency's research efforts. In order to allow for government agencies to sponsor certain outstanding researchers, the Service proposes to amend the regulation to include government agencies on the list of United States employers.

Multinational Executives and Managers

Section 203(b)(1)(C) of the Act provides for the immigration of multinational executives and managers if the alien, in the 3 years preceding the time of his or her application for classification and admission into the United States, has been employed for at least 1 year in a managerial or executive position abroad with the same

employer, or a subsidiary or affiliate thereof. To accommodate managers or executives who have been in the United States in nonimmigrant status for over 3 years, 8 CFR 204.5(j)(3)(i)(B) provides that an alien, already working in the Unites States for the same employer or a subsidiary or affiliate of the firm or corporation which employed the alien abroad as a manager or executive during at least one of the 3 years preceding his or her entry as a nonimmigrant, would qualify as a multinational executive or manager. In the case of an alien who is currently outside the United States, he or she must have been employed abroad by an affiliate, branch, or subsidiary of the petitioner as a manager or executive for at least 1 year during the 3-year period immediately preceding the filing of the petition. See 8 CFR 204.5(j)(3)(i)(A). Section 204.5(j)(3) of the regulations inadvertently omitted situations where the alien was in lawful nonimmigrant status while working for an unrelated employer, but worked for a qualifying company abroad in a managerial or executive position during at least 1 of the 3 years preceeding the filing of the petition. The fact that the alien is working in the United States should not preclude him or her from qualifying as a priority worker. Aliens who have worked for an unrelated employer should be treated the same as aliens who are outside the United States for purposes of eligibility. Accordingly, the Service proposes to allow U.S. employers to file petitions on behalf of those aliens for managerial or executive positions.

Advanced Degree Holders and Aliens of Exceptional Ability

The current regulation defines ''exceptional ability'' as a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. See 8 CFR 204.5(k)(2). The regulation at 8 CFR 204.5(k)(3)(ii) lists evidence which needs to be presented to establish exceptional ability. Since the Implementation of IMMACT, there has been some confusion over the role of various types of evidence listed in the regulation. As in the cases of aliens of extraordinary ability and outstanding professors and researchers, the Service intended that this list of evidence be a guideline for the petitioner and the Service to determine exceptional ability. Providing a list of possible types of evidence makes the adjudicative process simpler for both the petitioner and the Service. The fact that an alien may meet three of the listed criteria does not necessarily mean that he or she meets the standard of exceptional ability. The Service adjudicator must still determine whether the alien has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. Accordingly, the Service proposes to amend the regulation to state that meeting three of the evidentiary standards is not dispositive of whether the beneficiary is an alien of exceptional ability.

Under section 203(b)(2)(A) of the Act, professionals holding advanced degrees or their equivalent also qualify for classification under the employment-based second category. The Joint Explanatory Statement of the Committee of Conference, made at the time Congress adopted IMMACT, stated that the equivalent of an advanced degree is ''a bachelor's degree with at least five years progressive experience in the professions.'' See H.R. Rep. No. 101–955, 101st Cong., 2d Sess. 121 (1990). Accordingly, the current regulation states that the job offer portion of the labor certification application (Form ETA–750) must demonstrate that the job requires a professional holding an advanced degree or equivalent. See 8 CFR 204.5(k)(4)(i). Since the Service began adjudicating petitions under the current regulation, some petitioners have interpreted this regulation to allow job offers which require only a bachelor's degree, plus 5 years of progressive experience, but not an advanced degree. This interpretation does not comport with the language of section 203(b)(2)(A) of the Act which, on its face, states that a job offer must require an advanced degree or equivalent in order to qualify the beneficiary as an advanced degree holder. Requiring a bachelor's degree and 5 years of experience does not equate to a requirement that the beneficiary hold an advanced degree. In order for the beneficiary to qualify as an advanced degree holder, the job offered in the labor certification must also accept an advanced degree as a minimum job requirement. Therefore, the Service proposes that the regulation be amended to state that if the job offer portion of the labor certification requires a person holding a bachelor's degree, followed by at least 5 years of experience in the specialty, it must also accept an advanced degree holder in the same field as meeting the minimum job requirements.

Section 212(a)(5)(C) of the Act states that a petition filed under the employment-based second category requires a labor certification. Section 203(b)(2)(B) of the Act provides that ''the Attorney General may, when he deems it to be in the national interest, waive the requirement * * * that an alien's services in the sciences, arts, professions, or business are sought by an employer in the United States.'' The Service has determined that a waiver of the job offer constitutes a waiver of the labor certification. See 56 FR 60897–60913 dated November 29, 1991. Soon after the promulgation of the final rule on employment-based immigrant petitions in November of 1991, the President signed the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA). The MTINA added professionals to the list of aliens who are eligible to request a national interest waiver of the labor certification. Accordingly, the Service proposes to amend 8 CFR 204.5(k)(4)(ii) to add professionals to the list of aliens whom the service center director can exempt from the labor certification requirement.

After the Service issued a proposed regulation on employment-based immigrant petitions at 56 FR 30703–30714 on July 5, 1991, several commenters suggested that the Service define the term ''national interest.'' The Service decided not to define the term ''national interest'' in the final regulation. See 56 FR 60897–60913 dated November 29, 1991. At that time, the Service believed that it was appropriate to leave the application of the national interest waiver as flexible as possible and that each case should be judged on its own merits.

Since the promulgation of the final regulation on November 29, 1991, the Service has received numerous petitions filed under the employment-based second category, which request a waiver of the labor certification requirement in the national interest. Since IMMACT became effective in 1991, the Service has been flexible in approving national interest waivers in a variety of situations. The Administrative Appeals Unit (AAU) has issued a number of non-precedent decisions on the national interest waiver. The AAU has listed some factors which relate to national interest. See Matter of _____, EAC 92 091 50126 (July 21, 1992). They include improving the U.S. economy, improving conditions of U.S. workers, improving education and training of children and under-qualified workers, improving health care, providing affordable housing, improving the environment, and a request from an interested government agency. Although these factors provide a list of national goals or objectives, they do not provide much guidance to the public or to Service adjudicators with respect to which aliens merit a national interest waiver.

Without specific guidelines, the service centers have found it difficult to

determine which aliens should qualify for the waiver. It has proven to be very difficult to determine on a case-by-case basis which petitions deserve a ''national interest'' waiver. The Service believes that, absent published general guidelines, it is very difficult to adjudicate consistently national interest waivers. Based on the Service's experience in adjudicating national interest waivers since 1991, the Service proposes that the petitioner establish four elements to qualify for a national interest waiver. These elements will allow for greater consistency in adjudication of national interest waivers as well as provide guidance to the public. They do not limit, or attempt to define, which types of activities are in the national interest. The four elements do, however, provide common indicators of whether the alien's admission to the United States would benefit the national interest.

The first element is that the alien must have at least 2 years of experience in the area in which he or she will benefit the United States. The Service believes that requiring some background in the area in which the alien will benefit the national interest is an appropriate measure of whether the alien has the commitment to pursue the activity which will promote a national interest, as stated in the petition. Unlike an alien who immigrates based on a labor certification, an alien who immigrates based on a national interest waiver does not require a specific job offer and a sponsoring employer. It is, therefore, more difficult in such waiver cases for the Service to determine whether the alien has the commitment to engage in the activity which will promote a national interest following his or her admission as an immigrant.

To illustrate this problem, the Service notes that it has received a number of petitions, accompanied by a request for a national interest waiver, from professionals who recently received an advanced degree and claim that they will be engaged in activities which will be in the national interest. One example is an attorney who recently passed the state bar examination and promises to devote some of his practice to representing indigent persons. Another example is someone who has just graduated from medical school and states that he or she will practice in a medically under-served area. Such petitions have been problematic for the Service to adjudicate. The aliens claim they will be engaged in activity in which they do not have a ''track record.'' Under the current regulations, the Service has no means to determine whether the alien is truly committed to performing the activity which promotes the national interest. The Service believes that it is appropriate to require the alien to have 2 years of full-time experience in the field of endeavor which will promote the national interest. The Service does not believe, however, that the required period of experience should include time in which the alien was a full- or part-time student. It is the position of the Service that 2 years of full-time experience is the minimum period of time to measure the alien's commitment to work in an area which will promote the national interest. In addition, this 2-year full-time experience requirement is necessary to determine whether the alien has sufficient qualifying experience in the field to play a significant role in an activity which will prospectively benefit the United States.

The second element is that the national interest waiver not be based purely on the alien's ability to ameliorate a local labor shortage. Although the legislative history of IMMACT and MTINA does not address the meaning of the term ''national interest,'' Congress clearly stated, in section 212(a)(5)(C) of the Act, that all aliens who immigrate under the second and third employment-based categories require a labor certification. Section 203(b)(2)(B) of the Act allows the Attorney General to waive the requirement that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States if it is in the national interest. By enacting the national interest waiver, Congress created an exception to the general labor certification requirement. It would, therefore, be superfluous to allow an alien to be exempted from the labor certification requirement based purely on a shortage of available U.S. workers. Congress has delegated to the Department of Labor the determination of whether local labor shortages exist. See section 212(a)(5)(A) of the Act. This does not mean, however, that the existence of a national labor shortage would not be relevant to whether an alien should be granted a national interest waiver. The fact that the alien has skills which are not available in the overall U.S. labor market may be a relevant consideration in deciding whether to grant a national interest waiver. However, should the Service determine that the basis of the request for a national interest waiver is solely to alleviate a local labor shortage, a labor certification will be the appropriate basis to qualify for an employment-based petition.

The plain language of the term ''national interest'' supports the Service's position on local labor shortages. The dictionary defines the word ''national'' as ''pertaining to a whole nation'' or ''concerning or encompassing an entire nation.'' See The Random House College Dictionary (Rev. Ed. 1975). If the basis of the request for a national interest waiver is merely to solve a labor shortage in a limited area of the country, the impact of the alien's employment cannot be said to pertain directly to the entire Nation. There must be an impact on the Nation as a whole.

In conclusion, the Service has determined that local labor market concerns, standing alone, are not an appropriate basis for a national interest waiver, which exempts the alien from the normal labor certification requirement. Accordingly, the Service proposes to preclude aliens from obtaining a national interest waiver based purely on a local labor shortage.

The third element in determining whether the alien should be given a national interest waiver is that the alien will be involved in an undertaking which will substantially benefit prospectively the United States. This requirement follows the statutory language of section 203(b)(2)(B) of the Act, which makes it clear that the waiver request should be premised on an activity which will further an important national goal. The emphasis of this element is on the particular national goal the alien's proposed undertaking will promote.

The fourth element in determining whether the labor certification and job offer should be waived in the national interest is that the alien play a significant role in that activity which will prospectively benefit the United States. The Service has received a large number of requests for a national interest waiver from aliens who play relatively minor roles in an important project or activity which affects the national interest. One example is an alien who is an entry-level engineer who works for a company which conducts important research into new sources of energy, such as fusion. Another example is a physician who claims that he or she will work in primary-care, which the President's health care proposal emphasizes. In both examples, the alien states that he or she will be working in a field which will promote a national goal or cause. While this may be true, merely working in an area which benefits the national interest is not a sufficient basis to grant a national interest waiver. The alien must also establish that he or she will

play a significant role in advancing the particular national interest. In other words, the alien has the burden of proof that he or she will have a significant impact on an activity which will benefit the national interests of the United States.

This proposed regulation will serve as a guideline for aliens who apply for a national interest waiver. It emphasizes both the manner in which the alien will contribute to the national interest, as well as the activity or employment itself. The Service believes that the alien must show that he or she will play a significant role in an undertaking which will prospectively benefit the United States.

Skilled Workers, Professionals, and Other Workers

The employment-based third category under section 203(b)(3) of the Act has subcategories for professionals, skilled workers, and unskilled workers. Although there are 40,000 immigrant visa numbers allocated annually to the employment-based third category, section 203(b)(3)(B) of the Act limits the annual admissions of unskilled workers to 10,000. In order to qualify as a skilled worker, the job offered must require at least 2 years of training or experience. Under the current regulation, the Service determines whether a job offered is skilled or unskilled based on the minimum experience or training requirements which the prospective employer places on the job, as certified by the Department of Labor on Form ETA 750. See 8 CFR 204.5(l)(4). Block number 14 on Form ETA 750A (Offer of Employment) lists the minimum experience for a worker to satisfactorily perform the job offered. As a matter of practice, the Department of Labor permits the minimum experience required to satisfactorily perform the job offered to be in the job offered or in a related occupation.

The Service has received a number of petitions in which the minimum experience requirement in a related occupation is 2 years or more and the minimum experience requirement in the job offered is less than 2 years. This regulation proposes to place the beneficiary into the unskilled category if the experience requirement on Block 14 on Form ETA 750A for the job offered shows less than 2 years of experience. To do otherwise would mean that a job applicant could meet one of the minimum job offer requirements with less than 2 years of experience in the job itself. The Service has determined that focusing on the experience required for the job offered comports with the language of section 203(b)(3)(A)(i) of the Act which defines skilled workers as qualified immigrants who are capable of performing skilled labor, requiring at least 2 years of experience or training. Accordingly, the Service proposes to add a sentence to emphasize that a worker will be considered unskilled if a job applicant can meet the minimum experience requirements in the job offered with less than 2 years of experience.

Religious Workers

Section 151(a) of IMMACT created a new immigrant category for ministers, religious professionals, and other religious workers. Section 101(a)(27)(C)(iii) of the Act provides that in order to qualify under this category, a minister must have been carrying on the vocation of minister during the previous 2 years. The Act also requires professional and other religious workers to carry on the religious work during the previous 2 years. The regulation currently states that ministers and religious workers must have been performing the vocation of minister or religious work continuously, either abroad or in the United States, for at least the 2-year period immediately preceding the filing of the petition. See 8 CFR 204.5(m)(1). The Service proposes to amend the regulation to expressly require that the 2 years of experience be full-time.

Before Congress enacted IMMACT in 1990, section 101(a)(27)(C) of the Act classified ministers as special immigrants. Under this category, the alien had to establish that he was ''an immigrant who continuously for at least two years immediately preceding the time of his application for admission to the United States has been, and who seeks to enter the United States solely for the purpose of carrying on the vocation of minister of a religious denomination.'' This language is virtually identical with the current statute, except that Congress added a category for religious workers. The legislative history indicates that Congress did not intend to overrule pre-existing case law interpreting the experience requirement under former section 101(a)(27)(C) of the Act. See H. Rep. No. 723, 101st Cong., 2nd Sess. 75 (1990). In Matter of Faith Assembly Church, 19 I&N Dec. 391, 393 (Comm. 1986), the Commissioner determined that the term ''solely'' applies to both the alien's proposed ministerial activities as well as to the alien's previous experience as a religious minister. Because of the legislative history and the similarity in the statutory language, it is appropriate for the Service to require that the 2 years of experience be full-time. In addition, this interpretation is consistent with the statutory framework, under which IMMACT also created a nonimmigrant category for religious workers. See section 101(a)(15)(R) of the Act. The 2-year experience requirement is the only difference between the nonimmigrant and immigrant religious worker category. Compare id with section 101(a)(27)(C)(iii) of the Act. Both categories require 2 years of membership in the religious denomination. Since membership in a religious denomination may entail some part-time volunteer work, part-time employment should not suffice to qualify the alien as a special immigrant religious worker. Permitting such part-time employment to count towards meeting the experience requirement for immigrant religious workers would render the distinction between the two categories, and, therefore, the experience requirement itself, superfluous.

Accordingly, the Service proposes to amend the regulation to expressly require that the 2 years of experience be full-time. In order for the qualifying experience to be considered full-time, the alien must have worked in a qualifying religious vocation or occupation for at least 35 hours per week or more, depending on what constitutes ''full-time'' experience in the particular religious occupation or vocation.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not, if promulgated, have a significant adverse economic impact on a substantial number of small entities. This proposed rule merely modifies existing regulations for employment-based immigration. It will not significantly change the number of persons who immigrate to the United States based on employment-based petitions. Any impact on small business entities will be, at most, indirect and attenuated.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, § 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation 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.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has addressed this rule in light of the criteria in Executive Order 12606 and has determined that it will have no effect on family well-being.

List of Subjects in 8 CFR Part 204

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

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

PART 204—IMMIGRANT PETITIONS

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

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

2. In § 204.5, paragraph (c) is revised to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(c) *Filing petition.* Any United States employer desiring and intending to employ an alien may file a petition for classification of the alien under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act. An alien, or any person in the alien's behalf, may file a petition for classification under section 203(b)(1)(A) or 203(b)(4) of the Act (as it relates to special immigrants under section 101(a)(27)(C) of the Act). For purpose of this part, a United States employer must be a person who is a United States citizen or permanent resident, a firm, corporation, contractor, or other association or organization in the United States which engages a person to work in the United States, which has an employer-employee relationship with respect to employees as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of such employee.

* * * * *

3. In § 204.5, paragraph (d) is amended by adding the following sentence immediately after the first sentence, to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(d) *Priority date.* * * * If the United States employer substitutes another alien on a labor certification, the priority date shall be the date the employer requests the substitution. * * *

* * * * *

4. In § 204.5, paragraph (e) is amended by revising the third sentence to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(e) *Retention of section 203(b)(1), (2), or (3) priority date.*—* * * A petition revoked pursuant to 8 CFR 205.2 for fraud or misrepresentation will not confer a priority date, nor will any priority date be established as a result of a denied petition. * * *

* * * * *

5. In § 204.5, paragraph (f) is revised to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(f) *Maintaining the priority date of a third or sixth preference petition filed prior to October 1, 1991*—Any petition filed before October 1, 1991, and approved on any date, to accord status under section 203(a)(3) or 203(a)(6) of the Act, as in effect before October 1, 1991, shall be deemed a petition approved to accord status under section 203(b)(2) or within the appropriate classification under section 203(b)(3), respectively, of the Act as in effect on or after October 1, 1991, provided that the alien applies for an immigrant visa or adjustment of status within the two-year period following approval of the petition during which an immigrant visa is continuously available for his or her use.

* * * * *

§ 204.5 [Amended]

6. Section 204.5(g)(2) is amended in the last sentence by adding the phrase ''payroll records, W–2 forms,'' immediately after the phrase ''bank account records,''.

7. In § 204.5, paragraphs (h) through (n) are redesignated as paragraphs (i) through (o), respectively, and a new paragraph (h) is added to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(h) *Validity of section 203(b) petitions and labor certifications*—(1) A petition approved pursuant to section 203(b) of the Act is valid indefinitely unless revoked under section 205 of the Act. A labor certification is valid until the alien immigrates or adjusts status under an employment-based petition based on the labor certification, unless there is a finding by the Service or the State Department that the labor certification was obtained through fraud or a material misrepresentation.

(2) *Changes in job location*—(1) *Non-schedule A labor certificatons.* A labor certification is valid only for the area within normal commuting distance of the site of the original offer of employment. Any location within a Metropolitan Statistical Area is deemed to be within normal commuting distance. If there is a change in job location after a Form I–140 Immigrant Petition for Alien Worker has been approved, the petitioner shall file a new Form I–140 petition with the service center having jurisdiction over the intended place of employment.

(ii) *Schedule A labor certifications.* A Schedule A labor certification is valid anywhere in the United States.

(3) *Successorship in interest.* If there has been a successor in interest to the original petitioning employer, the Service will reaffirm the validity of the labor certification or previously approved Form I–140 petition for the new employer. For purposes of this paragraph, to be a successor in interest, the new employer must have substantially assumed the duties, rights, obligations, and assets of the original employer. In addition, the new employer must offer the same wages and working conditions to its employees, offer the beneficiary the same job as stated in the labor certification, and continue to operate the same type of business as the original employer. The new employer must submit a Form I–140 petition with the service center having jurisdiction over intended place of employment along with evidence that it is a successor in interest and documentation showing the change in ownership and ability to pay the wage offered. If the Service did not approve a petition filed by the original employer, the new employer must also establish that the original employer had the ability to pay the proffered wage when the labor certification was submitted.

* * * * *

8. In § 204.5, newly redesignated paragraphs (i)(4) and (i)(5) are revised to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(i) * * *

(4) If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility. Meeting three of the evidentiary standards listed in paragraph (i)(3) of this section is not dispositive of whether the beneficiary is an alien of extraordinary ability. The petitioner has the burden of proof to establish that he or she is an alien of extraordinary ability.

(5) *No offer of employment required.* Neither an offer of employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States. The alien's primary source of earned income must come from the specific activity or activities for which he or she seeks classification as an alien of extraordinary ability.

* * * * *

9. Section 204.5 is amended by:

a. Revising newly redesignated paragraph (j)(3)(i) introductory text;

b. Revising newly redesignated paragraph (j)(3)(i) (C) and (D); and by

c. Revising the first sentence in newly redesignated paragraph (j)(3)(iii)(C), to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(j) * * *

(3) * * *

(i) Evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition. Such evidence shall consist of at least two of the following. Meeting two of the following evidentiary standards listed in paragraph (j)(3)(i) of this section is not dispositive of whether the beneficiary is recognized internationally as outstanding in the academic field specified in the petition. The petitioner has the burden of proof to establish that the beneficiary is an outstanding researcher or professor:

* * * * *

(C) Published material in professional publications written by others discussing or analyzing the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation;

(D) Evidence of the alien's participation, either individually or on a panel, as the judge of the work of other professors, researchers, or Ph.D. candidates in the same or related academic field;

* * * * *

(iii) * * *

(C) A department, division, or institute of a private employer or a state, local, or Federal Government agency offering the alien a permanent research position in the alien's academic field.

* * *

* * * * *

10. In § 204.5, newly redesignated paragraph (k)(3)(i) is amended by redesignating paragraphs (k)(3)(i) (C) and (D) as paragraphs (k)(3)(i) (D) and (E) respectively; and by adding a new paragraph (k)(3)(i)(C) to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(k) * * *

(3) * * *

(i) * * *

(C) If the alien is already in the United States working for an employer which is not the same employer or a subsidiary or affiliate of the entity by which the alien was employed overseas, in the three years preceding the filing of the petition, the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity;

* * * * *

11. In § 204.5, newly redesignated paragraphs (l)(1), (l)(3)(iii), and (l)(4) are revised to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(l) *Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability.* (1) Any United States employer may file a petition on Form I–140 for classification of an alien under section 203(b)(2) of the Act as an alien who is a member of the professions holding an advanced degree or an alien of exceptional ability in the sciences, arts, or business. If the alien is seeking an exemption from the requirement of a job offer in the United States pursuant to section 203(b)(2)(B) of the Act, then the alien, or anyone in the alien's behalf, may be the petitioner.

* * * * *

(3) * * *

(iii) If the standards in paragraph (l)(3) do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility. Meeting three of the evidentiary standards listed in paragraph (l)(3)(ii) of this section is not dispositive of whether the beneficiary is an alien of exceptional ability. The petitioner has the burden of proof to establish that the alien is an alien of exceptional ability.

(4) *Labor certification or evidence that the alien qualifies for Labor Market Information Pilot Program*—(i) *General.* Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor, by an application for Schedule A designation (if applicable), or by documentation to establish that the alien qualifies for one of the shortage occupations in the Department of Labor's Labor Market Information Pilot Program. To apply for Schedule A designation or to establish that the alien's occupation is within the Labor Market Information Program, a fully executed uncertified Form ETA–750 in duplicate must accompany the petition. The job offer portion of the individual labor certification, Schedule A application, or Pilot Program application must demonstrate that the job requires a professional holding an advanced degree or the equivalent, or an alien of exceptional ability. If the job offer portion of the labor certification requires a baccalaureate degree or foreign equivalent degree followed by at least five years of progressive post-baccalaureate experience in the specialty, it must also provide that an advanced degree holder may meet the minimum job requirements.

(ii) *Exemption from job offer.* The director may exempt the requirement of a job offer, and thus of a labor certification, for aliens of exceptional ability in the sciences, arts, or business and members of the professions if exemption would be in the national interest.

(A) To show that such exemption would be in the national interest, the petitioner must establish the following:

(1) The alien has at least two years of full-time experience in the activity in which he or she will benefit the United States;

(2) The alien's request for a waiver of the labor certification requirement is not based purely on a local labor shortage;

(3) The alien will engage in an undertaking which will substantially benefit prospectively the United States; and

(4) The alien will play a significant role in the undertaking described in paragraph (l)(4)(ii)(A)(*3*).

(B) To apply for the exemption, the petitioner must submit Form ETA–750B, Statement of Qualifications of Alien, in duplicate, as well as evidence to support the claim that such exemption would be in the national interest.

* * * * *

12. In § 205.5, newly redesignated paragraph (m)(4) is revised to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(m) * * *

(4) *Differentiating between skilled and other workers.* The determination of whether a worker is a skilled or other worker will be based on the requirements of training and/or experience placed on the job by the prospective employer, as certified by the Department of Labor. A worker will be considered unskilled if the prospective employer's minimum experience requirement, as certified by the Department of Labor, indicates that less than two years of experience, either in the job offered or in a related occupation, is required. In the case of a Schedule A occupation or a shortage occupation within the Labor Market Pilot Program, the petitioner will be required to establish to the director that the job is a skilled one, i.e., one which requires at least two years of training and/or experience.

* * * * *

§ 204.5 [Amended]

13. In § 204.5, newly redesignated paragraph (n)(1) is amended in the fourth sentence by adding the phrase ''on a full-time basis'' immediately after the phrase ''or other work''.

14. In § 204.5, newly redesignated paragraph (n)(3)(ii)(A) is amended by adding the phrase ''full-time'' between the words ''of'' and ''experience''.

15. In § 204.5, newly redesignated paragraph (n)(4) is amended in the second sentence by adding the phrase ''and will be working for the religious organization on a full-time basis'' immediately after the term ''or solicitation of funds for support''.

16. In § 204.5, newly redesignated paragraph (o)(1) is revised to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(o) *Closing action*—(1) *Approval.* An approved employment-based petition will be forwarded to the Department of State National Visa Center. If the petition indicates that the alien will apply for adjustment to permanent residence in the United States, the approved petitions will be retained by the Service for consideration with the application for permanent resident (Form I–485).

* * * * *

§ 204.5 [Amended]

17. In § 204.5, newly redesignated paragraph (o)(3) is removed.

Dated: March 3, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–13806 Filed 6–5–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 98

[Docket No. 94–006–1]

Importation of Embryos From Ruminants and Swine From Countries Where Rinderpest or Foot-and-Mouth Disease Exists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations to allow, under specified conditions, the importation of embryos from all ruminants, including cervids, camelids, and all species of cattle, and from swine from countries where rinderpest or foot-and-mouth disease exists. The regulations currently provide for importing only embryos from certain species of cattle in countries where rinderpest or foot-and-mouth disease exists. Research now indicates that embryos from all species of cattle, from ruminants other than cattle, and from swine, which are produced, collected, and handled under certain conditions in countries where rinderpest or foot-and-mouth disease exists, could be imported with virtually no risk of introducing communicable diseases of livestock into the United States. This action would make additional sources of genetic material available to domestic animal breeders.

DATES: Consideration will be given only to comments received on or before August 7, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94–006–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. 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: Dr. Roger Perkins, Staff Veterinarian, Import/Export Animals, National Center for Import and Export, VS, APHIS, Suite 3B05, 4700 River Road Unit 39, Riverdale, MD 20737–1231. Telephone: (301) 734–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 98 (referred to below as the regulations) govern the importation of animal germ plasm so as to prevent the introduction of contagious diseases of livestock or poultry into the United States. Subpart A of part 98 applies to ruminant and swine embryos from countries free of rinderpest and foot-and-mouth disease (FMD), and to embryos of horses and asses. Subpart B applies to certain cattle embryos from countries where rinderpest or FMD exists. Subpart C applies to certain animal semen. Subpart B currently allows for the importation of embryos from cattle (*Bos indicus* and *Bos taurus*) from countries where rinderpest or FMD exists only if embryos are produced, collected, and handled under certain conditions. However, research [1] has demonstrated that the same conditions would effectively ensure that embryos from all species of cattle, and from swine, and from ruminants other than cattle, including camelids and cervids, can also be imported into the United States from countries where rinderpest or FMD exists without significant risk of introducing these diseases.

At this time, only *Bos indicus* and *Bos taurus* cattle embryos may be imported into the United States from countries where rinderpest or FMD exists. The available gene pool for swine and ruminants other than cattle cannot be enlarged by using embryos from animals in countries where rinderpest or FMD exists. Because of this, U.S. livestock interests, except cattle-related interests,

[1] Information about pertinent research may be obtained from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import-Export, 4700 River Road Unit 38, Riverdale, Maryland 20737–1231.

cannot fully participate in the growing international market in germ plasm.

Therefore, we are proposing to amend the regulations in subpart B to allow embryos from all ruminants, including cervids and camelids, from countries where rinderpest or FMD exists, to be imported into the United States under the same conditions under which *Bos indicus* and *Bos taurus* cattle embryos may be imported from those countries into the United States. Also, we are proposing to amend the regulations in subpart B to allow embryos from swine from countries where rinderpest or FMD exists to be imported into the United States under conditions that are the same as those for *Bos indicus* and *Bos taurus* cattle embryos, except with respect to the specific diseases for which we would screen.

Under our proposed regulations, the ''General prohibitions'' in § 98.12, which now apply only to *Bos indicus* and *Bos taurus* cattle embryos, would be amended to cover embryos from all ruminants, including camelids and cervids, and swine. In addition, import permits and health certificates would be required for all ruminant and swine embryos, just as they are now required for *Bos indicus* and *Bos taurus* cattle embryos (see §§ 98.13 and 98.14). Collection, processing, and handling requirements for all ruminant and swine embryos would also be the same as those now in place for *Bos indicus* and *Bos taurus* cattle embryos (see §§ 98.16, 98.17 and 98.18). In addition, requirements concerning arrival and inspection at the port of entry and embryos refused entry would be the same for all ruminant and swine embryos as those now in place for *Bos indicus* and *Bos taurus* cattle embryos (see §§ 98.19 and 98.20).

Health requirements would also be the same for all ruminant embryos as are those now in place for *Bos indicus* and *Bos taurus* cattle embryos (see § 98.15). The health requirements for swine embryos would differ only in regard to the listed diseases for which would screen. The current regulations are designed to ensure that embryos from *Bos indicus* and *Bos taurus* cattle are free of certain listed diseases. These regulations, in part, address the health of the donor dam and the herds in which it was present, the health of the animals in the embryo collection unit with the donor dam, and the presence of specific diseases in the locales of the embryo collection unit and of any herd in which the donor dam was present, over the previous 12 months.

The listed diseases of concern for embryos from *Bos indicus* and *Bos taurus* cattle are bovine spongiform encephalopathy, brucellosis, contagious bovine pleuropneumonia, FMD, Rift Valley fever, rinderpest, tuberculosis, and vesicular stomatitis. All of these diseases may affect other ruminants, including cervids, all other species of cattle, and camelids. Under our proposed regulations, all ruminant embryos would have to meet the same health regulations as *Bos indicus* and *Bos taurus* cattle embryos must now meet, to ensure that they are not infected with any of these diseases. Except for brucellosis and tuberculosis, none of these diseases are present in the United States and we want to prevent their introduction. Brucellosis and tuberculosis are present in the United States. However, we have programs to control their spread and to eradicate them. Therefore, we do not want infected embryos imported into the United States, where they could spread infection and increase the cost and difficulty of controlling and eradicating these diseases.

The proposed diseases of concern for swine embryos, which would be listed in the regulations, are African swine fever, brucellosis, FMD, hog cholera, pseudorabies, rinderpest, swine vesicular disease, tuberculosis, and vesicular stomatitis. Except for brucellosis, pseudorabies, and tuberculosis, these are diseases which are not present in the United States and which may infect swine. Brucellosis, pseudorabies, and tuberculosis are present in the United States. However, we have programs to control their spread and to eradicate them. We therefore do not want infected embryos imported into the United States. Rinderpest is not normally considered a swine disease, but we are proposing to require that swine embryos be free of rinderpest because rare infections do occur in domestic Asiatic swine.

We are also proposing to amend part 98 to remove the definition of *cattle* and add a definition of *ruminant.* Cervids, camelids, and all species of cattle would be included under the proposed definition of *ruminant.* Camelids are often considered to be ruminants. However, they are not true ruminants as they do not have four stomach compartments. There is no disease risk basis to treat them differently than true ruminants under these regulations. Therefore, we propose to include them under the definition of *ruminant.*

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this proposed rule on small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comment concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule.

In accordance with 21 U.S.C. 111, the Secretary of Agriculture is authorized to promulgate regulations to prevent the introduction or dissemination of any communicable disease of animals from a foreign country into the United States. This proposed rule would allow the importation of certain embryos from swine and ruminants, including camelids, cervids, and all species of cattle, from countries where rinderpest or foot-and-mouth disease exists, under restrictions that appear adequate to prevent the introduction or dissemination of rinderpest, foot-and-mouth disease, and other communicable diseases of livestock.

The annual value of cattle embryos imported during the past several years has averaged in the hundreds of thousands of dollars. We do not expect that this proposed rule change would result in a significant increase in cattle embryo imports, since demand will continue to be predominantly for the *Bos indicus* and *Bos taurus* species. However, APHIS does foresee the importation of embryos of other species, such as water buffalo and certain breeds of sheep and goats from Africa.

At present, ruminants and swine from countries where rinderpest or foot-and-mouth disease exists can only enter the United States following quarantine at the Harry S Truman Animal Import Center (HSTAIC). Allowing embryos of additional ruminant species and swine to be imported would enable importers to forgo quarantine and other costs of importing live animals. For example, we estimate that the cost to importers of importing approximately 500 Boer goats from South Africa would average more than $2,000 per animal for quarantine in HSTAIC. This does not include testing, post-quarantine clean-up expenses, and other costs associated with importing animals through HSTAIC. In addition, importers must undergo the inconvenience and uncertainty of lottery selection (including putting

down either a letter of credit or a $50,000 deposit), must bear the costs of qualifying animals for importation through HSTAIC, and must assume the risk that animals may not qualify for importation after quarantine. Quarantine-related costs could easily exceed the cost of implanting an imported embryo. Savings in transporting embryos rather than live animals, both before and after entry into the United States, would also be realized.

This proposed rule contains paperwork and recordkeeping requirements. Under this proposed rule, import permits and health certificates would be required for all ruminant and swine embryos, as they are now required for *Bos indicus* and *Bos taurus* cattle embryos.

The alternatives to this proposed rule would be to take no action, or to allow the importation of embryos under different conditions than those proposed. We did not consider taking no action a reasonable alternative, because it would, in our opinion, prohibit the importation of embryos which pose no significant risk of disease. We also did not consider importation under conditions other than those proposed a viable option. The only available research concerns embryos handled and treated as proposed in this document. Embryos handled and treated using other methods have not been tested. We therefore have no data demonstrating that other methods would be adequate to prevent the importation of rinderpest, foot-and-mouth disease, and other communicable diseases of livestock.

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.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Docket No. 94–006–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238 and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 98

Animal diseases, Imports, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 98 would be amended as follows:

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

1. The authority citation for part 98 would be revised to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

Subpart B—Ruminant and Swine Embryos From Countries Where Rinderpest or Foot-and-Mouth Disease Exists

2. The heading for subpart B would be revised to read as set forth above.

3. Section 98.11 would be amended by removing the definition of *Cattle*, and by adding, in alphabetical order, the following definitions to read as follows:

§ 98.11 Definitions.

* * * * *

Ruminant. All animals which chew the cud, including cattle, buffaloes, camelids, cervids (deer, elk, moose, and antelope), sheep, goats, and giraffes.

Swine. The domestic hog and all varieties of wild hogs.

* * * * *

§§ 98.12, 98.13, 98.14 [Amended]

4. In the following sections, the word ''Cattle'' would be removed and the words ''Ruminant, camelid, and swine'' would be added in its place:

a. § 98.12(a);

b. § 98.12(b);

c. § 98.13(a); and

d. § 98.14(a), the introductory text.

5. Section 98.15 would be amended as follows:

a. In the introductory paragraph, the word ''Cattle'' would be removed and the words ''Ruminant and swine'' would be added in its place.

b. Paragraphs (a)(1) and (a)(2) would be revised to read as set forth below:

c. In paragraph (a)(4), the word ''cattle'' would be removed and the words ''ruminants or swine'' would be added in its place.

d. In paragraph (a)(5), the first sentence would be designated as paragraph (a)(5)(i), the second sentence would be designated as paragraph (a)(5)(ii) and revised to read as set forth below, and the third and fourth sentences would be designated as paragraphs (a)(5)(iii) and (a)(5)(iv), respectively.

e. In paragraph (a)(7), the first sentence would be designated as paragraph (a)(7)(i) and revised to read as set forth below, and the second sentence would be designated as paragraph (a)(7)(ii).

f. In paragraph (a)(8), the first sentence would be designated as paragraph (a)(8)(i) and revised to read as set forth below, and the second sentence would be designated as paragraph (a)(8)(ii).

The revisions read as follows:

§ 98.15 Health requirements.

* * * * *

(a) * * *

(1) During the year before embryo collection, no case of the following diseases occurred in the embryo collection unit or in any herd in which the donor dam was present:

(i) Ruminant: Bovine spongiform encephalopathy, contagious bovine pleuropneumonia, foot-and-mouth disease, Rift Valley fever, rinderpest, or vesicular stomatitis; or

(ii) Swine: African swine fever, foot-and-mouth disease, hog cholera, pseudorabies, rinderpest, swine vesicular disease, or vesicular stomatitis.

(2) During the year before embryo collection, no case of the following diseases occurred within 5 kilometers of the embryo collection unit or in any herd in which the donor dam was present:

(i) Ruminant: Bovine spongiform encephalopathy, contagious bovine pleuropneumonia, foot-and-mouth disease, Rift Valley fever, rinderpest, or vesicular stomatitis; or

(ii) Swine: African swine fever, foot-and-mouth disease, hog cholera, pseudorabies, rinderpest, swine vesicular disease, or vesicular stomatitis.

* * * * *

(5)(i) * * *

(ii) The donor dam was determined to be free of foot-and-mouth disease based upon tests of the pair of serum samples. In addition, if any of the following diseases exist in the country of origin, the donor dam was determined to be free of these diseases based upon additional tests of the serum samples:

(A) Ruminant: Contagious bovine pleuropneumonia, Rift Valley fever, rinderpest, or vesicular stomatitis; or

(B) Swine: African swine fever, hog cholera, pseudorabies, rinderpest, swine vesicular disease, or vesicular stomatitis.

* * * * *

(7)(i) Not less than 30 days nor more than 120 days after embryo collection, the donor dam was examined by an official veterinarian and found free of clinical evidence of the following diseases:

(A) Ruminant: Bovine spongiform encephalopathy, brucellosis, contagious bovine pleuropneumonia, foot-and-mouth disease, Rift Valley fever, rinderpest, tuberculosis, and vesicular stomatitis; or

(B) Swine: African swine fever, brucellosis, foot-and-mouth disease, hog cholera, pseudorabies, rinderpest, swine vesicular disease, tuberculosis, and vesicular stomatitis.

* * * * *

(8)(i) Between the time the embryos were collected and all examinations and tests required by this subpart were completed, no animals in the embryo collection unit with the donor dam, or in the donor dam's herd of origin, exhibited any clinical evidence of:

(A) Ruminant: Bovine spongiform encephalopathy, brucellosis, contagious bovine pleuropneumonia, foot-and-mouth disease, Rift Valley fever, rinderpest, tuberculosis, and vesicular stomatitis; or

(B) Swine: African swine fever, brucellosis, foot-and-mouth disease, hog cholera, pseudorabies, rinderpest, swine vesicular disease, tuberculosis, and vesicular stomatitis.

* * * * *

§ 98.16 [Amended]

6. § 98.16 would be amended as follows:

a. In the introductory paragraph, the first sentence, the word ''Cattle'' would be removed and the words ''Ruminant and swine'' would be added in its place.

b. In paragraph (b), in the first sentence, the word ''cattle'' would be removed and the words ''embryo donors'' would be added in its place.

Done in Washington, DC, this 30th day of May 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–13667 Filed 6–5–95; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–61]

Nuclear Energy Institute, Receipt of a Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Nuclear Energy Institute (NEI) on behalf of the nuclear power industry. The petition has been docketed by the Commission and has been assigned Docket No. PRM–50–61. The petitioner requests that the NRC amend its regulations governing fire protection at nuclear power plants. The petitioner believes such an amendment would provide a more flexible alternative to the current requirements and permit nuclear power plant licensees more discretion in implementing fire protection requirements that would be site-specific without adversely affecting a licensee's ability to achieve the safe shutdown of a facility in the event of a fire.

DATES: Submit comments by September 29, 1995. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Services Branch.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board (BBS) on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on this rulemaking are also available for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number (800) 303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and data bases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, (703) 321–3339, or by using Telnet via Internet: fedworld.gov. If using (703) 321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mall.'' At that point, a menu will be displayed that has an option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules Menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FedWorld also can be accessed through the World Wide Web, like FTP, that mode only provides access for downloading files and does not display the NRC Rules Menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch,

NRC, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Monideep K. Dey, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–6443. Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7163 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission (NRC) received a petition for rulemaking dated February 2, 1995, submitted by the Nuclear Energy Institute (NEI). The petition was docketed as PRM–50–61 on February 2, 1995. The petitioner requests that the NRC amend the regulations in 10 CFR part 50 that govern fire protection at nuclear power plants. Specifically, the petitioner is seeking an amendment to 10 CFR 50.48 and the addition of a new appendix that it believes will provide a more flexible alternative to the current fire protection requirements in 10 CFR part 50, Appendix R, that the petitioner considers to be overly prescriptive.

The petitioner believes that significant strides have been made in the fire sciences and that licensees' fire protection programs have matured during the period after the current NRC fire protection requirements in 10 CFR 50.48 and 10 CFR Part 50, Appendix R, were adopted. The petitioner also notes that the NRC has gained nearly two decades of experience in reviewing licensee fire protection programs and requests that NRC adopt a more current approach to fire protection that builds on the defense-in-depth concept used to establish the existing requirements.

NEI cites the ''NRC Program for Elimination of Requirements Marginal to Safety,'' published on November 24, 1992 (57 FR 55157), and a separate initiative entitled, ''Reducing the Regulatory Burden on Nuclear Licensees,'' published on June 18, 1992 (57 FR 27187), as examples in which the NRC proposed amending its regulations to continue efforts to eliminate requirements that are marginal to safety and to reduce the regulatory burden when the benefit realized is not commensurate with the resulting cost. The petitioner also notes that the NRC's Regulatory Review Group (RRG) identified the existing rule on fire protection as one of the regulations that should be improved.

The NRC's general fire protection requirements for nuclear power plants were published on February 20, 1971 (36 FR 3255), and are contained in 10 CFR part 50, Appendix A, General Design Criterion (GDC) 3. The current fire protection requirements contained in 10 CFR 50.48 and 10 CFR part 50, Appendix R, were adopted several years after a 1975 fire at the Browns Ferry Nuclear Power Plant following considerable interaction between the NRC staff, the nuclear industry, and other interested parties. The petitioner notes that the NRC used a defense-in-depth approach to fire protection for nuclear power plants that includes key elements of protection, detection, and suppression within a fire protection program to attain the required objective of protecting the safe shutdown capability of the plant. However, the petitioner believes that the current requirements are too prescriptive because they apply equally in all plant areas without providing a mechanism for determining the actual fire hazard in each area.

NEI acknowledges that a prescriptive rule was necessary in 1980 because nuclear power plant fire protection technology was relatively new at that time. However, the petitioner believes that those fire protection standards have been difficult to implement consistently for nuclear power plants and notes that the NRC has granted more than 1,200 exemptions after the inception of the rule. The petitioner believes that the difficulty in implementing the standards results not only from the prescriptiveness of the current rule but also because fire protection standards in other industries are directed primarily toward protection of life and property, whereas fire protection at nuclear power facilities focuses on preserving the plant's safe shutdown capability to adequately protect the public health and safety.

The petitioner states that the proposed rule is based upon fire protection programs already in place at operating power plants and recognizes the expertise developed by the NRC staff and the industry over the past 20 years. The petitioner notes that other Federal agencies, such as the General Services Administration (GSA), have enhanced their fire protection regulations based on recent advances in fire modeling techniques. GSA uses fire modeling to identify fire safety risks and develop performance-based approaches to achieving adequate levels of protection.

The petitioner also notes that the Advisory Committee on Reactor Safeguards has briefed the Commission on the development of performance-based approaches to fire protection at nuclear power plants in the United Kingdom and Canada. NRC is currently participating in a Federal interagency task force to assess the potential implementation of performance-based regulations, which include fire protection. The RRG has specifically recommended that probabilistic safety assessment (PSA) techniques be used to develop fire protection regulations that are more performance-based. The petitioner believes that the proposed rule is consistent with the general philosophy of focusing on key objectives related to measurable performance in order to permit resources to be applied to and attention centered on activities most directly related to protection of the public health and safety.

The petitioner believes that the overall approach of the proposed rule may be characterized as performance-based because its ultimate goal is to adequately maintain the safe shutdown equipment function. NEI states that the proposed rule, unlike the current requirements, requires licensees to establish appropriate measurable parameters to ensure that the adequacy of the plant fire protection features in protecting the safe shutdown capability can be demonstrated based on the actual plant-specific fire risk. The petitioner asserts that rather than focusing on the details of the protective features, the criteria for assessing acceptable performance would be based on the effectiveness of these features in achieving the goal of the current fire protection regulation, the successful protection of the safe shutdown function.

The proposed rule is similar to the current rule in that it would require licensees to perform a fire hazards analysis (FHA). The petitioner states that the proposed rule, however, provides licensees with the flexibility to determine the relative value of various protective measures by supplementing the FHA with insights derived from other sources, such as a fire modeling analysis or a PSA. The petitioner believes that the proposed rule would allow licensees to implement alternative, more effective fire protection measures without compromising plant safety and, therefore, would provide greater flexibility than the current requirements while achieving the same objective.

The petitioner claims that the proposed rule would give licensees the option of demonstrating that they provide adequate protection against postulated fire hazards without having to resort to the more costly and time-consuming exemption process. The petitioner states that the current

language in 10 CFR part 50, Appendix R, would be retained and an alternative way to meet the requirements in 10 CFR 50.48 would be provided by the proposed Appendix S. The petitioner explains that licensees need not implement the proposed Appendix S in its entirety but may substitute, in whole or in part, the specific sections corresponding to Appendix R, as appropriate, in order to provide an equivalent degree of protection. The petitioner believes that the proposed rule provides an alternative means of complying with the fire protection requirements contained in GDC 3.

The proposed rule does not distinguish between older plants and those licensed to operate after January 1, 1979. The petitioner believes that the revised regulation can be applied equally to all plants because the newer plants were licensed pursuant to Branch Technical Position (BTP) 9.5–1, which is contained in NUREG–0800, and because 10 CFR part 50, Appendix R, which applied to older plants, reflects BTP 9.5–1.

The petitioner indicates that the proposed rule amends 10 CFR 50.48 by removing the schedule requirements that are no longer applicable. The proposed rule would also permit licensees to relocate the fire protection program from their technical specifications to the Final Safety Analysis Report as suggested in Generic Letter 88–12, ''Removal of Fire Protection Requirements from Technical Specifications'' (August 2, 1988). The petitioner envisions that the proposed changes would include the development of a new guidance document by the nuclear industry concurrent with the proposed promulgation of the rule. NRC would accept this guidance and issue a regulatory guide describing acceptable methods of compliance. Although the petitioner notes that licensees would be able to adopt other approaches to comply with the proposed rule, it realizes that the burden of demonstrating the adequacy of an alternative approach would be on the licensee.

The petitioner indicates that many of the prescriptive requirements in Appendix R, such as administrative controls, fire barrier penetration seals, and fire doors, would be removed. Also, the distinction between hot and cold shutdown ability and the requirement for 72-hour cold shutdown would be removed because the petitioner believes these requirements would no longer be applicable. The term ''safe shutdown'' as applied in the proposed rule would apply to both hot and cold shutdown functions. The petitioner believes that the proposed rule provides an opportunity for licensees to incorporate the advances in fire protection technology that have occurred after the current rule was enacted. As an example, the petitioner provides the requirements for fire hose materials and testing that cannot be altered under the current rule without a specific exemption granted by the NRC. The petitioner believes that the proposed rule provides an opportunity to revise fire hose testing to take into account material improvements.

The petitioner states that under the proposed rule, the licensee would maintain, in auditable form, all supporting analyses of alternatives to its fire protection programs instead of requiring the NRC staff to review and approve the alternatives. The petitioner believes that this type of approach would result in substantial reduction of required reviews by the NRC staff. The petitioner has concluded that under the proposed rule, NRC can effectively satisfy its responsibility of ensuring the public health and safety by monitoring licensee performance.

The petitioner has included an appendix entitled ''Supplementary Analyses in Support of the Petition for Rulemaking,'' which contains analyses of issues that the NRC must consider, including the effect of the proposed action on the environment and small business entities, the paperwork required of those affected by the change, whether a regulatory analysis must be performed, and whether the backfit rule applies to this action.

The NRC is soliciting public comment on the petition submitted by NEI that requests the changes to the regulations in 10 CFR part 50 as discussed below.

The Petitioner

The petitioner is the Nuclear Energy Institute (NEI), the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

Discussion of the Petition

The petitioner has submitted this petition for rulemaking because it believes the current fire protection regulations for nuclear power plants are overly burdensome and prescriptive. The petitioner believes that the proposed Appendix S is more flexible in its application than the current Appendix R and fully meets the requirements in 10 CFR part 50, Appendix A, GDC 3. Under the proposed rule, rather than a blanket requirement for the capability to shut down the plant within 72 hours, the licensee is required to have a cold shutdown capability or to demonstrate the ability to achieve and maintain hot shutdown until a cold shutdown path can be made available. The petitioner believes that the intent of the current fire protection requirement has been to ensure that plant operators can maintain control during a fire and safely shut down the plant. The petitioner states that the proposed rule preserves this intent without imposing an unnecessarily restrictive time limitation by recognizing the success of operating history and accumulated operator training and experience.

The petitioner states that other prescriptive distinctions in the current regulation, such as the distinction between exposure and direct fires and between normal, alternate, and dedicated shutdown systems, are removed. Under the proposed rule, licensees must consider the plant fires that may be credible based on actual plant-specific conditions in demonstrating that the plant could be safely shut down in the event of a fire. The petitioner believes that this action could be achieved through any available means by utilizing either redundancy in safe shutdown equipment or diversity of shutdown methods. The petitioner has concluded that this approach is more flexible than the current requirements and is consistent with the intent of the current regulation.

The petitioner states that the general requirements section of the rule remains essentially unchanged because the goals of the licensee's fire protection program are the same. The reference to ''alternative or dedicated shutdown'' is removed because the petitioner believes that the overall intent to provide redundancy or diversity in shutdown methods is reflected throughout the revised rule.

The petitioner states that the proposed rule describes the fire main as a ''system'' instead of a ''fire loop.'' The petitioner believes that this distinction allows licensees to provide water for fire suppression in the most practical manner without a requirement for a specific loop design. The petitioner has concluded that as a general principal the imposition of specific design requirements is overly prescriptive. The petitioner believes that by placing the discussion of appropriate design features in a guidance document, the

licensee will have the flexibility to design new systems or modify current systems to more effectively meet the same performance criteria. The proposed rule replaces the current 2-hour supply requirement with a requirement to demonstrate the availability of a water supply sufficient to protect the safe shutdown capability, as determined by the fire hazards analysis. The petitioner believes that this change provides flexibility in selecting water sources while ensuring that these sources are functionally available.

The petitioner has proposed that the current language describing ''outside'' hydrants be clarified by replacing the term with ''exterior plant'' to reflect the requirement that valves be installed for hydrants located outside plant buildings. The petitioner believes that this emphasis on performance capability is consistent with NRC staff positions in Generic Letter 86–10 and exemptions granted to date, as well as the Statement of Consideration in the original rulemaking of Appendix R. Also, the limitations of the current rule to ''exposure fire hazards'' are removed because the petitioner believes that the proposed rule addresses all fires, not just exposure fires. The petitioner indicated that specific detailed requirements for testing manual fire suppression systems are also removed because they are more properly dealt with in the proposed guidance document.

The petitioner believes that the flexibility provided by the proposed alternatives to the current requirements allows licensees to direct their resources more efficiently and is expected to result in an appreciable economic benefit to licensees while maintaining adequate protection. The petitioner claims that accounting for material improvements in design and manufacture of fire hoses can substantially reduce the frequency of hose testing and will result in a $16,000-per-year cost reduction at a two-unit plant. The petitioner states that because detailed provisions for hydrostatic hose tests are more properly included in the proposed guidance document, no need exists for an explicit requirement in the proposed rule.

The petitioner states that the focus of the current regulation on automatic detection ''systems'' is made more flexible by specifying automatic detection ''capability'' where determined necessary by the fire hazards analysis. However, the petitioner also indicates that the requirement for detection capability with or without offsite power has been retained in the proposed rule. The petitioner indicates that the guidance document is expected to identify pertinent National Fire Protection Association (NFPA) codes and standards for the design, installation, maintenance, testing, and power supplies for automatic detection systems.

The petitioner states that the section on protecting the safe shutdown capability from fire in the current rule has been to ensure that the safe shutdown capability is not lost as a result of a single fire. The petitioner also notes that three alternative requirements in the current rule, including physical separation, provision of a 3-hour barrier, or provision of a 1-hour barrier with automatic suppression, were established to achieve this goal. The petitioner states that the focus of fire protection for the safe shutdown capability is broadened to the protection of the safety function rather than maintaining the narrow focus on prescribed fire barrier ratings. The petitioner believes that the proposed language allows a licensee to satisfy Section III.G. of Appendix S by demonstrating the adequacy of its defense-in-depth program rather than satisfying the prescriptive requirements of the current regulation. The prescriptive requirements are replaced by the requirement to perform an engineering analysis or use the combination of engineering and probabilistic assessments to demonstrate that adequate time is available to complete the safety function of bringing the facility to a safe shutdown condition.

The petitioner believes that the net effect of making this type of approach part of a licensee's fire protection program is that the proposed rule removes the resource demand on licensees and the NRC staff to prepare and review, respectively, as an exemption any alternative proposed to the 1-hour and 3-hour barrier requirements. Under the proposed rule, the licensee would perform the appropriate evaluation using current analytical tools to demonstrate functionality rather than filing an exemption request based on a deterministic evaluation of the installed defense-in-depth features.

The petitioner states that the original rule adopted the design-basis protection feature because the initiation and propagation of fire was still believed to be so unpredictable at that time that the design-basis fire approach was considered to be impractical. However, today various fire modeling techniques, such as those used in the EPRI FIVE methodology and those developed by the National Institute of Standards and Technology and by the Factory Mutual Research Center, are available to predict the initiation and propagation of fires with a reasonable degree of confidence. The petitioner believes that the proposed rule allows licensees flexibility in evaluating anticipated fire loadings in an area because of the awareness of the existing fire hazards and the determination of fire barrier performance requirements by recognized competent fire initiation and propagation models. The petitioner claims that instead of focusing on a specific aspect such as fire barrier rating, under the proposed rule, the licensee will be able to more effectively utilize these fire protection features to protect the safe shutdown capability. The petitioner has concluded that installing a 1-hour or 3-hour rated fire barrier becomes less important in terms of the effectiveness of the fire protection program because it is only one factor that will be considered in a more comprehensive program than currently exists.

The petitioner states that in many circumstances automatic suppression, along with 1-hour barriers, may not be necessary in some existing plant designs for protection of the safe shutdown capability. The petitioner notes that the in situ combustible loading in an area might be so low that any fire that might occur would be of limited duration, extent, and magnitude. The petitioner believes that existing protective features other than automatic suppression might be capable of protecting the safe shutdown equipment until a suitable manual response could be provided. The proposed rule would permit removal of the requirements for surveillance, maintenance, and testing of unnecessary suppression systems, which the petitioner believes would save approximately $12,000 a year for a typical two-unit plant.

The petitioner also notes that the probability for core damage as a result of various events is being assessed by licensees under the Individual Plant Examination for External Events (IPEEE) programs. Under these programs, licensees must address plant vulnerabilities, including the detrimental effects of fires. The petitioner believes that the current rule severely restricts a licensee's ability to effectively address these effects under the IPEEE programs in stating that the proposed rule would provide needed flexibility to allow these vulnerabilities to be effectively addressed. The petitioner has concluded that Section III.G. of Appendix S is not limited to defining specific fire barrier

effectiveness in isolation from the overall consideration of system functional availability. The petitioner claims that the proposed rule provides additional measures to achieve the overall performance objective of ensuring protection of the safe shutdown function in the event of a single fire, consistent with the intent of the current regulation.

The petitioner recognizes that fire brigade training must still include initial and routine practical training and drills. However, the petitioner believes that the proposed rule removes the detailed prescriptive requirements and addresses those matters in the proposed guidance document to provide flexibility to licensees in the implementation of the proposed rule. The petitioner has concluded that the cost savings of using alternative fire brigade training methods rather than following the specific training requirements of the current rule would be about $12,000 a year at a two-unit plant.

The petitioner notes that the current requirements for emergency lighting specify the same lighting for all areas, no matter how little the lighting is used. The proposed rule would require the licensee to evaluate what lighting would be necessary for achieving safe shutdown and to provide sufficient lighting capacity to support that safe shutdown if the postulated fire could credibly result in the loss of normal and essential lighting consistent with previously granted exemptions. The petitioner believes that implementation of the proposed rule would result in appreciable cost savings to licensees of about $17,000 a year for a two-unit plant.

Although the proposed rule does not contain the detailed administrative requirements of the current rule, the petitioner states that it outlines the scope of the controls to include use, storage, and disposal of combustible and flammable materials and ignition sources, review of work activities, inspections, and emergency planning. The petitioner believes that the proposed rule would provide a more resource-efficient method of area monitoring and estimates that the cost savings from removing the need for currently required work permits would be about $45,000 a year.

The petitioner states that the proposed rule differs from the current rule with respect to shutdown path capability in that it permits the licensee to take advantage of the extensive operational experience with fire protection, prior NRC determinations, and the significant developments in fire sciences in providing appropriate fire protection for the equipment. The proposed rule follows the guidance of Generic Letter 86–10 and previously granted exemptions to Appendix R in order to allow licensees greater flexibility in satisfying 10 CFR Part 50, Appendix A, GDC 3. The petitioner states that because a licensee selecting an alternative under the revised rule must demonstrate the adequacy of the alternative selected, the NRC staff would continue to evaluate the shutdown path capability through audits of licensee programs.

The petitioner believes that the current requirement to categorically assume a loss of offsite power either concurrently with or within 72 hours of a fire anywhere in the plant is overly conservative and unnecessarily prescriptive. Because the petitioner has concluded that only a relatively small set of postulated plant fire scenarios could result in or occur with a simultaneous loss of power, the proposed rule requires that licensees demonstrate their ability to safely shut down the plant without offsite power for only those postulated fires. The petitioner claims that the NRC staff has acknowledged that the 72-hour requirement is somewhat arbitrary and has granted an exemption if a licensee demonstrated the capability to achieve cold shutdown in more than 72 hours utilizing only offsite power. The petitioner believes that the proposed rule satisfies the safe shutdown objective by placing the plant in a controlled and stable condition as defined in the technical specifications until cold shutdown can be achieved. The petitioner has concluded that the flexibility incorporated into the proposed rule would allow a licensee to safely shut down the plant in an orderly manner by using familiar, tested procedures. The petitioner has also concluded that the revised requirements would allow licensees to adopt alternatives that would result in potential cost savings.

The petitioner states that the proposed rule provides an alternative to the detailed penetration seal test acceptance criteria contained in the current rule. The proposed rule would require licensees to demonstrate that the penetration seal either meets the same endurance rating as the barrier in which it is contained or is adequate to withstand the fire hazards in the area for the time necessary for the equipment to perform its safety function. The petitioner has also concluded that the current regulation contains an unnecessarily prescriptive requirement to inspect fire doors semiannually to verify their operability. The proposed rule would remove the inspection schedule and criteria from the rule and provide licensees the flexibility to choose the most appropriate method for a particular fire door. The petitioner believes that although protection against fire in the reactor coolant pump lubricating oil system in a noninerted containment is to be maintained, even considering the possibility of a safe shutdown earthquake, measures to ensure this protection should be based on the licensee's hazards assessment.

The Petitioner's Proposed Amendment

The petitioner requests that 10 CFR Part 50 be amended to overcome the problems the petitioner has itemized and recommends the following revisions to the regulations:

1. The petitioner proposes that § 50.48 be amended by deleting paragraph (e) and by revising paragraphs (b), (c), and (d) to read as follows:

Section 50.48 Fire Protection Requirements

* * * * *

(b) Appendix R to this part, as promulgated on November 19, 1980, and amended May 27, 1988, established fire protection features required to satisfy Criterion 3 of Appendix A to this part with respect to certain generic issues for nuclear power plants licensed to operate before January 1, 1979. Except for the requirements of Sections III.G., III.J., and III.O., the provisions of Appendix R to this part did not apply to nuclear power plants licensed to operate before January 1, 1979, to the extent that fire protection features proposed or implemented by the licensee have been accepted by the NRC staff as satisfying the provisions of Appendix A to Branch Technical Position BTP APCSB 9.5–1 [1] reflected in staff fire protection safety evaluation reports issued before the effective date of this rule, or to the extent that fire protection features were accepted by the staff in comprehensive fire protection safety evaluation reports issued before

[1] Clarification and guidance with respect to permissible alternatives to satisfy Appendix A to BTP APCSB 9.5–1 has been provided in five other NRC documents:

''Supplementary Guidance on Information Needed for Fire Protection Evaluation,'' dated October 21, 1976.

''Sample Technical Specification,'' dated May 12, 1977.

''Nuclear Plant Fire Protection Functional Responsibilities, Administrative Control and Quality Assurance,'' dated June 14, 1977.

''Manpower Requirements for Operating Reactors,'' dated May 11, 1978.

''Generic Letter 85–01, Fire Protection Policy Steering Committee Report,'' dated January 9, 1985.

Appendix A to Branch Technical Position BTP APCSB 9.5–1 was published in August 1976. With respect to all other fire protection features covered by Appendix R, all nuclear power plants licensed to operate before January 1, 1979, have been required to satisfy the applicable requirements of Appendix R to this part, including specifically the requirements of Sections III.G., III.J., and III.O.

(c) Nuclear power plants licensed to operate after January 1, 1979, meet the requirements of Appendix R, as promulgated on November 19, 1980, and amended May 27, 1988, and satisfy Criterion 3 of Appendix A to this part by providing fire protection programs in accordance with the provisions of their licenses.

(d) Appendix S to this part provides an alternative method to satisfy fire protection requirements. Licensees may continue to comply with Appendix R, or they may utilize, in whole or in part, the requirements of Appendix S for any matter for which there is a corresponding specific topic in the licensee's fire protection program. This substitution may be exercised by all licensees regardless of the issuance date of their license to operate. Any alteration of a plant's existing fire protection program pursuant to this regulation shall be documented to demonstrate that the changes adopted do not alter the ability of the fire protection program to provide the capability to safely shut down and maintain the plant in a safe shutdown condition in the event of a single fire. The licensee shall document adoption of any substitution provided by Appendix S, where applicable, in the licensee's fire protection program documentation package. All exemptions to Appendix R previously granted to licensees apply in full under the terms of Appendix S.

2. The petitioner proposes that a new Appendix S be added to 10 CFR Part 50 to read as follows:

Appendix S to Part 50—Fire Protection Performance at Nuclear Power Facilities

I. Introduction and Scope

This appendix applies to all licensed nuclear power electric generating stations as set forth in § 50.48. This appendix sets forth the objectives and criteria which constitute a fire protection program adequate for meeting GDC 3 of Appendix A to this part. The specific paragraphs of this appendix have been formatted to parallel those of Appendix R to this part, with corresponding paragraph headings. Paragraphs E. and I. have been intentionally left blank and are reserved because there is no provision in this appendix that corresponds to these sections in Appendix R to Part 50.

Criterion 3 of Appendix A to Part 50 specifies that ''Structures, systems, and components important to safety shall be designed and located to minimize, consistent with other safety requirements, the probability and effect of fires and explosions.''

This regulation applies to equipment and functions designated as necessary to achieve and maintain safe plant shutdown in the event of a single fire in the plant. The terms ''as needed'' and ''as necessary'' are used interchangeably throughout this appendix. The phrase ''safe shutdown'' will be used throughout this appendix as applying to safely shutting the plant down and maintaining it in a safe shutdown condition at either a hot or cold shutdown condition.

Because fire may affect safe shutdown systems, and because the loss of function of systems used to mitigate the consequences of design-basis accidents under post-fire conditions does not per se impact public safety, the need to limit fire damage to systems required to achieve and maintain safe shutdown conditions is greater than the need to limit fire damage to those systems required to mitigate the consequences of design-basis accidents.

The licensee shall ensure that a safe shutdown path is or can be made available to bring the plant to cold shutdown in the event of a single fire in the plant. If a cold shutdown condition cannot be reached, it must be demonstrated that a hot shutdown can be achieved and maintained until a cold shutdown path is available. The terms ''trains'' and ''paths'' are used throughout this regulation to signify any method of shutdown.

Repairs and/or replacements may be instituted to either hot or cold shutdown paths as long as it can be demonstrated, for example, through procedures that such repairs and/or replacements can be conducted within a timeframe commensurate with assuring safe shutdown of the plant and consistent with the plant's technical specifications. Redundant systems used to mitigate the consequences of design-basis accidents but not necessary for safe shutdown may be lost to a single fire.

II. General Requirements

A. *Fire protection program.* A fire protection program shall be established at each nuclear power plant to provide reasonable assurance that structures, systems, and components necessary to safely shut the plant down are capable of fulfilling their intended functions in the event of a single fire. The program shall establish the fire protection policy for the protection of structures, systems, and components that are necessary to achieve and maintain safe shutdown in the event of a single fire, and the procedures, equipment, and personnel required to implement the program at the plant.

The fire protection program shall be under the direction of an individual who has been delegated authority commensurate with the responsibilities of the position and who has available personnel knowledgeable in both fire protection and nuclear safety. Appropriate combinations of fire protection features should be provided to ensure the functional availability of the required safe shutdown equipment located in a fire area. The fire protection program shall extend the concept of defense-in-depth to fire protection areas important to safety, with the following objectives:

- To prevent fires from starting;
- To detect rapidly, control, and extinguish promptly those fires that do occur; and
- To provide protection for structures, systems, and components needed for safe shutdown so that a single fire in the plant that is not promptly extinguished by the fire suppression activities will not prevent the safe shutdown of the plant.

B. *Fire hazards analysis.* A fire hazards analysis shall be performed by fire protection and reactor systems engineers, as necessary, to:

1. Consider potential *in situ* and transient fire hazards;

2. Determine the consequences of fire in any location in the plant on the ability to safely shut down the reactor or on the ability to minimize and control the release of radioactivity to the environment; and

3. Specify measures for fire prevention, detection, suppression, and containment and shutdown capability as required for each fire area containing structures, systems, and components necessary to achieve and maintain safe shutdown.

C. *Fire protection features.* Fire protection features shall meet the following general requirements for all fire areas that contain or present a fire hazard to structures, systems, or components that are necessary to ensure that safe plant shutdown in the event of a fire can be achieved and maintained:

1. *In situ* fire hazards shall be identified and suitable protection provided.

2. Transient fire hazards associated with normal operation, maintenance, repair, or modification activities shall be identified and eliminated where possible. Those transient fire hazards that cannot be eliminated shall be controlled and suitable protection provided.

3. Surveillance procedures shall be established to ensure that fire barriers are in place and that fire suppression systems are capable of performing their intended functions, as necessary to support safe plant shutdown in the event of a fire.

III. Specific Requirements

A. *Water supplies for fire suppression systems.* Two redundant water supplies shall be provided to furnish necessary water volume and pressure to the fire main system. Either redundant suctions from a single large body of water or redundant water storage tanks may be employed in meeting this requirement. These supplies shall be situated such that a failure of one supply will not result in failure of the other supply. Each supply of the fire water distribution system shall be capable of providing the maximum expected water demands as justified by an assessment of the fire hazards in the area. Other water systems used as one of the two fire water supplies shall be permanently connected to the fire main system and shall be capable of automatic alignment to the fire main system. The use of other water systems for fire protection shall not be incompatible with their functions required for safe plant shutdown. Failure of the other system shall not degrade the fire main system.

B. *Sectional isolation valves.* Sectional isolation valves shall be installed in the fire main system to permit isolation of portions of the fire main system for maintenance or repair without interrupting the entire water supply.

C. *Hydrant isolation valves.* Valves shall be installed to permit isolation of exterior plant hydrants from the fire main for maintenance or repair without interrupting the water supply to automatic or manual fire suppression systems in any area containing or presenting a fire hazard to safe shutdown equipment, to the extent that it can be assured that the plant can be safely shut down in the event of a single fire.

D. *Manual fire suppression.* Standpipe and hose systems shall be installed and maintained so that at least one effective hose stream will be able to reach any location that contains or presents a fire hazard to structures, systems, or components as necessary to ensure safe plant shutdown. Access to permit effective functioning of the fire brigade shall be provided to all areas that contain or present a fire hazard to structures, systems, or components that could impact successful safe plant shutdown.

E. [*Reserved*]

F. *Automatic fire detection.* Automatic fire detection capability shall be installed in areas of the plant that contain or present any fire hazard to safe shutdown systems or components, as determined by fire hazard analyses of these areas. These fire detection capabilities shall be capable of operating with or without offsite power.

G. *Fire protection of safe shutdown capability.* A fire protection program shall be instituted to ensure the functional availability of necessary and sufficient equipment to provide for safe shutdown in the event of a single fire in the plant. Engineering analysis or a combination of engineering and probabilistic safety assessments should be used to provide a technical understanding of fire hazards in a particular area. Appropriate combinations of fire barriers, physical separation, fire detection, fixed or automatic fire suppression, manual actions, repairs or replacements, administrative controls, and other means, as necessary, to ensure the functional availability of the required safe shutdown equipment located in that fire area should be provided. The effects of damage from fire suppression activities or rupture or inadvertent operation of fire suppression systems shall be considered for redundant shutdown paths.

H. *Fire brigade.* A site fire brigade trained and equipped for fire fighting shall be established to ensure adequate manual fire-fighting capability for all areas of the plant containing structures, systems, or components important to safety, as necessary, to assure safe plant shutdown in the event of a fire. Training shall include initial and routine practical training, drills, and demonstrations on how to fight live fires.

I. [*Reserved*]

J. *Emergency lighting.* Emergency lighting units shall be provided with sufficient capacity to allow for any necessary manual operation of safe shutdown equipment and for access and egress routes thereto, where the postulated fire may result in the loss of normal and essential lighting.

K. *Administrative controls.* Administrative controls shall be established to minimize fire hazards in areas containing structures, systems, and components necessary to achieve and maintain safe shutdown in the event of a fire. Measures shall be established to govern the use, storage, and disposal of *in situ* and transient combustible and flammable materials, control the use of ignition sources, review proposed work activities to identify potential fire hazards and assure appropriate fire prevention is applied, perform periodic fire prevention inspections, and plan for fire emergencies.

L. *Shutdown Path Capability.* 1. Shutdown path equipment shall be able to (a) Achieve and maintain subcritical reactivity conditions in the reactor; (b) maintain reactor coolant inventory; (c) achieve and maintain hot standby conditions for a PWR or hot shutdown conditions for a BWR, as defined in the plant's Technical Specifications, until cold shutdown path equipment can be made available; (d) achieve cold shutdown conditions; and (e) maintain cold shutdown conditions thereafter. During the post-fire shutdown, the reactor coolant system process variables shall be controlled commensurate with parameters in the plant's emergency operating procedures, and the fission product boundary integrity shall not be affected (i.e., there shall be no fuel clad damage, rupture of any primary coolant boundary, or rupture of the containment boundary). Support equipment necessary to assure control of these capabilities shall also be addressed in the plant's safe shutdown analysis.

2. The shutdown capability shall be demonstrated to provide its required function and shall accommodate anticipated post-fire conditions. When fire in the area may cause interruption of the offsite power supply, safe shutdown capability shall be demonstrated using onsite power not affected by the fire in the area. Procedures shall be in effect to implement this capability.

3. If the capability to achieve and maintain cold shutdown will not be available because of fire damage, the equipment and systems comprising the means to achieve and maintain the hot standby or hot shutdown conditions shall be capable of maintaining such conditions until cold shutdown can be achieved. If such equipment and systems will not be functionally capable of being powered by either onsite or offsite electric power systems, as deemed necessary by the specific scenarios considered, because of fire damage, an independent onsite power system shall be provided. The number of operating shift personnel, exclusive of fire brigade members, required to operate such equipment and systems

shall be available in accordance with the site emergency plan.

4. Equipment and systems comprising the means to achieve and maintain cold shutdown conditions shall not be functionally damaged by fire; or the fire damage to such equipment and systems shall be limited so that the systems can be made operable and cold shutdown can be achieved. Materials for such repairs shall be readily available and procedures shall be in effect to implement such repairs. If such equipment and systems used after the fire will not be capable of being powered by either onsite (when conditions warrant) or offsite electric power systems because of fire damage, an independent onsite power system shall be provided.

5. Shutdown systems installed to ensure post-fire shutdown capability need not be designed to meet seismic Category I criteria, single-failure criteria, or other design-basis accident criteria, except where required for other reasons (e.g., because of interface with or impact on existing safety systems).

6. The safe shutdown equipment and systems for each fire area shall be known to be isolated from associated circuits in the fire area so that hot shorts, open circuits, or shorts to ground in the associated circuits will not prevent operation of the safe shutdown equipment.

7. For those fire scenarios that do not result in or from a loss of offsite power (LOOP), plant shutdown may rely on available offsite power sources. Since a relationship could be defined between fire scenarios and a LOOP, the LOOP time duration would reflect appropriate repair/replacement times associated with the scenario.

M. *Fire barrier cable penetration seal qualification.* Penetration seals, when deemed necessary for installation, shall have fire resistance duration ratings comparable to that of the fire barriers they penetrate or adequate to withstand the fire hazards in the area as determined by engineering analysis.

N. *Fire doors.* Fire doors shall be ensured to be closed when necessary during a fire.

O. *Associated scenarios.* Postulated fires or fire protection system failures need not be considered concurrent with other plant accidents or the most severe natural phenomena. However, the effects of a Safe Shutdown Earthquake (SSE) on the reactor coolant pump in a containment that is not inerted during normal plant operation shall be addressed in accordance with paragraph III.G.

The Petitioner's Conclusion

The petitioner has concluded that fire protection requirements specified in 10 CFR 50.48 and Appendix R should be modified because the current requirements are overly burdensome and prescriptive. The petitioner believes that the past 20 years of expertise gained by the NRC and the nuclear industry in fire protection for nuclear power plants will permit licensees to implement more flexible, site-specific alternatives to the current requirements. The petitioner has proposed an amendment to the current regulations in 10 CFR Part 50 that it believes will permit more flexible and cost-effective fire protection requirements at nuclear power plants without adversely affecting the ability of the licensee to bring the plant to a safe shutdown condition in the event of a fire.

Specific Areas for Public Comment

In addition to commenting on the petition for rulemaking (petition) presented above, the NRC staff is soliciting specific comments on the issues presented below. Because the NRC staff has not yet developed its positions on the petition, it is soliciting these comments to obtain information that it will use in to develop its regulatory positions and approaches for a performance-oriented, risk-based fire protection rulemaking.

1. Scope

(a) Petition's focus only on the overall safety objective to safely shut down the plant in the event of a fire.

The current safety objective of the NRC's fire protection regulations is focused on providing reasonable assurance that damage from a single fire is limited such that one train of systems necessary to achieve and maintain safe shutdown (hot shutdown) is free from fire damage, and damage to other important safety structures, systems, and components is minimized. The petitioner has proposed a fire protection rule which focuses only on the safety objective to achieve and maintain safe plant shutdown in the event of a single fire, and proposed that other safety functions not related to safe shutdown in the event of a fire be addressed elsewhere in NRC regulations. The NRC staff is seeking public comment on the petitioner's proposal to limit the proposed rule to provide fire protection to only those systems necessary to achieve and maintain safe plant shutdown, and address other safety functions for fires (those not addressing safe shutdown) elsewhere in NRC regulations or through industrial safety standards and requirements from nuclear insurers that provide for protection against property loss, or whether the proposed rule should include requirements for all safety functions related to fire protection. If other safety functions should be addressed elsewhere in NRC regulations, what are these safety functions, and where in NRC regulations and how should they be addressed? If some safety functions are addressed through industrial safety standards, and requirements from nuclear insurers, should and how will NRC enforce these requirements?

The current NRC fire protection regulations are based on extending the concept of defense-in-depth to fire protection in areas that contain structures, systems, and components not required for safe shutdown but are important to safety. The defense-in-depth objectives are:

(1) To prevent fires from starting;

(2) To detect rapidly, control, and extinguish promptly those fires that do occur; and

(3) To provide protection for structures, systems, and components important to safety so that a fire that is not promptly extinguished by the fire suppression activities will not prevent the safe shutdown of the plant.

Current NRC regulations specifies the minimum requirements for each of these objectives. These objectives establish diversity in fire safety. Strengthening any one of these objectives can compensate for known weaknesses or uncertainties in plant fire protection features and program controls. The proposed rule limits the defense-in-depth concept to only those plant areas needed to shutdown the reactor from full power conditions. The NRC staff is seeking public comments whether the limitations of the petitioner's proposed rule is justified or if a revised regulation should establish a fire protection program based on the defense-in-depth concept for all plant areas that are important to safety.

The petitioner states that the proposed rule provides for licensees and NRC resources to be better focused to those activities most directly related to protection of the public health and safety. This can be accomplished by focusing resources toward the objective of achieving and maintaining safe shutdown in the unlikely event of a fire. Also, the use of a PRA allows the determination of protection features in each fire area as opposed to equal treatment of fire areas without consideration of risk significance. The NRC staff solicits further details, with specific examples, on the extent

elimination or relaxation of requirements marginal to safety in the fire area and if the use of a PRA will result in better focus and coherence in NRC's regulations.

(b) Exclusion of new requirements beyond the scope of the current regulations.

The proposed rule does not consider current fire safety issues that are beyond the scope of the current NRC fire protection regulations. For example, the proposed rule does not address the lessons learned from the results of individual plant external event examinations (IPEEE) and research, or concerns regarding personnel life safety, resolution of fire protection related generic safety issues (e.g., earthquake induced fires), operating experience (nuclear and related industries), performance criteria for compensatory measures, quality assurance, and consideration of fire-related risks during shutdown conditions and plant decommissioning.

Given the history of difficulty and low success rate for attempts to resolve new safety issues simultaneously with improvements to regulatory efficiency, the Commission approved an NRC staff policy for separating regulatory actions for new safety issues from those for improving regulatory efficiency. (See SECY–94–090, ''Institutionalization of Continuing Program for Regulatory Improvement,'' March 31, 1994). Specifically, the Commission approved a plan for fire protection rulemaking in which new safety issues that may arise as a result of implementing the Fire Protection Task Action Plan, would be evaluated, and backfit requirements developed, separate and independent from efforts to improve regulatory efficiency in the fire protection area. If necessary and appropriate, performance-based approaches would be used to promulgate new requirements justified by a backfit analysis.

The NRC staff is soliciting public comment on the above Commission-approved policy, and whether the policy should be maintained in the fire protection area, or if the staff should seek Commission approval to deviate from the established policy to simultaneously promulgate modifications to improve the efficiency of the regulation, and new requirements in the same rulemaking. If the commenter believes the NRC should promulgate new requirements, separately or simultaneously with modifications to improve regulatory efficiency, which of the areas cited above or others should the NRC address? Technical justifications or bases that support the recommendation for NRC to address specific issues are also requested.

2. Safety-Neutral: Demonstration that the proposal is ''safety-neutral.''

The petitioner claims that the proposed rule will reduce the regulatory burden on licensees without in any way reducing the protection to the public health and safety that the NRC's regulations provide. Because the guidance documents are not yet available, it is not clear how the petition, if accepted, would impact risk. The petition does not include a demonstration of how the proposed rule achieves an equivalent level of fire safety to that currently established by plants having a current NRC-approved fire protection program that meets the current regulations. The NRC staff is seeking public comments on details on the implementation of the proposed rule and the mechanism for licensees to demonstrate that alternative fire protection approaches allowed by the proposed rule, while reducing burden, will have no significant adverse effect on plant risk compared to that achieved by current NRC fire protection regulations. Specifically, the NRC staff is soliciting a supporting technical demonstration, including risk-based analysis, that justifies exclusions or relaxations in its fire protection requirements. For example, how will the focus of requirements for safe shutdown in the proposed rule and exclusion of requirements for structures, systems, and components (SSCs) important to safety result in an overall equivalent level of safety?

3. Implementation Guidance: Extent that judgement can be made on petition given the absence of an industry guideline, and the demonstration of the application of advanced methods in the fire sciences and PRA.

The proposed rule allows the use of fire modeling and risk assessment techniques, but does not include regulatory requirements or a guidance document that would specify methods and criteria for verifying and validating these methods. Experimental data that supports models that predict fire growth in large compartments and the corresponding potential for damage to nuclear power plant SSCs are not cited. In addition, a verification and validation or approval process for these fire models for application at nuclear power plants has not been proposed as yet by the petitioner.

The petition contends that the proposed rule would provide an opportunity for licensees to incorporate the advances in fire sciences and Probabilistic Risk Analysis (PRA) technology that have occurred since the current rule was promulgated. The NRC solicits information on details and specific examples of these advances in fire sciences and PRAs in the nuclear and other industries in the United States and other countries, and how these could be utilized in the U.S. nuclear power industry to increase innovation and the efficiency of NRC's regulations for fire protection. Comments on the applicability of the methods cited in the petition, e.g., EPRI FIVE methodology, and information and examples of application in specific areas of nuclear power plant fire protection regulations is requested. Also, to what extent should prior review and approval of these techniques by the NRC staff be required before application by a licensee, and to ensure consistent application, should a licensee's compliance with these alternatives be reviewed and approved by the NRC before implementation? Alternatively, is licensee certification of the verification, validation, and applicability of these new methods for the intended application sufficient to ensure quality of the techniques utilized in the analysis? In view of the fact that the proposed rule allows the use of new fire modeling and risk assessment techniques, to what extent should the methods and criteria for verifying, validating, and applying these models and methods be specified in the new performance-oriented, risk-based regulation rather than a guidance document?

4. Process for Burden Relief: Extent to which the rule revision is the preferred mechanism for providing the burden relief sought by the petitioner compared to moving the fire protection program to a Safety Analysis Report.

Currently, by implementing the guidance provided in Generic Letter (GL) 86–10, ''Implementation of Fire Protection Requirements'' (April 24, 1986), licensees can, under 10 CFR 50.59 accomplish many of the items specified in the proposed rule. As examples, licensees who have adopted the standard fire protection license condition specified in GL 86–10, can:

(1) Change surveillance testing of fire suppression and detection systems, fire hose testing, etc., without prior NRC approval provided the changes do not have an adverse impact on safety; and

(2) Evaluate the adequacy of fire area boundaries by assessing the fire hazards in the area.

The NRC staff is seeking public comments regarding the benefits of a new fire protection rule to realize the objectives stated by the petitioner. Specifically, what would be the benefits

and advantages of a revised regulation for providing the regulatory relief sought by the petitioner when compared to mechanisms such as those cited above, that are already available? Detailed and specific information on the added flexibility in the different areas of NRC fire protection regulations, and the resulting benefits and cost savings as a result of a performance-based fire regulation is solicited.

The petitioner states that no significant NRC staff resources are expected to be necessary for the proposed rule to ensure continued acceptability of licensee fire protection programs. The proposed rule would allow licensees to have the option of demonstrating that they provide adequate protection against postulated fire hazards without having to submit an exemption and the resultant of consumption of NRC staff and licensee resources. The NRC staff is seeking public comments regarding if and how this proposed rule will reduce the regulatory resources needed to evaluate an alternative approach's safety equivalency and ensure its proper implementation.

5. Content of Performance-Oriented and Risk-Based Regulation: Level of detail and the inclusion of risk-based safety objectives in a revised regulation.

The petitioner proposes an alternative 10 CFR Part 50, Appendix S, which replaces most of the prescriptive fire protection features presently specified in 10 CFR Part 50, Appendix R, with functional safety objectives and acceptance criteria in each area of Appendix R which would be accompanied with guidance documents. Could the same intent be gained by modifying 10 CFR 50.48 to be performance-based with higher level safety objectives than those specified in Appendix S, providing guidance, and disposing of both Appendix R and Appendix S in their entirety, or are the functional safety objectives and acceptance criteria proposed in Appendix S accurate and at the right level for a performance-based regulation? Is an evolutionary approach which maintains the same structure of the regulation as in Appendix R, as proposed by the petitioner, preferred to a more comprehensive modification of NRC fire protection regulations and a high level performance-oriented, risk-based fire protection regulation.

In SECY–94–090, the NRC staff stated that a performance-oriented approach establishes regulatory safety objectives which, to the extent feasible, will be risk-based. Petitioner contends that the proposed rule is performance-based in that the functionality of the safe shutdown equipment is the ultimate goal. Although the proposed rule, allows the use of PRA for determining fire protection features, it does not appear to have been developed from risk considerations and does not contain risk-based objectives which are related to safety goals. Implementation of the proposed rule would not explicitly require consideration of risk. The NRC staff is seeking public comments regarding the need for the proposed rule to establish risk-based safety objectives.

The petitioner states that the overall approach of the proposed rule may be appropriately characterized as performance-based. The proposed rule would require licensees to establish measurable processes or parameters, as appropriate, to ensure that the adequacy of plant fire protection features in protecting the safe shutdown capability can be demonstrated, based on the plant-specific actual fire risk. The NRC solicits further detail and information on the nature of these parameters, and how they could be monitored to ensure adequacy of the protection features for fire risk.

In addition, the petitioner contends that all previously granted exemptions from current NRC fire protection regulations would remain valid and would be exempted from the proposed rule. The NRC staff is requesting public comments regarding if and how previously granted exemptions should be exempted from the scope of a performance-based regulation.

6. Voluntary Adoption in Whole or in Part: Extent to which licensees should be permitted to voluntarily adopt parts of a revised regulation.

The Commission has approved an NRC staff policy (see SECY–94–090) in which any proposed revisions to existing regulations developed by the Regulatory Improvement Program would not be mandatory but would be proposed as alternatives (options) to existing requirements which may be voluntarily adopted by licensees. This policy was formulated because the main objective of the program is to increase regulatory efficiency and to recognize that many licensees have technical programs which they may not wish to modify.

The petitioner has proposed an Appendix S to 10 CFR Part 50 which provides an alternative method to satisfy fire protection requirements. Licensees may continue to comply with 10 CFR Part 50, Appendix R, or they may utilize, in whole or in part, the requirements of Appendix S for any matter for which there is a corresponding specific topic in the licensee's fire protection program. This would provide licensees flexibility to revise its program when it determines it would be cost beneficial without modifying the entire fire protection program. The NRC staff is soliciting public comment on any challenges this partial adoption may present. For example, performance-oriented approaches need to ensure that the new regulation can be objectively inspected and enforced (SECY–94–090). The NRC staff resources to evaluate the licensees implementation of the proposed rule could exceed those required currently to enforce 10 CFR Part 50, Appendix R, and may make effective and consistent inspections and enforcement difficult. The NRC staff is requesting public comments on the pros and cons for adoption of a revised regulation partially, or in its entirety by a licensee.

7. Allowable Repairs During Fire Events: Extent of allowable fire damage and repairs to one train needed for hot shutdown.

One of the safety objectives of the current NRC fire protection regulations is to ensure that one train of systems necessary to achieve and maintain hot shutdown conditions will remain free of fire damage. The proposed rule would permit both trains of systems necessary to achieve and maintain hot shutdown to be damaged by a single fire if the functional availability of the required safe shutdown equipment located in the fire area is ensured.

The safety objective of the current regulation is met by protecting the safe shutdown capability with the fire protection features specified in the rule. When this objective cannot be met, the current rule specifies that alternate or dedicated safe shutdown capability must be provided. The proposed rule replaces the prescriptive requirements to provide fire protection for safe shutdown capability or to provide alternative or dedicated safe shutdown capability with the requirement to perform an engineering analysis or use the combination of engineering and probabilistic assessments to demonstrate that adequate time is available to complete the safety function to bring the reactor to a safe shutdown condition. This approach would allow fire damage to redundant safe shutdown functions provided an analysis demonstrates that a sufficient quantity of shutdown equipment could be made ''functionally available'' (through repairs) in a time frame commensurate with assuring safe shutdown of the plant. The current regulations do not allow licensees to perform troubleshooting and make repairs in order to achieve and maintain post-fire safe (hot) shutdown conditions. Is the

petitioner's proposal acceptable or should the revised rule retain the performance goals established in the current rule for limiting fire damage so that one train of safe shutdown systems and components is free from fire damage or to provide alternative or dedicated shutdown capability?

8. Automatic Actuation of Suppression Systems: Means to address adverse impacts of inadvertent actuation of suppression systems.

The petitioner has stated the potential for damage to safety equipment and that plant transients from inadvertent actuations of automatic suppression systems can contribute to the overall damage risk in a facility. The probability for core damage due to various events is being assessed by licensees under the Individual Plant Examination for External Events (IPEEE) programs. The petitioner claims, given the potential for inadvertent actuation of automatic suppression systems, the marginal improvement to safety from a defense-in-depth perspective may not warrant the increased risk of water damage to safety systems or exposure to personnel. Is the petitioner's assertion accurate, and, if so, should the proposed rule allow the elimination of some automatic suppression systems on the basis of their adverse impact on safety, or should other means be employed, e.g. plant modifications, to address this issue?

9. Alternative and Dedicated Shutdown Capability:

(a) Need for an independent shutdown path.

For plant areas in which redundant trains of safe shutdown systems may be damaged by fire (e.g., control room, cable spreading room, some plant specific switchgear rooms and relay rooms), current NRC fire protection guidelines and regulations require plants to develop a shutdown capability that is physically and electrically independent of the fire area of concern. The proposed rule does not specifically require this capability, but is stated to be similar to the current rule in that it specifies that shutdown path equipment must be able to achieve and maintain critical functions; namely, achieve subcritical conditions, maintain coolant inventory, achieve and maintain hot standby or hot shutdown conditions until cold shutdown equipment can be made available, and achieve and maintain cold shutdown conditions. The proposed rule differs from the current regulation by allowing licensees to take advantage of the extensive operational experience with fire protection, prior NRC determinations, and the significant developments in fire sciences in providing fire protection for the appropriate equipment. The NRC staff is seeking public comments regarding details of the extensive operational experience, the developments which have been made in the fire sciences, and if and how the use of this information will ensure that an equivalent level of fire safety to that which is currently implemented and incorporated into operating plant designs is maintained.

(b) The need to have abnormal operating procedures that provide guidance on which safe shutdown path is free from fire damage and can be used to achieve and maintain safe shutdown.

Post-fire safe shutdown performance criteria established by the current regulation requires that the reactor coolant system inventory and process variables be maintained within those predicted for a loss of normal a.c. power. The proposed rule changes this performance criteria to allow the reactor coolant process variables to be controlled commensurate with parameters in the plant emergency operating procedures (EOP). Because fires can cause rapid and widespread damage, this may result in unusual conditions requiring the operation of unique plant shutdown equipment in order to meet the established performance goals. The use of EOPs may not be adequate to address the use of alternative or dedicated shutdown systems. Therefore, the NRC is seeking public comments regarding the proposed rule's intent to eliminate the need to develop procedures that address unique fire damage and shutdown conditions, and provide operators with specific guidance on which safe shutdown systems have been properly protected from potential fire damage.

10. 72-Hour Requirement to Achieve Cold Shutdown: Elimination of the requirement to allow repairs and provide flexibility.

The petitioner proposes to eliminate the current 72-hour time requirement to achieve cold shutdown with on-site power stating that it is an overly conservative and unnecessarily prescriptive requirement. Additionally, the petitioner states that inadvertent actuation of protective features designed to address postulated simultaneous loss of offsite power scenarios in the event of a real fire may create abnormal conditions that further unnecessarily challenge operator control of the plant. The intent of this requirement is to effectively limit the extent of repairs necessary to achieve and maintain cold shutdown. The petitioner justifies the elimination of this requirement on the basis that the NRC has granted a number of site-specific exemptions from this requirement. The petitioner states that operational experience has revealed that the plant is in a more safe condition during deliberate and controlled evolutions employing normal and familiar equipment configurations as compared to nonroutine responses to transients using nonroutine equipment and procedures. The petitioner also recognizes the success of operating history and accumulated operator training and experience.

Under the criteria of the proposed rule, the availability of off-site power would be determined from an analysis of the fire area under review and if off-site power could be lost due to fire damage. Generally, plant areas in which a fire may cause a loss of off-site power typically include the control room, certain cable spreading rooms and switchgear rooms, and the turbine building. Therefore, the proposed rule appears to be consistent with the intent of current NRC regulations.

The NRC staff is seeking public comments on the justification of the petitioners proposal to not impose fire damage limits and allow repairs of shutdown equipment that would require more than 72 hours, and maintain hot standby or hot shutdown conditions until cold shutdown equipment can be made available. The NRC staff specifically solicits information on the methods and feasibility of quantifying the risk impact for this relaxation, and the operating history and accumulated operator training and experience cited in the petition.

11. Rulemaking Finding: Necessity of finding of compliance with current requirements.

Paragraph (c) of the petitioner's proposed revision to § 50.48 would include a rulemaking finding that all nuclear power plants licensed after January 1, 1979, met the requirements of 10 CFR Part 50, Appendix R, and satisfy GDC 3. It is not clear why this language is necessary in order to provide an alternative to the requirements of Appendix R. Furthermore, it is unclear whether this rulemaking finding would preclude future NRC determinations (*e.g.,* enforcement action) that licensees are not complying with the requirements of Appendix R and GDC 3. If this is the intent of the petitioner's proposed rule, it is unclear what policy considerations favor adoption of such a rulemaking finding. The Commission requests public comment on these matters.

12. Exemptions: Treatment of exemptions from current requirements when adopting revised requirements.

Paragraph (d) of the petitioner's proposed revision to § 50.48 provides that all exemptions to 10 CFR Part 50, Appendix R, ''apply in full under the terms of Appendix S.'' However, the petition does not explain what relevance or effect an exemption to a specific Appendix R requirement could have if a licensee instead chose to comply with a substitute Appendix S requirement. The language could be interpreted as intending to make clear that licensees who choose to comply with a specific Appendix S provision should not lose its exemptions to those portions of Appendix R for which the licensee continues to be in compliance. The Commission requests comments on how exemptions to 10 CFR Part 50, Appendix R, should be treated if a licensee chooses to comply, in full or part, with the alternative requirements in the proposed Appendix S.

13. Regulatory Analysis: The need for regulatory analysis for rulemakings that reduce burden.

The petition proposes that a regulatory analysis does need not to be prepared for the proposed rulemaking, because it does not impose a new requirement on licensees but instead, provides an alternative means of compliance. The petition also argues that because the proposed rulemaking is intended to result in cost saving for licensees, there is no need for a regulatory analysis. The Commission notes that a regulatory analysis could also provide important information when the Commission is considering reducing regulatory requirements. For example, the regulatory analysis could be utilized to determine whether a proposed change in regulatory requirements in fact would be more efficient in maintaining the desired level of safety while reducing regulatory burden. The regulatory analysis process would also be useful in identifying alternatives for reducing regulatory burden with a different mix of impacts on licensees and the NRC. Therefore, the Commission requests comments on the petition's arguments that a regulatory analysis does not need to be prepared for rulemaking petitions in which regulatory burdens are proposed to be relaxed.

Dated at Rockville, Maryland, this 31st day of May, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–13755 Filed 6–5–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–133–AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Boeing Model 757 series airplanes. This proposal would require modifying the engine fuel indication circuits. This proposal is prompted by numerous reports of false indications of engine fuel valve faults, which have led to the flight crew conducting rejected takeoffs (RTO). The actions specified by the proposed AD are intended to prevent such false indications and the flight crew's consequent execution of an RTO at high speed during takeoff roll, which could result in the airplane overrunning the runway, damage to the airplane, and injury to airplane occupants.

DATES: Comments must be received by August 2, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–133–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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Jeff Duven, Aerospace Engineer, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4065; telephone (206) 227–2688; fax (206) 227–1181.

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–133–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–133–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of at least fifteen incidents of false indications of engine fuel valve faults that have occurred on Boeing Model 757 series airplanes. The purpose of the engine fuel valve fault indication is to alert the flight crew that the engine-mounted fuel valve is not in the commanded position. In all of the reported incidents, the engine fuel valve was in the commanded position, but the indication system indicated that the valve was not in that position.

In nine of these incidents, the flight crew's response to the false indication was to initiate a rejected takeoff (RTO). The other six incidents resulted in various flight schedule interruptions. There have been no reports of airplane damage or passenger injuries resulting from any of these particular incidents.

Rejected takeoffs that are initiated at high speed should be executed only in response to conditions that preclude the continued safe takeoff of the airplane. False indications of an engine fuel valve fault, such as those that occurred in the

reported incidents, are not a hazard to the continued safe operation of the engines or the airplane and, therefore, should not result in RTO's. The current service history of Model 757 series airplanes has shown, however, that when these false indications occur during the takeoff roll, flight crews are concerned to such a level that they believe an RTO is necessary.

Transport category airplanes, such as the Model 757, are designed to allow an RTO to be safely executed, provided that the maneuver is initiated at or below established airplane speeds. When RTO's are initiated at speeds in excess of the established speeds, or when the established flight crew procedures are not followed, there may not be sufficient distance remaining on the runway to bring the airplane to a safe stop. Service history has documented numerous accidents and incidents in which various models of transport category airplanes have overrun the available stopping area; this has led to consequent damage or destruction of the airplane, and injuries to airplane occupants.

The FAA has reviewed and approved the following two Boeing service bulletins:

1. Boeing Service Bulletin 757–76–0010, dated August 12, 1993, which pertains to Model 757 series airplanes equipped with Pratt & Whitney (P&W) PW2000 engines; and

2. Boeing Service Bulletin 757–76–0011, dated December 2, 1993, which pertains to Model 757 series airplanes equipped with Rolls-Royce RB211–535 engines.

These service bulletins describe procedures for modifying the engine fuel indication circuits to decrease the number of false fault indications of the engine fuel valve. Decreasing the number of these false indications will thereby decrease the number of RTO's initiated for this reason. This modification will not affect correct indications of an engine fuel valve fault.

For Model 757 series airplanes equipped with Rolls-Royce RB211–535 engines, the successful installation of this modification of the engine fuel indication circuits requires that an additional modification of the engine fuel shutoff valve control be installed previously or concurrently. Boeing Service Bulletin 757–76–0007, Revision 2, dated January 23, 1992, describes procedures for modifying the engine fuel shutoff valve control on these airplanes by installing six blocking diodes in the P36 and P37 panels, and modifying the airplane's wiring to accommodate the diode installation. (This modification will reduce the possibility of engine shutdown due to uncommanded closing of the engine fuel shutoff valve.) The FAA has reviewed and approved this service bulletin.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modifying the engine fuel indication circuits to decrease the number of false fault indications of the engine fuel valve. This proposed AD would also require that modification of the engine fuel shutoff valve control be accomplished on airplanes equipped with the subject Rolls Royce engines prior to or concurrently with the modification of the engine fuel indication circuits. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Operators of airplanes equipped with Rolls Royce engines would be provided a longer compliance time for modification, since the modifications required for those airplanes necessitate more work hours to complete than for the modification of airplanes equipped with P&W engines.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 272 Model 757 series airplanes equipped with P&W PW2000 engines in the worldwide fleet. The FAA estimates that 219 of these airplanes are currently of U.S. registry and would be affected by this proposed AD. It would take approximately 4 work hours per airplane to accomplish the proposed modification of the engine fuel indication circuits, at an average labor rate of $60 per work hour. The cost of required parts would be negligible. Based on these figures, the total cost impact of the proposed AD on U.S. operators of these airplanes is estimated to be $52,560, or $240 per airplane.

There are approximately 302 Model 757 series airplanes equipped with Rolls Royce RB211–535 engines in the worldwide fleet. The FAA estimates that 119 of these airplanes are currently of U.S. registry and would be affected by this proposed AD. It would take approximately 4 work hours per airplane to accomplish the proposed modification of the engine fuel indication circuits, at an average labor rate of $60 per work hour. The cost of required parts would be $194 per airplane. Based on these figures, the total cost impact of this proposed modification on U.S. operators of these airplanes is estimated to be $51,646, or $434 per airplane.

Additionally, for airplanes equipped with Rolls Royce RB211–535 engines, it would take approximately 28 work hours to accomplish the proposed modification of the engine fuel shutoff valve control, at an average labor rate of $60 per work hour. The cost of required parts would be $470 per airplane. Based on these figures, the total cost impact of this proposed modification on U.S. operators of these airplanes is estimated to be $255,850, or $2,150 per airplane.

The total cost impact figures discussed above are 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. However, the FAA is aware that the modification of the engine fuel shutoff valve control has already been accomplished on several affected Model 757 series airplanes equipped with Rolls Royce RB211–535 engines; therefore, the future total cost impact of this proposed AD is reduced by that amount.

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:

Boeing: Docket 94–NM–133–AD.

Applicability: Model 757 series airplanes equipped with Pratt & Whitney PW2000 engines, as listed in Boeing Service Bulletin 757–76–0010, dated August 12, 1993; and Model 757 series airplanes equipped with Rolls-Royce RB211–535 engines, as listed in Boeing Service Bulletin 757–76–0011, dated December 2, 1993; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent false indications of engine fuel valve faults, accomplish the following:

(a) For airplanes equipped with Pratt & Whitney PW2000 engines: Within 6 months after the effective date of this AD, modify the engine fuel valve indication circuits in accordance with Boeing Service Bulletin 757–76–0010, dated August 12, 1993.

(b) For airplanes equipped with Rolls-Royce RB211–535 engines: Within 18 months after the effective date of this AD, accomplish the modifications specified in paragraphs (b)(1) and (b)(2) of this AD. The modification specified in paragraph (b)(1) must be accomplished either prior to or concurrently with the modification specified in paragraph (b)(2). In any case, both modifications must be completed within 18 months after the effective date of this AD.

(1) Modify the engine fuel shutoff valve control in accordance with Boeing Service Bulletin 757–76–0007, Revision 2, dated January 23, 1992.

Note 2: Accomplishment of this modification prior to the effective date of this AD in accordance with Boeing Service Bulletin 757–76–0007 (original issue), dated February 22, 1990, or Revision 1, dated October 31, 1991, is considered acceptable for compliance with paragraph (b)(1) of this AD.

(2) Modify the engine fuel valve indication circuits in accordance with Boeing Service Bulletin 757–76–0011, dated December 2, 1993.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), 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, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) 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 May 30, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–13784 Filed 6–5–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–ANE–32]

Airworthiness Directives; Hamilton Standard 14RF, 247F, 14SF, and 6/5500/F Series Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Hamilton Standard 14RF, 247F, 14SF, and 6/5500/F (formerly Hamilton Standard/British Aerospace 6/5500/F) series propellers, that currently requires initial and repetitive inspections of the propeller control unit (PCU) servo ballscrew internal spline (BIS) teeth for wear, and replacement, if necessary, of PCU servo BIS assemblies. This proposed AD would increase the repetitive PCU servo BIS teeth inspection interval from 1,500 to 2,500 hours time in service (TIS) for propellers that have a ballscrew quill damper installed. In addition, this proposed AD would add an optional terminating action to the repetitive PCU servo BIS teeth inspections by installing a Secondary Drive Quill (SDQ). If an SDQ is installed, this proposed AD would require initial and repetitive torque check inspections of the primary ballscrew quill. This proposal is prompted by field service and laboratory test data that indicate that the repetitive inspection interval can be safely increased, and by the development and availability of the SDQ. The actions specified by the proposed AD are intended to prevent inability to control the propeller blade angle due to tooth wear in the PCU servo BIS assembly.

DATES: Comments must be received by July 6, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–32, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Hamilton Standard, One Hamilton Road, Windsor Locks, CT 06096–1010. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7158, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the

proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–ANE–32.'' 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, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–32, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On October 26, 1994, the Federal Aviation Administration (FAA) issued AD 94–22–12, Amendment 39–9062 (59 FR 55199, November 4, 1994), applicable to Hamilton Standard 14RF, 247F, 14SF, and 6/5500/F (formerly Hamilton Standard/British Aerospace 6/5500/F) series propellers, to increase the repetitive inspection interval from 500 to 1,500 hours time in service (TIS) since last inspection for propellers that have a ballscrew quill damper installed. That action was prompted by the availability of improved hardware that restricts quill motion and enhances the lubrication of the BIS and significantly reduces BIS wear. Severe wear of the BIS affects the ability to control the propeller blade angle. That condition, if not corrected, could result in inability to control the propeller blade angle due to tooth wear in the PCU servo BIS assembly.

Since the issuance of that AD, the FAA has received field service data and additional data accumulated on six controlled PCU's. These six controlled PCU's show no BIS wear in more than 2,500 hours TIS for PCU's with ballscrew quill dampers installed.

In addition, Hamilton Standard has developed redundant design hardware that incorporates a secondary drive path for control between the PCU and the propeller oil transfer tube. This redundant hardware is known as the Secondary Drive Quill (SDQ) installation. The SDQ is currently being installed on new production PCU's. For in-service PCU's, this SDQ installation, accomplished by service bulletin at field repair stations, is optional; however, this proposed AD makes installation of the SDQ terminating action to the repetitive PCU servo BIS teeth inspections. With the SDQ installed, this proposed AD would require initial and repetitive torque check inspections of the primary ballscrew quill.

The FAA has reviewed and approved the technical contents of the following Hamilton Standard Alert Service Bulletins (ASB's), all dated May 5, 1995: No. 14SF–61–A59, Revision 6; No. 14RF–9–61–A53, Revision 7; No. 14RF–19–61–A25, Revision 6; No. 14RF–21–61–A38, Revision 6; No. 247F–61–A3, Revision 5; and No. 6/5500/F–61–A11, Revision 6. These ASB's enable affected propellers with a ballscrew quill damper installed in production or in accordance with the following Hamilton Standard Service Bulletins (SB's), all dated September 27, 1994, to extend the repetitive PCU servo BIS teeth inspection interval from 500 to 2,500 hours TIS since last inspection: No. 14SF–61–67, Revision 2; No. 14RF–9–61–61, Revision 1; No. 14RF–19–61–29, Revision 2; No. 14RF–21–61–48, Revision 2; No. 247F–61–6, Revision 2; and No. 6/5500/F–61–19, Revision 2.

In addition, the FAA has reviewed and approved the technical contents of the following Hamilton Standard SB's, all Revision 1, all dated May 17, 1995: No. 14SF–61–82; No. 14RF–9–61–76; No. 14RF–19–61–43; No. 14RF–21–61–62; No. 247F–61–13; and No. 6/5500/F–61–33. These SB's describe procedures for installing the SDQ.

Also, the FAA has reviewed and approved the technical contents of the following Hamilton Standard SB's, all Revision 1, dated May 17, 1995; No. 14SF–61–81; No. 14RF–9–61–75; No. 14RF–19–61–41; No. 14RF–21–61–60; No. 247F–61–12; and No. 6/5500/F–61–33. These SB's describe procedures for initial and repetitive torque check inspections of the primary ballscrew quill if the SDQ is installed.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 94–22–12 to increase the repetitive PCU servo BIS teeth inspection interval from 1,500 to 2,500 TIS for propellers that have a ballscrew quill damper installed. In addition, this proposed AD would add an optional terminating action to the repetitive PCU servo BIS teeth inspections by installing a SDQ. With the SDQ installed, this proposed AD would require an initial torque check inspection of the primary ballscrew quill at 5,000 hours TIS since installation of the SDQ, and thereafter repetitive torque check inspections at intervals not to exceed 5,000 hours TIS since last inspection.

There are approximately 2,506 propellers of the affected design in the worldwide fleet. The FAA estimates that 1,150 propellers installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 1.5 work hours per propeller to accomplish the PCU servo BIS teeth inspections, and that the average labor rate is $60 per work hour. Based on these figures, and on the average utilization rate of 2,000 hours TIS per year equating to 1.3 inspections per year, the total cost impact of the current AD per year on U.S. operators is estimated to be $134,550. However, this proposed superseding AD would require only 0.8 inspections per year, resulting in an approximate yearly inspection cost of $82,800, which would provide an approximate yearly savings to U.S. operators of $51,750.

The optional terminating action would require 4 work hours to install the SDQ, and required parts would cost approximately $5,500 per propeller. With the SDQ installed, the proposed AD would require initial and repetitive torque check inspections of the primary ballscrew quill. The torque check inspection would take 3 work hours to perform the required actions, and with an average utilization rate of 2,000 hours TIS per year equating to 0.4 inspections per year, resulting in an approximate yearly inspection cost of $72 per propeller.

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 removing amendment 39–9062 (59 FR 55199, November 4,1994) and by adding a new airworthiness directive to read as follows:

Hamilton Standard: Docket No. 95–ANE–32. Supersedes AD 94–22–12, Amendment 39–9062.

Applicability: Hamilton Standard Models 14RF–9, 14RF–19, 14RF–21, and 14RF–23; 247F–1; 14SF–5, 14SF–7, 14SF–11, 14SFL11, 14SF–15, 14SF–17, 14SF–19, 14SF–23; and 6/5500/F propellers installed on but not limited to Embraer EMB–120 and EMB–120RT; SAAB–SCANIA SF340B; Aerospatiale ATR42–100, ATR42–300, ATR42–320, ATR72, ATR72–210; DeHavilland DHC–8–100 series, DHC–8–300; Construcciones Aeronauticas SA (CASA) CN–235 and CN–235–100; Canadair CL215T and CL415; and British Aerospace ATP airplanes.

Note: This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any propeller from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability to control the propeller blade angle due to tooth wear in the propeller control unit (PCU) servo ballscrew internal spline (BIS) assembly, accomplish the following:

(a) Inspect the PCU servo BIS assembly for tooth wear in accordance with the Accomplishment Instructions of the following Hamilton Standard Alert Service Bulletins (ASB), all dated May 5, 1995, as applicable: No. 14RF–9–61–A53, Revision 7; No. 14RF–19–61–A25, Revision 6; No. 14RF–21–61–A38, Revision 6; No. 247F–61–A3, Revision 5; No. 14SF–61–A59, Revision 6; and No. 6/5500/F–61–A11, Revision 6; as follows:

(1) For a PCU with unknown time in service (TIS), and unknown TIS since the last inspection, on the effective date of this airworthiness directive (AD), and that does not have a ballscrew quill damper installed, inspect within 200 hours TIS after the effective date of this AD.

(2) For a PCU with 1,800 or more hours TIS or unknown TIS on the effective date of this AD, and either has not been inspected, or has been inspected more than 500 hours prior to the effective date of this AD, in accordance with the applicable Hamilton Standard ASB listed in paragraph (a) of this AD; and that does not have a ballscrew quill damper installed; inspect within 200 hours TIS after the effective date of this AD.

(3) For a PCU with 1,800 or more hours TIS or unknown TIS on the effective date of this AD, and that has been inspected within the previous 500 hours TIS in accordance with the applicable Hamilton Standard ASB listed in paragraph (a) of this AD, and that does not have a ballscrew quill damper installed, inspect within 500 hours TIS since the last inspection in accordance with the applicable Hamilton Standard ASB listed in paragraph (a) of this AD.

(4) For a PCU with less than 1,800 hours TIS on the effective date of this AD, and that does not have a ballscrew quill damper installed, inspect prior to accumulating 1,800 hours TIS, or within 300 hours TIS after the effective date of this AD, whichever occurs later.

(5) For a PCU that has a ballscrew quill damper installed in production or in accordance with the following applicable Hamilton Standard Service Bulletins (SB), all dated September 27, 1994, or previous revisions: No. 14SF–61–67, Revision 2; No. 14RF–9–61–61, Revision 1; No. 14RF–19–61–29, Revision 2; No. 14RF–21–61–48, Revision 2; No. 247F–61–6, Revision 2; and No. 6/5500/F–61–19, Revision 2; inspect within 2,500 hours TIS since installation of the ballscrew quill damper

(6) Thereafter, inspect at intervals described as follows:

(i) For propellers that have a ballscrew quill damper installed in production or in accordance with the applicable Hamilton Standard SB listed in paragraph (a)(5) of this AD, or previous revisions, inspect at intervals not to exceed 2,500 hours TIS since the last inspection required by this AD.

(ii) For propellers that do not have a ballscrew quill damper installed in production or in accordance with the applicable Hamilton Standard SB listed in paragraph (a)(5) of this AD, inspect at intervals not to exceed 500 hours TIS since the last inspection required by this AD.

(7) If PCU servo BIS teeth are worn beyond the limits specified in the Accomplishment Instructions of the applicable ASB's listed in paragraph (a) of this AD, prior to further flight, replace the PCU with a serviceable assembly in accordance with the Accomplishment Instructions of the applicable ASB's listed in paragraph (a) of this AD, and thereafter reinspect in accordance with paragraphs (a)(6) and (a)(7) of this AD.

(b) Operators have the option of installing a Secondary Drive Quill (SDQ) in accordance with the Accomplishment Instructions of the following applicable Hamilton Standard SB's, all Revision 1, all dated May 17, 1995: No. 14SF–61–82; No. 14RF–9–61–76; No. 14RF–19–61–43; No. 14RF–21–61–62; No. 247F–61–13; and No. 6/5500/F–61–33. Installation of an SDQ constitutes terminating action to the repetitive inspections required by paragraph (a) of this AD.

(c) With an SDQ installed, perform an initial torque check inspection of the primary ballscrew quill at 5,000 hours TIS since installation of the SDQ, and thereafter at intervals not to exceed 5,000 hours TIS since last inspection, and remove from service and replace with a serviceable part, if necessary, in accordance with the following applicable Hamilton Standard SB's, all Revision 1, dated May 17, 1995: No. 14SF–61–81; No. 14RF–9–61–75; No. 14RF–19–61–41; No. 14RF–21–61–60; No. 247F–61–12; and No. 6/5500/F–61–33.

(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, Boston Aircraft 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, Boston Aircraft Certification Office.

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

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

Issued in Burlington, Massachusetts, on May 30, 1995.

James C. Jones,

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

[FR Doc. 95–13785 Filed 6–5–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–139–AD]

Airworthiness Directives; Jetstream Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Jetstream Model ATP airplanes. This proposal would require modification of certain doors. This proposal is prompted by a report that an operator was unable to unlock a Type I passenger door due to migration of a shootbolt bush. The actions specified by the proposed AD are intended to prevent such migration, which could jam the Type I passenger door, and subsequently could delay or impede the evacuation of passengers during an emergency.

DATES: Comments must be received by June 26, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–139–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 Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; 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–139–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–139–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model ATP airplanes. The CAA advises it has received a report indicating that an operator was unable to unlock a Type I passenger door. Investigation revealed that shootbolt bush had migrated. This shootbolt bush is also located in the aft baggage door. This condition, if not corrected, could jam the Type I passenger door, which could delay or impede the evacuation of passengers during an emergency.

Jetstream has issued Service Bulletin ATP–52–26–10350B, dated June 29, 1994, which describes procedures for modification of the Type I passenger doors and the aft baggage door. This modification involves installation of locking pins at the shootbolt bush housings of the doors. Accomplishment of the modification ensures that the latching and locking mechanism of the doors cannot become jammed. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, 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 Type I passenger doors and aft baggage door. The actions would be required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 35 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The cost of the required parts would be nominal. Based on these figures, the total cost impact of the proposed AD on U.S. operators is

estimated to be $21,000, or $2,100 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:

Jetstream Aircraft Limited (Formerly British Aerospace Commercial Aircraft Limited): Docket 94–NM–139–AD.

Applicability: Model ATP airplanes, constructor's numbers 2002 through 2063 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent migration of a shootbolt bush, which could jam the Type I passenger door, and subsequently could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 1,500 hours time-in-service after the effective date of this AD, or within 6 months after the effective date of this AD, whichever occurs first, modify the Type I passenger doors and aft baggage door, in accordance with Jetstream Service Bulletin ATP–52–26–10350B, dated June 29, 1994.

(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 2: 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 May 30, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–13783 Filed 6–5–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 54

[Docket No. 93N–0445]

Financial Disclosure by Clinical Investigators; Public Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing regarding a proposed regulation that would require disclosure of certain financial interests and arrangements by clinical investigators. The proposed regulation would require that sponsors submitting clinical studies in support of marketing applications for human drugs, biologics, and medical devices either certify to the absence of certain financial interests of clinical investigators or disclose those financial interests. The purpose of the public hearing is to obtain additional comments and information on specific issues for use in developing a final rule, and a proposed rule to extend these requirements to submissions for marketing approval related to human foods, animal foods, and animal drugs. The public hearing will address specific issues on which FDA seeks information and comment, and time will also be set aside after these issues have been addressed during which participants will have an opportunity to address other aspects of the proposed regulation.

DATES: The public hearing will be held on July 20, 1995, from 9 a.m. to 5:30 p.m. Submit written notices of participation, including a brief summary of the presentation and the approximate time requested, by June 30, 1995. Written comments will be accepted until August 20, 1995.

ADDRESSES: The public hearing will be held in the Wilson Auditorium, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD. Submit written notices of participation and comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. To expedite processing, written notices of participation may also be FAXED to 301–594–0113. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Transcripts of

the hearing will be available for review at the Dockets Management Branch (address above).

FOR FURTHER INFORMATION CONTACT: Mary Gross, Office of External Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3390, or FAX 301–594–0113.

SUPPLEMENTARY INFORMATION:

I. Background

FDA will sponsor a public hearing to solicit comments and views on specific aspects of a proposed regulation published in the **Federal Register** of September 22, 1994 (59 FR 48708) that would require disclosure of certain financial information by clinical investigators.

There has been a growing concern for some time, both at FDA and within the academic and scientific communities, that some financial arrangements between clinical investigators and product sponsors, as well as the personal financial interests of clinical investigators, are a potential source of bias in clinical trials. FDA currently has no mechanism to collect information concerning specific financial interests of clinical investigators who conduct studies in support of product marketing. FDA believes that institution of a system to collect and analyze this information will strengthen the product review process.

Under the proposed regulation, every sponsor filing an application for marketing approval would be required to make one of two alternative submissions as part of the application: (1) For any clinical study relied upon by the sponsor to establish that the product meets the regulatory requirements for approval, the sponsor may certify that: (a) The sponsor has not entered into any financial arrangement with any clinical investigator in which the value of financial compensation received by the clinical investigator for conducting the studies could be affected by the outcome of the research; (b) the investigator has not received significant payments of other sorts from the sponsor, such as a grant to fund ongoing research, compensation in the form of equipment, a retainer for ongoing consultation, or honoraria; (c) the clinical investigator has no proprietary interest, such as a patent or other direct financial interest in the clinically tested product; and (d) the clinical investigator holds no significant equity interest in the sponsor's company; or (2) if the sponsor does not provide certification, the sponsor must disclose the specific financial arrangements made with the clinical investigator, the investigator's proprietary and equity interests in the tested product and the sponsor's company, and significant payments of other sorts, and describe steps taken to minimize the potential for bias in data submitted in support of product applications. FDA would refuse to file any marketing application that does not include either certification or disclosure.

FDA received 47 comments on the proposed regulation. Many comments supported the proposed regulation with relatively minor modifications, while others questioned the substantive provisions of the rule. In view of the complexity of some of the issues that were raised, and the diversity of views expressed on these issues, FDA believes that it would be useful to convene a public meeting to provide interested parties with an opportunity to present further comment. At this time, the agency also wishes to provide an opportunity to interested persons to comment on FDA's intention to propose extending financial disclosure requirements to submissions for marketing approval related to human foods, animal foods, and animal drugs.

II. Public Hearing

Consistent with FDA regulations at 21 CFR 10.40(f)(2), the agency is holding a hearing under part 15 (21 CFR part 15) to discuss the proposed rule. Presentations submitted and comments received at the hearing will be included in the administrative record for that regulation. In addition, written comments submitted to the Dockets Management Branch (address above) by August 20, 1995, will also be part of the administrative record.

The format of the hearing is one in which specific issues, as listed below, are dealt with one at a time in the order listed. A block of time will be allotted to discussion of additional issues by participants once the listed issues have been addressed. Issues to be addressed are as follows:

(1) In the proposed regulation, FDA specified four specific financial arrangements or interests of a clinical investigator that would be required to be disclosed, including any significant equity interest in the applicant held by a clinical investigator. For purposes of the regulation, a significant equity interest was defined as any ownership interest, stock options, or other financial interest whose value cannot be readily determined through reference to public prices, or any equity interest in a publicly traded corporation that exceeds 5 percent of total equity. With respect to an equity interest in a publicly traded corporation, a number of comments requested clarification as to whether ''5 percent'' refers to 5 percent of the investigator's equity, or 5 percent of the equity of the corporation. Other comments argued that a dollar threshold should be set for disclosure of an equity interest in a publicly traded corporation. These comments suggested threshold amounts ranging from $5,000 to $50,000. In specifying an equity interest that exceeds 5 percent of total equity, FDA was referring to equity of a corporation. FDA initially considered specific dollar amounts that might be used to trigger disclosure, but wanted to avoid setting an amount that would be so small as to trigger excessive and not particularly meaningful disclosure. On the other hand, the agency acknowledges that the value of 5 percent of equity in publicly traded companies could vary widely. FDA is interested in further discussion as to what would constitute a reasonable threshold for disclosure of an equity interest in a publicly traded corporation.

(2) The proposed regulation would require disclosure of ''significant payments of other sorts,'' which were defined for purposes of the regulation as payments that exceed $5,000 (e.g., grants to fund ongoing research, compensation in the form of equipment or retainers for ongoing consultation or honoraria) or that exceed 5 percent of the total equity in a publicly held or widely traded company. Comments were divided as to the need to require disclosure of arrangements that would fall under this definition. Some comments held that only payments directly related to the conduct of covered studies should be required to be disclosed. It should also be noted that a number of comments stated that the regulation was intrusive and burdensome, particularly with respect to the need to obtain extensive information from investigators, adding that much of the need to query investigators would be associated with accessing ''significant payments of other sorts.'' FDA seeks additional discussion and views on whether such arrangements should be disclosed, and the value of such disclosure to the intent of the regulation.

(3) In proposed § 54.2(e), FDA defined a clinical study as:

> Any study involving human subjects, including a study to establish bioavailability or bioequivalence, submitted in a marketing application subject to this part, that either: (1) The sponsor identifies as one that the sponsor relies on to establish that the product meets the regulatory requirements for marketing, or (2) FDA identifies as one that it intends to rely on to support its decision to permit the marketing of the product * * *.

Comments suggested that the definition of a covered study be narrowed by exempting, for example, phase 1 safety studies, because they are not as important to evaluation for marketing as phase 2 and 3 studies, and bioavailability and pharmacokinetic studies, because they generally result in quantitative, objective results based on tangible data that are not especially vulnerable to bias. It was also suggested that covered studies be limited to open label (unblinded) studies of a nonpharmacokinetic nature, study designs with subjective endpoints, and single investigator studies. FDA is interested in further discussion as to what should constitute a covered study and whether the scope of the proposed definition might be narrowed.

(4) In proposed § 54.2(d), FDA defined ''clinical investigator'' as any investigator who is: ''(i) Directly involved in the treatment or evaluation of research subjects, or (ii) Could otherwise influence the outcome of the research; * * *.'' Some comments stated that this definition was overly broad. It was suggested that FDA use for the purposes of this regulation the definition of ''clinical investigator'' relied on by the agency's investigational drug application regulations at 21 CFR 312.3(b), as follows:

Investigator means an individual who actually conducts a clinical investigation (i.e., under whose immediate direction the drug is administered or dispensed to a subject). In the event an investigation is conducted by a team of individuals, the investigator is the responsible leader of the team. ''Subinvestigator'' includes any other individual member of that team.

FDA notes that the term ''clinical investigator,'' was defined in a Public Health Service (PHS) proposed rule on objectivity in research that published in the **Federal Register** of June 28, 1994 (59 FR 33242), as the principal investigator and any other person who is responsible for the design, conduct, or reporting of research. Both FDA's proposed rule and the PHS final rule defined ''investigator'' as including the spouse and dependent children of the investigator. FDA is interested in obtaining additional views on the definition of ''clinical investigator'' for purposes of financial disclosure.

(5) In the preamble to the proposed regulation, FDA stated its expectation that disclosed financial interests and steps taken to minimize bias would vary with different applications, and explained that the agency would therefore evaluate and act on these applications on a case-by-case basis. As to what actions the agency might take in response to disclosure of problematic interests, FDA stated that, if a study design is sufficiently robust as a result of factors such as independent data monitoring, multiple investigators, blinding, and independent endpoint assessment, the agency could determine that the financial interest would not likely introduce bias and the data could be accepted. In other situations, there might be sufficient replication of critical results to render questionable data less important, or it might be possible to carry out further analyses or observations (such as reexamination of hospital records or patients) that would provide assurance as to the quality of the data. In still others, intensified scrutiny by FDA's bioresearch monitoring staff might be sufficient to permit FDA to accept the data in support of product marketing applications. In some cases, however, if adequate steps were not taken to minimize potential bias, FDA stated that it might not be able to conclude that the data were reliable and might find it necessary to require sponsors to conduct further studies. This range of actions was listed in proposed § 54.5(c). A number of comments criticized the proposed process as subjective. One comment argued that FDA must develop specific criteria for evaluating the potential impact of financial interests to avoid ad hoc decisionmaking by reviewers. FDA is interested in further discussion of how these evaluations might be conducted, especially with respect to specific criteria that might be applied.

(6) In the preamble to the proposed rule, FDA stated its intention to propose the extension of this rulemaking on financial disclosure to additional products for which sponsors submit data from clinical investigators, or investigators who conduct the equivalent of clinical studies in animals, in support of marketing. Examples of these products include food and color additives, infant formulas, human foods labeled with health claims, animal foods, and animal drugs. FDA is interested in hearing comments on this extension from the industries that would be affected, as well as other interested persons.

III. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs is announcing that the public hearing will be held in accordance with 21 CFR part 15. The presiding officer will be Sharon Smith Holston, Deputy Commissioner for External Affairs. Ms. Holston will be joined by other FDA officials.

Persons who wish to participate must file a written notice of participation with the Dockets Management Branch (address above) on or before June 30, 1995. All notices submitted should be identified with the docket number found in brackets in the heading of this document and should contain the person's name, address, telephone number, FAX number, business affiliation, if any, a brief summary of the presentation, and the approximate time requested for the presentation.

The agency requests that individuals or groups having similar interests consolidate their comments and present them through a single representative. FDA may request joint presentations by persons with common interests. FDA will allocate the time available for the hearing among persons who properly file a notice of participation.

After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by mail, telephone, or FAX, of the time allotted to the person and the approximate time the person's presentation is scheduled to begin. The schedule of the public hearing will be available at the hearing and then placed on file in the Dockets Management Branch (address above) after the hearing under docket number 93N–0445.

Under § 15.30, the hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of their presentation.

Public hearings, including hearings under part 15, are subject to FDA's guideline (21 CFR part 10, subpart C) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b). Orders for copies of the transcript can be placed at the meeting or through the Dockets Management Branch (address above).

To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

The administrative record of the proposed rule will remain open until August 20, 1995 to allow comments on matters raised at the hearing. Persons

who wish to provide additional materials for consideration should file these materials with the Dockets Management Branch (address above) by August 20, 1995.

Dated: June 1, 1995.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 95–13886 Filed 6–5–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13–94–039]

RIN 2115–AE47

Drawbridge Operation Regulations; Lake Washington, Seattle, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the regulations governing the operation of the Evergreen Point, State Route 520, floating drawbridge across Lake Washington at Seattle, Washington. The proposed rule would modify five different aspects of the existing operation regulations for the bridge including the notice period for requesting an opening; the length of weekday closed periods; the exemptions from weekday closed periods for Federal holidays and vessels greater than 2000 gross tons; and the requirement that non-self propelled vessels be towed through the draw. Through this action, the Coast Guard seeks to alleviate commuter traffic congestion on the bridge while continuing to meet the reasonable needs of navigation on Lake Washington.

DATES: Comments must be received on or before August 7, 1995.

ADDRESSES: Comments may be mailed to Commander (OAN), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, Room 3410, Seattle, Washington. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Plans and Programs Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 220–7270).

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD13–94–039) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

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

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address listed under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If the Coast Guard 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 Austin Pratt, Project Officer, Aids to Navigation Branch, Thirteenth Coast Guard District, and Lieutenant Commander John C. Odell, Project Counsel, Thirteenth Coast Guard District Legal Office.

Background and Purpose

At the request of the Washington State Department of Transportation (WDOT), the Coast Guard is proposing to amend the drawbridge operation regulations for the Evergreen Point, State Route 520, floating bridge across Lake Washington at Seattle, Washington. The chief purpose of the proposed amendment is to alleviate commuter traffic congestion on the bridge while continuing to meet the reasonable needs of navigation.

In recent years vehicular traffic volumes on the bridge have increased dramatically while requests for openings of the drawspan have declined. State Route 520 is a major four-lane arterial in the Seattle area and is heavily traveled during daily commuting hours. Any opening of the drawspan during commuting hours would cause severe traffic congestion and back ups.

Most of the vessels on Lake Washington are able to pass under the bridge at its two fixed transition spans at either end of the floating segment. With the exception of a few tall-masted sailing vessels, floating construction equipment is the chief user of the drawspan. The predominant navigational use of Lake Washington is recreational.

In recent years, the drawspan has been under extensive repair and refurbishment. This work has required temporary changes to bridge operations. Since September 21, 1992, temporary regulations allowed WDOT to keep the drawspan closed except from 11 p.m. to 2 a.m. during the week and from 11 p.m. to 5 a.m. on weekends. From April 1, 1994, to October 1, 1994, the Coast Guard authorized WDOT to keep the drawspan closed at all times during the final phase of the repair project. Despite the highly restrictive nature of these temporary bridge operation regulations, no objections were received from entities representing commercial or recreational navigation on Lake Washington.

In order to alleviate roadway traffic congestion while continuing to meet the reasonable needs of navigation, the proposed amendment would modify five different aspects of the existing regulations:

First, the proposed amendment would increase the notice period for requesting openings from one hour to two hours. The bridge does not currently have continuous attendance by drawtenders, and in recent years, drawtenders have had difficulty getting to the bridge in time to make requested openings. This difficulty is the result of increased roadway traffic in the Seattle metropolitan area. The proposed increase in the notice period would give drawtenders sufficient time to arrive at the bridge for openings. This proposal would not seriously inconvenience navigation because vessel transits of the drawspan are infrequent and can be planned in advance by vessel operators.

Second, the proposed amendment would increase the period during which the drawspan may remain closed on weekdays. The existing drawbridge operation regulations at 33 CFR 117.1049(c) allow the bridge to remain closed from 6 a.m. to 10 a.m. and from 2 p.m. to 7 p.m. Monday through Friday. The proposed amendment would establish a single, yet substantially increased, closed period from 5 a.m. to 9 p.m. Monday through Friday. The proposed increase in the length of the weekday closed period is necessary to prevent the interruption of commuter traffic on the bridge. A bridge

opening during peak traffic hours can produce traffic gridlock on the bridge and its approaches, and openings during the workday must be avoided. The small number of openings requested in recent years and the nature of vessel traffic on Lake Washington indicates that the impact on commercial and recreational navigation from the increased closed period would be minimal.

Third, the proposed amendment would remove Columbus Day from the Federal holiday exemption to normal weekday closed periods. Under the existing Federal holiday exemption contained in 33 CFR 117.1049(c), the normal weekday closed periods do not apply on designated Federal holidays. Unlike other Federal holidays, Columbus Day enjoys no significant reduction in roadway traffic in the Seattle metropolitan area. This difference is due to the fact that most employers in the area do not observe Columbus Day. For this reason, commuter traffic volumes remain substantial on Columbus Day. Removal of Columbus Day from the federal holiday exemption would prevent the serious traffic congestion that would be caused by opening the drawspan during heavy commuter hours.

Fourth, the proposed amendment would remove the provision of 33 CFR 117.1049(c) that requires the drawspan to open during weekday closed periods in order to accommodate piledrivers and vessels greater than 2000 gross tons. In recent years the use of Lake Washington by vessels of this type and size has declined dramatically. Moreover, waters of Lake Washington in the area of the bridge do not form a restricted waterway, and the need for immediate openings for these larger and less maneuverable vessels is therefore less critical. Finally, the passage of such vessels can be planned in such a way as to avoid their arrival at the bridge during the weekday closed periods.

Fifth, the proposed amendment would remove the provision of 33 CFR 117.1049(d) requiring non-self-propelled vessels to be towed through the drawspan. The original purpose of this requirement was to avoid delays to roadway traffic caused by openings requested by vessels powered only by sail. The proposed increase in the length of the weekday closed periods would reduce the significance of such an event, and the possibility of such an event no longer needs to be specifically accounted for in the bridge operation regulations.

Discussion of Proposed Rule

The proposed rule would amend paragraphs (a), (c), and (d) of 33 CFR 117.1049. Paragraph (a) would be changed to require two hours notice for requesting an opening of the drawspan. Paragraph (b) would remain unchanged as it continues to provide accurate information about how to contact the operator for an opening. Paragraph (c) would be changed to specify a closed period from 5 a.m. to 9 p.m. Monday through Friday, except for all Federal holidays other than Columbus Day. This increased weekday closed period would apply on Columbus Day but would not apply on other designated Federal holidays. Paragraph (c) would also be changed to remove the requirement that the drawspan open during the weekday closed periods for piledrivers and vessels greater than 2000 gross tons. Paragraph (d) would be deleted, removing the requirement that vessels powered only by sail be towed through the drawspan.

Regulatory Evaluation

This proposal is not a significant regulatory action under 3(f) of Executive Order 12866 and does not require an assessment of potential cost 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 proposed rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that most commercial navigation on Lake Washington can transit the bridge at its two fixed transition spans at either end of the floating segment. Moreover, commercial vessels can plan their transits so that they do not arrive at the bridge during weekday closed periods. Finally, transits of the drawspan by commercial vessels have become increasingly infrequent in recent years.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant effect on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons stated in the Regulatory Evaluation above, the Coast Guard expects the impact of this proposal to be minimal on all entities. Therefore, 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 proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2. of COMDTINST M16475.B, the proposed regulation 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 in 33 CFR Part 117

Bridges.

Proposed Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.1049 is amended by revising paragraphs (a) and (c) and by removing paragraph (d) to read as follows:

§ 117.1049 Lake Washington.

* * * * *

(a) The draw shall open on signal if at least two hours notice is given.

* * * * *

(c) The draw need not be opened from 5 a.m. to 9 p.m. Monday through Friday, except for all Federal holidays other than Columbus Day.

Dated: May 23, 1995.

J.W. Lockwood,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 95–13774 Filed 6–5–95; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 265

Compliance With Subpoenas, Summonses, and Court Orders by Postal Employees Within the Inspection Service Where the Postal Service or the United States Is Not a Party

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to establish procedures for Postal Service employees within the Postal Inspection Service to respond to subpoenas, summonses, and court orders to produce records or give testimony in cases where the Postal Service is not a party. The purpose of this proposed rule is to minimize disruption of normal Postal Inspection Service functions caused by compliance with those demands, maintain control over release of public information, prevent the disclosure of information that should not legally be disclosed, prevent the Postal Service from being misused for private purposes, and otherwise protect the interests of the United States. These procedures would prohibit postal employees within or assigned to the Postal Inspection Service from complying with subpoenas, summonses, and other court orders in cases where the Postal Service is not a party unless authorized by certain authorizing officials.

DATES: Comments must be submitted on or before July 6, 1995. Comments will be available for public inspection until July 21, 1995.

ADDRESSES: Written comments should be mailed or delivered to James M. Parrott, Associate Counsel, Postal Inspection Service, United States Postal Service, 475 L'Enfant Plaza SW, Room 3411, Washington, DC 20260–2181.

Comments may be delivered to room 3411 at the above address between 8:15 a.m. and 4:45 p.m., Monday through Friday. Copies of all written comments will be available for inspection and photocopying during these hours in room 3411.

FOR FURTHER INFORMATION CONTACT: James M. Parrott, Associate Counsel, Office of the Chief Postal Inspector, (202) 268–4417.

SUPPLEMENTARY INFORMATION: The proposed rule provides that postal employees within or assigned to the Postal Inspection Service must follow certain rules for the release of information in the form of documents or testimony. Giving testimony or releasing a document in legal proceedings where the Postal Service or the United States is not a party must be authorized beforehand. Employees within or assigned to the Inspection Service may comply with subpoenas, summonses, and court orders where the Postal Service or the United States is not a party, with the authorization of specified authorizing officials after consulting Inspection Service legal counsel. The release of the information must be in compliance with applicable laws and regulations and not be against the interests of the United States.

Several federal agencies have enacted regulations that give them the authority to control the release of documents and testimony in legal proceedings where the agency is not a party. Courts have recognized that federal agencies may limit compliance in these situations. See *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951). Additionally, subpoenas, summonses, and orders issued by state courts, legislatures, or legislative committees that attempt to assert jurisdiction over federal agencies are inconsistent with the Supremacy Clause of the U.S. Constitution. A federal regulation regarding compliance with those subpoenas reinforces this principle. *McCulloch* v. *Maryland,* 17 U.S. (4 Wheat.) 316 (1819); *United States* v. *McLeod,* 385 F.2d 734 (5th Cir. 1967).

This proposed rule does not apply to situations in which the United States, the Postal Service, or any federal agency is a party in action; Congressional requests, summonses, or subpoenas; consultative services and technical assistance rendered by the Inspection Service in the course of its normal functions; employees serving as expert witnesses; employees making appearances in their private capacity; and when it has been determined by an authorizing official that it is in the public interest.

Proposed new § 265.13 of title 39 of the Code of Federal Regulations will be the Postal Service regulation concerning the compliance with subpoenas, summonses, and court orders by postal employees within the Inspection Service where the Postal Service or the United States is not a party. This section has also been written to reflect the changes in organization that the Inspection Service has undergone. As an example, the position of Regional Chief Inspector no longer exists within the Inspection Service. Current regulations identify that official as responsible for authorizing testimony or the production of documents pursuant to a subpoena, summons, or court order where the Postal Service, the United States, or another federal agency is not a party. Now, the authorizing official, in most cases, is the Postal Inspector in Charge of the affected field Division.

List of Subjects in 39 CFR Part 265

Administrative practice and procedure, Government employees, Release of information.

Accordingly, 39 CFR part 265 is proposed to be amended as set forth below.

PART 265—RELEASE OF INFORMATION

1. The authority citation for part 265 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended), 5 U.S.C. App. 3.

2. The heading of § 265.11 is revised to read as follows:

§ 265.11 Compliance with subpoena duces tecum, court orders, and summonses.

3. Paragraphs (b) and (c) of § 265.11 are removed and paragraph (b) is reserved. A new § 265.13 is added to read as follows:

§ 265.13 Compliance with subpoenas, summonses, and court orders by postal employees within the Inspection Service where the Postal Service, the United States, or any other federal agency is not a party.

(a) *Applicability of this section.* These rules apply to all federal, state, and local court proceedings, as well as administrative and legislative proceedings, other than:

(1) Proceedings where the United States, the Postal Service, or any other federal agency is a party;

(2) Congressional requests or subpoenas for testimony or documents;

(3) Consultative services and technical assistance rendered by the Inspection Service in executing its normal functions;

(4) Employees serving as expert witnesses in connection with professional and consultative services under § 447.23 of this chapter and under title 5, Code of Federal Regulations, part 7001, provided that employees acting in this capacity must state for the record that their testimony reflects their personal opinions and should not be viewed as the official position of the Postal Service;

(5) Employees making appearances in their private capacities in proceedings that do not relate to the Postal Service (e.g., cases arising from traffic accidents, domestic relations) and do not involve professional or consultative services; and

(6) When in the opinion of the Counsel or the Counsel's designee, Office of the Chief Postal Inspector, it has been determined that it is in the best interest of the Inspection Service or in the public interest.

(b) *Purpose and scope.* These provisions limit the participation of postal employees within or assigned to the Inspection Service, in private litigation, and other proceedings in which the Postal Service, the United States, or any other federal agency is not a party. The rules are intended to promote the careful supervision of Inspection Service resources and to reduce the risk of inappropriate disclosures that might affect postal operations.

(c) *Definitions.* For the purposes of this section:

(1) *Authorizing official* is the person responsible for giving the authorization for release of documents or permission to testify.

(2) *Case* or *matter* means any civil proceeding before a court of law, administrative board, hearing officer, or other body conducting a judicial or administrative proceeding in which the United States, the Postal Service, or another federal agency is not a named party.

(3) *Demand* includes any request, order, or subpoena for testimony or the production of documents.

(4) *Document* means all records, papers, or official files, including, but not limited to, official letters, telegrams, memoranda, reports, studies, calendar and diary entries, graphs, notes, charts, tabulations, data analyses, statistical or information accumulations, records of meetings and conversations, film impressions, magnetic tapes, computer discs, and sound or mechanical reproductions;

(5) *Employee* or *Inspection Service employee*, for the purpose of this regulation only, refers to a Postal Service employee currently or formerly assigned to the Postal Inspection Service, student interns, contractors and employees of contractors who have access to Inspection Service information and records.

(6) *Inspection Service* means the organizational unit within the Postal Service as outlined in § 224.3 of this chapter.

(7) *Inspection Service Legal Counsel* is an attorney authorized by the Chief Postal Inspector to give legal advice to members of the Inspection Service.

(8) *Inspection Service Manual* is the directive containing the standard operating procedures for Postal Inspectors and certain Inspection Service employees.

(9) *Nonpublic* includes any material or information not subject to mandatory public disclosure under § 265.6(b).

(10) *Official case file* means official documents that relate to a particular case or investigation. These documents may be kept at any location and do not necessarily have to be in the same location in order to constitute the file.

(11) *Postal Inspector reports* include all written reports, letters, recordings, or other memorializations made in conjunction with the duties of a Postal Inspector.

(12) *Testify* or *testimony* includes both in-person oral statements before any body conducting a judicial or administrative proceeding and statements made in depositions, answers to interrogatories, declarations, affidavits, or other similar documents.

(13) *Third-party action* means an action, judicial or administrative, in which the United States, the Postal Service, or any other federal agency is not a named party.

(d) *Policy.* No current or former employee within the Inspection Service may testify or produce documents concerning information acquired in the course of employment or as a result of his or her relationship with the Postal Service in any proceeding to which this subsection applies (see paragraph (a) of this section), unless authorized to do so. Authorization will be provided by:

(1) The Postal Inspector in Charge of the affected field Division, or designee, for Division personnel and records, after that official has determined through consultation with Inspection Service legal counsel that no legal objection, privilege, or exemption applies to such testimony or production of documents.

(2) The Chief Postal Inspector or designee for Headquarters employees and records, after that official has determined through consultation with Inspection Service legal counsel, that no legal objection, privilege, or exemption applies to such testimony or production of documents.

(3) Consideration shall be given to:

(i) Statutory restrictions, as well as any legal objection, exemption, or privilege that may apply;

(ii) Relevant legal standards for disclosure of nonpublic information and documents;

(iii) Inspection Service rules and regulations and the public interest;

(iv) Conservation of employee time; and

(v) Prevention of the expenditure of Postal Service resources for private purposes.

(4) If additional information is necessary before a determination can be made, the authorizing official may, in coordination with Inspection Service legal counsel, request assistance from the Department of Justice.

(e) *Compliance with subpoena duces tecum.* (1) Except as required by part 262 of this chapter, produce any other record of the Postal Service only in compliance with a subpoena *duces tecum* or appropriate court order.

(2) Do not release any record containing information relating to an employee's security or loyalty.

(3) Honor subpoenas and court orders only when disclosure is authorized.

(4) When authorized to comply with a subpoena *duces tecum* or court order, do not leave the originals with the court.

(5) Postal Inspector reports are considered to be confidential internal documents and shall not be released unless there is specific authorization by the Chief Postal Inspector or the Inspector in Charge of the affected field Division, after consulting with Inspection Service legal counsel.

(6) The Inspection Service Manual and other operating instructions issued to Inspection Service employees are considered to be confidential and shall not be released unless there is specific authorization, after consultation with Inspection Service legal counsel. If the requested information relates to confidential investigative techniques, or release of the information would adversely affect the law enforcement mission of the Inspection Service, the subpoenaed official, through Inspection Service legal counsel, may request an *in camera, ex parte* conference to determine the necessity for the release of the information. The entire Manual should not be given to any party.

(7) Notes, memoranda, reports, transcriptions, whether written or recorded and made pursuant to an official investigation conducted by a member of the Inspection Service, are the property of the Inspection Service and are part of the official case file, whether stored with the official file.

(f) *Compliance with summonses and subpoenas ad testificandum.* (1) If an Inspection Service employee is served with a third-party summons or a subpoena requiring an appearance in court, contact should be made with Inspection Service legal counsel to determine whether and which exemptions or restrictions apply to proposed testimony. Inspection Service

employees are directed to comply with summonses, subpoenas, and court orders, as to appearance, but may not testify without authorization.

(2) Postal Inspector reports or records will not be presented during testimony, in either state or federal courts in which the United States, the Postal Service, or another federal agency is not a party in interest, unless authorized by the Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division, who will make the decision after consulting with Inspection Service legal counsel. If an attempt is made to compel production, through testimony, the employee is directed to decline to produce the information or matter and to state that it may be exempted and may not be disclosed or produced without the specific approval of the Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division. The Postal Service will offer all possible assistance to the courts, but the question of disclosing information for which an exemption may be claimed is a matter of discretion that rests with the appropriate official. Paragraph (e) of this section covers the release of Inspection Service documents in cases where the Postal Service or the United States is not a party.

(g) *General procedures for obtaining Inspection Service documents and testimony from Inspection Service employees.* (1) To facilitate the orderly response to demands for the testimony of Inspection Service employees and production of documents in cases where the United States, the Postal Service, or another federal agency is not a party, all demands for the production of nonpublic documents or testimony of Inspection Service employees concerning matters relating to their official duties and not subject to the exemptions set forth in paragraph (a) of this section shall be in writing and conform to the requirements outlined in paragraphs (g)(2) and (g)(3) of this section.

(2) Before or simultaneously with service of a demand described in paragraph (g)(1) of this section, the requesting party shall serve on the Counsel, Office of the Chief Postal Inspector, 475 L'Enfant Plaza SW, Washington, DC 20260–2181, an affidavit or declaration containing the following information:

(i) The title of the case and the forum where it will be heard;

(ii) The party's interest in the case;

(iii) The reasons for the demand;

(iv) A showing that the requested information is available, by law, to a party outside the Postal Service;

(v) If testimony is sought, a summary of the anticipated testimony;

(vi) If testimony is sought, a showing that Inspection Service records could not be provided and used in place of the requested testimony;

(vii) The intended use of the documents or testimony; and

(viii) An affirmative statement that the documents or testimony is necessary for defending or prosecuting the case at issue.

(3) The Counsel, Office of the Chief Postal Inspector, shall act as agent for the receipt of legal process for demands for production of records or testimony of Inspection Service employees where the United States, the Postal Service, or any other federal agency is not a party. A subpoena for testimony or for the production of documents from an Inspection Service employee concerning official matters shall be served in accordance with the applicable rules of civil procedure. A copy of the subpoena and affidavit or declaration, if not previously furnished, shall also be sent to the Chief Postal Inspector or the appropriate Postal Inspector in Charge.

(4) Any Inspection Service employee who is served with a demand shall promptly inform the Chief Postal Inspector, or the appropriate Postal Inspector in Charge, of the nature of the documents or testimony sought and all relevant facts and circumstances.

(h) *Authorization of testimony or production of documents.* (1) The Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division, after consulting with Inspection Service legal counsel, shall determine whether testimony or the production of documents will be authorized.

(2) Before authorizing the requested testimony or the production of documents, the Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division shall consider the following factors:

(i) Statutory restrictions, as well as any legal objection, exemption, or privilege that may apply;

(ii) Relevant legal standards for disclosure of nonpublic information and documents;

(iii) Inspection Service rules and regulations and the public interest;

(iv) Conservation of employee time; and

(v) Prevention of expenditures of government time and resources solely for private purposes.

(3) If, in the opinion of the authorizing official, the documents should not be released or testimony should not be furnished, that official's decision is final.

(4) Inspection Service legal counsel may consult or negotiate with the party or the party's counsel seeking testimony or documents to refine and limit the demand, so that compliance is less burdensome, or obtain information necessary to make the determination whether the documents or testimony will be authorized. If the party or party's counsel seeking the documents or testimony fails to cooperate in good faith, preventing Inspection Service legal counsel from making an informed recommendation to the authorizing official, that failure may be presented to the court or other body conducting the proceeding as a basis for objection.

(5) Permission to testify or to release documents in all cases will be limited to matters outlined in the affidavit or declaration described in paragraph (g)(2) of this section or to such parts as deemed appropriate by the authorizing official.

(6) If the authorizing official allows the release of documents or testimony to be given by an employee, arrangements shall be made for the taking of testimony or receipt of documents by the least disruptive methods to the employee's official duties. Testimony may, for example, be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law.

(i) While giving a deposition, the employee may, at the option of the authorizing official, be represented by Inspection Service legal counsel.

(ii) While completing affidavits, or other written reports or at any time during the process of preparing for testimony or releasing documents, the employee may seek the assistance of Inspection Service legal counsel.

(7) Absent written authorization from the authorizing official, the employee shall respectfully decline to produce the requested documents, testify, or, otherwise, disclose the requested information.

(8) If the authorization is denied or not received by the return date, the employee, together with counsel, where appropriate, shall appear at the stated time and place, produce a copy of this section, and respectfully decline to testify or produce any document on the basis of these regulations.

(9) The employee shall appear as ordered by the subpoena, summons, or other appropriate court order, unless:

(i) Legal counsel has advised the employee that an appearance is inappropriate, as in cases where the subpoena, summons, or other court order was not properly issued or served,

has been withdrawn, discovery has been stayed; or

(ii) Where the Postal Service will present a legal objection to furnishing the requested information or testimony.

(i) *Inspection Service employees as expert or opinion witnesses.* No Inspection Service employee may testify as an expert or opinion witness, with regard to any matter arising out of the employee's duties or functions at the Postal Service, for any party other than the United States, except that in extraordinary circumstances, the Counsel, Office of the Chief Postal Inspector, may approve such testimony in private litigation. An Inspection Service employee may not testify as such an expert or opinion witness without the express authorization of the Counsel, Office of the Chief Postal Inspector. A litigant must first obtain authorization of the Counsel, Office of the Chief Postal Inspector, before designating an Inspection Service employee as an expert or opinion witness.

(j) *Postal liability.* This section is intended to provide instructions to Inspection Service employees and does not create any right or benefit, substantive or procedural, enforceable by any party against the Postal Service.

(k) *Fees.* (1) Unless determined by 28 U.S.C. 1821 or other applicable statute, the costs of providing testimony, including transcripts, shall be borne by the requesting party.

(2) Unless limited by statute, such costs shall also include reimbursement to the Postal Service for the usual and ordinary expenses attendant upon the employee's absence from his or her official duties in connection with the case or matter, including the employee's salary and applicable overhead charges, and any necessary travel expenses as follows:

(i) The Inspection Service is authorized to charge reasonable fees to parties demanding documents or information. Such fees, calculated to reimburse the Postal Service for the cost of responding to a demand, may include the costs of time expended by Inspection Service employees, including attorneys, to process and respond to the demand; attorney time for reviewing the demand and for legal work in connection with the demand; expenses generated by equipment used to search for, produce, and copy the requested information; travel costs of the employee and the agency attorney, including lodging and per diem where appropriate. Such fees shall be assessed at the rates and in the manner specified in § 265.9.

(ii) At the discretion of the Inspection Service where appropriate, fees and costs may be estimated and collected before testimony is given.

(iii) These provisions do not affect rights and procedures governing public access to official documents pursuant to the Freedom of Information Act, 5 U.S.C 552a.

(k) *Acceptance of Service.* These rules in no way modify the requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix) regarding service of process.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–13252 Filed 6–5–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL–5217–1]

Determination of Attainment of Ozone Standard for Lewiston-Auburn and Knox and Lincoln Counties, Maine Ozone Nonattainment Areas and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to determine that the Lewiston-Auburn, Maine and the Knox and Lincoln Counties, Maine ozone nonattainment areas have attained the National Ambient Air Quality Standard (NAAQS) for ozone and that certain reasonable further progress and attainment demonstration requirements, along with certain related requirements, of Part D of Title I of the Clean Air Act are not applicable for so long as the areas continue to attain the ozone standard. In the Final Rules section of this **Federal Register**, EPA is making these determinations without prior proposal. A detailed rationale for the action is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and address the comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this notice. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this action must be received by July 6, 1995.

ADDRESSES: Written comments should be mailed to Susan Studlien, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the relevant material for this notice are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Phone: 617–565–3244.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the Final Rules section of this **Federal Register**.

Dated: May 22, 1995.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 95–13813 Filed 6–5–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD–FRL–5216–8]

Clean Air Act Proposed Interim Approval of Operating Permits Program; Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes interim approval of the Operating Permits Program submitted by the Sacramento Metropolitan Air Quality Management District (''Sacramento'' or ''District'') for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by July 6, 1995.

ADDRESSES: Comments should be addressed to Ed Pike at the Region IX address. Copies of the State's submittal and other supporting information used in developing the proposed interim approval are available for inspection

during normal business hours at the following location: Air and Toxics Division, US EPA-Region IX, 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Ed Pike (telephone 415/744–1248), Operating Permits Section, A–5–2, Air and Toxics Division, US EPA–Region IX, 75 Hawthorne Street, San Francisco, California 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

B. Federal Oversight and Sanctions

If EPA were to finalize this proposed interim approval, it would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, the District would be protected from sanctions, and EPA would not be obligated to promulgate, administer, and enforce a Federal permits program for the District. Permits issued under a program with interim approval have full standing with respect to part 70, and the one year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the three year time period for processing the initial permit applications.

Following final interim approval, if the District failed to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If the District then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the Act, which would remain in effect until EPA determined that the District had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of the District, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the District had come into compliance. In any case, if, six months after application of the first sanction, the District still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim approval, EPA were to disapprove the District's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the District had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the District, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the District had come into compliance. In all cases, if, six months after EPA applied the first sanction, the District had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a District has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a District program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for that District upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

EPA is proposing to grant interim approval to the District's part 70 operating permit program. The program qualifies for interim approval because it substantially, but not fully, meets the requirements of part 70 and meets the requirements for interim approval in 40 CFR 70.4(d). The Technical Support Document (''TSD''), which is included in the docket, includes a detailed analysis of the program elements that meet the requirements of part 70 and the program elements that must be revised to qualify for full approval.

1. Support Materials

The California Air Resources Board (''ARB'') submitted an administratively complete part 70 permitting program on behalf of the District on August 1, 1994 with a letter requesting source-category limited interim approval. California law currently exempts agricultural sources from permitting requirements, including title V. The ARB submitted a statement from the California Attorney General and copies of state enabling legislation on behalf of all California air districts on November 16, 1993. The Attorney General stated that California law provides air districts with sufficient authority, including enforcement authority, to implement title V except for permitting agricultural sources.

Sacramento's program includes a description of the permitting program, permitting rules, permit forms, and the District requirements for permit applications (which are contained in Sacramento's ''List and Criteria''). EPA intends to finalize an implementation agreement prior to final interim approval of the program. The implementation agreement will address data management, a mechanism for straight delegation of section 112 standards under section 112(1) of the Act, and other implementation details.

2. Regulations and Program Implementation

Sacramento's submittal contains three rules with part 70 requirements. District rule 207 (adopted June 7, 1994) contains most permit program requirements. Rule 201 (as amended June 7, 1994) contains permit exemptions and rule 301 (as amended June 7, 1994) contains fee requirements. The District also submitted its ''List and Criteria'' and permit application forms to specify the permit application requirements. The program substantially meets part 70

requirements as described below and in the TSD.

a. *Applicability.* The District's regulation requires that all part 70 sources, except agricultural sources exempted under state law, apply for a part 70 permit (rule 207 section 102). Initial applications are due within one year of EPA's approval of the program, except that sources with actual emissions below certain levels are given three years from the date of EPA's approval of the program to apply for permits. The program does not require non-major sources subject to New Source Performance Standards (NSPS) or National Emission Standards for Hazardous Air Pollutants (NESHAP) to obtain permits except as required by EPA.

Sacramento opted for source category limited interim approval. In addition to agricultural sources exempted under state law, the District temporarily excluded sources with the potential to emit at major source levels but actual emissions below certain levels. During the initial three years, Sacramento will defer permitting sources with actual emissions less than fifty percent of the major source threshold for criteria pollutants. The deferred sources must also have hazardous air pollutant (HAP) emissions of less than seven tons per year of each HAP and fifteen tons per year of total HAPs. The District submitted a demonstration that sixty percent of all major sources and eighty percent of the title V emissions inventory will be permitted within the first three years after the program is approved. The District intends to use this time to create federally-enforceable potential to emit limits. These deferred sources must be permitted within the first five years of the program if they do not obtain federally enforceable limits on their potential to emit. The program is consistent with EPA's August 2, 1993 guidance on source-category limited interim approval (memorandum signed by John Seitz, Director of the Office of Air Quality Planning and Standards) except for the District permit issuance deadlines, which must be revised as described under Requirements for Full Approval.

EPA is in the process of changing the District's attainment status for ozone from serious to severe. The redesignation will reduce the major source potential to emit threshold from 50 tons per year to 25 tons per year for nitrogen oxides and volatile organic compounds. EPA expects that this change will be promulgated and effective by June 1, 1995, which is prior to EPA's deadline for final action on the District's title V permitting program. The District's major stationary source definition (District rule 207 section 219) references the title I major source definitions and will automatically incorporate this change.

b. *Permit applications.* The program meets the part 70 requirements for permit application deadlines and permit application content. Rule 207 contains the correct permit application deadlines and requires that sources submit a complete permit application (section 301). The ''List and Criteria'' and the permit application forms meet the requirements for permit application content and require that sources submit information to verify all applicable requirements and fees. Rule 207 section 208 states that a complete application must contain the requirements in the ''List and Criteria'' and section 401 states that the District will use the ''List and Criteria'' to determine whether the application is complete. Rule 207 requires complete applications but does not contain the specific permit application content requirements. EPA is approving the ''List and Criteria'' and the permit application forms as part of the title V permitting program to ensure that the permit application content requirements are met.

c. *Permit content.* Each part 70 permit must contain emission limitations and standards that assure compliance with all applicable requirements (rule 207 section 305.1). The permit must also contain monitoring, recordkeeping, and other compliance terms sufficient to ensure compliance with the permit terms. The program allows alternative operating scenarios and operational flexibility (rule 207 sections 305 and 308.1).

d. *Public participation and EPA oversight.* The District will provide the public with notice of and an opportunity to comment on all initial permits, permit renewals, reopenings, and significant modifications. Each initial permit, renewal, and significant and minor modification is subject to EPA oversight and veto (rule 207 sections 403 through 406).

e. *Variances.* The District has the authority to issue a variance from requirements (except the requirement to obtain a permit to construct or operate) imposed by state and local law. (See California Health and Safety Code sections 42350–42364 and Sacramento rule 601.) In the opinion submitted with California operating permit programs, California's Attorney General states that ''[t]he variance process is *not* part of the title V permitting process and does not affect federal enforcement for violations of the requirements set forth in a title V permit.'' (Emphasis in original.)

The EPA regards the State and District variance provisions as wholly external to the program submitted for approval under part 70 and consequently is proposing to take no action on these provisions of state and local law. The EPA has no authority to approve provisions of state law that are inconsistent with the CAA. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or revision procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance ''shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.''

f. Title I modification definition. Sacramento's rule requires a significant permit modification for a permit change that involves a ''title I modification'' but does not explicitly define the term (rule 207 section 233). The significant modification definition explicitly states that title I modification includes modifications under 40 CFR parts 61 and 63 and case-by-case determinations of emissions limits and standards, but does not explicitly include changes reviewed under the District's minor new source review program (''minor NSR changes''). The EPA is currently in the process of determining the proper definition of ''title I modification.'' As further explained below, EPA has solicited public comment on whether the phrase ''modification under any provision of title I of the Act'' in 40 CFR 70.7(e)(2)(i)(A)(5) should be interpreted to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under title I of the Act. This would include State preconstruction review programs, including the District's, approved by EPA as part of the State Implementation Plan under section 110(a)(2)(C) of the Clean Air Act.

On August 29, 1994, EPA proposed revisions to the interim approval criteria in 40 CFR 70.4(d) to, among other

things, allow State programs with a more narrow definition of ''title I modifications'' to receive interim approval (59 FR 44572). The Agency explained its view that the better reading of ''title I modifications'' includes minor NSR, and solicited public comment on the proper interpretation of that term (59 FR 44573). The Agency stated that if, after considering the public comments, it continued to believe that the phrase ''title I modifications'' should be interpreted as including minor NSR changes, it would revise the interim approval criteria as needed to allow States with a narrower definition to be eligible for interim approval.

The EPA hopes to finalize its rulemaking revising the interim approval criteria under 40 CFR 70.4(d) expeditiously. If EPA establishes in its rulemaking that the definition of ''title I modifications'' can be interpreted to exclude changes reviewed under minor NSR programs, Sacramento's definition of ''title I modification'' would be fully consistent with part 70. Conversely, if EPA establishes through the rulemaking that the definition must include changes reviewed under minor NSR, Sacramento's lack of a ''title I modifications'' definition that explicitly includes minor NSR will become a basis for interim approval. If the definition becomes a basis for interim approval as a result of EPA's rulemaking, Sacramento would be required to revise its definition to conform to the requirements of part 70.

Accordingly, today's proposed approval does not identify Sacramento's lack of a ''title I modification'' definition that explicitly includes minor NSR as necessary grounds for either interim approval or disapproval. For similar reasons, the EPA will not construe 40 CFR 70.7(e)(2)(i)(A)(3) to prohibit Sacramento from allowing minor NSR changes to be processed as minor permit modifications. See 59 FR 44573–44574. Again, although EPA has reasons for believing that the better interpretation of ''title I modifications'' is the broader one, EPA does not believe that it is appropriate to determine whether this is a program deficiency until EPA completes its rulemaking on this issue.

g. Insignificant activities. Section 70.4(b)(2) requires that States include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purposes of determining complete applications. Section 70.5(c) states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.5(c) also states that EPA may approve as part of a State program a list of insignificant activities and emissions levels which need not be included in permit applications. Under part 70, a State must request and EPA must approve as part of that State's program any activity or emission level that the State wishes to consider insignificant. Part 70, however, does not establish appropriate emission levels for insignificant activities. Instead, the rule requires a case-by-case determination of appropriate levels based on the particular circumstances of the part 70 program under review.

Sacramento provided its current permit exemption lists as its list of insignificant activities. The District did not provide criteria or information on the level of emissions of activities, did not demonstrate that these activities are not likely to be subject to an applicable requirement or fees, and did not explain the basis for determining that these activities are insignificant. Therefore, EPA cannot propose full approval of the program without additional information and/or revisions to the list of insignificant activities.

h. Enhanced new source review changes. New source review modifications that undergo ''enhanced'' NSR may be administratively incorporated into title V permits to avoid a second review process. Rule 207 section 202.5 requires that enhanced NSR modifications meet the NSR requirements of rule 202, the title V procedural requirements of rule 207 (sections 401 through 408), and the compliance requirements of rule 207 (section 305).

3. Permit Fee Demonstration

The District assesses three types of fees. The District collects equipment fees and emissions fees based on actual emissions. The District stated that at least one quarter of these fees will be used for title V activities. The District also collects separate fees based on the amount of staff time required to issue a title V permit. The District stated that a total of $744,722 will be collected for implementing the title V program during the first three years and that an average of $97 per ton of regulated pollutant (for fee purposes) will be collected. These fees are above the presumptive minimum ($25 adjusted by the Consumer Price Index since 1989) in § 70.9. Therefore, EPA believes that these fees are sufficient to fund the program.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and commitments for section 112 implementation. Sacramento has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in the State of California enabling legislation and in rule 207 provisions defining ''applicable federal requirements'' (section 206) and stating that the permit must incorporate all applicable federal requirements (see section 305). EPA has determined that this legal authority is sufficient to allow Sacramento to issue permits that assure compliance with all section 112 requirements.

EPA is interpreting the above legal authority to mean that Sacramento is able to carry out all section 112 activities. For further rationale on this interpretation, please refer to the Technical Support Document accompanying this rulemaking and the April 13, 1993 guidance memorandum titled ''Title V Program Approval Criteria for Section 112 Activities,'' signed by John Seitz, Director of the Office of Air Quality Planning and Standards, U.S. EPA.

b. *District preconstruction permit program to implement 112(g).* Sacramento will be required to implement the Maximum Achievable Control Technology requirements of section 112(g) of the Act as a component of the part 70 program. Under the interpretive notice EPA has published in the **Federal Register**, State and local agencies may delay implementing 112(g) of the Act until EPA promulgates a final 112(g) rule. Alternatively, State and local agencies may implement the requirements of 112(g) prior to EPA promulgation of the 112(g) rule as a matter of State or local law. See 60 FR 8333 (February 14, 1995). The notice also states that EPA is considering whether to further delay the effective date of section 112(g) beyond the date of promulgation of the Federal rule so as to allow State and local agencies time to adopt rules implementing the Federal rule. EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), the District must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing District regulations and may choose to implement section 112(g) sooner as a matter of local law.

For this reason, EPA is proposing to approve the use of the District's preconstruction review program (District rule 202) and the District's New Source Guidelines for Toxics (Appendix B–6 of submittal) solely as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and District adoption of rules specifically designed to implement section 112(g). However, since approval is intended soley to confirm that State and local agencies have a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that there will be no transition period. The EPA is proposing that twelve months will be adequate for the District to adopt implementing regulations but solicits comments on whether this timeframe will be adequate.

c. *Program for delegation of section 112 standards as promulgated.* Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA, as they apply to part 70 sources. Section 112(l)(5) requires that the District's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 to Sacramento's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. Sacramento can accept delegation of section 112 standards through automatic delegation, as provided for by sections 39658 and 42301.10 of the California Health and Safety Code. The details of this delegation mechanism will be set forth in an implementation agreement between Sacramento and EPA, and EPA expects to complete this agreement prior to approval of Sacramento's section 112(l) program for straight delegations. This program applies to both existing and future standards but is limited to sources covered by the part 70 program.

d. *Commitments for title IV implementation.* Sacramento stated in the program description that no title IV affected sources are located in the District. Therefore, EPA is not requiring that the District adopt an acid rain program prior to receiving interim approval. If acid rain sources are constructed in the District or existing sources become subject to the program, the District will be required to adopt an acid rain program expeditiously.

B. Requirements for Full Approval

The EPA is proposing to grant interim approval to the operating permits program submitted by Sacramento on August 1, 1994. If this interim approval is promulgated, the State and the District must make the following changes to receive full approval:

1. Necessary Change to California Enabling Legislation

a. *Legislative source category limited interim approval issue.* Because California state law currently exempts agricultural production sources from permit requirements, the California Air Resources Board has requested source category limited interim approval for all California air districts. EPA is proposing to grant source category limited interim approval to the operating permits program submitted by the California Air Resources Board on behalf of the District on August 1, 1994. In order for this program to receive full approval (and to avoid a disapproval upon the expiration of this interim approval), the California Legislature must revise the Health and Safety Code to eliminate the exemption of agricultural production sources from the requirement to obtain a permit.

2. Necessary Changes to Sacramento's Rule

a. *Agricultural exemption.* The District permit exemption rule also contains a blanket exemption for agricultural operations. The District must also remove the agricultural permit exemption to qualify for full approval.

b. *Insignificant activities.* EPA cannot propose full approval of the District's list of permit exemptions under the insignificant activities provisions of § 70.5(c) because the District did not submit information justifying these exemptions. In addition, EPA has noted several types of activities in rule 201 that are likely to be subject to applicable requirements. For instance, the exemption for internal combustion engines (rule 201 section 112) could apply to a source near the major source threshold. The exemption for cooling systems (rule 201 section 115) will apply to large systems subject to emission standards under title VI. Therefore, the District must revise the list of insignificant activities and provide criteria for determining insignificant activities. The District must also show that information omitted from permit applications will not be necessary to determine the applicability of, or to impose, any applicable requirement or fee.

For other State and local programs, EPA has proposed to accept, as sufficient for full approval, emission levels for insignificant activities of two tons per year and the lesser of 1000 pounds per year, section 112(g) de minimis levels, or other title I significant modification levels for HAPs and other toxics (40 CFR 52.21(b)(23)(i)). EPA believes that these levels, or lower levels for non-attainment pollutants, are sufficiently below applicability thresholds for many applicable requirements to assure that it is unlikely that a unit potentially subject to an applicable requirement will be left off a title V application. EPA is requesting comments on whether these thresholds are appropriate. This request for comment is not intended to restrict Sacramento's ability to propose other emission levels for EPA approval if Sacramento demonstrates that such alternative emission levels are insignificant compared to the types of units that are permitted or subject to applicable requirements and the level of emissions from these units.

c. *Operational flexibility.* The District's limits on operational flexibility are not as explicitly restrictive as the limits in part 70. Section 308.3 of rule 207 does not allow operational flexibility for title I modifications, which is consistent with 70.4(b)(12)(i); however, the reference to ''title I modification'' is unclear. EPA has interpreted the term title I modification to include all modifications under title I of the Act, and has specifically determined that the term includes section 111 modifications (New Source Performance Standards) and section 112(g) modifications. See 56 FR 21746. Sacramento's use of the term ''title I modification'' should also be read to include these requirements. Therefore, the District must clarify the rule through guidance or rulemaking changes to explicitly restrict operational flexibility for NSPS and section 112(g) modifications.

On August 29, 1994 (59 FR 44573), EPA requested public comment on whether the definition of title I modification should include other section 112 modifications and minor NSR modifications. EPA may require that the District explicitly add additional restrictions based on the outcome of this rulemaking. EPA believes that other restrictions in section 308.8 of rule 207 are sufficiently clear to prohibit this type of operational flexibility for major NSR modifications.

Sacramento's rule also allows sources to accept a federally enforceable

emissions cap and trade emissions increases and decreases within the facility to meet this cap but does not prohibit this trading if it involves a title I modification. This restriction must be added to the rule along with the correct definition of title I modification (§ 70.4(b)(12)).

d. *Permit issuance deadlines.* The District must change rule 207 and adopt appropriate permit issuance deadlines for sources that are initially deferred from the program due to their actual emissions but do not obtain federally enforceable limits on their potential to emit. These deadlines must ensure that all permits are issued by December 15, 1999, which is required by EPA's August 2, 1993 guidance on source-category limited interim approval.

e. *Emissions trading under applicable requirements.* Sacramento must add emissions trading provisions consistent with § 70.6(a)(10). The permit content section of the rule must allow provisions for trading within the permitted facility where an applicable requirement provides for trading increases and decreases without case-by-case approval.

f. *Inclusion of fugitive emissions in the permit.* The rule must explicitly require that the permit include fugitive emissions in the same manner as stack emissions (§ 70.3(d)).

g. *Public participation.* The District rule must state that the District will provide public notice by means other than newspaper notice and a mailing list when necessary to ensure that adequate notice is given (§ 70.7(h)).

C. Effect of Interim Approval

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, the District is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the District. Permits issued under a program with interim approval have full standing with respect to part 70. The one year time period for submittal of permit applications by subject sources and the three year time period for processing the initial permit applications begin upon interim approval.

The scope of the part 70 program EPA is proposing to approve in this notice applies to all part 70 sources (as defined in the approved program) within the Sacramento Metropolitan Air Quality Management District except any sources of air pollution over which an Indian Tribe has jurisdiction. See, e.g., 59 FR 55813, 55815–18 (Nov. 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the District's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process; and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by July 6, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 23, 1995.

David P. Howekamp,

Acting Regional Administrator.

[FR Doc. 95–13788 Filed 6–5–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5216–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Action Anodizing, Plating and Polishing Superfund site from the National Priorities List; Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces its intent to delete the Action Anodizing, Plating and Polishing (AAPP) site from the National Priorities List (NPL) and

requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York have determined that no further action is appropriate at the AAPP site under CERCLA. Moreover, EPA and the State have determined that activities conducted at the AAPP site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the deletion of the AAPP site from the NPL may be submitted on or before July 5, 1995.

ADDRESSES: Comments may be mailed to: Kathleen C. Callahan, Director, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, NY 10007.

Comprehensive information on this site is available through the EPA Region II public docket, which is located at EPA's Region II Office in New York City, and is available for viewing, by appointment only, from 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays. For further information or to request an appointment to review the public docket, please contact: Ms. Janet Cappelli, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, NY 10007, (212) 637–4270.

Background information from the Regional public docket related to the AAPP site is also available for viewing at the information repositories noted below:

Copiague Memorial Library, 50 Deauville Boulevard, Copiague, New York 11726
and
Town of Babylon, Department of Environmental Control, 281 Phelps Lane, Control Room 23, North Babylon, New York 11703.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region II announces its intent to delete the AAPP site from the NPL and requests public comment on this action. The NPL constitutes Appendix B to the NCP, which EPA promulgated pursuant to Section 105 of CERCLA. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions, if conditions at such sites warrant such action.

The EPA will accept comments concerning the AAPP site for thirty days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the AAPP site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425 (e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria has been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or,

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or,

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or to the environment and, therefore, taking remedial measures is not appropriate.

III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist Agency management.

EPA Region II will accept and evaluate public comments before making a final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be most pertinent to deletion decisions. The following procedures were used for the intended deletion of the AAPP site:

1. EPA Region II has recommended deletion and has prepared the relevant documents. EPA has also made all relevant documents available in the Regional office and local AAPP site information repositories.

2. The State of New York has concurred with the deletion decision.

3. Concurrent with this national Notice of Intent to Delete, a notice has been published in local newspapers and has been distributed to appropriate Federal, state and local officials and other interested parties. This notice announces a thirty (30) day public comment period on the deletion package starting on June 5, 1995 and concluding on July 5, 1995.

4. The Region has made all relevant documents available in the Regional Office and local site information repositories.

The comments received during the comment period will be evaluated before any final decision is made. If necessary, EPA Region II will prepare a Responsiveness Summary which will address any comments received during the public comment period.

If, after consideration of these comments, EPA decides to proceed with deletion, the EPA Regional Administrator will place a Notice of Deletion in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region II.

IV. Basis for Intended Site Deletion

The Action Anodizing Plating and Polishing (AAPP) site is located at 33 Dixon Avenue in the Hamlet of Copiague in the Town of Babylon, Suffolk County, New York. It is approximately one acre in size and is one mile east of the Nassau-Suffolk County line and one-half mile south of Sunrise Highway.

For approximately thirty years prior to 1968, a commercial laundry facility operated on the Site's premises. Since 1968, AAPP has operated at the Site as a small metal-finishing shop. AAPP's operations primarily involve sulfuric acid anodizing of aluminum parts for the electronics industry, cadmium plating, chromate conversion coatings, metal dyeing and vapor degreasing. Liquid wastes from these operations

include rinses of spent caustic and acidic solutions contaminated with cadmium, chromium, zinc and sodium cyanide. According to the operator of the facility, prior to 1980, rinse water was reportedly stored in a concrete waste holding trough in the floor of the facility from which it was pumped into a low pressure steam boiler. The steam was then condensed and reused as process make-up water. The solids from the rinse water were allowed to build up in the boiler tubes until the tubes became plugged, at which time, the boiler would be replaced with a new unit.

The concrete trough had previously been used by the commercial laundry as part of its drainage system. The trough was connected to a septic tank on the north side of the building. Tank overflow fed into a series of six leaching pits on the east side of the building. The bottoms of the pits were reportedly several feet below ground.

During an inspection of the Site by the Suffolk County Department of Health Services (SCDHS) in January 1980, it was discovered that rinse water from AAPP's operation was discharging to the leaching pits rather than the low pressure steam boiler. SCDHS sampled the leaching pits, process tanks, surface soils, and septic tank on the Site. The results showed elevated levels of several metals, notably cadmium, chromium and nickel in the leaching pits. AAPP was told by SCDHS to cease discharge to the leaching pits immediately and remove the soils and sediments of the entire leaching system.

In the spring of 1980, AAPP contracted with the Patterson Chemical Company for the cleanup and closing of the leaching system. This work was supervised and approved by SCDHS. In September 1980, SCDHS notified AAPP that the leaching pits could be back-filled with clean sand and gravel. A 7,500 foot equipment storage area, built in 1984, lies directly on top of the former leaching pits. AAPP reports that its industrial waste is currently hauled off-site for disposal.

In January 1986, the New York State Department of Environmental Conservation (NYSDEC) issued a Phase I Investigation Report which summarized past investigations and included a Hazard Ranking System (HRS) score for the Site. Although groundwater contamination was not documented as part of the Phase I investigation, the potential for groundwater contamination by wastewater discharges to the leaching pools prior to 1980 was the major contributor to the HRS score. Based on the HRS score, the Site was proposed for inclusion on the NPL in June 1988 and was placed on the NPL in March 1989.

Under the direction of EPA, Malcolm Pirnie, Inc. conducted a remedial investigation (RI) from July 1989 to April 1992 to characterize the geology, groundwater hydrology and chemical quality of the soils and groundwater at the AAPP site. The investigation consisted of drilling borings and constructing monitoring wells, collecting soil and groundwater samples, a geophysical survey, and an air-monitoring survey. All sampling results, both organic and inorganic, were compared with New York State and Federal applicable or relevant and appropriate requirements (ARARs). The data were also utilized to prepare a baseline risk assessment for the site.

The risk assessment indicated that the levels of contaminants in the soil, air and groundwater at the Site presented risks which fell within or below the Superfund remediation range. In addition, sampling results indicated the majority of contaminants did not exceed MCLs in the groundwater, or background levels in the soil and air. It appeared that the 1980 SCDHS-ordered remediation of the leaching pits removed the most significant contamination known to exist at the Site.

EPA released the Proposed Plan, detailing the RI results, on April 3, 1992 and held two public meetings and a public availability session for the community before closing the public comment period. At the conclusion of the RI process, EPA, in consultation with the State of New York, issued a Record of Decision (ROD) on June 30, 1992, which determined that the AAPP site does not pose a significant threat to human health or the environment and that no further action was required. However, the ROD did call for a one-year groundwater monitoring program to ensure that the remedy is protective of human health and the environment.

As specified in the ROD, a groundwater monitoring program, consisting of two rounds of samples from four monitoring wells, was conducted by EPA. Samples from both rounds were analyzed for organic and inorganic contaminants. The first round of sampling was conducted in May 1993. Chromium, which had been of concern during the RI, was not detected above New York State or Federal drinking water or groundwater standards, nor were any other inorganics. No volatiles or semi-volatile organic compounds were detected. Only trace levels of two pesticides, both unrelated to past production activities at the Site, were detected. The second round of sampling was conducted in March 1994. During the second round, DEC split samples with EPA for analysis of pesticides only. As with the first round, no contaminants were detected above allowable levels. DEC's analysis verified EPA's findings that pesticides are present in trace levels only. EPA and DEC have determined that no further monitoring is necessary. Having met the deletion criteria, EPA proposes to delete the AAPP site from the NPL.

Dated: March 28, 1995.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 95–13789 Filed 6–5–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–73, RM–8568]

Radio Broadcasting Services; Boonville and Fayette, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Big Country of Missouri, Inc. proposing the substitution of Channel 230C3 for Channel 230A at Boonville, Missouri, reallotment of the channel from Boonville, Missouri to Fayette, Missouri, and modification of the license for Station KTLH to specify operation on Channel 230C3 at Fayette, Missouri. The coordinates for Channel 230C3 at Fayette are 39–05–00 and 92–28–30. We shall propose to modify the license for Station KTLH in accordance with Section 1.420(g) and (i) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before July 24, 1995, and reply comments on or before August 8, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Frederick A. Polner, Rothman Gordon Foreman & Groudine, P.C., Third Floor, Grant Building, Pittsburgh, Pennsylvania 15219.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–73, adopted May 23, 1995, and released June 1, 1995. 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.

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* contact.

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,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–13761 Filed 6–5–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–74, RM–8579]

Radio Broadcasting Services; Benavides and Bruni, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Benavides Communications, permittee of Station KXTM(FM), Channel 299C2, Benavides, Texas, seeking the reallotment of Channel 299C2 from Benavides to Bruni, Texas, as the community's first local aural transmission service, and the modification of Station KXTM(FM)'s construction permit to specify Bruni as its community of license. In addition, we also propose the allotment of Channel 254A to Benavides, Texas. *See* Supplemental Information, *infra*.

DATES: Comments must be filed on or before July 24, 1995, and reply comments on or before August 8, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lee J. Peltzman, Esq., Suite 200, 2000 L Street, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–74, adopted May 23, 1995, and released June 1, 1995. 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, DC. 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, DC 20037.

Channels 299C2 and Channel 254A can be allotted to Bruni and Benavides, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 299C2 can be allotted to Bruni without the imposition of a site restriction. Channel 254A can be allotted to Benavides with a site restriction of 11.8 kilometers (7.3 miles) south to accommodate Benavides Communications' desired transmitter site. The coordinates for Channel 299C2 at Bruni are 27–25–31 and 98–50–21. The coordinates for Channel 254A at Benavides are 27–29–48 and 98–26–59. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 299C2 at Bruni or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties. In addition, since Bruni and Benavides are located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence by the Mexican government has been requested.

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,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–13762 Filed 6–5–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–71; RM–8632]

Radio Broadcasting Services; Pasco, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Martin L. Gibbs proposing the allotment of Channel 229A at Pasco, Washington, as the community's third local commercial FM service. Channel 229A can be allotted to Pasco in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.6 kilometers (7.8 miles) southwest to avoid a short-spacing to Station KDRK-FM, Channel 229C, Spokane, Washington. The coordinates for Channel 229A at Pasco are North Latitude 46–09–37 and West Longitude 119–13–07. Since Pasco is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

DATES: Comments must be filed on or before July 24, 1995 and reply comments on or before August 8, 1995.

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: Martin L. Gibbs, 1708 Road 52, Pasco, Washington 99301 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–71, adopted May 17, 1995, and released June 1, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC

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 contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 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,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–13763 Filed 6–5–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 649, 650, and 651

[I.D. 052595B]

New England Fishery Management Council; Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a public meeting to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will begin on Friday, June 9, 1995, at 9 a.m.

ADDRESSES: The meeting will be held at the Days Inn, Wheeler Road and Middlesex Turnpike, Burlington, MA 01803; telephone: (617) 231–0422.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, (617) 231–0422.

SUPPLEMENTARY INFORMATION: The June 9, 1995, meeting is being convened specifically to address groundfish issues. The Groundfish Committee will report on their recommendations for management alternatives to be included in the public hearing document for Amendment 7 to the Northeast Multispecies Fishery Management Plan. The Council hopes to finalize alternatives to address severely overfished stocks, with particular emphasis on cod, haddock, and yellowtail flounder.

If time allows, the Council may consider action on an Atlantic Herring Preliminary Management Plan and any other business relevant to fishery management plans under the Council's jurisdiction.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Douglas G. Marshall (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: May 31, 1995.

Richard W. Surdi,

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

[FR Doc. 95–13727 Filed 6–5–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 108

Tuesday, June 6, 1995

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

Animal and Plant Health Inspection Service

[Docket No. 95–036–1]

Availability of Environment Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that four environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings 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 and Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessment and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
94–355–01	Betaseed, Incorporated	3–24–95	Sugar beet plants genetically engineered for resistance to beet necrotic yellow vein virus.	California, Idaho.
95–053–01	PanAmerican Seed Company	4–11–95	Petunia plants genetically engineered for resistance to bacteria and fungi.	Florida, Illinois.
94–362–01	Betaseed, Incorporated	4–25–95	Sugar beet plants genetically engineered for tolerance to the herbicide glufosinate.	Idaho.
95–003–01	U.S. Department of Agriculture, Agricultural Research Service.	5–03–95	Strains of the fungus *Fusarium graminearum* genetically engineered to express altered levels of mycotoxin production.	Illinois, Indiana.

The environmental assessments and findings of no significant impact have been 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' NEPA Implementing Procedures (7 CFR part 372, 60 FR 6000–6005, February 1, 1995).

Done in Washington, DC, this 30th day of May 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–13666 Filed 6–5–95; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

North Shore Project, Lake Tahoe Basin Management Unit (LTBMU), Washoe County, Nevada; Placer County, California

AGENCY: Forest Service, USDA.

ACTION: Notice, intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to implement ecosystem management principles on approximately 7,000 acres of National Forest System lands, north of Lake Tahoe, within the Lake Tahoe Basin. Proposed activities include harvest of approximately twenty to thirty million board feet of both merchantable and unmerchantable wood products. Dead and dying trees would be cut, and thinning of live trees is also proposed to improve forest health and to reduce fire danger. The proposed action also uses prescribed fire and analyzes post sale treatments, including watershed improvement projects. Stream and riparian area enhancement and wildlife habitat improvements are also planned.

DATES: Agencies and the public are invited to participate at any stage of the process; however, the Forest Supervisor requests that individuals concerned with the scope of the analysis comment by July 1, 1995.

ADDRESSES: Written comments concerning the DEIS should be sent to the responsible official, Forest supervisor, LTBMU, 870 Emerald Bay Road, Suite 1, South Lake Tahoe, California, 96150.

FOR FURTHER INFORMATION CONTACT: Direct questions concerning the proposed action and alternatives to Joe Oden, Interdisciplinary team Leader, at (916) 573–2600 or the above address.

SUPPLEMENTARY INFORMATION: The proposed action would harvest dead, dying, and diseased trees over approximately 7,000 acres of an 24,000-acre study area. Trees would be thinned from overstocked stands, over about 6,000 acres, some of which overlap the salvage acreage, and some of which is separate. Some of the 20 to 30 million board feet removed would be useful lumber; much of the timber removed would have no commercial value.

Trees would be removed from slope less than thirty percent by tractor skidding systems. Trees would be flown from slopes over thirty percent by helicopter. No new permanent roads would be constructed; however, construction of additional temporary access roads and landing sites may be required, as well as reconstruction and restoration of existing roads.

The proposed action includes treatments that would follow tree removal activities. This would include (but is not limited to) site preparation, planting, treatment of slash generated by the project, fuel treatment adjacent to residential areas, closing of temporary and unneeded roads, and restoration of landings. The use of prescribed fire will be analyzed, both as a post-harvest treatment and as a means to reintroduce fire to the ecosystem on untreated areas. Wildlife habitat would be improved by thinning stands of small lodgepole pines and underburning older brushfields.

Heritage (historic archaeological) resources are dispersed throughout the study area. Most are the remains of 19th century logging. Sites determined to be significant will be protected. In addition to mitigation negotiated with the Advisory Council of Historic Preservation, a key component of the analysis is to seek and address enhancement opportunities for representative heritage properties.

Watershed restoration projects and road closures are also included in the proposed action if they are, in the language of the National Environmental Policy Act (NEPA—. ''connected'', ''cumulative'' or are ''ripe for decision''.

These actions are proposed to promote stable ecosystems as described in ''desired condition'' portions of the Forest Plan and the North Shore Ecosystem Report.

Beginning in the 1850's many of the 200–500 year old pine trees around Lake Tahoe were harvested in support of silver mining activities of the Comstock Lode. Earlier, the forest had consisted of diverse species that better resisted drought and insect attacks. After logging slowed in the 1890's, the area began to revegetate naturally. But a new and different forest grew to replace the old. In the absence of frequently recurring fires, dense thickets of moisture-loving fir trees replaced much of the open pine forest that has been cut. The drought that begin in 1987 weakened and killed many of the fir trees that had sprouted after the massive Comstock cutting.

Forty years of fire suppression has dramatically increased the density of trees and the amount of dead wood, both standing and on the ground. Members of the public have expressed concern over the large numbers of dead trees and the amount of forest fuels now present. Many requests have been made for projects to remove timber to reduce safety hazards, fire danger, and to improve visual quality. Such projects would reduce the ''fuel loading'' and could decrease the risk and severity of a catastrophic fire. Additionally, thinning of overstocked stands can be an effective way to reduce the risk of future catastrophic insect and disease outbreaks.

The environmental analysis provides the decisionmaker—the LTBMU Forest Supervisor—with an evaluation of what will happen if nothing is done, and what may result from the proposed action and other alternatives. Such disclosure will allow a reasoned choice between management options. If an alternative other than No Action is selected the work should proceed without delay. Delaying the removal of dead, dying, or diseased trees can reduce their commercial value. The anticipated high cost of implementation could deter potential bidders as the soundness of the trees declines. Consequently, project implementation is expected to begin during the spring or summer of 1996.

Over sixty agencies, organizations, and individuals were notified of this proposed project through the LTBMU NEPA Status Report. Public meetings were held on March 10, 13 and 24, as part of the scoping process. Some people also provided written comments. Tahoe Regional Planning agency staff was briefed about the project on March 13, 1995.

Participants in the planning process will be sent copies of the draft EIS for the public comment period. Availability of the draft EIS will also be noticed in the **Federal Register** and the Tahoe Daily Tribune, the LTBMU's newspaper of record. Written comments received by July 1, 1994 will be addressed in the draft EIS.

The ''no action'' alternative (Alternative 1) proposes a continuation of the current types of management activities currently conducted in the study area, without imposing impacts from proposed fuels treatments, logging, wildlife or streamzone enhancements, or watershed improvement work.

Alternative 3 emphasizes fuels treatments to reduce the threat of intense wildfires. It harvests dead, dying, diseased, and overcrowded trees over approximately 3,600 acres, concentrating on areas of high tree mortality and areas adjacent to residential neighborhoods. Removal of 15 to 20 MMBF of both merchantable and unmerchantable material is anticipated. This alternative includes all components of the proposed action, except when modified as described: Tree removal activities and prescribed underburning would be located adjacent to proposed fuelbreaks to maximize fire defensible space strategies.

Alternative 4 represents a ''wildlife habitat emphasis.'' It includes harvests of dead, dying, diseased, and overcrowded trees over approximately 3,000 acres, for the purpose of improving wildlife habitat. Removal of about 10 MMBF of both merchantable and unmerchantable material is anticipated. This alternative includes all components of the proposed action, except as modified: while treatment of activity fuels will occur, the use of prescribed fire as a management tool will be limited to improving wildlife habitat; a greater level of road closures would be implemented to reduce disturbance to wildlife.

Implementation of this project requires permits from the Tahoe Regional Planning Agency (TRPA) and the California Regional Water Quality Control Board, Lahontan Region. Additionally, encroachment permits from the California and Nevada Departments of Transportation will be required for project implementation. Consultation with both the California and Nevada State Historic Preservation Offices (SHPO) and the Advisory Council on Historic Preservation (ACHP) in accordance with the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) is required. Concurrence from the U.S. Fish and Wildlife Service is needed if the Forest Service Biological Assessment results in a ''may affect'' determination.

The decision on this analysis, pursuant to NEPA, is made by Lake Tahoe Basin Management Unit Forest Supervisor, Robert Harris, as the Forest Service is the lead agency under NEPA. There is no other joint lead agency and no cooperating agencies under NEPA.

The draft EIS is anticipated to be filed with the Environmental Protection Agency and made available to the public for comment in September 1995. The final EIS and its Record of Decision is expected in January 1996. The decision will be appealable under Forest Service regulations found at 36 CFR 215.

The comment period for the draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. The public will also be informed of the availability of the DEIS by news releases issued to the media in the Lake Tahoe region. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft EIS' must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. ''Vermont Yankee Nuclear Power Corp. v. NRDC,'' 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. ''City of Angoon v. Hodel,'' (9th Circuit, 1986) and ''Wisconsin Heritages, Inc. v. Harris,'' 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available for the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: May 23, 1995.

Robert E. Harris,

Forest Supervisor.

[FR Doc. 95–13725 Filed 6–5–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Traffic Act of 1930, as amended, may request, in accordance with section 353.22 or 355.22 of the Department of Commerce (the Department) Regulations (19 CFR 353.22/355.22 (1993)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than June 30, 1995, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in June for the following periods:

	Period
Antidumping Duty Proceedings	
Belgium: Sugar (A–351–077)	06/01/94–05/31/95
Canada:	
Oil Country Tubular Goods (A–122–506)	06/01/94–05/31/95
Red Raspberries (A–122–401)	06/01/94–05/31/95
France:	
Calcium Aluminate Flux (A–427–812)	03/25/94–05/31/95
Large Power Transformers (A–427–030)	06/01/94–05/31/95
Sugar (A–427–078)	06/01/94–05/31/95
Germany:	
Barium Carbonate (A–428–061)	06/01/94–05/31/95
High-Tenacity Rayon Filament Yarn (A–428–810)	06/01/94–05/31/95
Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured (A–428–802)	06/01/94–05/31/95
Sugar (A–428–082)	06/01/94–05/31/95
Italy:	
Large Power Transformers (A–475–031)	06/01/94–05/31/95
Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured (A–475–802)	06/01/94–05/31/95

	Period
Japan:	
Fishnetting of Man-Made Fibers (A–588–029)	06/01/94–05/31/95
Forklift Trucks (A–588–703)	06/01/94–05/31/95
Grain-Oriented Electrical Steel (A–588–831)	02/09/94–05/31/95
Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured (A–588–807)	06/01/94–05/31/95
Large Power Transformers (A–588–032)	06/01/94–05/31/95
Nitrile rubber (A–588–706)	06/01/94–05/31/95
Pet Film (A–588–814)	06/01/94–05/31/95
Korea: Pet Film (A–580–807)	06/01/94–05/31/95
Netherlands: Aramid Fiber Formed of Poly-Phenylene Terephthalamide (A–421–805)	12/16/93–05/31/95
New Zealand: Fresh Kiwifruit (A–614–801)	06/01/94–05/31/95
Romania: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished (A–485–602)	06/01/94–05/31/95
Russia: Ferrosilicon (A–821–804)	06/01/94–05/31/95
Singapore: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured (A–559–803)	06/01/94–05/31/95
Sweden: Stainless Steel Plate (A–401–040)	06/01/94–05/31/95
Taiwan:	
Carbon Steel Plate (A–583–003)	06/01/94–05/31/95
Oil Country Tubular Goods (A–583–505)	06/01/94–05/31/95
Stainless Steel Butt-Weld Pipe Fittings (A–583–816)	06/01/94–05/31/95
Certain Helical Spring Lock Washers (A–583–020)	06/01/94–05/31/95
The Hungarian People's Republic: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished (A–437–601)	06/01/94–05/31/95
The People's Republic of China:	
Sparklers (A–570–804)	06/01/94–05/31/95
Tapered Roller Bearings and Parts Thereof, Finished or Unfinished (A–570–601)	06/01/94–05/31/95
Silicon Metal (A–570–806)	06/01/94–05/31/95
Venezuela: Ferrosilicon (A–307–807)	06/01/94–05/31/95
Countervailing Duty Proceedings	
Italy: Grain-Oriented Electrical Steel (C–475–812)	02/01/94–12/31/94

In accordance with sections 353.22(a) and 355.22(a) of the regulations, an interested party as defined by section 353.2(k) may request in writing that the Secretary conduct an administrative review. For antidumping reviews, the interested party must specify for which individual producers or resellers covered by an antidumping finding or order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which were produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: Pamela Woods, in room 3065 of the main Commerce Building. Further, in accordance with section 353.31(g) or 355.31(g) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Antidumping (Countervailing) Duty Administrative Review,'' for requests received by June 30, 1995. If the Department does not receive, by June 30, 1995, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: May 31, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–13825 Filed 6–5–95; 8:45 am]

BILLING CODE 3510–DS–M

[A–583–009]

Color Television Receivers, Except for Video Monitors, From Taiwan; Recision of Revocation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of recision of revocation.

SUMMARY: On March 8, 1995, the United States Court of International Trade (CIT) ordered the Department of Commerce (the Department) to rescind its revocation of Capetronic (BSR) Ltd. (Capetronic), with respect to the antidumping duty order on color television receivers, except for video monitors, from Taiwan. Pursuant to the order of the CIT, we are rescinding our revocation of Capetronic.

EFFECTIVE DATE: March 18, 1995.

FOR FURTHER INFORMATION CONTACT:

Michael J. Heaney or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4475 or 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 9, 1990, the Department issued a revocation of Capetronic based upon no sales at less than fair value for the three consecutive periods October 19, 1983 through March 31, 1985, April 1, 1985 through March 31, 1986, and April 1, 1986 through March 31, 1987 (55 FR 47093). On October 21, 1994, the CIT affirmed the Department's results of redetermination pursuant to court remand for the period October 19, 1983 through March 31, 1985. The Department calculated a rate of 1.36 percent for Capetronic in that redetermination, and we published an amended final results of review on March 3, 1995 (60 FR 11955). On March 8, 1995, the CIT issued an order directing the Department to rescind its previous revocation of Capetronic from the antidumping duty order on color television receivers, except for video monitors, from Taiwan (*Tatung Company* v. *United States* (Court No., 90–12–00645 (March 8, 1995)) (*Tatung*)), because as a result of the redetermination pursuant to court remand Capetronic did not have three consecutive years of no sales at less than fair value.

As a result of our review covering the period April 1, 1986 through March 31, 1987, we calculated a dumping margin of 0.20 percent for Capetronic. Because Capetronic's rate was *de minimis* under 19 CFR 353.6, Capetronic's cash deposit requirement on shipments entered, or withdrawn from warehouse, for consumption on or after March 18, 1985, is zero.

Recision of Revocation

Accordingly, the Department hereby rescinds its revocation with respect to Capetronic, and reinstates Capetronic in the antidumping duty order on color television receivers, except for video monitors, from Taiwan.

Dated: May 26, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–13826 Filed 6–5–95; 8:45 am]

BILLING CODE 3510–DS–M

Determination Not To Revoke an Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination not to revoke an antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order listed below.

EFFECTIVE DATE: June 6, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on May 4, 1994, we published in the **Federal Register** a notice of intent to revoke the antidumping duty order on electrolytic manganese dioxide from Greece and served written notice of the intent to each domestic interested party on the Department's service list. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke this antidumping duty order. Therefore, because domestic interested parties objected to our intent to revoke, we no longer intend to revoke this antidumping duty order.

Respondents in electrolytic manganese dioxide from Greece have requested that the Department revoke the antidumping duty order in this case in accordance with the Court of International Trade's (CIT) holding in *Kemira Fibres Oy* v. *United States,* 861 F. Supp. 144 (Ct. Int'l Trade 1994). The CIT held that, pursuant to 19 CFR 353.25(d)(4)(iii), if no interested party objects to the Department's notice of intent to revoke by the last day of the fifth anniversary month of the order, then the Department must revoke the order, regardless of the time limit for objections specified by the Department in its notice of intent to revoke. The anniversary month for the antidumping duty order on electrolytic manganese dioxide from Greece is April. On May 4, 1994, the Department published its notice of intent to revoke the order on electrolytic manganese dioxide from Greece, and provided interested parties 30 days from the date of the notice within which to file objections. Interested parties objected to the Department's notice on June 2, 1994.

Because no interested party objected to the Department's notice of intent to revoke by the last day of the fifth anniversary month of the above-referenced antidumping duty order, respondents request that the Department revoke the order in accordance with *Kemira Fibres Oy*.

The Department respectfully disagrees with the holding of *Kemira Fibres Oy,* and has appealed the decision to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit). On appeal, the Department argued to the Federal Circuit that 19 CFR 353.25(d) requires issuance of the notice of intent to revoke as a prerequisite to revocation of an antidumping duty order. The Department further argued that the time limits specified in 19 CFR 353.25(d)(4) are provided as a guide for the Department, and, therefore, any belated issuance of the notice of intent to revoke does not limit the Department's authority to honor an objection to revocation. Therefore, pending the outcome of the Federal Circuit's decision in this case, the Department will continue to maintain this order for which an objection was made within the time limit specified by the Department in its notice of intent to revoke.

Dated: May 30, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–13824 Filed 6–5–95; 8:45 am]

BILLING CODE 3510–DS–P

Determination Not To Revoke Antidumping Duty Orders and Findings Nor To Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination not to revoke antidumping duty orders and findings nor to terminate suspended investigations.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders and findings nor to terminate the suspended investigations listed below.

EFFECTIVE DATE: June 6, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed

under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on March 31, 1995, we published in the **Federal Register** a notice of intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations and served written notice of the intent to each domestic interested party on the Department's service list in each case. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations. Therefore, because domestic interested parties objected to our intent to revoke or terminate, we no longer intend to revoke these antidumping duty orders and findings or to terminate the suspended investigations.

Antidumping Proceeding

A–122–085
Canada
Sugar and Syrups
Objection Date: April 5, 1995; April 21, 1995
Objector: American Sugar Cane League et. al.

A–484–801
Greece
Electrolytic Manganese Dioxide
Objection Date: April 13, 1995; April 20, 1995
Objector: Kerr-McGee Chemical Corp., Chemetals Inc.

A–588–401
Japan
Calcium Hypochlorite
Objection Date: April 27, 1995
Objector: Olin Corporation

A–779–602
Kenya
Standard Carnations
Objection Date: April 24, 1995
Objector: Floral Trade Council

Dated: May 26, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–13823 Filed 6–5–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–838]

Notice of Preliminary Critical Circumstances Determination: Honey From the People's Republic of China (PRC)

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

EFFECTIVE DATE: June 6, 1995.

FOR FURTHER INFORMATION CONTACT: Karla Whalen or David J. Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 482–6309 and (202) 482–4136, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Preliminary Critical Circumstances Determination

The Department of Commerce (the Department) published its preliminary determination of sales at less-than-fair-value in this investigation on March 20, 1995 (60 FR 14725). On April 27, 1995, petitioners in this investigation alleged that critical circumstances exist with respect to imports of honey from the PRC. In accordance with 19 CFR 353.16(b)(2)(ii), since this allegation was filed later than 20 days before the scheduled date of the preliminary determination, we must issue our preliminary critical circumstances determination not later than 30 days after the allegation was filed.

Section 733(e)(1) of the Tariff Act of 1930, as amended, provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, *or*

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, *and*

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Imputed Knowledge of Dumping

To determine whether the persons by whom or for whose account the merchandise was imported knew, or should have known, that the exporter was selling the merchandise which is the subject of the investigation at less-than-fair-value, the Department's practice is to impute knowledge of dumping when the estimated margins are of such a magnitude that the importer should have reasonably known that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater on sales to unrelated parties and margins of 15 percent or greater on sales through related parties to be sufficient to impute such knowledge. (*See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Metal from China* (56 FR 18570, April 23, 1991) and *Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia* (57 FR 38465, August 25, 1992). In this investigation, we found preliminary dumping margins ranging between 127.52 and 157.16 percent. Accordingly, we find that the importers either knew, or should have known, that the imports of honey were being sold at less-than-fair-value.

Because we determine that importers of this merchandise knew, or should have known, that the merchandise was being sold at less-than-fair-value, we do not need to address the question of whether there is a history of dumping of the subject merchandise.

Massive Imports

Under 19 CFR 353.16(f) and 353.16(g), we normally consider the following to determine whether imports have been massive over a relatively short period of time: 1) volume and value of the imports; 2) seasonal trends; and 3) the share of domestic consumption accounted for by the imports.

When examining volume and value data, the Department normally compares the export volume for equal periods immediately preceding and following the filing of the petition (the ''pre-filing period'' and the ''post-filing period''). Under 19 CFR 353.16(f)(2), unless the imports in the post-filing period have increased by at least 15 percent over the imports during the pre-filing period, we will not consider the imports to have been ''massive.''

Because a determination of critical circumstances should be based on

company-specific shipment information (*See, e.g., Final Determination of Sales at Less-Than-Fair-Value: Certain Hot Rolled Carbon Steel Flat Products, Certain Cold Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Belgium,* 58 FR 37083 (July 9, 1993)), we requested shipment information from the four companies for which we calculated preliminary margins (*See, Preliminary Determination of Sales at Less-Than-Fair-Value: Honey From the People's Republic of China* (60 FR 14725, March 20, 1995)). These four companies, (1) Kunshan Xinlong Foods, Ltd. (Xinlong); (2) Jiangsu Native Produce Import and Export (Jiangsu); (3) Jiangxi Native Produce Import and Export (Jiangxi); and (4) Zhejiang Native Produce & Animal By-product Import and Export (Zhejiang), provided shipment information for the period from January, 1993 through April 1995. Pursuant to 19 CFR 353.16(g), in making a critical circumstances determination, the Department normally considers the period beginning on the first day of the month of the initiation and ending at least three months later. The Department considers this period because it is the period immediately prior to a preliminary determination in which exporters of the subject merchandise could take advantage of the knowledge of the dumping investigation to increase exports to the United States without being subject to antidumping duties (*see, e.g., Final Determination of Sales at Less Than Fair Value of Certain Internal-Combustion, Industrial Forklift Trucks from Japan* (53 FR 12552, April 15, 1988)). For purposes of this preliminary determination of critical circumstances, we are using as our comparison period five months prior to and five months subsequent to the filing of the petition in this investigation. As the petition was filed in the first half of October 1994, per Department practice, this month is considered to be part of the ''post-petition'' period. Thus, the Department analyzed the company specific shipment information for the pre-petition period, May 1994 through September 1994, and the post-petition period, October 1994 through February 1995.

The data we received indicates that Xinlong, Jiangxi, and Zhejiang's shipment of honey to the U.S. decreased over the relevant time period and the increase in Jiangsu's shipments exceeded 15 percent.

Other Factors

Our analysis pursuant to 19 CFR 353.16(f)(1)(ii) indicated that seasonal trends were not a significant factor explaining the increase in Jiangsu's shipments. We were unable to consider the share of U.S. consumption represented by imports from Jiangsu, pursuant to 353.16(f)(1)(iii), because we have insufficient information with regard to Jiangsu's specific market share of domestic consumption.

Jiangsu argues that the increase in its shipments during the post-petition period was a result of the new Chinese export quota system which became effective in April 1994. Specifically, Jiangsu claims that it was forced to ship the remainder of its honey quota by year-end 1994, or it would forfeit the right to export its unused quota. As a result of these circumstances, Jiangsu's shipments worldwide increased in November and December 1994. Jiangsu argues that because its shipments increased in the post-petition period for reasons other than an intent to import large amounts prior to suspension of liquidation, the Department should find that these do not constitute ''massive'' imports for purposes of critical circumstances. We believe the evidence on the record is insufficient to support the legal and factual bases for this argument, but may reconsider this argument based on verification findings.

Conclusion

We find that critical circumstances do not exist for Xinglong, Jiangxi, and Zhejiang because they did not have massive imports over a relatively short period of time. For Jiangsu, we find that critical circumstances do exist due to: (1) Imputed knowledge of dumping; and (2) Massive imports as evidenced by a significant increase in shipments between the pre- and post-petition comparison period. For the exporters whose responses were not analyzed,[1] we find that critical circumstances do not exist for the following reason. Due to the large number of responding companies in this case, the Department selected only four exporting companies and their respective producers to analyze in the investigation. The Department does not believe it is appropriate to penalize respondents whose individual data have not been analyzed due to the Department's own administrative constraints. Furthermore, based on an aggregate analysis of the four respondents from which we requested shipment data, we conclude that the increase in shipment data for the pre- and post-petition comparison periods is not larger than 15 percent. For all PRC companies which did not respond to the Department's questionnaire, we have made the determination, as BIA, that ''massive'' imports exist, and we therefore find that critical circumstances do exist for all PRC firms not otherwise named in this notice.

Final Critical Circumstances Determination

We will make a final determination and address any comments concerning critical circumstances when we make our final determination in this investigation by August 2, 1995.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, we are directing the Customs Service to suspend liquidation of all entries of honey from Jiangsu Native Produce Import and Export of the PRC and all other PRC companies not specifically named above that are entered, or withdrawn from warehouse, for consumption on or after December 20, 1994 (*i.e.*, 90 days prior to the date of publication of our preliminary determination in the **Federal Register**). The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Average margin percentage
Jiangsu Native Produce Import and Export	127.52
Kunshan Xinlong Food, Ltd	*146.37

[1] Heilongjiang Native Produce and Animal By-product Import and Export
Inner Mongolia Native Produce and Animal By-product
Chang Cheng Industrial Co. Ltd.
Shaanxi Native Produce Import and Export
Kunshan Foreign Trade Co.
China (TUHSU) Super Food Import and Export
Hubei Native Produce Import and Export
Tianjin Native Produce Import and Export
Chanting Native Produce Import and Export
Qinghai Cereals and Oils Import and Export
Shanghai Native Produce Import and Export
Guangxi Cereals, Oils and Foodstuffs Import and Export Corporation
Sichuan Native Produce Import and Export
China (TUHSU) Flavors and Fragrances Import and Export
Shandong Cereals and Oils Import and Export
Ningbo Native Produce Import and Export
Anhui Cereals & Oils Import and Export
Jiangsu Sweet Foods, Ltd.
Hebei Native Produce Import and Export
Anhui Medicines and Health Produce Import and Export
Xian Native Produce and Animal By-product Import and Export Liaoning Native Produce Import and Export
Liaoning Native Produce Import and Export
Anhui Native Produce Import and Export
Henan Native Produce Import and Export

Producer/manufacturer/exporter	Average margin percentage
Jiangxi Native Produce Import and Export	*131.86
Zhejiang Native Produce & Animal By-product Import and Export	*131.86
All PRC	157.16

The asterisk indicates the rate for continuing the suspension of liquidation for those exporters found preliminarily to have negative critical circumstances.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination.

Public Comment

Since this preliminary critical circumstances determination is being made after the due date for public comment on our preliminary determination of sales at less than fair value in this case, we will accept written comments on this preliminary determination of critical circumstances until the date in which case briefs are to be filed.

This determination is published pursuant to section 733(f) of the Act.

Dated: May 30, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–13822 Filed 6–5–95; 8:45 am]

BILLING CODE 3510–DS–P

North Carolina State University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

DECISION: Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

REASONS: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

Docket Number: 94–103. *Applicant:* North Carolina State University, Campus Box 7212, Raleigh, NC 27695-7212. *Instrument:* Digital Oxygen Electrode. *Manufacturer:* Rank Brothers Ltd., United Kingdom. *Date of Denial without Prejudice to Resubmission:* March 8, 1995.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–13820 Filed 6–5–95; 8:45 am]

BILLING CODE 3510–DS–F

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–030. *Applicant:* University of Pennsylvania, Smell and Taste Center, 3400 Spruce Street, Philadelphia, PA 19104. *Instrument:* Olfactometer, Transformation Unit and Compressor-Vacuum-Unit, Model OM/4. *Manufacturer:* Heinrich Burghart, Germany. *Intended Use:* The instrument will be used to provide accurate and pulsed computer-controlled presentations of an odorant stimulus to the nares of a human being to allow for the recording of electrical brain waves in response to these presentations. The objectives will be achieved through psychophysical measurement, electrophysiological measurement, and computer-controlled generation of very accurate and timed pulses of odorants for evoked potential. The instrument will also be used for educational purposes in the course Interdisciplinary 200 (ID 200). *Application Accepted by Commissioner of Customs:* April 10, 1995.

Docket Number: 95–032. *Applicant:* University of Wisconsin, 1300 University Ave., Madison, WI 53706. *Instrument:* Electron Microscope, Model CM120. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used for experiments related to studying biological phenomena at the ultrastructural level at common electron microscope magnifications. In addition, the instrument will be used in the course Anatomy 660: Introduction to Electron Microscopy to teach faculty, staff and students to operate the microscope to image the specimens prepared to achieve the research goals. *Application Accepted by Commissioner of Customs:* April 10, 1995.

Docket Number: 95–033. *Applicant:* University of South Carolina, Department of Geological Sciences, Columbia, SC 29208. *Instrument:* Mass Spectrometer, Model Optima. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used to study the carbon and oxygen isotopic composition of samples of calcite and aragonite, the carbon and nitrogen isotopic composition of marine organic matter, and the carbon isotopic composition of carbon dioxide dissolved in water. The particular focus of the analysis will be on the carbonate shells of forminifera from small samples of marine and lacustrine sediments and on carbon isotopes from both seawater and freshwater samples. In addition, the instrument will be used for educational purposes in the course Geology 715, Stable Isotope Geochemistry to introduce graduate students to different applications of stable geochemistry in the research environment. *Application Accepted by Commissioner of Customs:* April 13, 1995.

Docket Number: 95–034. *Applicant:* Argonne National Laboratory, 9700 S. Cass Avenue, Argonne, IL 60439. *Instrument:* Electron Microscope, Model H-9000NAR. *Manufacturer:* Hitachi, Japan. *Intended Use:* The instrument will be used for studies of pure metals, metallic alloys, semiconductors, and minerals and other ceramics in order to understand the physical origin and rules for occurrence of the phenomena under study. *Application Accepted by Commissioner of Customs:* April 13, 1995.

Docket Number: 95–035. *Applicant:* University of Texas Medical Branch, 301 University Blvd., Galveston, TX 77555. *Instrument:* Electron Microscope, Model CM100. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used by the faculty and staff for a variety of ongoing scientific research activities as listed below:

(a) Analysis of Spotted Fever Rickettsial Antigens,

(b) Mechanisms of Toxic Injury in Vascular Tissue,

(c) Transplacental Transfer of Asbestos in Humans,

(d) Hyperthyroidism Potentiates Aging Effects in Heart,
(e) Bile Canaliculi Injury; Comparing Function to Structure,
(f) Dolphin Mortality an Indicator of Environmental Degradation and
(g) Splenic Toxicity of Aniline.
Application Accepted by Commissioner of Customs: April 19, 1995.

Docket Number: 95–036. *Applicant:* University of South Carolina, Department of Chemistry and Biochemistry, 730 S. Main Street, Columbia, SC 29208. *Instrument:* ICP Mass Spectrometer, Model ELEMENT. *Manufacturer:* Finnigan MAT GmbH, Germany. *Intended Use:* The instrument will be used for studies of trace elements and their isotopes in environmental, geological and marine samples with complex background matrices. In addition, the instrument will be used as a supplement to several courses such as ''Environmental and Analytical Chemistry'' and seminars on instrument operation to prepare students to analyze their own samples and acquire accurate and precise data. *Application Accepted by Commissioner of Customs:* April 24, 1995.

Docket Number: 95–037. *Applicant:* University of Miami, Chemistry, 1301 Memorial Dr., Room 315, Coral Gables, FL 33145. *Instrument:* L-B Film Deposition Apparatus with Ellipsometric Microscope. *Manufacturer:* Nippon Laser & Electronics Lab., Japan. *Intended Use:* The instrument will be used for studies of lipids, phospholipids, fatty acids, proteins, pigments and other molecules that are surfactant and may be spread at the air/water interface. The objective of these studies is to obtain better knowledge of the aggregation form of these molecules in a molecular model (monolayer) to understand phenomena like membrane rigidity, charge transport, reaction rate, etc. as they take place in living organisms. *Application Accepted by Commissioner of Customs:* April 25, 1995.

Docket Number: 95–039. *Applicant:* Richard L. Roudebush VA Medical Center, 1481 West Tenth Street, Indianapolis, IN 46202. *Instrument:* Electron Microscope, Model CM120. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used in experiments involving collection of surgical, autopsy, and cytologic specimens for evaluation at the ultrastructural level and correlation of these findings with light microscopy and clinical findings to eventually render a pathologic description and diagnosis. In addition, the instrument will be used to provide hands-on experience for pathology residents, fellows, and medical students in visualizing ultrastructural criteria necessary for making a variety of known pathologic diagnoses. *Application Accepted by Commissioner of Customs:* April 28, 1995.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 95–13819 Filed 6–5–95; 8:45 am]
BILLING CODE 3510–DS–F

National Institute of Standards and Technology

[Docket No. 950519137–5137–01]

Manufacturing Extension Partnership Program

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The National Institute of Standards and Technology invites proposals from qualified organizations for funding projects to provide manufacturing extension services to small- and medium-sized manufacturers in the United States. These projects correspond to the Manufacturing Technology Centers component of the Manufacturing Extension Partnership (MEP).

Manufacturing extension centers must be affiliated with a U.S.-based not-for-profit institution or organization. Support may be provided for a period not to exceed six years. Applicants are required to provide 50% or more of the operating costs for providing these manufacturing extension services in year 1 through 3 and an increasing percentage in years 4 through 6.

DATES: Proposals from qualified applicants must be received at the address below by August 7, 1995. Selection of awards will be made in September 1995.

ADDRESSES: Applicants must submit one signed original and six (6) copies of their proposal along with a Standard Form 424, 424–A, and 424–B (Rev 4–92) and Form CD–511 to the Manufacturing Extension Partnership, Building 301, Room C121, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001. Plainly mark on the outside of the package that it contains a manufacturing extension center proposal.

FOR FURTHER INFORMATION CONTACT: For information regarding this announcement, contact Roger Kilmer of the Manufacturing Extension Partnership by calling (301) 975–5020; or by mailing information requests to the Manufacturing Extension Partnership, Building 301, Room C121, National Institute of Standards and Technology, Gaithersburg, Maryland, 20899–0001. Information packets, which include background materials on MEP, existing centers and the necessary application forms, should be requested via a one page fax sent to (301) 963–6556. Please include name, organization, mailing address, telephone number, and fax number on this request.

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance

The catalog number for the award of Manufacturing Technology Centers funds in the Catalog of Federal Domestic Assistance is 11.611.

Background

In accordance with the provisions of Section 5121 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418), codified in 15 U.S.C. § 278k, and final rule 15 CFR 290 published September 17, 1990 and amendment published May 2, 1994, NIST will provide assistance for the creation and support of manufacturing extension centers. The objective of these centers is to enhance productivity, technological performance, and strengthen the global competitiveness of small- and medium-sized U.S.-based manufacturing firms.

These manufacturing extension centers will become part of the MEP national system of extension service providers. Currently, MEP is managing 44 centers located throughout the United States. Information regarding MEP and these centers is provided in the information packet which can be obtained as explained above.

Funding Availability

It is anticipated that approximately $41,000,000 will be available to support manufacturing extension centers under this program. The funding level for individual awards is not prescribed. The funding requested by the applicant should be directly related to the level of activity of the center, which is a function of the number of manufacturers in the designated service region, and to the availability of applicant-provided cash and in-kind contributions to be used as cost share.

Invitation for Proposals

Proposals must be received at the address listed above by August 7, 1995.

Award Period

The projects awarded under this program will have an initial performance period of one year. These

projects are renewable on an annual basis up to a maximum of six (6) years subject to the review requirements described in 15 CFR 290.8. Renewal of these projects shall be at the sole discretion of NIST and shall be based upon satisfactory performance, priority of the need for the service, existing legislative authority, and availability of funds.

Cost Share Requirements

A cost sharing contribution from the applicant is required. The applicant must provide 50% or more of the total capital, operating and maintenance costs for the center for years 1 through 3. The applicant's cost share requirement increases to 60% or more in year 4 and 66⅔% or more in years 5 and 6. The applicant's share of the center expenses may include cash and in-kind contributions. In each of the six years, at least 50% of the applicant's total cost share (cash plus in-kind) must be in cash. The source of the cost share, both cash and in-kind, must be documented in the budget submitted in the proposal.

In all cases, a contribution will only be treated as cash cost share if the center director has suitable authority and discretion to control its expenditure. Acceptable cash cost share, which must come from non-federal sources, includes:

—Dollar contributions from state, country, city, industrial or other sources

—Income from fees charged for services performed

—Revenue from licensing, royalties, dividends, and capital gains

—Contributions of full-time personnel from other organizations

—Other contributions as approved by NIST

To qualify as in-kind cost share, the claimed items must be directly related to the tasks to be accomplished and must be utilized solely for the center activities or the cost share must be prorated based upon the percentage of time they are used for these activities. Acceptable in-kind cost share includes:

—Contributions of full-time personnel for which the center director lacks suitable authority and discretion to qualify as cash cost share

—Contributions of part-time personnel from other organizations

—Contributions of equipment, software, rental value of office, laboratory or other space

—Other contributions as approved by NIST

Proposal Content

The proposal must, at a minimum, include the following:

A. An executive summary of the proposed project, consistent with the Evaluation Criteria stated in this notice.

B. A description of the proposed project, sufficient to permit evaluation of the proposal, in accordance with the proposal Evaluation Criteria stated in this notice.

C. A detailed budget for the proposed project which breaks out all expenses for year 1 of operation and identifies all sources of funds to pay these expenses.

D. A budget outline for annual costs and sources of funds for years 2 through 6. It is expected, especially for newly created centers, that year one costs are lower because of a ramp-up of operations from start-up to the point where the center is fully operational and services are being provided. If such a ramp-up of operations is to occur, this should be reflected in the budget outline for years 2 through 6.

E. A description of the qualifications of key personnel who will be assigned to work on the proposed project.

F. A statement of work that discusses the specific tasks to be carried out, including a schedule of measurable events and milestones.

G. A Standard Form 424, 424–A, and 424–B (Rev 4–92) prescribed by OMB circular A–110 and Form CD–511, Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying. The 424 series of forms and form CD–511 will not be considered part of the page count of the proposal.

Proposal Format

The proposal must not exceed 25 typewritten pages in length. The proposal must contain both technical and cost information. The proposal page count shall include every page, including pages that contain words, table of contents, executive summary, management information and qualifications, resumes, figures, tables, and pictures. All proposals shall be printed such that pages are single-sided, with no more than fifty-five (55) lines per page. Use 21.6 x 27.9 cm (8½″ x 11″) paper or A4 metric paper. Use an easy-to-read font of not more than about 5 characters per cm (fixed pitch font of 12 or fewer characters per inch or proportional font of point size 10 or larger). Smaller type may be used in figures and tables, but must be clearly legible. Margins on all sides (top, bottom, left and right) must be at least 2.5 cm. (1″). The applicant may submit a separately bound document of appendices containing other supporting information. The proposal should be self-contained and not rely on the appendices for meeting criteria. Excess pages in the proposal will not be considered in the evaluation. Applicants must submit one signed original plus six (6) copies of the proposal.

Manufacturing Extension Centers

a. Project Objective

The objective of the projects funded under this program is to provide manufacturing extension services to small- and medium-sized manufacturers in the United States. These services are provided through the coordinated efforts of a regionally-based manufacturing extension center and local technology resources.

The management and operational structure of the manufacturing extension center is not prescribed, but should be based upon the characteristics of the manufacturers in the region and locally available resources. The center should include plans for integration into the MEP national system and linkages to appropriate national resources.

The focus of the center is to provide those manufacturing extension services required by the small- and medium-sized manufacturers in their service region using the most cost effective sources for those services. It is not the intent of this program that centers perform research and development.

b. Evaluation Criteria

All qualified proposals will be evaluated and rated on the basis of the following criteria by an impartial review panel. Each proposal should address all four evaluation criteria, which are assigned equal weighting. Selection will be based upon the total evaluation score of qualified proposals.

(1) *Identification of Target Firms in Proposed Region.* Does the proposal define an appropriate service region with a large enough population of target firms of small- and medium-sized manufacturers which the applicant understands and can serve, and which is not presently served by an existing center?

(i) Market Analysis. Demonstrated understanding of the service region's manufacturing base, including business size, industry types, product mix, and technology requirements.

(ii) Geographical Location. Physical size, concentration of industry, and economic significance of the service

region's manufacturing base. Geographical diversity of the centers will be a factor in evaluation of proposals; a proposal for a center located near an existing center may be considered only if the proposal is unusually strong and the population of manufacturers and the technology to be addressed justify it.

(2) *Technology Resources.* Does the proposal assure strength in technical personnel and programmatic resources, full-time staff, facilities, equipment, and linkages to external sources of technology to develop and transfer technologies related to NIST research results and expertise in the technical areas noted in these procedures?

(3) *Technology Delivery Mechanisms.* Does the proposal clearly and sharply define an effective methodology for delivering advanced manufacturing technology to small- and medium-sized manufacturers?

(i) Linkages. Development of effective partnerships or linkages to third parties such as industry, universities, nonprofit economic organizations, and state governments who will amplify the center's technology delivery to reach a large number of clients in its service region.

(ii) Program Leverage. Provision of an effective strategy to amplify the center's technology delivery approaches to achieve the proposed objectives as described in 15 CFR 290.3(e).

(4) *Management and Financial Plan.* Does the proposal define a management structure and assure management personnel to carry out development and operation of an effective center?

(i) Organizational Structure. Completeness and appropriateness of the organizational structure, and its focus on the mission of the center. Assurance of full-time top management of the center.

(ii) Program Management. Effectiveness of the planned methodology of program management.

(iii) Internal Evaluation. Effectiveness of the planned continuous internal evaluation of program activities.

(iv) Plans for Financial Matching. Demonstrated stability and duration of the applicants funding commitments as well as the percentage of operating and capital costs guaranteed by the applicant. Identification of matching fund sources and the general terms of the funding commitments. Evidence of the applicant's ability to become self-sustaining in six years.

(v) Budget. Suitability and focus of the applicants detailed one-year budget and six-year budget outline.

c. Eligibility Criteria

- Eligible applicants for these projects must be affiliated with a non-profit institution or organization.
- The applicant must provide the necessary cost share as specified above.
- Proposals for a center which provides services in a region in which another center already exists may be considered only if the proposal presents strong evidence that the number of manufacturers and the service it proposes to provide justifies it.
- Proposals for an industry sector-specific center or for expansion of an existing center will be considered. These proposals will be evaluated using the same selection criteria as for all other proposals.

Proposal Selection Process

Proposal evaluation and selection will consist of four principal phases: proposal qualification, proposal review, site visits and award determination.

a. Proposal Qualification

All proposals will be reviewed by NIST to assure compliance with the proposal content as described in 15 CFR 290.5 and other basic provisions of this notice. Proposals which satisfy these requirements will be designated as qualified proposals. Non-qualified proposals will not be evaluated and will be returned to the applicant.

b. Proposal Review

NIST will appoint an evaluation panel to review and evaluate all qualified proposals in accordance with the evaluation criteria set forth in this notice. Based upon this review, the panel will select a group of finalists to be site visited.

c. Site Visits

Finalists will be notified and a site visit scheduled. Finalists will be reviewed and assigned numeric scores, assigning equal weight to each of the four criteria. Based upon these scores, the panel will submit recommendations to the Director of NIST, or a designee, for final award determination.

d. Award Determination

The Director of NIST, or a designee, shall make final determination of whether an award should be made to the proposing organization based on a review of the panel's recommendations.

Additional Requirements

(a) Federal Policies and Procedures. Recipients and sub-recipients are subject to all Federal laws and Federal and NIST policies, regulations, and procedures applicable to Federal financial assistance awards.

(b) Indirect Costs. The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

(c) Pre-award Activities. If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any written or verbal assurance that may have been received, there is no obligation on the part of NIST to cover pre-award costs.

(d) Delinquent Federal Debts. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(1) The delinquent account is paid in full;
(2) A negotiated repayment schedule is established and at least one payment is received; or
(3) Other arrangements satisfactory to NIST are made.

(e) Past Performance. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(f) Name Check Review. All non-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(g) Primary Applicant Certification. All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided.

(1) *Non Procurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR 26, ''Non procurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

(2) *Drug-free Workplace.* Recipients (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Government-wide

Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

(3) *Anti-lobbying.* Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(4) *Anti-lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

(h) Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to NIST. SF–LLL submitted by any tier recipient or sub-recipient should be submitted to NIST in accordance with the instructions contained in the award document.

(i) False Statements. A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001

(j) American-made Equipment and Products. Applicants are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with the funding provided under this program in accordance with Congressional intent.

(k) North American Free Trade Agreement Patent Notification Procedures. Pursuant to Executive Order 12889, the Department of Commerce (DoC) is required to notify the owner of any valid patent covering technology whenever the DoC or its financial assistance recipient, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. Applicants selected for awards under this program are required to comply with this executive order.

(l) Intergovernmental Review. Applications under this program are not subject to the requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs''.

(m) Paperwork Reduction Act. This notice contains collection of information requirements subject to the Paperwork Reduction Act which have been approved by the Office of Management and Budget (OMB Control Number 0693–0005, 0348–0043 and 0348–0044).

Program Execution

(a) Cooperative Agreement. The formal agreement between NIST and the applicant will be in the form of a cooperative agreement. Under this agreement, the NIST MEP will have substantial interactions with the applicant in planning and executing this project. This may include the following:

—Assisting in developing required plans
—Providing access to standard manufacturing extension and related tools
—Facilitating partnering with appropriate organizations both within and outside of the MEP
—Defining measures for evaluation of performance
—Direct involvement in helping to understand, define, and resolve problems in the center's operations

(b) Operating Plan. All recipients of awards are required to submit an Operating Plan within ninety (90) days of the project start date. The Operating Plan is a more detailed statement of work based on project objectives and activities the applicant will undertake to achieve the objectives and incorporates recommendations provided by the evaluation panel and the NIST Program Officer. The Operating Plan must be reviewed and approved by NIST and will be incorporated into the cooperative agreement by amendment. Operating Plan guidelines will be distributed to award recipients.

(c) Project Reporting. Quarterly reports will be submitted to the NIST Program Officer no later than thirty (30) days after the end of each quarter of the award year. The information provided is used to characterize the projects, develop detailed case studies, and evaluate individual examples of outcomes. Quarterly reporting instructions will be distributed to award recipients.

Dated: May 31, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–13764 Filed 6–5–95; 8:45 am]

BILLING CODE 3510–13–M

[Docket No. 950420110–5110–01]

RIN 0693–XX06

Proposed Federal Information Processing Standard (FIPS) for Public Key Cryptographic Entity Authentication Mechanisms

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: NIST is proposing a FIPS for Public Key Cryptographic Entity Authentication Mechanisms, which will specify two challenge-response mechanisms by which entities in a computer system may authenticate their identities to one another. This standard defines protocols which are derived from an international standard for entity authentication based on public key cryptography using digital signatures and random number challenges.

Public key based authentication is advantageous because no secret information has to be shared by the entities involved in the exchange. In the authentication process, a user employs a private key to digitally sign a random number challenge issued by the verifying entity. This random number is a time variant parameter which is unique to the authentication exchange. If the verifier can successfully verify the signed response using the claimant's public key, then the claimant has been successfully authenticated.

Prior to the submission of this proposed FIPS to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

The proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deal with the technical aspects of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the specifications section from the Standards Processing Coordinator, National Institute of Standards and Technology, Technology Building, Room B–64, Gaithersburg, MD 20899, telephone (301) 975–2816.

DATES: Comments on this proposed FIPS must be received on or before September 5, 1995.

ADDRESSES: Written comments concerning the proposed FIPS should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed FIPS for Public Key Authentication, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. James Foti, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–5237.

Dated: May 31, 1995.

Samuel Kramer,

Associate Director.

Federal Information Processing Standards Publication JJJ

Draft 1995—March 13 Draft

Announcing the Draft Standard for Public Key Cryptographic Entity Authentication Mechanisms

Federal Information Processing Standards (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Standard for Public Key Cryptographic Entity Authentication Mechanisms (FIPS PUB JJJ).

2. Category of Standard. Computer Security, Subcategory Access Control.

3. Explanation. This standard specifies two challenge-response mechanisms by which entities in a computer system may authenticate their identities to one another. These mechanisms are used during session initiation, and at any other time that entity authentication is necessary. Depending on which protocol is implemented, either one or both entities involved may be authenticated. The defined protocols are derived from an international standard for entity authentication based on public key cryptography using digital signatures and random number challenges.

Public key based authentication has an advantage over many other authentication schemes because no secret information has to be shared by the entities involved in the exchange. A user (claimant) attempting to authenticate oneself must use a private key to digitally sign a random number challenge issued by the verifying entity. This random number is a time variant parameter which is unique to the authentication exchange. If the verifier can successfully verify the signed response using the claimant's public key, then the claimant has been successfully authenticated.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. Department of Commerce, National Institute of Standards and Technology, Computer Systems Laboratory.

6. Cross Index.

a. FIPS PUB 140–1, Security Requirements for Cryptographic Modules.

b. FIPS PUB 171, Key Management Using ANSI X9.17.

c. FIPS PUB 180, Secure Hash Standard.

d. FIPS PUB 186, Digital Signature Standard.

e. FIPS PUB 190, Guideline for the Use of Advanced Authentication Technology Alternatives.

f. ISO/IEC 9798–1:1991, Information technology—Security techniques—Entity authentication mechanisms—Part 1: General model.

g. ISO/IEC 9798–3:1993, Information technology—Security techniques—Entity authentication mechanisms—Part 3: Entity authentication using a public key algorithm.

Other NIST publications may be applicable to the implementation and use of this standard. A list (NIST Publications List 91) of currently available computer security publications, including ordering information, can be obtained from NIST.

7. Applicability. This standard is applicable to all Federal departments and agencies that use public key based authentication systems to protect unclassified information within computer and digital telecommunications systems that are not subject to Section 2315 of Title 10, U.S. Code, or Section 3502(2) of Title 44, U.S. Code. This standard shall be used by all Federal departments and agencies in designing, acquiring and implementing public key based, challenge-response authentication systems at the application layer within computer and digital telecommunications systems. This includes all systems that Federal departments and agencies operate or that are operated for them under contract. In addition, this standard may be used at other layers within computer and digital telecommunications systems.

This standard may be adopted and used by non-Federal Government organizations. Such use is encouraged when it is either cost effective or provides interoperability for commercial and private organizations.

8. Applications. Numerous applications can benefit from the incorporation of public key authentication. Networking applications that require remote login will be able to authenticate clients who have not previously registered with the host, since secret material (e.g., a password) does not have to be exchanged beforehand. Also, point-to-point authentication can take place between users who are unknown to one another. The authentication mechanisms in this standard may be used in conjunction with other public key based systems (e.g., a public key infrastructure that uses public key certificates) to enhance the security of a computer system.

9. Specifications. Federal Information Processing Standard (FIPS) JJJ, *Standard for Public Key Cryptographic Entity Authentication Mechanisms* (affixed).

10. Implementations. The authentication mechanisms described in this standard may be implemented in software, firmware, hardware, or any combination thereof.

11. Export Control. Implementations of this standard are subject to Federal Government export controls as specified in Title 15, Code of Federal Regulations, Parts 768 through 799. Exporters are advised to contact the Department of Commerce, Bureau of Export Administration, for more information.

12. Implementation Schedule. This standard becomes effective (insert six months after approval by the Secretary of Commerce).

13. Qualifications. The authentication technology described in this standard is based upon information provided by sources within the Federal Government and private industry. Authentication systems are designed to protect against adversaries mounting cost-effective attacks on unclassified government or commercial data (e.g., hackers, organized crime, economic competitors). The primary goal in designing an effective security system is to make the cost of any attack greater than the possible payoff.

14. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information

Processing Standards (FIPS). The head of such agency may re-delegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive classified portions clearly identified, shall be sent to: National Institute of Standards and Technology, ATTN: FIPS Waiver Decisions, Technology Building, Room B–154, Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Section 552(b), shall be part of the procurement documentation and retained by the agency.

[FR Doc. 95–13765 Filed 6–5–95; 8:45 am]

BILLING CODE 3510–CN–M

[Docket No. 950411101–5101–01]

RIN 0693–XX07

Proposed Federal Information Processing Standard (FIPS) for Standard for the Exchange of Product Model Data (STEP)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: NIST is proposing a FIPS for STEP that will adopt the voluntary industry specification, International Organization for Standardization (ISO) Product Data Representation and Exchange, ISO 10303:1994.

STEP defines and describes all product data used during the manufacturing life-cycle of a product, the production steps needed to make a product and the order in which they occur. STEP provides a representation of product information along with the necessary mechanisms and definitions to enable product data to be archived, exchanged, or shared among data bases. The STEP specifications are organized as a series of parts, each published separately. Support for specific applications is provided through application protocols (AP). An AP specifies the information requirements for data exchange, the data representation, and the conformance requirements to support the application.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specification section. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the ISO 10303:1994 from the National Computer Graphics Association, 2722 Merrilee Drive, Suite 200, Fairfax, VA 22031, telephone: (703) 698–9600.

DATES: Comments on this proposed standard must be received on or before September 5, 1995.

ADDRESSES: Written comments concerning the adoption of this proposed standard should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed FIPS for STEP, Technology Building, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Lynne Rosenthal, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone: (301) 975–3353.

Dated: May 31, 1995.

Samuel Kramer,

Associate Director.

Proposed Federal Information Processing Standards Publication

_____

(Date)

Announcing the Standard for Product Data Representation and Exchange (STEP)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administration Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Product Data Representation and Exchange, commonly known as the Standard for the Exchange of Product model data (STEP) (FIPS PUB _____).

2. Category of Standard. Software standard; Product data representation and exchange; industrial automation systems and integration.

3. Explanation. This publication adopts the International Organization for Standardization (ISO) 10303: 1994, Product Data Representation and Exchange standard as a Federal Information Processing Standard (FIPS). ISO 10303, more commonly known as STEP, Standard for the Exchange of Product model data, defines a neutral computer-interpretable representation for describing product data in a manner that is independent from any particular system. ISO 10303 specifies the necessary mechanisms and definitions to enable product data throughout the life cycle of a product, to be exchange, archived, or shared among product databases.

The purpose of the FIPS for STEP is to enable the compatible exchange and sharing of product definition data used by a wide range of dissimilar computer-aided design (CAD), engineering, manufacturing and product support applications. The specification provides a neutral format for the exchange and sharing of digital three-dimensional (3D) vector and solid representations for a stated application context. Two-dimensional (2D) vector representation

and the projection of a 3D representation into 2D views is also supported.

Support for specific applications is provided through an Application Protocol (AP). An AP specifies the information requirements for data exchange, the data representation, and the conformance requirements to support the application. APs are defined in ISO 10303.

ISO 10303 is organized as a series of parts, each published separately. ISO 10303–1 presents an overview of ISO 10303 and specifies the functions of the various series of parts and the relationships among them. ISO 10303–31 presents a framework and principles for the conformance testing of implementations of ISO 10303. This FIPS PUB adopts all ISO 10303 parts. However, the parts of ISO 10303 required for implementation and conformance are determined by the AP specification (ISO 10303 200-series documents). Associated with each application protocol is an abstract test suite (ISO 10303 1200 series documents) that specifies the test purposes and verdict criteria which implementations are to be evaluated against.

This FIPS PUB is the beginning of a continuing effort to identify appropriate application protocols that can be used by both vendors and users to specify the information requirements for data exchange of specific end-user applications. This first FIPS for STEP identifies the APs presently required for Federal use. Future APs which are deemed necessary to satisfy Federal user requirements will be added by revision (i.e., change notice in the **Federal Register**) to this FIPS PUB.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. Department of Commerce, National Institute of Standards and Technology (NIST), Manufacturing Engineering Laboratory (MEL).

6. Cross Index. a. International Organization for Standardization (ISO), Product Data Representation and Exchange, ISO 10303:1994:

—Part 1, Overview and fundamental principles;
—Part 11, Description methods: The EXPRESS language reference manual;
—Part 21, Implementation methods: Clear text encoding of the exchange structure;
—Part 31, Conformance testing methodology and framework; General concepts;
—Part 41, Integrated generic resources: Fundamentals of product description and support;
—Part 42, Integrated generic resources: Geometric and topological representation;
—Part 43, Integrated generic resources: Representation structures;
—Part 44, Integrated generic resources: Product structure configuration;
—Part 46, Integrated generic resources: Visual presentation;
—Part 101, Integrated application resources: Draughting;
—Part 201, Application protocol: Explicit draughting;
—Part 203, Application protocol: Configuration controlled design.

7. Related Documents. a. Federal Information Resources Management Regulations (FIRMR) subpart 201–20.303, Standards, and subpart 201–39.1002, Federal Standards, April 1992.

b. Federal ADP and Telecommunications Standards Index, U.S. General Services Administration, Information Resources Management Service, October 1994 (updated periodically).

c. NISTIR 4743, Issues, Requirements, and Recommendations for a STEP Conformance Testing Program.

d. NISTIR 5511 STEP On-line Information System (SOLIS).

e. NISTIR 5535 Initial NIST Testing Policy for STEP.

8. Objectives. The primary objectives of this standard are:

—To reduce the overall life-cycle cost for digital systems by establishing a common exchange format for storing, transferring, accessing and archiving product data digitally across organizational boundaries and independent from any particular system.
—To promote the exchange of product data thereby enabling installations to share data, and reduce time spent in efforts to regenerate product data.
—To specify Application Protocols that can be used by Federal departments and agencies to support exchange of product data.
—To protect the capital investment of users of the standard by ensuring to the extent possible that commercial off-the-shelf products meet the requirements in the standard, thereby providing a know capability which can be expected of any certified product.

9. Applicability. a. This standard is intended for the computer-interpretable representation and exchange of product data used in computer aided design, analysis, manufacture, test and inspection. The FIPS for STEP provides a mechanism for the digital exchange of life cycle product information as well as implementing and sharing product databases and archiving.

b. Implementations acquired for government use which purport to create or read STEP product information shall contain a conforming STEP processor.

c. This FIPS for STEP shall be used when the requirements of the agency's application are satisfied by at least one of the APs specified herein and one or more of the following situations exist:

—A method for complete representation of products through the entire manufacturing process is required.
—The product data is to be used and maintained on different systems.
—A physical file representing product data is to be exchanged between systems.
—An interface to product databases for accessing and sharing data is required.
—The product data is or is likely to be used by organizations outside the Federal Government.
—It is desired to have the product data understood by multiple people, groups, or organizations.

d. The use of an application protocol is required for all implementations of STEP. An AP specifies the scope, context, information requirements, representation of the application information, and conformance requirements. APs are developed by domain experts for the purpose of defining the processes, information flows, and functional requirements of an application. Initial release of FIPS for STEP includes one application protocol, applicable for the exchange of configuration controlled 3D product design data.

—ISO 10303–203: Application protocol: Configuration controlled 3D design of mechanical parts and assemblies is required for applications which exchange or sharing of data pertaining to the shape representation of a part or product, configuration control and management, and description of the bill of material structure of a product within its design phase. Integral to the definition of a mechanical product is the specification of its shape, the specification of its configurations and the applicability of its possibly multiple definitions to a particular configuration. The focus is on the data from the design phase which controls the tracking and management of the product, including the following:
—identification of a product and the link of the design identification of the components which comprise the product;
—the documentation of formal change and release of designs for the product, including the design and change history;

—the structured relationship of each of the components to the product as a whole;
—additional information concerning materials, processes, finishes, other design requirements and the identification of qualified suppliers for the product or the design of the product.

Other stages of the life cycle of a product are not addressed by this part.

10. Specifications. The ISO 10303:1994 standard for STEP, provides a representation of product information along with the necessary mechanisms and definitions to enable product data to be exchanged. ISO 10303–1: Overview and general principles defines concepts which apply to the entire standard. ISO 10303 is divided into six series of parts, each series may have one or more parts. The series are as follows:

—Description methods—Part 10 series which includes part 11 that defines the data specification language used by ISO 10303;
—Integrated resources:
Generic resources—Part 40 series;
Application resources—Part 100 series;
—Application protocols—Part 200 series;
—Conformance testing methodology and framework—Part 30 series;
—Abstract test suites—Part 1200 series, each of which corresponds to an associated application protocol;
—Implementation methods—Part 20 series.

Conformance of an implementation to an application protocol is specified by the conformance requirements within the application protocol. The AP requires at least one implementation method, and references other parts of ISO 10303 for additional conformance requirements. Within an AP, conformance requirements may be grouped into conformance classes. An implementation may conform to one or more conformance class. The scope of conformance testing of a specific implementation is the requirements specified for the conformance class(es) claimed for the implementation in the Protocol Implementation Conformance Statement (i.e., a statement of which capabilities and options are supported within an implementation).

11. Implementation. The implementation of this standard involves four areas of consideration: effective date, acquisition, interpretations, and validation.

11.1 Effective Date. This publication is effective six (6) months after date of publication of final announcement in the **Federal Register**. A transition period of twelve (12) months, beginning on the effective date, allows industry to produce STEP implementations conforming to this standard. Agencies are encouraged to use this standard for solicitation proposals during the transition period. This standard is mandatory for use in all solicitation proposals for STEP implementations (i.e., computer-aided design, engineering, and manufacturing systems) acquired twelve (12) months after the effective date.

11.2 Acquisition. The use of application protocols is required for all STEP implementations. ISO 10303–203 is required for applications which exchange between product data application systems of configuration-controlled 3D designs of mechanical parts and assemblies.

Conformance to this standard should be considered whether the STEP preprocessor or postprocessor are developed internally, acquired as part of a system procurement, acquired by separate procurement, used under a leasing arrangement, or specified for use in contract for programming services.

11.3 Interpretation. Resolution of questions regarding this standard will be provided by NIST. Procedures for interpretations are specified in FIPS PUB 29–3. Questions concerning the content and specifications should be addressed to: Director, Computer Systems Laboratory, ATTN: STEP Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899.

11.4 Validation. The following requirements for conformance testing of STEP implementations become effective twelve months after the effective date. Validation requirements apply only to the application protocols required for use by this FIPS PUB. Additional validation requirements may be added in the future as new application protocols complete the standardization process and corresponding executable test suites are developed.

a. The party offering a STEP implementation to ensure its conformance to FIPS for STEP shall be responsible for securing validation of the STEP implementation when it is offered to the Government for purchase, lease, or use in connection with ADP services. STEP implementations shall be validated in accordance with National Institute for Standards and Technology (NIST) Computer Systems Laboratory (CSL) Validation Procedures for the STEP Validation Test Service.

b. To confirm that the specifications of FIPS for STEP have been met, STEP executable test suites have been developed and a STEP–AP 203 Validation Testing Service has been established. Conformance testing shall be performed by either the NIST or a test laboratory accredited by the National Voluntary Laboratory Accreditation Program (NVLAP). Upon request, the CSL will provide a list of test laboratories.

c. Federal agencies shall use the test results of the STEP Validation Testing Service to confirm that a particular STEP implementation meets the specifications of this FIPS PUB. The CSL will issue certificates as specified in the NIST CSL Validation Procedures for the STEP Validation Testing Service.

d. Recommended procurement terminology for validation of FIPS for STEP is contained in the U.S. General Services Administration publication Federal ADP & Telecommunications Standards Index, Chapter 4 Part 2. This GSA publication provides terminology for three validation options: Delayed Validation, Prior Validation Testing, and Prior Validation. The agency may select the appropriate validation option and may specify appropriate time frames for validation and correction of nonconformities.

e. Request for, and questions on STEP Validation Testing Services should be addressed to: Director, Computer Systems Laboratory, Attention: STEP Validation Testing Service, National Institute of Standards and Technology, Gaithersburg, MD 20899 Telephone: (301)975–3353.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of

Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

[FR Doc. 95–13769 Filed 6–5–95; 8:45 am]

BILLING CODE 3510–CN–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

May 31, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17321, published on April 5, 1995.

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 Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 31, 1995.

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 March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on June 7, 1995, you are directed to increase the limits for the following categories, as provided under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
340/640	784,120 dozen.
342/642	551,803 dozen.
347/348/647/648	1,868,381 dozen of which not more than 991,636 dozen shall be in Categories 647/648.
351/651	852,513 dozen.
433	22,788 dozen.
442	78,671 dozen.
444	75,061 numbers.
633	106,861 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The guaranteed access levels remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–13749 Filed 6–5–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF ENERGY

Environmental Management Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting:

Name: Environmental Management Advisory Board Formerly Utilized Site Remedial Action Program Committee.

Date and Times:

Tuesday, June 20, 1995 from 8:30 a.m. to 8:00 p.m.

Wednesday, June 21, 1995 from 8:30 a.m. to 4:00 p.m.

Place: Henry VIII Hotel, 4690 North Lindbergh, St. Louis, MO 63044, (314) 731–3040, extension 6186, (314) 731–1228 fax.

FOR FURTHER INFORMATION CONTACT: James T. Melillo, Executive Director, Environmental Management Advisory Board, EM–5, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–4400. The Internet address is: James.Melillo@em.doe.gov.

SUPPLEMENTARY INFORMATION: Purpose of the Board. The purpose of the Board is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on issues confronting the Environmental Management program and the Programmatic Environmental Management Impact Statement, from the perspectives of affected groups and State and local Governments. The Board will help to improve the Environmental Management Program by assisting in the process of securing consensus recommendations, and providing the Department's numerous publics with op portunities to express their opinions regarding the Environmental Management Program including the Formerly Utilized Site Remedial Action Program.

Tentative Agenda

Tuesday, June 20, 1995

8:30 a.m.—Chairman Opens Public Meeting—Overview of Findings

from the May 2–3, 1995 National Stakeholders Meeting in Washington, D.C.
9:30 a.m.—Briefing on effective Department of Energy Technologies/discussions
10:30 a.m.—Break
10:45 a.m.—Environmental Protection Agency Briefing and Discussion
12:00 p.m.—Lunch
1:00 p.m.—Presentation of Issue Papers
3:00 p.m.—Break
3:15 p.m.—Committee/ Public Discussion of Issues
5:00 p.m.—Break for Dinner
7:00 p.m.—Public Comment Session
8:00 p.m.—Meeting Adjourns

Wednesday, June 21, 1995

8:30 a.m.—Chairman Reconvenes Public Meeting
8:35 a.m.—National Stakeholder Forum Issues
10:00 a.m.—Break
10:15 a.m.—Continued Discussion of Issues and Public Recommendations
12:00 p.m.—Lunch
1:00 p.m.—Discussion/ outline of Potential Guiding Principles
2:30 p.m.—Break
2:45 p.m.—Committee Business
3:15 p.m.—Public Comment Session
4:00 p.m.—Meeting Adjourns

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact James T. Melillo at the address or telephone number listed above. Individuals wishing to orally address the Committee during the public comment session should call (800) 862–8860 and leave a message. Individuals may also register on June 20, 1995 at the meeting site. Every effort will be made to hear all those wishing to speak to the Committee, on a first come, first serve basis. Those who call in and reserve time will be given the opportunity to speak first. The Chairman is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts and Minutes

Meeting minutes will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on June 1, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–13817 Filed 6–5–95; 8:45 am]
BILLING CODE 6450–01–P

Advisory Committee on External Regulation of Department of Energy Nuclear Safety

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the fourth meeting of the Advisory Committee on External Regulation of Department of Energy Nuclear Safety.

DATE AND TIMES: The Committee session will begin at 8:30 am Wednesday, June 28, 1995 and adjourn at 5:00 pm, with a public comment session to begin at 7:30 pm. The Thursday, June 29, 1995, session will begin at 8:00 am and adjourn at 5:00 pm.

ADDRESSES: Holiday Inn Naperville, 1801 Naper Boulevard, Naperville, Illinois 60563.

FOR FURTHER INFORMATION CONTACT: Thomas H. Isaacs, Executive Director, Advisory Committee on External Regulation of Department of Energy Nuclear Safety, 1726 M Street, NW, Suite 401, Washington, DC 20036, (202) 254–3826.

SUPPLEMENTARY INFORMATION: The Purpose of the Committee is to provide the Secretary of Energy, the White House Council on Environmental Quality, and the Office of Management and Budget with advice, information, and recommendations on how new and existing Department of Energy (DOE) nuclear facilities and operations, except those operations covered under Executive Order 12344 (Naval Propulsion Program), might best be regulated with regard to safety. The Department currently self-regulates many aspects of nuclear safety, pursuant to the Atomic Energy Act of 1954, as amended. The Committee consists of 25 members drawn from Federal and State government and the private sector, and is co-chaired by John F. Ahearne, Executive Director of Sigma Xi, and Gerard F. Scannell, President of the National Safety Council. Members were chosen with environment, safety, and health backgrounds, balanced to represent different public, Federal, State, Tribal, regulatory, and industry interests and experience.

Purpose of the Meeting: To better understand the Department of Energy's existing regulatory structure, the Committee will hear presentations by several senior DOE program officials, by a panel of directors of DOE's research laboratories, and by a panel of laboratory environment, safety, and health managers. The Committee will also consider draft reports from a series of subcommittees set up by the Committee. These draft reports will address current problems with internal regulation, advantages and disadvantages of external regulation, regulatory options and other special issues related to the Committee's charter. The Committee will hold a public comment period to hear views on external regulation from workers and interested members of the public.

Tentative Agenda: In addition to conducting deliberations related to its charter, the Committee will hear from the DOE Assistant Secretary for Environment, Safety and Health, and a member of the Defense Nuclear Facilities Safety Board (both Committee members) on the current processes for internal and external oversight of safety at DOE nuclear facilities and activities. The Committee will also hear observations on external regulation specific to environmental restoration and waste management activities from the DOE Assistant Secretary for Environmental Management. The Committee will hear comments from the DOE Director of the Office of Energy Research and from four National Laboratory Directors, followed by a panel of laboratory environment, safety, and health managers who will recount their experiences with DOE. The agenda will provide an opportunity for public comment at 7:30 pm on June 28, 1995, at the Holiday Inn, Naperville, Illinois. A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Members of the public are welcome to make oral statements during the public comment period. Those who wish to do so may pre-register by contacting Glenda Oakley at (301) 924–6169. Individuals may also register on June 28, 1995, at the meeting site. Every effort will be made to hear all those wishing to speak. Written comments are welcomed, and should be mailed to Thomas H. Isaacs, Executive Director, 1726 M Street, NW, Suite 401, Washington, DC 20036. The Committee Co-Chairs are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts and Minutes: A meeting transcript and minutes will be available for public review and copying four to six weeks after the meeting at the DOE

Freedom of Information Public Reading Room, 1E–1990, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 am and 4:00 pm, Monday through Friday, except Federal holidays. The transcript will also be made available at the Department's Field Office Reading Room locations.

Issued at Washington, DC on June 1, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–13815 Filed 6–5–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

Advisory Committee on the Demonstration and Commercial Application of Renewable Energy and Energy Efficiency, Open Meeting

Under the provisions of the Federal Advisory Committee Act (Public Law 92–463; 86 Stat. 770), notice is hereby given of the following meeting:

Name: Advisory Committee on the Demonstration and Commercial Application of Renewable Energy and Energy Efficiency Technologies.

Date and Time: June 21, 1995, 10:30 a.m.–4:30 p.m.

Place: The Grand Hotel, 2350 M Street, NW., Washington, DC.

Contact: Thomas W. Sacco, Office of Technical Assistance (EE–542), Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, Telephone 202/586–0759.

Purpose of Committee: To advise the Secretary of Energy on the development of the solicitation and evaluation criteria for commercialization ventures, and on otherwise carrying out her responsibilities under the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (Public Law 101–218, 42 U.S.C. 12005), as amended by the Energy Policy Act of 1992 (Public Law 102–486, 42 U.S.C. 13201).

Tentative Agenda: Briefings and discussions of:

- Review of DOE solicitation for a financial intermediary for program implementation;
- Discussion of contents of final report;
- Other matters requiring Committee consideration;
- Public Comment Period (10 minute rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Thomas W. Sacco at the address or telephone number listed above. Requests to make oral presentations must be received 2 days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chair of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on June 1, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–13816 Filed 6–5–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER95–778–000, et al.]

Pacific Gas & Electric Company, et al.; Electric Rate and Corporate Regulation Filings

May 26, 1995.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Company

[Docket No. ER95–778–000]

Take notice that on May 16, 1995, Pacific Gas and Electric Company (PG&E), tendered for filing a letter of clarification to the amendment to the System Bulk Power Sale and Purchase Agreement (Bulk Power Agreement) between PG&E and the City of Santa Clara (City of Santa Clara), previously filed in this docket on March 21, 1995. The Bulk Power Agreement was initially filed in FERC Docket No. ER87–498–000 and designated as PG&E Rate Schedule FERC No. 108.

PG&E's filing seeks to clarify § 7.2 of the amendment regarding certain rights to seek unilateral rate changes.

Copies of this filing were served upon Santa Clara and the California Public Utilities Commission.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. The Cleveland Electric Illuminating Company

[Docket No. EC94–14–000]

The Toledo Edison Company

Take notice that on May 25, 1995, a notice of filing was inadvertently issued in this docket. That notice is hereby rescinded.

3. The Washington Water Power Company

[Docket No. ER95–982–0000]

Take notice that on May 16, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission, a request to withdraw its earlier filing (FERC Docket No. ER95–982–000) of an Agreement for the sale of firm capacity and associated energy to the Inland Power and Light Company.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas City Power & Light Company

[Docket No. ER95–1044–000]

Take notice that on May 15, 1995, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated May 5, 1995, between KCPL and Enron Power Marketing, Inc. (EPMI). KCPL proposes an effective date of May 5, 1995, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and EPMI.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges which are under review by the Commission in Docket No. ER94–1045–000 and which are subject to refund pursuant to the Commission's order in that docket.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Northeast Utilities Service Company

[Docket No. ER95–1045–000]

Take notice that on May 15, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with InterCoast Power Marketing, Inc. (InterCoast) under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to InterCoast.

NUSCO requests that the Service Agreement become effective sixty (60) days after receipt of this filing by the Commission.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Southern California Edison Company

[Docket No. ER95–1046–000]

Take notice that on May 15, 1995, Southern California Edison Company (Edison), tendered for filing the following Supplemental Agreement (Supplemental Agreement) to the 1990 Integrated Operations Agreement (IOA)

between the City of Anaheim (Anaheim) and Edison, FERC Rate Schedule No. 246: Supplemental Agreement For The Integration Of Non-Firm Energy From Platte River Power Authority Between Southern California Edison Company And City of Anaheim.

The Supplemental Agreement sets forth the terms and conditions by which Edison will integrate Anaheim's purchases of non-firm energy under Service Schedule B of the Energy Sales Agreement between Anaheim and Platte River Power Authority. Edison is requesting waiver of the 60-day prior notice requirements, and requests the Commission to assign to the Agreement an effective date of May 16, 1995.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Ruffin Energy Services, Inc.

[Docket No. ER95–1047–000]

Take notice that on May 15, 1995, Ruffin Energy Services, Inc. (Ruffin), an Oklahoma corporation, petitioned the Commission for acceptance of Ruffin, Rate Schedule FERC No. 1, providing for the sale of electricity at market-based rates, the granting of certain blanket approvals, and the waiver of certain Commission regulations.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Northeast Utilities Service Company

[Docket No. ER95–1048–000]

Take notice that on May 15, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with LG&E Power Marketing, Inc. (LG&E) under the NU System Companies' System Power Sales/ Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to LG&E.

NUSCO requests that the Service Agreement become effective sixty (60) days after receipt of this filing by the Commission.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Gateway Energy, Inc.

[Docket No. ER95–1049–000]

Take notice that on May 15, 1995, GPU Service Corporation on behalf of Gateway Energy Inc. tendered for filing an initial rate schedule for the sale of energy and capacity at market-based rates.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Sonat Power Marketing, Inc.

[Docket No. ER95–1050–000]

Take notice that on May 16, 1995, Sonat Power Marketing Inc. (SPM), filed an application with the Federal Energy Regulatory Commission requesting acceptance of its proposed Rate Schedule FERC No. 1, authorizing market-based rates, granting waivers of certain Commission regulations and granting certain blanket approvals. Consistent with these requests, SPM seeks authority to engage in the business of power marketing and to sell power at market-based rates.

SPM is a wholly and subsidiary of Sonat Energy Services Company and Sonat Inc. SPM is not in the business of generating, transmitting, or distributing electric power.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. El Paso Electric Company

[Docket No. ER95–1051–000]

Take notice that on May 16, 1995, El Paso Electric Company (EPE), tendered for filing Amendment No. 2 to the West Mesa Reactor Switch Agreement (Agreement) between EPE and Public Service Company of New Mexico (PNM). Amendment No. 2 amends the Agreement by extending its term and amending the provision of operation of the West Mesa reactor switch. EPE requests that the Commission waive the appropriate notice provisions to accept the Agreement, as amended, for filing as of its date of execution, May 5, 1995.

Copies of this filing were served upon PNM and the appropriate state public service commissions.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Company of New Mexico

[Docket No. ER95–1052–000]

Take notice that on May 16, 1995, Public Service Company of New Mexico (PNM), tendered for filing Interim Agreement #2 (Interim Agreement) between PNM and El Paso Electric Company (EPE); Pre-Phase Shifting Transformer New Mexico Transmission Operating Procedure to the Interim Agreement (Revised Exhibit A) between EPE, PNM, Texas-New Mexico Power Company (TNP) and Plains Electric Generating and Transmission Cooperative, Inc. (Plains); the EPE/PNM Operating Procedure No. 10, Incremental Energy Cost (Operating Procedure 10), to the EPE-PNM Interconnection Agreement and a Letter Agreement between EPE and PNM regarding the EPE-Tucson Electric Power Company (TEP) Interconnection Agreement (Letter Agreement).

The Interim Agreement sets forth an understanding between PNM and EPE for the operation of the New Mexico Transmission System. Revised Exhibit A is an operating procedure and provides the basis under which southern New Mexico transmission import capability can be maintained at specified levels prior to the installation of EPE's phase shifting transformer. Operating Procedure 10 establishes EPE's responsibility level for incremental cost incurred by PNM to support a portion of the transmission levels required by EPE. The Letter Agreement provides recognition of the Interconnection Agreement between EPE and Tucson Electric Power Company.

PNM requests waiver of the Commission's notice requirements to permit Interim Agreement #2, Revised Exhibit A and Operating Procedure 10 to become effective as of June 1, 1995 and to permit the Letter Agreement to become effective on the day that the operating status of the 345 kV facilities at the Hidalgo and Luna substations is transferred from PNM to EPE.

Copies of this notice have been mailed EPE, TNP, Plains, TEP and the New Mexico Public Utility Commission.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Duquesne Light Company

[Docket No. ER95–1053–000]

Take notice that on May 16, 1995, Duquesne Light Company (Duquesne Light), tendered for filing a Coordination Sales Tariff. The tariff provides for sales of Negotiated Capacity and/or Energy, and Emergency Energy. Duquesne Light states that sales under the tariff will be made at negotiated prices no lower than system incremental energy costs and no higher than the Company's fully allocated cost of capacity, plus 110% of incremental energy costs. Duquesne Light has included with the filing a list of prospective customers under the tariff in lieu of filing service agreements with those customers, and states that service will be provided under the tariff only to customers who sign service agreements. Duquesne Light requests that the Commission accept the tariff for filing and that the normally applicable sixty-day suspension period be waived.

Duquesne Light states that copies of the filing have been served on each

potential customer whose name is included on the list attached to the filing.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Virginia Electric and Power Company

[Docket No. ER95–1054–000]

Take notice that on May 16, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Kentucky Utilities Company and Virginia Power, dated April 21, 1995 under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Kentucky Utilities Company under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of Service Schedule B included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–1062–000]

Take notice that on May 18, 1995 Consolidated Edison Company of New York, Inc. (''Con Edison'') tendered for filing an agreement to provide interruptible transmission service for Catex Vitol Electric, L.L.C. (''Catex'').

Con Edison states that a copy of this filing has been served by mail upon Catex.

Comment date: June 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Company of Oklahoma

[Docket No. ER95–1065–000]

Take notice that on May 18, 1995, Public Service company of Oklahoma (PSO) tendered for filing a Contract for Electric Service (Contract), dated April 20, 1995, between PSO and Northeast Oklahoma Electric Cooperative, Inc. (NEO) and a Notice of Cancellation of the Second Amendment to the Interconnection Agreement, dated November 11, 1982, between PSO and NEO. Pursuant to the Contract, PSO will provide full-requirements service to NEO at the Mazie, Home, Prior and Sailboat substations. Upon the effectiveness of the Contract, PSO and NEO will no longer have a need for their present interconnection arrangements.

PSO seeks an effective date of May 25, 1995, and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served on NEO and the Oklahoma Corporation Commission. Copies are also available for public inspection at PSO's offices in Tulsa, Oklahoma.

Comment date: June 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13771 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–341–000]

Texas Gas Transmission Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Herbert-Cannelton Looping Project and Request for Comments on Environmental Issues

May 31, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facility proposed in the Herbert-Cannelton Looping Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

[1] Texas Gas Transmission Corporation's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

Summary of the Proposed Project

Texas Gas Transmission Corporation (Texas Gas) wants to expand the capacity of its facilities in Ohio and Hancock Counties, Kentucky to transport 500 million British thermal units per day of natural gas to a local distribution company. Texas Gas requests Commission authorization to construct and operate 0.93 mile of 8-inch-diameter pipeline in Ohio and Hancock Counties. Kentucky needed to transport those volumes.

The general location of the project facility is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facility would disturb about 24.66 acres of land. Following construction, about 2.82 acres would be maintained as new right-of-way. About 4.53 acres are located within an existing right-of-way. The remaining 17.33 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

- Land use.
- Cultural resources.
- Air quality and noise.
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified two issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Texas Gas. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

- Two federally listed endangered or threatened species may occur in the proposed project area.
- Two proposed workspace areas may be located within 50 feet of a residence, one of which may directly impact an adjacent building.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, D.C. 20426;
- Reference Docket No. CP95–341–000;
- Send a *copy* of your letter to: Ms. Amy Olson, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 7312, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before June 30, 1995.

If you wish to receive a copy of the EA, you should request one from Ms. Olson at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Ms. Amy Olson, EA Project Manager, at (202) 208–1199.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13728 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–37–003]

Alabama-Tennessee Natural Gas Co.; Notice of Filing of Refund Report

May 31, 1995.

Take notice that on May 26, 1995, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), filed a report of refunds made pursuant to Section 33.3 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Accordingly to Alabama-Tennessee, the amounts being refunded result from the partial flow through of a refund received by Alabama-Tennessee from Tennessee Gas Pipeline (Tennessee) pursuant to the settlement of Tennessee's FERC Docket Nos. RP93–147, et al., which the Commission approved on November 15, 1994.

Alabama-Tennessee states that it calculated the portion of Tennessee's refund to be flowed-through by deducting its revised liability to Tennessee resulting from the settlement in FERC Docket Nos. RP93–147, et al., from the amounts actually collected by Alabama-Tennessee from its customers.

Alabama-Tennessee has requested that the Commission grant such waivers as may be necessary to accept and approve Alabama-Tennessee's filing as submitted.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protest should be filed on or before June 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13733 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–310–000 and CP94–260–002]

Algonquin Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

May 31, 1995.

Take notice that on May 26, 1995, Algonquin Gas Transmission Company (Algonquin) submitted pro forma tariff sheets in compliance with the Commission's April 19, 1995, order in Docket No. CP94–260–000. In that order the Commission directed Algonquin to provide service on the proposed Canal Lateral under a separately stated rate schedule under its Part 284 open-access transportation certificate, subject to the General Terms and Conditions of its tariff.

Algonquin further states that copies of this filing was mailed to all participants in Docket No. CP94–260–000 and affected customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR Sections 385.214 and 385.211 of the Commission's Rules of Practice and

Procedure. All such motions or protests should be filed on or before June 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13742 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–305–000]

Canyon Creek Compression Company; Notice of Proposed Changes in FERC Gas Tariff

May 31, 1995.

Take notice that on May 26, 1995, Canyon Creek Compression Company (Canyon Creek) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet Nos. 142 and 148, to be effective May 4, 1995.

Canyon Creek states that the purpose of the filing is to conform with the Commission's Order No. 577, which changed the Commission's Rules and Regulations as follows: (1) prearranged releases of exactly one month are no longer required to have open seasons and (2) the minimum time period before a subsequent short-term prearranged release to the same replacement shipper was shortened to 28 days.

Canyon Creek requested waiver of the Commission's Regulations to the extent necessary to permit the above tariff sheets to become effective May 4, 1995, effective date of the Commission's Order No. 577.

Canyon Creek states that a copy of the filing was mailed to Canyon Creek's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13737 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–513–000]

El Paso Natural Gas Co.; Notice of Request Under Blanket Authorization

May 31, 1995.

Take notice that on May 24, 1995, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP95–513–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery point located in Yoakum County, Texas, under El Paso's blanket certificate issued in Docket No. CP82–435–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso proposes to construct and operate a new tap, valve assembly and meter on its existing 30-inch diameter Permian-San Juan Line to provide interruptible transportation and delivery of natural gas for Exxon Company, U.S.A. (Exxon). El Paso states that Exxon will use the gas as fuel to operate its Cornell Field Compressor. El Paso mentions that Exxon had been receiving gas from Shell Western E & P, Inc.'s Wasson Plant which has been closed. El Paso asserts that it will deliver 32,850 Mcf of gas annually and 250 Mcf of gas on a peak day to Exxon. El Paso also states that the estimated $39,800 cost of the proposed facilities would be reimbursed by Exxon and that Exxon would construct approximately 1.5 miles of 2-inch polyethylene pipeline to connect its compressor facilities to El Paso's proposed delivery point.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13730 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–212–000]

Order To Show Cause

Issued May 31, 1995.

In the matter of KansOk Partnership; Kansas Pipeline Partnership; Kansas Natural Partnership; Riverside Pipeline Company, L.P.

On November 30, 1993, KansOk Partnership (KansOk) filed a petition for rate approval in Docket No. PR94–3–000 to justify its firm and interruptible transportation rates for service performed under section 311 of the Natural Gas Policy Act of 1978 (NGPA). Western Resources, Inc. (Western Resources) filed a protest contending that KansOk is an interstate pipeline, and not an intrastate pipeline as claimed, because of the interstate nature of its transportation service. The Commission will address KansOk's rate filing in Docket No. PR94–3–000 in an order issued concurrently with this order. The instant order establishes a separate show cause proceeding, pursuant to sections 5, 7, and 16 of the Natural Gas Act (NGA), to investigate Western Resources' claims.[1]

As discussed below, the Commission is requiring KansOk and its downstream affiliates, Kansas Pipeline Partnership (Kansas Pipeline), Kansas Natural Partnership (Kansas Natural), and Riverside Pipeline Company, L.P. (Riverside), to show cause: (1) Why all four affiliates should not be viewed collectively as one interstate pipeline system subject to the Commission's jurisdiction; and (2) in the alternative, why KansOk, by itself, should not be considered an interstate pipeline subject to the Commission's jurisdiction.

A. Description of the Pipelines

KansOk owns and operates two distinct segments of pipeline, the West Leg and East Leg, totalling approximately 114 miles of pipeline. Both the West Leg and East Leg are

[1] In addition, the Commission notes that at a staff panel proceeding convened on December 1, 1994 in Docket No. PR94–3–000, Missouri Gas Energy also argued that KansOk and its affiliates should be considered an interstate pipeline subject to Commission jurisdiction. *See* Tr. at 25.

located solely within the state of Oklahoma. At the southern end of the East Leg in Oklahoma, KansOk interconnects with Transok, Inc. (Transok), an intrastate pipeline. KansOk leases capacity on Transok, and has firm contracts for transportation on the East Leg for a maximum of 95,000 MMBtu/day. The West Leg of KansOk interconnects with gathering facilities at its southern terminus and transports only interruptible volumes.

At their northern termini, KansOk's West and East Legs interconnect, respectively, with the western and eastern segments of Riverside. Riverside is an interstate pipeline consisting of: (1) two segments of 1-mile pipeline crossing the Oklahoma-Kansas border at two separate locations; and (2) a third segment of 2-mile pipeline crossing the Kansas-Missouri border. The Kansas-Missouri segment was authorized under NGA section 7 in 1989.[2] In 1992, Riverside constructed the two Oklahoma-Kansas segments pursuant to NGPA section 311.[3]

In Kansas, at their northern termini, the Riverside segments interconnect at two points with Kansas Natural, an intrastate pipeline. Kansas Natural then continues in a northeasterly direction through Kansas where it interconnects at two points with Kansas Pipeline, another intrastate pipeline.[4] The two segments of Kansas Pipeline then continue approximately 64 miles to an interconnection with the Riverside pipeline segment at the Kansas-Missouri border, which completes the network in Kansas City, Missouri. Through this series of interconnections, gas flows from gathering fields in Oklahoma to markets in the Kansas City metropolitan area through five pipeline systems, all of which are affiliated except Transok. Further, KansOk, Riverside, Kansas Natural, and Kansas Pipeline all are operated by Kansas Pipeline Operating Company (KPOC).

On April 19, 1995, Riverside filed a proposal in Docket No. RP95–239–000 to establish a new Multiple Pipeline Transportation service. Riverside would contract for capacity, as available, on its upstream affiliated pipelines to provide transportation on those pipelines for new or existing firm shippers on its own system. The maximum and minimum rates for the proposed service would be the sum of the effective maximum and minimum rates of the transporting pipelines.

B. Prior Commission Orders

On February 6, 1992, a Letter Order was issued by direction of the Commission approving a settlement of the rate issues raised in KansOk's first proceeding, which it filed pursuant to NGPA section 311.[5] At that time, no party contested KansOk's claim to be an intrastate pipeline.[6] The record indicates that KansOk's 1990 actual transportation volumes consisted of 2.6 percent intrastate volumes and 97.4 percent NGPA section 311 volumes.[7]

KansOk's filing in Docket No. PR94–3–000 was made pursuant to a requirement in the February 6 order that KansOk file, on or before December 1, 1993, an application for rate approval to justify its current systemwide rates or to establish new systemwide rates. As stated, this show cause proceeding arises from Western Resources' protest in Docket No. PR94–3–000 claiming that KansOk is not an intrastate pipeline.

C. Western Resources' Protest

Western Resources argues that KansOk is an interstate pipeline, rather than an intrastate pipeline, because of the interstate nature of its transportation service. Specifically, Western Resources states that since June 1991, 100 percent of the volumes transported by KansOk on the East Leg, and over 99 percent of the volumes transported by it on the West Leg, were delivered to the interstate market, to customers in Kansas and Missouri. Only a *de minimis* amount of KansOk's business was intrastate. Specifically, Western Resources claims that the volumes moved intrastate on the West Leg in the first five months of KansOk's operations constituted only 0.3212 percent of the volumes moved on the West Leg, 0.1014 percent of KansOk's interruptible volumes, and 0.0133 percent of KansOk's total system volumes. All of the transportation performed by KansOk on the West Leg was interruptible, while the transportation performed on the East Leg was firm and interruptible. KansOk does not dispute these figures.

In support of its argument that KansOk is an interstate pipeline, Western Resources cites *Midcoast Ventures I (Midcoast),*[8] where the Commission, finding that the pipeline was an interstate pipeline, stated that it ''has never ruled that a company could qualify as an intrastate pipeline without doing any intrastate business in the state where it claims intrastate status.''[9] Western Resources argues that, under the *Midcoast* rationale, KansOk's *de minimis* intrastate operations do not qualify it to be an intrastate pipeline. Further, Western Resources points out that KansOk is not regulated by the Oklahoma Corporation Commission. Western Resources contends that, at a minimum, the East Leg of KansOk, which provides no intrastate service, should be treated as an interstate pipeline. Accordingly, Western Resources contends that the Commission should require KansOk to refile its rates under section 4 of the NGA.

D. KansOk's Answer

First, KansOk states that under section 1(b) of the NGA, the Commission is required to regulate the transportation and sale for resale of natural gas ''in interstate commerce,'' and to regulate any ''natural gas company'' engaged in such transportation or sale.[10] Section 601(a) of the NGPA, however, limits the jurisdiction otherwise resulting from NGA section 1(b) by providing that the Commission's NGA jurisdiction ''shall not apply to any transportation in interstate commerce of natural gas if such transportation is * * * authorized by the Commission under'' NGPA section 311(a). In addition, section 601(a)(2)(B) of the NGPA provides that the NGA definition of a natural gas company does not include ''persons'' who provide sales or transportation authorized under section 311 of the NGPA.

KansOk states that, as a corporate entity, it qualifies as an intrastate pipeline within the meaning of section 2(16) of the NGPA.[11] In Order No. 46, the Commission explained that ''if a

[2] *See* Riverside Pipeline Co., L.P., 48 FERC ¶ 61,309 (1989).

[3] *See* responses to Staff Data Request No. 2 in KansOk Partnership, Docket No. PR91–6–000.

[4] By order dated March 17, 1995, the Kansas Corporation Commission authorized Kansas Natural and Kansas Pipeline to merge. The merger has not taken place yet.

[5] *See* KansOk Partnership, 58 FERC ¶ 61,152 (1992).

[6] We note that in authorizing the construction of Riverside's initial system under the NGA, the Commission discussed an argument that the Hinshaw status of Riverside's affiliate, Kansas Pipeline, should be reconsidered. *See* Riverside Pipeline Company, L.P., 48 FERC ¶ 61,309, at 62,015–16 (1989). However, that case involved the issue of a single affiliate in one state, not a chain of affiliates claiming three different types of jurisdictional status.

[7] *See* Exhibit D to KansOk's February 11, 1991 Response to Staff's December 18, 1990 Data Request, which states that KansOk transported 31,672 Mcf of gas intrastate and 1,168,131 Mcf of gas under NGPA section 311, for a yearly total of 1,199,803 Mcf.

[8] Midcoast Ventures I, 61 FERC ¶ 61,029 (1992).

[9] *Id.* at 61, 158.

[10] 15 U.S.C. 717(b) (1988).

[11] *See* 15 U.S.C. 3301(16) which states: The term ''intrastate pipeline'' means any person engaged in natural gas transportation (not including gathering) which is not subject to the jurisdiction of the Commission under the [NGA] (other than any such pipeline which is not subject to the jurisdiction of the Commission solely by reason of section 1(c) of the [NGA]).

corporate entity qualifies as an intrastate pipeline under section 2(16), it will retain that identity for its entire system even if it constructs a new portion of its system to be used exclusively for section 311(a)(2) transportation.'' [12]

In response to Western Resources' *Midcoast* arguments, KansOk states that its case differs from *Midcoast* because it had legitimate intrastate business in Oklahoma before it ever transported gas under NGPA section 311. Unlike KansOk, the pipeline in *Midcoast* had no facilities and provided no transportation service in Kansas before conducting its first transaction, purportedly under NGPA section 311. Rather, Midcoast's claim to be an existing intrastate pipeline was based solely on its status as an intrastate pipeline in Texas.

KansOk argues that *Seagull Pipeline Corp. (Seagull)* [13] applies better here. In *Seagull,* the Commission ruled that the company did not lose its intrastate status by constructing new facilities to provide, in part, NGPA section 311(a)(2) transportation. KansOk states that, like the pipeline in *Seagull,* it was engaged in intrastate business prior to conducting its first NGPA section 311 transaction. Further, KansOk points out that when it filed its first rate proceeding under NGPA section 311, no party challenged its status as an intrastate pipeline, and the Commission accepted its intrastate status in approving fair and equitable rates for its section 311 service.

KansOk next states that the lack of state regulation over it has not resulted in harm to its customers, because it has been subject to the Commission's NGPA rate jurisdiction and has charged FERC-approved fair and equitable rates since the inception of its section 311 service. Also, since KansOk makes no retail sales to consumers within the state, it claims that the lack of state regulation is not unusual.

Finally, KansOk argues that the transportation services it provides qualify as service provided ''on behalf of'' an interstate pipeline, namely Riverside. Under NGPA section 311(a)(2)(A), an intrastate pipeline may transport natural gas in interstate commerce on behalf of any interstate pipeline or local distribution company and be exempt from the Commission's NGA jurisdiction.

E. Discussion

The Commission is concerned that, when viewed as a whole, the KansOk-Riverside-Kansas Natural-Kansas Pipeline systems may, in reality, constitute one interstate pipeline system. At the very least, it appears that KansOk may in fact be an interstate pipeline. The four pipelines are contiguous in three states and move gas from Oklahoma through Kansas and into Missouri. In addition, in its recent filing in Docket No. RP95–239–000, Riverside is proposing an integrated transportation service using the available capacity of its affiliated pipelines.

The Commission recognizes that one purpose of NGPA section 311 is to enable intrastate pipelines to transport gas destined for the interstate market and thus spare interstate pipelines from having to construct duplicative facilities.[14] The NGPA accomplishes this through permitting intrastate pipelines to perform such transportation without becoming subject to NGA jurisdiction over the entirety of their operations. As the Commission stated in *Lear Petroleum Corporation:*

> NGPA sections 601(a)(1)(C) and (a)(2)(A) provide that the intrastate pipelines do not become subject to the NGA by virtue of section 311 transactions. This ensures that intrastate pipelines are only subject to Commission regulation of their rates for section 311 transactions. Intrastate pipelines do not become subject to Commission regulation of their intrastate activities or of construction of facilities used for intrastate transportation.[15]

Nevertheless, the Commission is concerned that what would physically and operationally appear to be one interstate pipeline system from Kansas to Missouri has been broken down artificially into three intrastate systems and one small interstate system consisting only of border crossings. Of concern too is that these four companies are affiliated and operated as one system by KPOC. This suggests that the corporate structure of these companies was designed primarily to avoid the Commission's jurisdiction under the NGA. While the Commission has stated that it is not unusual, much less unlawful, for persons to structure transactions either to qualify for regulation by one entity or to avoid regulation by another,[16] nevertheless at some point such structuring may be contrary to the public interest and inconsistent with the underlying purpose of statutes effecting a federal scheme of regulation.

Here, the Commission recognizes that the present corporate structure of the four companies will not frustrate the Commission's regulation over the rates charged by the companies for services currently performed under NGPA section 311, since the Commission regulates those rates. Rather, the Commission is concerned that the purpose of the NGA may be frustrated because KansOk, Kansas Pipeline, and Kansas Natural do not have to comply with Order No. 636.[17] In Order No. 636, the Commission explained that its ''responsibility under the NGA is to protect the consumers of natural gas from the exercise of monopoly power by pipelines in order to ensure consumers access to an adequate supply of gas at a reasonable price.''[18] Order No. 636 also required the unbundling of pipeline sales services.

The Commission has some concern that segmenting a single system into three intrastates and one interstate could frustrate the purposes underlying the NGA, Order No. 636, and other policies. For example, if the four pipelines operated by KPOC were found to be one interstate pipeline, they would be required to file a FERC tariff setting forth their terms and conditions of service, comply with the Commission's capacity release requirements under Order No. 636, and be subject to the Commission's NGA sections 4 and 5 authority with respect to their rates. Whereas under their present corporate structure, only Riverside is required to comply with these requirements; the three intrastate pipelines are not.

The Commission recognizes that a finding that the four companies operated by KPOC constitute one interstate pipeline would require the Commission to disregard their corporate forms. However, the Commission has the authority to do so, under certain circumstances. For example, in *General Telephone Co.* v. *U.S.*,[19] the court stated

[12] Sales and Transportation of Natural Gas, FERC Stats. & Regs., Regulations Preambles 1977–1981 ¶ 30,081, at 30,536 (1979).

[13] Seagull Pipeline Corp., 11 FERC ¶ 61,267 (1980); *see also* Black Warrior Pipeline, Inc., 8 FERC ¶ 61,241 (1979).

[14] Lear Petroleum Corp., 42 FERC ¶ 61,015, at 61,043 (1988).

[15] *Id. See also* Mustang Energy Corp. v. FERC, 859 F.2d 1447 (10th Cir. 1988).

[16] *See, e.g.,* Riverside Pipeline Co., L.P., 48 FERC ¶ 61,309, at 62,015–16 (1989).

[17] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 Fed. Reg. 13,267 (Apr. 16, 1992) III FERC Stats. & Regs. Preambles ¶ 30,939 (Apr. 8, 1992); *order on reh'g,* Order No. 636–A, 57 Fed. Reg. 36,128 (Aug. 12, 1992), III FERC Stats. & Regs. Preambles ¶ 30,950 (Aug. 3, 1992); *order on reh'g,* Order No. 636–B, 57 Fed. Reg. 57,911 (Dec. 8, 1992), 61 FERC ¶ 61,272 (Nov. 27, 1992); *reh'g denied,* 62 FERC ¶ 61,007 (1993); *appeal pending sub nom.* United Distribution Companies, *et al.* v. FERC, No. 92–1485 (D.C. Cir.).

[18] Order No. 636, at 30,392.

[19] 449 F.2d 846 (5th Cir. 1971).

that, ''[w]here the statutory purpose could * * * be easily frustrated through the use of separate corporate entities, the [Federal Communications Commission] is entitled to look through corporate form and treat the separate entities as one and the same for purposes of regulation.'' [20] Therefore, if the Commission were to determine here that the corporate structure of the four companies frustrated the statutory purpose of the NGA and was contrary to the public interest, it would have the authority to disregard their corporate forms.

In any event, at the very minimum the Commission believes that KansOk may be an interstate pipeline, based on the nature of its transportation services. At present, it appears that KansOk provides no intrastate service on its East Leg, and only a *de minimis* amount of intrastate service on its West Leg. The Commission recognizes the KansOk's mix of intrastate and interstate transportation volumes has not changed dramatically since the Commission issued its February 6, 1992 order.[21] Although no party contested KansOk's claim to be an intrastate pipeline at that time, Western Resources has raised the issue now.

F. Show Cause

For the reasons discussed above, the Commission is instituting this show cause proceeding, pursuant to sections 5, 7, and 16 of the NGA, to investigate further these matters. To this end, the Commission is ordering the following:

(1) KansOk, Riverside, Kansas Natural, Kansas Pipeline are ordered to show cause why the Commission should not disregard their corporate forms and find them to be one interstate pipeline system subject to the Commission's NGA jurisdiction; and

(2) KansOk is ordered to show cause why, since all but a *de minimis* amount of the service it provides is in interstate commerce, it should not be found to be an interstate pipeline subject to the Commission's NGA jurisdiction.

In their responses, the parties are encouraged to address the concerns raised above by the Commission.

The Commission Orders

(A) Within 30 days of the issuance of this order:

(1) KansOk, Riverside, Kansas Natural, Kansas Pipeline are ordered to show cause why the Commission should not disregard their corporate forms and find them to be one interstate pipeline system subject to the Commission's NGA jurisdiction; and

(2) KansOk is ordered to show cause why, since all but a *de minimis* amount of the service it provides is in interstate commerce, it should not be found to be an interstate pipeline subject to the Commission's NGA jurisdiction.

(B) Notice of this proceeding will be published in the **Federal Register**. Interested persons will have 20 days from the date of publication of the notice to intervene.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13770 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[20] *Id.* at 855 (citations omitted). *See also* Taylor v. Standard Gas & Electric Co., 306 U.S. 307, 322 (1939); Transcontinental Gas Pipe Line Corp. v. FERC, 998 F.2d 1313 (5th Cir. 1993).

[21] In 1990, approximately 97.4 percent of KansOk's transportation service was pursuant to NGPA section 311, whereas KansOk does not dispute Western Resources' claim that KansOk now performs approximately 99.9 percent of its services under NGPA section 311.

[Docket No. RP95–307–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

May 31, 1995.

Take notice that on May 26, 1995, Natural Gas Pipeline Company of America (Natural) tendered for filing to be a part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Second Revised Sheet Nos. 289 and 297, to be effective May 4, 1995.

Natural states that the purpose of the filing is to conform with the Commission's Order No. 577, which changed the Commission's Rules and Regulations as follows: (1) Prearranged releases of exactly one month are no longer required to have open seasons and (2) the minimum time period before a subsequent short-term prearranged release to the same replacement shipper was shortened to 28 days.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the above tariff sheets to become effective May 4, 1995, the effective date of the Commission's Order No. 577.

Natural states that a copy of the filing was mailed to Natural's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13739 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–5–004]

Northwest Pipeline Corp.; Notice of Proposed Changes in FERC Gas Tariff

May 31, 1995.

Take notice that on May 26, 1995, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets with a proposed effective date of November 6, 1994:

Third Substitute Second Revised Sheet No. 234
Second Substitute First Revised Sheet No. 237
Second Substitute Original Sheet No. 237–A
Third Substitute Original Sheet No. 237–B
Third Substitute Original Sheet No. 237–C

Northwest states that the purpose of this filing is to comply with the directives established by the Federal Energy Regulatory Commission (''Commission'') Staff at the April 26, 1995, technical conference (''Conference'') which was held to discuss Northwest's Entitlement and Imbalance Filing in Docket No. RP95–5.

On May 12, 1995, Northwest provided all Conference attendees with proposed tariff language which represented Northwest's best attempt to incorporate the suggestions received in protests and at the Conference and to address the concerns presented by the various parties. On May 19, two of the nine parties represented at the Conference, Natural Gas Clearinghouse and Sierra Pacific Power Company, communicated comments to Northwest regarding the May 12 proposal. Northwest further states that the instant filing starts with the May 12 proposal and adds revisions to address the May 19 concerns.

Northwest states that a copy of this filing has been served upon all intervenors in Docket No. RP95–5, upon Northwest's jurisdictional customers, and upon relevant state regulatory commissions.

Any persons desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13734 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–145–002]

Northwest Pipeline Corporation; Notice of Proposed Change in FERC Gas Tariff

May 31, 1995.

Take notice that on May 26, 1995, Northwest Pipeline Corporation (Northwest), tendered for filing and acceptance as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets with a proposed effective date of March 2, 1995:

Second Revised Sheet No. 202
Fourth Revised Sheet No. 231
First Revised Sheet No. 231–A
Original Sheet No. 303
Original Sheet No. 303–A

Northwest states that the purpose of this filing is to respond to the directives of the Commission staff at the technical conference held on April 25, 1995 in Docket No. RP95–145 wherein Northwest was instructed to submit revised tariff sheets to the Commission by May 26, 1995. Northwest states that the proposed tariff provisions establish a new Section 32 in its General Terms and Conditions that allows Northwest to sell: (i) gas that becomes the property of Northwest pursuant to the provisions of terminated transportation or storage agreements or due to tariff provisions relating to interruptible storage or shipper imbalances; and (ii) other volumes of gas in de minimis quantities or in limited or infrequent situations.

Northwest states that it is proposing to credit its customers for certain gas sales revenues through a revenue crediting mechanism or, in the alternative, to credit its customers volumetrically for certain gas that becomes the property of Northwest by reducing the fuel use requirements factors. Likewise, Northwest states that its customers would bear the risk for certain gas that Northwest is unable to recover in imbalance situations.

Northwest further states that it is seeking to withdraw the proposed tariff sheets submitted on January 30, 1995 and March 16, 1995 in this docket.

Northwest is requesting limited waiver of the Commission's conduct and reporting regulations in Order No. 497 with regard to the sales of this gas.

Northwest states that a copy of this filing has been served upon Northwest's jurisdictional customers, upon all intervenors in Docket No. RP95–145–000 and upon interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13735 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–304–000]

North Penn Gas Co.; Notice of Filing

May 31, 1995.

Take notice that on May 25, 1995, North Penn Gas Company (North Penn) tendered for filing a request for authority to provide payment to its current customers for (a) past North Penn overrecoveries of take-or-pay (TOP) dollars, as reduced by (b) three percent TOP payments by North Penn. As explained below, application of North Penn's tariff would allow North Penn to provide payment of $63,619 in TOP overrecoveries, which would be the amount owed, including interest, as of July 31, 1995.

As its primary relief, however, North Penn requests authority to provide payment of TOP overrecoveries as of December 29, 1995, which will reflect the remaining North Penn TOP payments of which North Penn is aware. If the Commission denies the primary relief, then North Penn requests authority to provide payment of the aforesaid $63,619.

North Penn requests waiver of any of the Commission's Rules and Regulations as may be required to implement the filing.

North Penn states that copies of the letter of transmittal and all enclosures are being mailed to each of North Penn's affect customers and State Commissions shown on the service list attached to the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13736 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES95–33–000]

Northwestern Public Service Co.; Notice of Application

May 31, 1995.

Take notice that on May 24, 1995, Northwestern Public Service Company (Northwestern) filed an application under § 204 of the Federal Power Act seeking authorization to issue:

(1) not more than 2 million shares of Common Stock, par value $3.50;

(2) not more than $75 million of shares of Cumulative Preferred Stock;

(3) not more than $125 million of New Mortgage Bonds, notes, debentures, subordinated debentures (including securities in connection with a monthly income preferred securities financing), guarantees or other evidences of indebtedness;

(4) not more than $75 million of short-term debt securities; and

(5) not more than $175 million of bridge financing notes, debentures, guarantees or other evidences of indebtedness, until the permanent financing in (1)–(4) is in place.

Northwestern states that it may vary the maximum issuance amounts set forth above for each type of permanent

security, so long as the aggregate issuance amount of all permanent securities does not exceed $300 million.

Also, Northwestern requests exemption from the Commission's competitive bidding and negotiated placement regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13731 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–309–000]

Riverside Pipeline Company L.P.; Notice of Proposed Changes in FERC Gas Tariff

May 31, 1995.

Take notice that on May 26, 1995, Riverside Pipeline Company, L.P. (Riverside) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, to become effective June 1, 1995:

First Revised Sheet No. 107
First Revised Sheet No. 108
First Revised Sheet No. 109
First Revised Sheet No. 113

Riverside states that the purpose of the instant filing is to revise its capacity release tariff provisions set forth in Section 18 of the General Terms and Conditions of its Volume No. 1 Tariff to comply with Order No. 577 issued March 29, 1995 in Docket No. RM95–5–000.

Riverside is also serving copies of the instant filing on its customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13741 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–508–000]

Stingray Pipeline Co.; Notice of Request Under Blanket Authorization

May 31, 1995.

Take notice that on May 23, 1995, Stingray Pipeline Company (Stingray), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP95–508–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to acquire, own, construct and operate facilities in Vermillion Blocks 321, 348, 362 and 371 Offshore Louisiana, to receive and transport up to 150 Mmcf/day of natural gas for Samedan Oil Corp. Energy Development Corporation and Shell Offshore Inc. (Producers), under Stingray's blanket certificate issued in Docket No. CP91–1505–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Stringray proposes to acquire, own and operate dual 10-inch meter facilities and approximately 0.09 miles of 20-inch lateral to be constructed by the Producers on the production platform being constructed by the Producers in Vermillion Block 371 Offshore Louisiana.

Stingray proposes further to construct, own and operate 15.61 miles of 20-inch lateral from the Vermillion 371 production platform to Stingray's existing facilities in Vermillion Block 321, Offshore Louisiana and a 20-inch subsea tap valve assembly to be available for a future interconnect.

Stringray, in addition, proposes to construct, own and operate a 20-inch and 12-inch subsea tap valve assembly on the proposed 20-inch lateral in Vermillion Block 362 for future interconnects as well as a 12-inch subsea tap valve on the proposed 20-inch lateral in Vermillion Block 348 for a future interconnect.

It is said that the total cost of the facilities proposed for acquisition and construction is estimated to be approximately $9.06 million.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13729 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–306–000]

Stingray Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

May 31, 1995.

Take notice that on May 26, 1995, Stingray Pipeline Company (Stingray) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet Nos. 150 and 156, to be effective May 4, 1995.

Stringray states that the purpose of the filing is to conform with the Commission's Order No. 577, which changed the Commission's Rules and Regulations as follows: (1) prearranged releases of exactly one month are no longer required to have open seasons and (2) the minimum time period before a subsequent short-term prearranged release to the same replacement shipper was shortened to 28 days.

Stingray requested waiver of the Commission's Regulations to the extent necessary to permit the above tariff sheets to become effective May 4, 1995, the effective date of the Commission's Order No. 577.

Stingray states that a copy of the filing was mailed to Stingray's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the

Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20406, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13738 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–308–000]

Trailblazer Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 31, 1995.

Take notice that on May 26, 1995, Trailblazer Pipeline Company (Trailblazer) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet Nos. 149 and 155, to be effective May 4, 1995.

Trailblazer states that the purpose of the filing is to conform with the Commission's Order No. 577, which changed the Commission's Rules and Regulations as follows: (1) Prearranged releases of exactly one month are no longer required to have open seasons and (2) the minimum time period before a subsequent short-term prearranged release to the same replacement shipper was shortened to 28 days.

Trailblazer requested waiver of the Commission's Regulations to the extent necessary to permit the above tariff sheets to become effective May 4, 1995, the effective date of the Commission's Order No. 577.

Trailblazer states that a copy of the filing was mailed to Trailblazer's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13740 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–41–000]

Trunkline Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

May 31, 1995.

Take notice that on May 26, 1995, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 revised tariff sheets, as listed on Appendix A attached to the filing, proposed to be effective November 1, 1994, December 1, 1994, February 1, 1995, April 1, 1995 and May 1, 1995.

Trunkline states that this filing is being made in compliance with Section 154.41(b) of the Commission's Regulations. The revised tariff sheets reflect updates to the Index of Firm Customers.

Trunkline states that copies of this filing are being mailed to affected shippers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13732 Filed 6–5–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5215–6]

National Environmental Education and Training Foundation, Inc. Announcement of a New Appointment to the Board of Directors

The National Environmental Education and Training Foundation was created by Public Law #101–619, the National Environmental Education Act of 1990. It is a private 501(c)(3) non-profit organization established to promote and support education and training as necessary tools to further environmental protection and sustainable, environmentally sound development. It provides the common ground upon which leaders from business and industry, all levels of government, public interest groups, and others can work cooperatively to expand the reach of environmental education and training programs beyond the traditional classroom. The Foundation will develop and support a grant program that promotes innovative environmental education and training programs; it will also develop partnerships with government and other organizations to administer projects that promote the development of an environmentally literate public.

The Administrator of the U.S. Environmental Protection Agency, as required by the terms of the Act, announces the appointment of Sam Rowse and Wayne Allen to the National Environmental Education and Training Foundation, Inc. Board of Directors.

Sam Rowse is President of Veryfine Products, Inc., Westford, Massachusetts. Mr. Rowse served as company treasurer from 1972 through 1989 when he was named President. He has served as vice chairman of the board of directors for the Processed Apples Institute and is a member of the National Juice Processors Association. Mr. Rowse is a member of the Joslin Clinic's Boston Committee and serves as trustee of The Deaconess Nashoba Hospital in addition to holding the position of corporator at the Deaconess Hospital in Boston.

Mr. Rowse is a graduate of Lawrence Academy in Groton, Massachusetts and holds a business degree from Nasson College in Springvale, Maine. His term of office is four years.

W.W. (Wayne) Allen is chairman and chief executive officer of Phillips Petroleum Company. Mr. Allen joined Phillips in 1961 as an engineer. After holding various staff engineering positions, Mr. Allen was elected to the board of directors in 1989, in 1991 became president and chief operating

officer and in May 1994 became chairman and chief executive officer.

Mr. Allen is a member of the National Petroleum Council, the Society of Petroleum Engineers, the American Society of Mechanical Engineers, a director of the Federal Reserve Bank of Kansas City, serves as a member and trustee of the Oklahoma State University Foundation Board of Governors, and is a national trustee, Southwest Region of the Boys & Girls Clubs of America.

Mr. Allen is a graduate of Oklahoma State University with a bachelor's degree in mechanical engineering and a master's degree in industrial engineering.

This appointee will join the ten current Board members, who include: Edward Bass, Chairman and CEO of Fine Line, Inc. and Chairman of Space Biospheres Ventures; Dr. James Crowfoot, Professor of Natural Resources and Urban and Regional Planning at the University of Michigan; Mark De Michele, President and CEO of Arizona Public Service Company; James Donnelley, Vice Chairman of the Board of R.R. Donnelley & Sons; Dr. Bonnie F. Guiton, Dean of the McIntire School of Commerce at the University of Virginia; Fred Krupp, Executive Director of the Environmental Defense Fund; Sarah Muyskens, Management Consultant; Leslie Dach, Executive Vice President and General Manager, Edelman Public Relations; and Francis Pandolfi, President and CEO of Times Mirror Magazines, Inc. and Chairman of the Board of The Sporting News Publishing Company.

Great care has been taken to assure that new appointees not only have the highest degree of expertise and commitment but also bring to the Board diverse points of view relating to environmental education and training.

Dated: May 22, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–13791 Filed 6–5–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 95–1092]

Applications for Review on Responsible Accounting Officer Letter 25 (''RAO Letter 25'')

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This notice invites comments on applications filed for review of Responsible Accounting Officer Letter 25 (April 19, 1995, 60 FR 19591).

The Commission on November 7, 1994, issued the Video Dialtone Reconsideration Order (''VDT Recon Order''). In that Order, the Commission reaffirmed its basic video dialtone framework adopted in the Second Report and Order, and, among other things, required carriers offering video dialtone to establish two sets of subsidiary accounting records to capture the wholly dedicated and shared video dialtone investment, expense and revenue. The VDT Recon Order also requires carriers to file a summary of these subsidiary accounting records with the Commission on a quarterly basis. The Commission delegated to the Common Carrier Bureau the authority to define the content and format of both the subsidiary accounting records and the quarterly reports, and to provide accounting guidance where necessary for uniform classification of video dialtone investment, expense and revenue. Finally, the VDT Recon Order required carriers to file revisions to their cost allocation manuals (''CAMs'') to reflect the provision of video dialtone service. On April 3, 1995, the Accounting and Audit Division issued RAO Letter 25 setting forth specific guidance on the requirements for accounting classifications, subsidiary records, and amendments to CAMs for carriers that provide video dialtone service.

DATES: Comments are due May 30, 1995. Reply comments are due June 9, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kim Yee, Common Carrier Bureau, Accounting and Audits Division, (202) 418–0810.

SUPPLEMENTARY INFORMATION:

Bell Atlantic Telephone Companies, BellSouth Telecommunications, Inc., GTE Service Corporation, Southwestern Bell Telephone Company, US West Communications, Inc., and National Telephone Cooperative Association File Applications for Review of Responsible Accounting Officer Letter 25

Public Comments Invited

On May 3, 1995, Bell Atlantic Telephone Companies (''Bell Atlantic''), BellSouth Telecommunications, Inc. (''BellSouth''), GTE Service Corporation (''GTE''), Southwestern Bell Telephone Company (''Southwestern''), US West Communications, Inc. (''US West'') and National Telephone Cooperative Association (''NTCA'') filed with the Commission separate Applications for Review of Responsible Accounting Officer Letter No. 25 (RAO Letter 25), which was issued by the Common Carrier Bureau under delegated authority on April 3, 1995 (DA 95–703). RAO Letter 25 provides guidance on video dialtone accounting to local exchange carriers that receive Section 214 authorizations to provide video dialtone service. It sets forth specific guidance on the requirements for accounting classifications, subsidiary records, and amendments to cost allocation manuals (''CAMs'') for LECs that provide video dialtone service.

Bell Atlantic, BellSouth, Southwestern Bell and US West state that RAO Letter 25 exceeds the scope of the Bureau's delegated authority. Bell Atlantic, GTE, Southwestern Bell, BellSouth and US West contend that RAO Letter 25 creates a new product-specific or cost-of-service type of accounting system that is contrary to the Commission's existing Part 32 rules and that it is too costly to implement. BellSouth and Southwestern Bell state that RAO Letter 25 incorrectly classified the asynchronous transfer mode (''ATM'') equipment as circuit equipment. BellSouth, GTE and US West also claim that the CAM revisions required by RAO Letter 25 are unnecessary. In addition, GTE also states that RAO Letter 25 conflicts with FCC rules and policies for retirement of investments and depreciation and income tax calculations. All petitioners request the Commission to revise or modify the RAO Letter 25. Finally, BellSouth and NTCA request the Commission to rescind the letter.

Ex Parte Rules—Non Restricted Proceeding. This is a non-restricted notice and comment proceeding. Ex Parte presentations are permitted, provided that they are disclosed as provided in Commission Rules. See generally 47 C.F.R. Sections 1.1202, 1.1203, and 1.106(a).

Parties may file comments on the Applications for Review no later than May 30, 1995. Replies should be filed by June 9, 1995. Comments should reference AAD 95–68. A copy of each pleading should be sent to Kenneth Ackerman and Daniel Gonzalez, Common Carrier Bureau, 2000 L Street, NW., Room 812, Washington, DC 20554, and the International Transcription Service (ITS), 2100 M Street, NW. Suite 140, Washington, DC 20037, (202) 857–3800. Copies of the Applications for Review and any comments will be available for public inspection and copy in the Accounting and Audits public reference room, 2000 L Street, NW., Room 812, Washington, DC Copies are

also available from ITC. For further information contact Kenneth Ackerman, or Daniel Gonzalez (202) 418–0810.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–13381 Filed 6–5–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Solicitation of Nominations for Membership

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board is inviting the public to nominate qualified individuals for appointment to its Consumer Advisory Council, which is comprised of representatives both of consumer and community interests and of the financial services industry. Nine new members will be selected for three-year terms that will begin in January 1996. The Board expects to announce the selection of new members by year-end 1995.

DATES: Nominations should be received by August 31, 1995.

ADDRESSES: Nominations should be submitted in writing to Dolores S. Smith, Associate Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Information about nominees will be available for inspection upon request.

FOR FURTHER INFORMATION CONTACT: Ann Marie Bray, Secretary to the Council, Division of Consumer and Community Affairs, (202) 452–6470; or for Telecommunications Device for the Deaf (TTD) users *only*, Dorothea Thompson (202) 452–3544; Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Consumer Advisory Council was established in 1976 at the direction of Congress to advise the Federal Reserve Board on the exercise of its duties under the Consumer Credit Protection Act and on other consumer-related matters. The Council by law (15 USC 1691(b)) represents the interests both of consumers and of the financial community. Under the Rules of Organization and Procedure of the Consumer Advisory Council (12 CFR 267.3), members serve three-year terms that are staggered to provide the Council with continuity.

New members will be selected for terms beginning January 1, 1996, to replace members whose terms expire this year. *Nominations should include the address and telephone number of the nominee, information about past and present positions held, and a description of special knowledge, interests or experience related to community reinvestment, consumer credit or other consumer financial services.* Persons may nominate themselves as well as other candidates.

The Board is interested in candidates who have some familiarity with community reinvestment or consumer financial services and who are willing to express their viewpoints. Candidates do not have to be experts on all levels of community reinvestment or consumer financial services, but they should possess some basic knowledge of the area. In addition, they should be able to make the necessary time commitment to prepare for and attend meetings (usually two days long including committee meetings) three times a year.

In making the appointments, the Board will seek to complement the qualifications of continuing Council members in terms of affiliation and geographic representation, and to ensure the representation of women and minority groups. The Board expects to announce its selection of new members by year-end.

Council members whose terms end as of December 31, 1995, are:

D. Douglas Blanke, Director of Consumer Policy, Office of the Attorney General, St. Paul, Minnesota

Michael Ferry, Staff Attorney, Consumer Unit, Legal Services of Eastern Missouri, Inc., St. Louis, Missouri

Norma L. Freiberg, Community Activist, New Orleans, Louisiana

Lori Gay, Executive Director, Los Angeles Neighborhood Housing Services, Los Angeles, California

Ronald A. Homer, Chairman and CEO, Boston Bank of Commerce, Boston, Massachusetts

Thomas L. Houston, Executive Director, The Dallas Black Chamber of Commerce, Dallas, Texas

Grace W. Weinstein, Financial Writer and Consultant, Englewood, New Jersey

James L. West, President, Jim West Financial Group, Inc., Tijeras, New Mexico

Robert O. Zdenek, Senior Program Officer, Annie E. Casey Foundation, Baltimore, Maryland

Other Council members whose terms continue through 1996 and 1997, are listed below (together with the expiration date of each one's term of office).

Thomas R. Butler, President and Chief Operating Officer, Discover Card Services, Riverwoods, Illinois, December 31, 1997

Robert A. Cook, Partner, Venable, Baetjer and Howard, Baltimore, Maryland, December 31, 1997

Alvin J. Cowans, President and CEO, McCoy Federal Credit Union, Orlando, Florida, December 31, 1996

Elizabeth G. Flores, Senior Vice President, Laredo National Bank, Laredo, Texas, December 31, 1996

Emanuel Freeman, President, Greater Germantown Housing Development Corporation, Philadelphia, Pennsylvania, December 31, 1997

David C. Fynn, Regulatory Risk Manager, National City Corporation, Cleveland, Ohio, December 31, 1997

Robert G. Greer, Chairman of the Board, Tanglewood Bank, Houston, Texas, December 31, 1997

Kenneth R. Harney, Journalist, Washington Post Writers Group, Chevy Chase, Maryland, December 31, 1997

Gail K. Hillebrand, Litigation Counsel, West Coast Regional Office, Consumers Union of U.S., Inc., San Francisco, California, December 31, 1997

Terry Jorde, President and CEO, Towner County State Bank, Cando, North Dakota, December 31, 1997

Eugene I. Lehrmann, President, American Association of Retired Persons, Madison, Wisconsin, December 31, 1997

Katharine W. McKee, Transition Director, CDFI Fund, Washington, D.C., December 31, 1996

Ronald A. Prill, Vice President, Credit, Dayton Hudson Corporation, Minneapolis, Minnesota, December 31, 1997

Lisa Rice-Coleman, Executive Director, Fair Housing Center, Toledo, Ohio, December 31, 1997

John R. Rines, President, General Motors Acceptance Corporation, Detroit, Michigan, December 31, 1997

Julia M. Seward, Vice President and Corporate Community Reinvestment Officer, Signet Bank, Richmond, Virginia, December 31, 1997

Anne B. Shlay, Associate Director, Institute for Public Policy Studies, Temple University, Philadelphia, Pennsylvania, December 31, 1996

Reginald J. Smith, President, United Missouri Mortgage Company, Kansas City, Missouri, December 31, 1996

John E. Taylor, President and CEO, The National Community Reinvestment Coalition, Washington, D.C., December 31, 1996

Lorraine VanEtten, Vice President and Community Lending Officer, Standard Federal Bank of Troy, Troy, Michigan, December 31, 1996

Lily K. Yao, Chairman and CEO, Pioneer Federal Savings Bank, Honolulu, Hawaii, December 31, 1996.

Board of Governors of the Federal Reserve System, May 31, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–13745 Filed 6–5–95; 8:45am]

BILLING CODE 6210–01–P

Consumer Advisory Council; Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, June 29, 1995. The meeting, held pursuant to 15 U.S.C. 1691(b) and 12 CFR 267.5, will take place in Terrace Room E of the Martin Building. The meeting, which will be open to public observation, is expected to begin at 9:00 a.m. and to continue until 4:00 p.m., with a lunch break from 1:00 p.m. until 2:00 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, D.C.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Community Reinvestment Act Reform. Discussion led by the Bank Regulation Committee regarding the agencies' implementation of new regulations under the Community Reinvestment Act, including (1) what issues should be addressed in the examination procedures and examiner training; (2) what impact the new rules might have on lending in low- and moderate-income areas; and (3) whether additional incentives may be needed to encourage institutions to choose to be evaluated for CRA under the strategic plan option.

Voluntary Data Collection of Personal Characteristics of Credit Applicants. Discussion led by the Consumer Credit Committee of a proposed amendment to the Board's Regulation B (Equal Credit Opportunity) that would allow, but not require, creditors to ask for the race, color, sex, religion and national origin of credit applicants to help ensure compliance with the Equal Credit Opportunity Act and other fair lending laws.

Consumer Leasing Disclosures (Tentative). Further discussion led by the Consumer Credit Committee on possible amendments to the Board's Regulation M (Consumer Leasing) to address technological and other developments in the leasing industry and to simplify compliance and reduce burdens without diminishing consumer protections.

Right of Rescission under the Truth in Lending Act. Presentation by members of the Consumer Credit Committee on the right of rescission, a legal remedy available to all consumers who secure a loan transaction with their homes. (Legislation has been introduced in the Congress that would limit the availability of the right in different ways.)

Legislative Proposals for Regulatory Relief under the Truth in Lending Act. Discussion led by the Consumer Credit Committee on recent legislative proposals that would amend the Truth in Lending Act to, among other things, (1) streamline consumer disclosures required for adjustable rate mortgages, and (2) eliminate, limit, or reduce potential creditor liability for disclosure errors.

Need for Reconciliation of Provisions of the Truth in Lending and Real Estate Settlement Procedures Acts. Discussion led jointly by the Consumer Credit Committee and the Community Affairs and Housing Committee of whether and how provisions of the Truth in Lending Act and the Real Estate Settlement Procedures Act or the implementing regulations should be amended to facilitate compliance.

Governor's Report. Report by Federal Reserve Board Member Lawrence B. Lindsey on economic conditions, recent Board initiatives, and issues of concern, with an opportunity for questions from Council members.

Members Forum. Presentation of individual Council members' views on the economic conditions present within their industries or local economies.

Committee Reports. Reports from Council committees on their work.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Comments must be received no later than close of business Wednesday, June 21, 1995, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Ann Marie Bray, 202–452–6470. Telecommunications Device for the Deaf (TDD) users may contact Dorothea Thompson, 202–452–3544.

Board of Governors of the Federal Reserve System, May 31, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–13744 Filed 6–5–95; 8:45am]

BILLING CODE 6210–01–P

Jeffrey Howard Steinberg; 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 June 14, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Jeffrey Howard Steinberg, Marlton, New Jersey; to acquire up to 24.9 percent of the voting shares of Continental Bancorporation, Laurel Springs, New Jersey, and thereby indirectly acquire Continental Bank of New Jersey, Laurel Springs, New Jersey.

Board of Governors of the Federal Reserve System, May 31, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–13743 Filed 6–5–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 932–3150]

Frank A. Latronica, Jr., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the distributor and the manufacturer of the Duram Emergency Escape Mask to possess competent and reliable scientific evidence to substantiate claims that their mask will absorb, filter out, or otherwise protect the user from any

hazardous gas or fumes associated with fires, and for claims that the mask is appropriate for use in mines.

DATES: Comments must be received on or before August 7, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Alan E. Krause, Chicago Regional Office, Federal Trade Commission, 55 East Monroe Street, Suite 1437, Chicago, Illinois 60603. (312) 353–8156.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(F) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Frank A. Latronica, Jr., individually and doing business as Life Safety Products, and Duram Rubber Products, a partnership, Agreement Containing Consent Order to Cease and Desist.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Frank A. Latronica, Jr., individually and doing business as Life Safety Products; and Duram Rubber Products, a partnership, (hereinafter referred to as ''proposed respondents''), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Frank A. Latronica, Jr., individually and doing business as Life Safety Products; and Duram Rubber Products, a partnership, and counsel for the Federal Trade Commission that:

1. Proposed respondent Frank A. Latronica, Jr., is an individual doing business as Life Safety Products with his principal office or place of business at 412 North Pacific Coast Highway, Suite 357, Laguna Beach, California 92651.

2. Proposed respondent Duram Rubber Products is a registered partnership of Kibbutz Ramat Hakovesh organized, existing and doing business under and by virtue of the laws of the country of Israel, with its principal office or place of business at Kibbutz Ramat Hakovesh 44930 Israel.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

4. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commssion. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint, other than the jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this Order, the following definitions shall apply:

(1) ''Duram Emergency Escape Mask'' shall mean the over-the-head escape hood manufactured by Duram Rubber Products an Israeli Company.

(2) ''Substantially similar product'' shall mean any mask, hood or other product that is designed or advertised as offering the user protection from the hazards associated with fires.

(3) ''Competent and reliable scientific evidence'' shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I

It is ordered that respondents Frank A. Latronica, Jr., individually and doing business as Life Safety Products; and Duram Rubber Products, a partnership, its successors and assigns, and its officers; and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of the Duram Emergency Escape Mask, or any substantially similar product, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication that:

A. Such product is capable of absorbing, removing, filtering out, or otherwise protecting the user from any hazardous gas or fumes associated with fire, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; or

B. Such product can protect the user from any hazards associated with fire, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; or

C. Such product is appropriate for use in mines, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable evidence that substantiates the representation.

II

It is further ordered that respondents Frank A. Latronica, Jr., individually and doing business as Life Safety Products; and Duram Rubber Products, a partnership, its successors and assigns, and its officers; and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, shall include, as specified below, the following disclosure in any advertisement or promotional material for the Duram Emergency Escape Mask, or any substantially

similar product, that is advertised, offered for sale, or sold by respondents that is incapable of absorbing, removing, filtering or otherwise providing significant protection from carbon monoxide, if that advertising or promotional material expressly or impliedly represents that the device protects the user from any hazard associated with fire:

Notice: This device does not filter carbon monoxide—a lethal gas associated with fire.

In any print advertisement or promotional material, the above disclosure shall be printed in a typeface and color that are clear and prominent in at least ten-point bold type print, in close conjunction with the representation. In multipage documents, the disclosure shall appear on the cover or first page.

In any advertisement disseminated on television broadcast, cablecast, home video or theatrical release, the above disclosure shall be displayed in a legible superscript with a simultaneous voice-over recitation of the disclosure in a manner designed to ensure clarity and prominence.

In any radio advertisement, the above disclosure shall be spoken in a manner designed to ensure clarity and prominence.

Nothing contrary to, inconsistent with, or in mitigation of the above disclosure shall be used in any advertisement in any medium.

III

It is further ordered that respondents Frank A. Latronica, Jr., individually and doing business as Life Safety Products; and Duram Rubber Products, a partnership, its successors and assigns, and its officers; and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, shall include, as specified below, the following disclosure on all package labels and package inserts for the Duram Emergency Escape Mask, or any substantially similar product, advertised, offered for sale, or sold by respondents that is incapable of absorbing, removing, filtering or otherwise providing significant protection from carbon monoxide:

Warning: This device does not filter carbon monoxide—a lethal gas associated with fire.

The above-required language shall be printed in at least ten-point bold type print in a typeface and color that are clear and prominent. Nothing contrary to, inconsistent with, or in mitigation of the above disclosure shall be used on any such package label or product insert.

IV

It is further ordered that respondents Frank A. Latronica, Jr., individually and doing business as Life Safety Products; and Duram Rubber Products, a partnership, its successors and assigns, and its officers; and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any fire protection or safety related product, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any such product protects or assists in protecting the user from respiratory hazards associated with fire, explosions, air pollution, chemical exposure or other environments where normal breathing is impaired, unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

V

It is further ordered that respondents Frank A. Latronica, Jr., individually and doing business as Life Safety Products; and Duram Rubber Products, a partnership, its successors and assigns, and its officers; and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any fire protection or safety related product, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test or study.

VI

It is further ordered that respondents shall:

A. Within thirty (30) days from the date of service of this Order, deliver by first class mail, a dated notification letter, on Life Safety Products letterhead stationery, in the form set forth in Appendix A to this Order, to each person, partnership or corporation who purchased a Duram Emergency Escape Mask from Life Safety Products. The notification letter shall be delivered by itself in a format that does not include any additional communication from respondent.

B. Within sixty (60) days from the date of service of this Order, deliver by first class mail, a dated notification letter, on Life Safety Products letterhead stationery, in the form set forth in Appendix A to this Order, to each person, partnership, or corporation who purchased a Duram Emergency Escape Mask from any of the catalog retailers to whom Life Safety Products sold the Duram Emergency Escape Mask for resale. The notification letter shall be delivered by itself in a format that does not include any additional communication from respondent.

VII

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representations; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

VIII

It is further ordered that respondents shall:

A. Within thirty (30) days from the effective date of this Order deliver a copy of this Order to each of their officers, agents, representatives, and employees who are engaged in the preparation or placement of advertisements, promotional materials, product labels or other such sales materials covered by this Order.

B. For a period of ten (10) years from the effective date of this Order deliver a copy of this Order to each of their future officers, agents, representatives, and employees who are engaged in the preparation or placement of advertisements, promotional materials, product labels or other such sales materials covered by this Order, within three (3) days after the person assumes such position.

IX

It is further ordered that the respondent Duram Rubber Products shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in its partnership structure, including but not limited to dissolution, assignment or sale resulting in the emergence of a successor partnership or corporation, the creation or dissolution of subsidiaries or affiliates, the planned filing of a bankruptcy petition or any other partnership change, that may affect compliance obligations arising under this Order.

X

It is further ordered that respondent Frank A. Latronica, Jr., doing business as Life Safety Products, shall, for a period of ten (10) years from the date this Order becomes final, notify the commission within thirty (30) days of the discontinuance of his present business or employment and of each affiliation with a new business or employment. Each notice of affiliation with any new business or employment shall include his new business address and telephone number, current home address, and a statement describing the nature of the business or employment and the duties and responsibilities. The expiration of the notice provision of this Part X. shall not affect any other obligation arising under this Order.

XI

It is further ordered that respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Appendix A

Dear Purchaser of a Duram Emergency Escape Mask: Please note this important safety information:

The Duram Emergency Escape Mask you purchased does not filter carbon monoxide—a lethal gas associated with fire. This mask will not protect you from the effects of carbon monoxide gas.

This means that if you are wearing the Duram Emergency Escape Mask during a fire, exit immediately. You should know that carbon monoxide is colorless and odorless.

Our company, Life Safety Products, is sending all Duram Emergency Escape Mask (''Duram Mask'') purchasers this alert as a

result of a consent order with the Federal Trade Commission. According to the Federal Trade Commission, advertisements for the Duram Mask claimed that the mask would protect you from all significant fire hazards for up to 20 minutes. These hazards included toxic smoke, poisonous fumes, and lethal gases.

The advertisements for the Duram Mask did not make it clear that the mask does not filter carbon monoxide—a lethal gas associated with fires.

We have now agreed not to make any claims about the mask's ability to protect you from fire hazards, unless we have reliable scientific evidence to back up these statements.

We also have learned that these masks are not appropriate for use in U.S. mines.

While the Duram Mask will not protect you from carbon monoxide gas, it will protect you from other potentially lethal gases associated with fire. These gases include hydrogen chloride, hydrogen cyanide, nitrogen dioxide, and sulfur dioxide.

Life Safety Products

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Frank A. Latronica, Jr., doing business as Life Safety Products, and Duram Rubber Products.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns claims made by the respondents in their advertising and other promotional materials that the Duram Emergency Escape Mask will absorb or filter out all significant toxic smoke and poisonous fumes and lethal gases associated with fires; will protect the user from all significant hazards associated with toxic smoke, poisonous fumes and lethal gases in fires for up to twenty minutes; and is appropriate for use in mines. The Commission's complaint charges that respondents' claims are false and misleading because the Duram Emergency Escape Mask will not absorb or filter out all significant toxic smoke and poisonous fumes and lethal gases associated with fires because it does not absorb or filter out carbon monoxide, a lethal gas associated with fires; will not protect the user from all significant hazards associated with toxic smoke, poisonous fumes and lethal gases in fires for up to twenty minutes because it does not absorb or filter out carbon monoxide, a lethal gas associated with fires; and it is not appropriate for use in mines because it does not meet the standards developed by the National Institute for Occupational Safety and Health and the United States Bureau of Mines for Respiratory Protective Devices, as set forth in 30 CFR part 11.

The Commission's complaint also charges that the respondents falsely represented that they possessed and relied upon a reasonable basis that substantiated the above claims. The Commission's complaint alleges that this representation is false and misleading because at the time they made these three representations respondents did not possess and rely upon a reasonable basis that substantiated these claims.

The Commission's complaint also alleges that respondents' failure to disclose to consumers that the Duram Emergency Escape Mask does not absorb or filter out carbon monoxide, is a deceptive practice.

Finally, the Commission's complaint charges that in their advertising and other promotional materials respondents represented, directly or by implication, that scientific tests prove that the Duram Emergency Escape Mask filters 94% of the smoke in an environment filled with smoke. The Commission's complaint alleges that this representation is false and misleading because scientific tests do not prove that the Duram Emergency Escape Mask filters 94% of the smoke in an environment filled with smoke.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits the respondents from representing, directly or by implication in its advertising or labeling for the Duram Emergency Escape Mask, or any substantially similar product, that such product is capable of absorbing, removing, filtering out, or otherwise protecting the user from any hazardous gas or fumes associated with fire and such product can protect the user from any hazards associated with fire unless such representation are true, and respondents possess and rely upon competent and reliable scientific evidence that substantiates them. Part I of the proposed order also prohibits the respondents from representing, directly or by implication in its advertising or labeling for the Duram Emergency Escape Mask, or any substantially similar product, that such product is appropriate for use in mines, unless such representations are true, and respondents possess and rely upon competent and reliable evidence that substantiates them.

Part II of the proposed order requires respondents to include a disclosure in any advertisement or promotional material for the Duram Emergency Escape Mask or any substantially similar product alerts consumers that the mask is incapable of absorbing, removing, filtering or otherwise providing significant protection from carbon monoxide, if the advertisement or promotional material expressly or impliedly represents that the device protects the user from any hazard associated with fire. The proposed order also specifies the size and placement of such a disclosure for print advertisements and the nature and manner of such a disclosure for audio and visual advertisements.

Part III of the proposed order requires respondents to include a disclosure on all package labels and package inserts for the Duram Emergency Escape Mask or any substantially similar product that alerts consumers that the mask does not filter carbon monoxide, a lethal gas associated with fire. The proposed order also specifies the size of such a disclosure and that it must be in a typeface and color that are clear and prominent.

Part IV of the proposed order prohibits respondents from representing, directly or by implication, that any fire protection or safety related product protects or assists in protecting the user from respiratory hazards associated with fire, explosions, air pollution, chemical exposure or other environments where normal breathing is impaired, unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

Part V of the proposed order prohibits respondents from misrepresenting, in any manner, directly or by implication, for any fire protection or safety related product, the existence, contents, validity, results, conclusions or interpretations of any test or study.

Part VI of the proposed order requires respondents to mail to each person who has purchased the Duram Emergency Escape Mask from Life Safety Products, or from any catalog retailer to whom Life Safety Products has sold the Duram Emergency Escape Mask for resale, a notification letter informing the consumer that the Duram Emergency Escape Mask they have purchased does not filter carbon monoxide.

The remaining parts of the proposed consent order require the respondents to maintain materials relied upon in disseminating any representation covered by the order, to distribute copies of the order to certain company officials and employees, to notify the Commission of any changes in the corporate structure of Duram Rubber Products or the employment status of Mr. Frank A. Latronica, Jr., that might affect compliance with the order, and that each respondent file one or more compliance reports.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 95–13793 Filed 6–5–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statewide Immunization Information System Developer's Workshop

The National Immunization Program (NIP) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Statewide Immunization Information system (SIIS) Developer's Workshop.

Times and Dates: 8:30 a.m.–4 p.m., August 1, 1995; 8:30 a.m.–4 p.m., August 2, 1995; 8:30 a.m.–4 p.m., August 3, 1995.

Place: Omni Hotel at CNN Center, 100 CNN Center, Atlanta, Georgia 30335, telephone 404/659–0000, (Reservations 404/818–4300).

Status: The meeting will be open to the public, attendance limited only by space available. The meeting room will accommodate approximately 280 people.

Purpose: This workshop will focus on technical issues and guidelines related to the SIIS projects, and CDC's role in the SIIS technical support and implementation.

Matters To Be Discussed: Topics to be discussed will include: SIIS architecture and design; Record Exchange Interface; Gateway Interface Specification design; Data Communication Security; immunization history evaluation algorithms; patient de-duplication algorithms; programming confidentiality; vaccine code structure; Health Level 7 (HL7) data exchange standards; Information Network for Public Health Officials (INPHO); and Clinic Assessment Software Application (CASA).

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Donna Williams, Program Analyst, NIP, CDC, 1600 Clifton Road, NE, (E–62), Atlanta, Georgia 30333, telephone 404/639–8243.

Dated: May 31, 1995.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–13780 Filed 6–5–95; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Psychopharmacologic Drugs Advisory Committee

Date, time, and place. July 24 and 25, l995, 8:30 a.m., Gaithersburg Hilton, Grand Ballroom, 620 Perry Pkwy., Gaithersburg, MD.

Type of meeting and contact person. Open committee discussion, July 24, l995, 8:30 a.m. to 5 p.m.; open committee discussion, July 25, l995, 8:30 a.m. to 5 p.m.; open public hearing, 5 p.m. to 6 p.m., unless public participation does not last that long; Michael A. Bernstein, Center for Drug Evaluation and Research (HFD–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5521, or FDA Advisory Committee Information Hotline, l–800–741–8138 (301–443–0572 in the Washington, DC area), Psychopharmacologic Drugs Advisory Committee, code 12544.

General function of committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of psychiatry and related fields.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 17, l995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On July 24 and 25, l995, the committee will discuss issues in the design and conduct of studies involving antipsychotic drugs.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 25, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–13752 Filed 6–5–95; 8:45 am]

BILLING CODE 4160–01–F

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970 and 56 FR 29484, June 27, 1991, as amended most recently in pertinent parts at 55 FR 12283, April 2, 1990) is amended to reflect the following reorganization in the Food and Drug Administration (FDA).

The Office of Biotechnology, Office of Operations, is being abolished. The biotechnology industry has evolved to the point where the functions of this office are more appropriately performed by FDA's centers. The office's industry liaison activities will be performed by FDA's Office of External Affairs under its existing liaison functions.

Under section HF–B, Organization:

1. Delete subparagraph Office of Biotechnology (HFA–H), Office of Operations (HFA9), in its entirety.

Prior Delegations of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: May 17, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–13710 Filed 6–5–95; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1995:

Name: Council on Graduate Medical Education Medical Licensure Subgroup.

Time: June 23, 1995, 8:30 a.m.–4:00 p.m.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Open for entire meeting.

Purpose: Review the operations of the American Medical Association's National Credentials Verification System and recommend if appropriate, an alternative credentials verification system or process for physicians that assures nondiscriminatory policies and practices in the operation of the system.

Review the policies and practices of State Medical Boards in licensing international medical graduates and U.S. medical graduates, and determine the effects of such policies and practices.

Report and make recommendations to Congress, the Secretary of Health and Human Services and the Council on Graduate Medical Education regarding the finding of the subgroup.

Agenda: The agenda for the third meeting of the Council on Graduate Medical Education Medical Licensure Subgroup includes a review of the results of the pilot test of the proposed questionnaire for the survey of selected State medical boards. Presentation will be made by the Educational Commission for Foreign Medical Graduates (ECFMG) and the Federation of State Medical Boards (FSMB) regarding their operations and their views on the development of a private sector national credentials verification system.

Anyone requiring information regarding the meeting should contact Stanford Bastacky, D.M.D., M.H.S.A., telephone (301) 443–6785; Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Agenda Items are subject to change as priorities dictate.

Dated: May 31, 1995.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 95–13709 Filed 6–5–95; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting of the Sickle Cell Disease Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, June 16, 1995. This meeting will be held at the National Institutes of Health, Federal Building, Conference Room B1–19, 7550 Wisconsin Avenue, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9:00 a.m. to adjournment, to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Clarice D. Reid, Executive Secretary, Sickle Cell Disease Advisory Committee, Division of Blood Diseases and Resources, NHLBI, Two Rockledge Building, Suite 10160, 6701 Rockledge Drive, Bethesda, Maryland 20892, (301) 435–0080, will furnish substantive program information.

This notice is being published less than fifteen days prior to the meeting due to the conflict of schedules of committee members.

(Catalog of Federal Domestic Assistance Program No. 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: May 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13712 Filed 6–5–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Refinement on Clinical Use of New Assays for Direct Detection of Viral Nucleic Acids in Donated Blood, Organs and Tissues (Teleconference Call).

Date: June 15, 1995.

Time: 11:00 a.m.

Place: 6701 Rockledge Drive, Room 7178, Bethesda, Maryland.

Contact Person: David M. Monsees, Jr., Ph.D., 6701 Rockledge Drive, Room 7178, Bethesda, Maryland 20892–7294, (301) 435–0270.

Purpose/Agenda: To review and evaluate contract proposals.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: May 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13713 Filed 6–5–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Trigeminal Pain Mechanisms & Control Center.

Dates: June 14–15, 1995.

Time: 8:00 a.m.

Place: Hyatt Hotel Dulles, 2300 Dulles Corner Boulevard, Herndon, VA.

Contact Person: Dr. Yong Shin, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Advanced Dental Restorative Systems Program Project.

Date: July 18, 1995.

Time: 8:00 a.m.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Conf. Room A, Bethesda, MD 20892.

Contact Person: Dr. Yong Shin, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Dentin Characterization Program Project.

Date: July 19, 1995.

Time: 8:00 a.m.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Conf. Room A, Bethesda, MD 20892.

Contact Person: Dr. Yong Shin, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Facial Profile SBIR.

Dates: August 22, 1995.

Time: 8:00 a.m.

Place: Wellesley College Club Inn, 44 Commonwealth Avenue, Boston, MA.

Contact Person: Dr. George Hausch, Chief, Review Section, 4500 Center Drive, Natcher Building, Room 4AN-38J, Bethesda, MD 20892, (301) 594–2372.

Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research.)

Dated: May 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13714 Filed 6–5–95; 8:45 am]

BILLING CODE 4140–01–M

Opportunity for a Cooperative Research and Development Agreement (CRADA) and Licensing Opportunity for Testosterone Bucyclate

AGENCIES: National Institute of Child Health and Human Development, National Institutes of Health, Public Health Service, DHHS; and UNDP/UNFPA/WHO/World Bank Special Programme of Research, Development and Research Training in Human Reproduction (WHO/HRP).

ACTION: Notice.

SUMMARY: The National Institutes of Health and the World Health Organization are seeking (a) partner(s) for the further development, evaluation and commercialization of testosterone bucyclate and pharmaceutical compositions thereof. The invention claimed in the issued U.S. patent referenced below is available for either exclusive or non-exclusive licensing. Licensing by NIH is subject to 35 U.S.C. 207 and 37 CFR part 404.

Long-Acting Androgenic Compounds and Pharmaceutical Compositions Thereof

Inventors: Sydney Archer, Gabriel Bialy, Richard P. Blye, Pierre Crabbe, Egon R. Diczfalusy, Carl Djerassi, Josef Fried and Hyun K. Kim

Assignees: National Institutes of Health and the World Health Organization

Issued: August 14, 1990

Patent Number: 4,948,790

To expedite the research, development and commercialization of testosterone bucyclate, the National Institutes of Health and the World Health Organization are seeking one or more CRADA and/or license agreements with pharmaceutical or biotechnology companies in accordance with the regulations governing the transfer of Government-developed agents and WHO's public sector objectives, as outlined below. Any proposal to use or develop these drugs will be considered.

SUPPLEMENTARY INFORMATION:

Androgens are principally employed in therapeutic medicine for replacement or supplementation in androgen deficiency states but also find use in hypopituitarism, menstrual disorders, anemia, promotion of anabolism, suppression of lactation and as a palliative measure in recurrent and metastatic carcinoma of the breast. NIH's and WHO's interest is to develop testosterone bucyclate for use as a hormonal method of male contraception and for androgen replacement in other methods of male contraception which usually compromise the endocrine as well as the gametogenic function of the testis. Long-term androgen therapy is complicated by the side effects and/or poor bioavailability of oral preparations and the need for frequent injections of parenteral products. Two of the most commonly used injectable androgens, testosterone enanthate and testosterone cypionate, must be administered about every two weeks. There is thus a crucial need for longer-acting injectable androgens.

Testosterone bucyclate emanated, in 1980, from a joint NIH–WHO-sponsored steroid synthesis program in which the

preparation of selected steroid esters was contracted by WHO and the resulting compounds screened by the Contraceptive Development Branch (CDB) of the National Institute for Child Health and Human Development at its Biological Testing Facility. Chemically, testosterone bucyclate is Testosterone 17β-(*trans*-4-*n*-butyl) cyclohexyl carboxylate. This ester of the natural hormone, testosterone, exhibits prolonged activity when administered intramuscularly as an aqueous crystalline suspension in all species studied, including man. The drug was evaluated, including pharmacokinetics and metabolic studies in both rodents and primates, by CDB. WHO supported studies in primates as well as the first clinical studies in hypogonadal and normal men. The patent is jointly held by NIH and WHO. NIH and WHO intend to continue joint development of testosterone bucyclate.

Although each patentee may proceed with granting a non-exclusive license independently, joint licensing is envisaged. Licensing will include use of testosterone bucyclate as a hormonal method of male contraception, use for androgen replacement in other methods of male contraception, which usually compromise the endocrine as well as the gametogenic function of the testis and use as a therapeutic androgen for patients with androgen deficiency syndromes. A ''Notice of Claimed Investigational Exemption For A New Drug'' (IND) is currently being prepared.

The National Institute of Child Health and Human Development and the World Health Organization seek partners for the further development and commercialization of testosterone bucyclate.

The role of the National Institute of Child Health and Human Development and the World Health Organization is expected to be as follows:

1. Provide the commercial partner with all biological data on testosterone bucyclate covered by the agreement.
2. Provide samples of the drug and clinical dosage forms.
3. Provide chemical data on testosterone bucyclate, including routes of synthesis, analytical methods employed, purity, stability and formulation.
4. Provide reports of all safety studies of the drug.
5. Continue studies on the pharmacokinetics and biological activity of testosterone bucyclate and formulations thereof.
6. Conduct appropriate studies to optimize formulations of testosterone bucyclate.
7. Prepare the IND.
8. Participate in meetings with the Food and Drug Administration for establishment of the protocols for Phase I, II and III clinical investigations and provide liaison with the FDA.

The role of the commercial partner is expected to be as follows;

1. Obtain a commercialization license from NIH and the WHO.
2. Participate in the development of the IND.
3. Assume responsibility for regulatory affairs.
4. Assume responsibility for preparation and formulation of the drug for pre-Phase III safety studies and Phase III clinical trials.
5. Undertake such additional safety studies as may be required for Phase III clinical trials and for NDA submission.
6. Undertake an orderly sequence of clinical investigations of testosterone bucyclate as a hormonal method of male contraception and for androgen replacement in other methods of male contraception.
7. Assume responsibility for preparation and filing of the NDA.
8. Assume responsibility for commercial manufacture and distribution of the final products.
9. Ensure availability of the final products to the public sector of developing countries in sufficient quantities, at a preferential price, in accordance with WHO's public sector objectives.

Selection criteria for choosing commercial partners will furthermore include, but will not be limited to the following:

1. The proposal must contain a clear statement of capabilities and experience with respect to the tasks to be undertaken. This would include experience in drug development, regulatory affairs and marketing.
2. The proposal must contain a clear and concise outline of the work to be undertaken, a schedule of significant events, an outline of objectives to be accomplished with individual and overall times frames, and details of experimental procedures and techniques to be employed.
3. The proposal must contain the level of financial support which will be supplied for the development of testosterone bucyclate.
4. Agreement to be bound by DHHS and WHO rules and regulations regarding patent rights, the ethical treatment of animals, the involvement of human subjects in clinical investigations and the conduct of randomized clinical trials.
5. Agreement with provisions for equitable distribution of patent rights to any inventions developed under the CRADA and license agreements.

EFFECTIVE DATE: In view of the high priority for developing and commercializing testosterone bucyclate, all proposals must be received no later than September 5, 1995 for priority consideration.

ADDRESSES: CRADA proposals and questions should be addressed to Dr. Gordon Guroff, Deputy Scientific Director, National Institutes of Child Health and Human Development, Building 49, Room 5A64, Bethesda, Maryland 20892 (Telephone: 301/496–4751); with a copy to Director, UNDP/UNFPA/WHO/World Bank Special Programme of Research, Development and Research Training in Human Reproduction, World Health Organization, 20, Avenue Appia, CH–1211 Geneva 27, Switzerland. Responders interested in submitting a CRADA should simultaneously submit a license application concerning the above-mentioned patent rights to NIH and WHO for commercialization of products arising from the CRADA.

Requests for copies of the U.S. patent, license application forms, or questions about the licensing opportunity should be addressed to Ms. Carol Lavrich, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (Telephone: 301/496–7735 ext. 287), with a copy to Office of the Legal Counsel, World Health Organization, 20 Avenue Appia, CH–1211 Geneva 27, Switzerland (Telephone: 00–41–22 7912685). Completed license applications should be submitted to the same addresses.

Pertinent information not yet publicly described can be obtained under a Confidential Disclosure Agreement with the appropriate agency.

Dated: May 24, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–13711 Filed 6–5–95; 8:45 am]

BILLING CODE 4140–01–P

National Institute of Nursing Research; Meetings of the National Advisory Council for Nursing Research and its Subcommittees

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Council for Nursing Research, National Institute of Nursing Research, National Institutes of Health; and its Subcommittees, June 16 and June 20–21, 1995.

The meetings will be open to the public as indicated below. Attendance will be limited to space available.

The meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information may be obtained from the Executive Secretary listed below. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Name of Committee: National Advisory Council for Nursing Research.

Date of Meeting: June 20–21, 1995.

Place: National Institutes of Health, Building 45 (Natcher), Conference Room D, Bethesda, MD.

Open: June 20—1:30 p.m. to 5 p.m.

Agenda: NINR Director's Report, Report on Research Roundtable Meetings and Research Training, NACRN Subcommittee Issues, Report on Reinventing Government.

Closed: June 21—8:30 a.m. to adjournment.

Name of Committee: Planning Subcommittee.

Date of Meeting: June 16, 1995 (Telephone Conference).

Place: National Institutes of Health, Building 31, Conference Room 5B03, Bethesda, MD.

Open: 1 p.m. to 2:30 p.m.

Agenda: Discuss long-term and strategic planning and policy issues.

Executive Secretary: Dr. Ernest Marquez, NINR, NIH, Building 45, Room 3AN.12, Bethesda, MD 20892 (301) 594–5965.

Name of Committee: Nursing Research Subcommittee.

Date of Meeting: June 16, 1995 (Telephone Conference).

Place: National Institutes of Health, Building 31, Conference Room 5B03, Bethesda, MD.

Closed: 10:30 a.m. to 12:30 p.m.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health.)

Dated: May 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13719 Filed 6–5–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Committee Name: National Institute of Dental Research Special Review Committee Meeting.

Dates: June 15–16, 1995.

Time: 8:00 a.m.

Place: Hyatt Regency Hotel, Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Contact Person: Dr. William Gartland, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–38E, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

The meetings will be closed in accordance with the provision set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the extramural research review cycle.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research.)

Dated: May 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13717 Filed 6–5–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: June 16, 1995.

Time: 1 p.m. to 3 p.m.

Place: 6120 Executive Boulevard, Room 400C, Rockville, MD 20852.

Contact Person: Marilyn Semmes, Ph.D., Acting Chief, Scientific Review Branch, DEA, NIDCD, NIH, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301/496–8683.

Purpose/Agenda: To review and evaluate a contract proposal.

The meeting, which will be conducted as a telephone conference call, will be closed in accordance the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review cycle.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders.)

Dated: May 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13718 Filed 6–5–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: June 23, 1995.

Time: 8:30 a.m.

Place: Jefferson Hotel, Washington, DC.

Contact Person: Dr. Bob Weller, Scientific Review Administrator, 6701 Rockledge Drive, Room 5204, Bethesda, MD 20892, (301) 435–1261.

Name of SEP: Clinical Sciences.

Date: June 30, 1995.

Time: 8:30 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Daniel McDonald, Scientific Review Administrator, 6701 Rockledge Drive, Room 4214, Bethesda, MD 20892, (301) 435–1215.

Name of SEP: Clinical Sciences.

Date: July 12, 1995.

Time: 1:00 p.m.

Place: NIH, Rockledge II, Room 4218, Telephone Conference.

Contact Person: Dr. Shirley Hilden, Scientific Review Admin., 6701 Rockledge Drive, Room 4218, Bethesda, MD 20892, (301) 435–1197.

Name of SEP: Biological and Physiological Sciences.

Date: July 14, 1995.

Time: 1:30 p.m.

Place: NIH, Rockledge II, Room 5122, Telephone Conference.

Contact Person: Dr. Michael Lang, Scientific Review Administrator, 6701 Rockledge Drive, Room 5122, Bethesda, MD 20892, (301) 435–1015.

Name of SEP: Behavioral and Neurosciences.
Date: July 24, 1995.
Time: 8:30 a.m.
Place: Jefferson Hotel, Washington, DC.
Contact Person: Dr. Lynwood Jones, Scientific Review Admin., 6701 Rockledge Drive, Room 5204, Bethesda, MD 20892, (301) 435–1261.

Name of SEP: Multidisciplinary Sciences.
Date: July 9–10, 1995.
Time: 6:00 p.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Richard Panniers, Scientific Review Admin., 6701 Rockledge Drive, Room 5106, Bethesda, MD 20892, (301) 435–1166.

Purpose/Agenda: To review Small Business Innovation Research Program grant applications.

Name of SEP: Multidisciplinary Sciences.
Date: July 16–18, 1995.
Time: 6:00 p.m.
Place: Hyatt Regency, Bethesda, MD.
Contact Person: Dr. Richard Panniers, Scientific Review Admin., 6701 Rockledge Drive, Room 5106, Bethesda, MD 20892, (301) 435–1166.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13716 Filed 6–5–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.
Date: June 14, 1995.
Time: 8:00 a.m.
Place: Holiday Inn, Bethesda, MD.
Contact Person: Dr. Gopal Sharma, Scientific Review Admin., 6701 Rockledge Drive, Room 4112, Bethesda, MD 20892, (301) 435–1783.

Name of SEP: Clinical Sciences.
Date: July 7, 1995.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Sooja Kim, Scientific Review Admin., 6701 Rockledge Drive, Room 4120, Bethesda, MD 20892, (301) 435–1191.

Name of SEP: Multidisciplinary Sciences.
Date: July 23–25, 1995.
Time: 6:00 p.m.
Place: Raleigh, NC.
Contact Person: Dr. Nadarajen Vydelingum, Scientific Review Admin., 6701 Rockledge Drive, Room 5210, Bethesda, MD 20892, (301) 435–1176.

Purpose/Agenda: To review Small Business Innovation Research Program grant applications.

Name of SEP: Clinical Sciences.
Date: June 18, 1995.
Time: 1:30 p.m.
Place: NIH, Rockledge II, Room 4112, Telephone Conference.
Contact Person: Dr. Gopal Sharma, Scientific Review Admin., 6701 Rockledge Drive, Room 4112, Bethesda, MD 20892, (301) 435–1783.

Name of SEP: Multidisciplinary Sciences.
Date: July 11–12, 1995.
Time: 8:30 a.m.
Place: Embassy Suites, Washington, DC.
Contact Person: Dr. Nancy Shinowara, Scientific Review Admin., 6701 Rockledge Drive, Room 5216, Bethesda, MD 20892, (301) 435–1173.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306. 93.333. 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 30, 1965.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13715 Filed 6–5–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organizations, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38409–24, August 31, 1982, as amended most recently at 60 FR 10396–37, February 24, 1995) is amended to reflect the current functions assigned to the Maternal and Child Health Bureau (HBM).

Under Section HB–20, Functions, delete in its entirety the functional statements under the *Maternal and Child Health Bureau (HBM)* and substitute the following:

Maternal and Child Health Bureau (HBM)

Office of the Director (HBM1)

Provides national leadership and policy direction for the planning, development, implementation and evaluation of the programs and activities of the Bureau. These programs are designed to improve the health of women of childbearing age, infants, children, adolescents, and their families, of children with special health needs, and of persons with hemophilia. Specifically: (1) Oversees the day-to-day management and operations of the Bureau's Offices and Divisions; (2) coordinates all internal functions of the Bureau and facilitates effective, collaborative relationships with other health and related programs; (3) establishes a program mission, goals, objectives, and policy positions consistent with legislation and broad Administration guidelines; (4) serves as the focal point for managing the Bureau-wide strategic planning operation as it relates to long and short range programmatic goals and objectives for the Bureau; (5) develops and administers internal operating policies and procedures and provides guidance and direction to regional staff, to State Health Officers, and to State Maternal and Child Health and Special Health Needs Coordinators; (6) serves as principal contact point to the agency, the Public Health Service, the Department, OMB, and the White House on matters concerning the health status of America's mothers and children; (7) directs and coordinates the Bureau's program responsibilities, including the Maternal and Child Health block grants to States, contracts, and other funding arrangements in the areas of research, training, genetics, hemophilia, and health service improvement through regionally and nationally significant projects, a program of consultation, technical assistance and training designed to improve health, nutrition, mental and dental health services for children in Head Start programs, a

national program to improve emergency medical services for children, a Healthy Start program designed to strengthen and improve the delivery of health services, a demonstration program in Pediatric AIDS, and a national service demonstration program for the treatment and prevention of AIDS in persons with hemophilia; (8) directs and coordinates the planning, implementation and monitoring of a national maternal and child health data and information system based in State and local jurisdictions; (9) provides direction and serves as the focal point for international matters of concern to the health of mothers, children, and their families; (10) develops a policy statement and an action plan to address the health needs of mothers and children from culturally diverse groups; (11) directs and coordinates Bureau activities in support of Equal Opportunity programs; (12) provides direction for the Bureau's Civil Rights compliance activities; (13) provides information and reports on the Bureau's programs to public, health, education and related professional associations, the Congress, other Federal and PHS agencies, OMB, and the White House; (14) coordinates public communications and public affairs activities for the Bureau; (15) administers the implementation of the Privacy Act and the Freedom of Information Act in the Bureau; and (16) performs the executive secretariat functions and coordinates responses to General Accounting Office audit reports and monitors the implementation of GAO recommendations.

Office of Operations and Management (HBM15)

Plans, directs, coordinates, and evaluates Bureau-wide administrative and management activities; coordinates and monitors program and administrative policy implementation; and maintains close liaison with officials of the Agency, the Office of the Assistant Secretary for Health, and the Office of the Secretary on matters relating to these activities. Specifically: (1) Serves as the Bureau Director's and Bureau's principal source for management and administrative advice and assistance for Headquarters and Regional Office staff operations; (2) provides or serves as liaison for program support services and resources, such as procurement of equipment and supplies, space, property, etc.; (3) provides leadership on intergovernmental activities of the Bureau which requires central administrative direction or intergovernmental activities of the Bureau which require central direction of cross cutting administrative issues affecting program activities; (4) participates in the development of strategic plans, regulatory activities, policy papers, and legislative proposals relating to MCH programs; (5) serves as liaison with the Division of Personnel, HRSA, and coordinates personnel activities for the Bureau; (6) directs, conducts, and coordinates manpower management activities and advises on the allocation of personnel resources including interagency agreements of Federal assignees to MCH programs; (7) manages the performance appraisal and employee performance management systems; (8) develops and carries out a full range of financial management activities, including the annual budget formulation, presentation, and execution functions; (9) determines State allocations of MCH Block Grant funds based on formula and current census data; (10) is responsible for planning, directing, coordinating, and evaluating Bureau-wide grants management activities, including cooperative agreement operations; (11) coordinates the development and processing of Bureau contract procurement activities and maintains liaison with the Division of Grants and Procurement Management, HRSA, and with the Office of the Assistant Secretary for Health; (12) plans, coordinates, and facilitates the Bureau's intra- and interagency agreement activities; (13) provides organization and management analysis, develops policies and procedures for internal operations, and interprets and implements the Administration's management policies, procedures and systems; (14) coordinates the Bureau's program and administrative delegations of authority activities; (15) provides staff services in the operational planning and program analysis; (16) is responsible for paperwork management functions, including the development and maintenance of manual issuances; (17) provides direction regarding new developments in office management activities; and (18) participates in international health activities of the Bureau.

Office of Program Development (HBM13)

Serves as the Bureau focal point for the management of the planning, evaluation, legislation, and legislative implementation activities, including the development, coordination, and dissemination of program objectives, policy positions, reports and strategic plans. Specifically: (1) Advises and assists the Bureau Director and the Bureau in the development, coordination and management of legislative planning documents, responses to Departmental and HRSA initiatives, and information papers to support Bureau and Administration goals; (2) interprets evaluation requirements, develops, coordinates, and manages preparation of the annual evaluation plans and activities, and conducts or contracts for specific evaluation projects related to the performance of MCHB programs; (3) provides staff services, disseminates information, and develops, coordinates, and manages Bureau activities relating to legislation and regulations, and develops and coordinates legislative proposals and regulations; (4) develops, coordinates, and manages Bureau activities related to the development, clearance, and dissemination of **Federal Register** notices, guidelines, final grant reports, and periodic and annual reports to other Federal and non-Federal agencies; (5) participates in the development of budget submissions related to the office's functions; (6) coordinates activities closely and continuously with the Office of Planning, Evaluation and Legislation, HRSA, and other MCHB Divisions and Offices in promoting program objectives and the mission of the Bureau; (7) provides liaison with public, private, professional, and voluntary organizations on programs related to MCHB planning and legislative issues; and (8) participates in international health activities of the Bureau.

Office of State and Community Health (HBM14)

In collaboration with MCHB Divisions and Offices, serves as the organizational focus for the administration of responsibilities related to the MCH Block Grant to States Program, including guidance to States on community health activities, reporting requirements and assurances, coordination of the provision of technical assistance and consultation, oversight of the Regional staff workplan, and development of national information and data systems for management of the Block Grant Program. Specifically: (1) Provides national leadership, direction, coordination, and administrative oversight related to the development and management of the State MCH Block Grant applications and the annual reports; (2) develops, plans, manages, and monitors a Bureau-wide program of technical assistance and consultation in collaboration with other MCHB Divisions and agencies and organizations and based on review of

State Block applications and annual reports, and provides assistance related to the State Block Grant and community health activities; (3) coordinates, facilitates, supports, and monitors the development of national information and data systems for management of the Block Grant; (4) coordinates the analysis of data related to the State Block Grant activities; (5) directly or through grants, contracts, or cooperative agreements, and in concert with the MCHB Divisions, provides for the collection of State MCH health data and assures the utilization of the data in preparation of the Annual Report to the Congress; (6) provides leadership and direction to the ten Regional Office staffs in concert with the MCHB Divisions through the development, implementation, monitoring, and management of the Regional staff/Headquarters workplan guidance; (7) participates in activities related to the Special Projects of Regional and National Significance (SPRANS) program to facilitate the dissemination of effective knowledge related to State MCH functions; (8) manages and monitors interagency agreements of Federal assignees to State MCH programs; (9) maintains liaison with other public, private, professional and voluntary organizations, institutions, and associations dealing with the State MCH Block Grant program; (10) promotes program objectives and the mission of the Bureau; (11) participates in the development of strategic plans, regulatory activities, policy papers, legislative proposals, and budget submissions relating to health services for women of childbearing age, infants, children, adolescents, children with special health care needs and their families; (12) participates in international health activities of the Bureau and coordinates the Pacific Basin activities; and (13) accounts for the administration of funds and other resources for grants, contracts, and cooperative agreements.

Division of Services for Children With Special Health Needs (HBM2)

Provides national leadership in planning, directing, coordinating, monitoring, and evaluating national programs focusing on the promotion of health and prevention of disease among children with special health needs, and their families with special emphasis on the development and implementation of family-centered, comprehensive, care-coordinated, community-based and culturally competent systems of care for such populations. Specifically: (1) Administers a program which supports the development of systems of care and services for children with special health care needs and their families; (2) develops policies and guidelines and promulgates standards for professional services and effective organization and administration of health programs for children with special health care needs, and their families; (3) accounts for the administration of funds and other resources for grants, contracts and programmatic consultation and assistance; (4) coordinates with other MCHB Divisions and Offices in promoting program objectives and the mission of the Bureau; (5) serves as the focal point within the Bureau in implementing programmatic statutory requirements for State programs for children with special health care needs, and their families; (6) provides consultation and technical assistance to State programs for children with special health care needs and to local communities, consistent with a Bureau-wide technical assistance consultation plan, and in concert with other agencies and organizations; (7) provides liaison with public, private, professional and voluntary organizations on programs designed to improve services for children with special health care needs, and their families; (8) develops and implements a national program for those at-risk-for or suffering from genetic diseases, implementing a system of projects related to genetic services, counseling information and referral; (9) develops and implements a national program for persons with hemophilia; (10) develops and implements a national program relating to women, children, and adolescents with HIV infection; (11) develops and implements community-based service and systems of care for children with disabling conditions and chronic illnesses; (12) coordinates within this Agency and with other Federal programs (particularly Title XIX of the Social Security Act) to extend and improve comprehensive, coordinated services and promote integrated State-based systems of care for children with special health care needs, and their families; (13) disseminates information on preventive health services and advances in the care and treatment of children with special health care needs, and their families; (14) participates in the development of strategic plans, regulatory activities, policy papers, legislative proposals, and budget submissions relating to health services for children with special health care needs and their families; (15) provides a focus for international health activities of the Bureau for services for children with special health care needs and their families, and (16) participates in the development of interagency agreements of Federal assignees to State MCH programs.

Division of Maternal, Infant, Child, and Adolescent Health (HBM3)

Provides national leadership in planning, directing, coordinating, monitoring, and evaluating national programs focusing on the promotion of health and prevention of disease among women of childbearing age, infants, children, adolescents, and their families with special emphasis on the development and implementation of family-centered, comprehensive, care coordinated, community based and culturally competent systems of care for such populations. Specifically: (1) Administers a program which supports the development of systems of care and services for women of childbearing age, infants, children, adolescents, and their families; (2) develops policies and guidelines and promulgates standards for professional services and effective organization and administration of health programs for women of childbearing age, infants, children, adolescents, and their families; (3) accounts for the administration of funds and other resources for grants, contracts and programmatic consultation and assistance; (4) coordinates with other MCHB Divisions and Offices in promoting program objectives and the mission of the Bureau; (5) serves as the focal point within the Bureau in implementing programmatic statutory requirements for State programs for women of childbearing age, infants, children, adolescents, and their families; (6) provides consultation and technical assistance to State programs for women of childbearing age, infants, children, adolescents, and their families and to local communities, consistent with a Bureau-wide technical assistance consultation plan, working with other agencies and organizations; (7) provides liaison with public, private, professional and voluntary organizations on programs designed to improve services for women of childbearing age, infants, children, adolescents, and their families; (8) serves as the national focus for reducing unacceptably high rates of infant and maternal mortality and morbidity and associated problems of low birthweight infants; (9) serves as the national focus for improving the health and well-being of adolescents; (10) carries out a national program on school staff development activities; (11) carries out a national program designed to improve the provision of emergency medical services for children; (12) coordinates within this Agency and

with other Federal programs (particularly Title XIX of the Social Security Act) to extend and improve comprehensive, coordinated services and promote integrated State-based systems of care for women of childbearing age, infants, children, adolescents, and their families; (13) disseminates information on preventive health services and advances in the care and treatment of women of childbearing age, infants, children, adolescents, and their families; (14) participates in the development of strategic plans, regulatory activities, policy papers, legislative proposals, and budget submissions relating to health services for women of childbearing age, infants, children, adolescents, and their families; (15) provides a focus for international health activities of the Bureau for services for women of childbearing age, infants, children, adolescents, and their families; and (16) participates in the development of interagency agreement of Federal assignees to State MCH programs.

Division of Science, Education, and Analysis (HBM6)

Provides national leadership in planning, directing, coordinating, monitoring, and evaluating national programs related to research, professional and public education, analysis, and computer science and Information Resources Management (IRM) application activities focusing on the promotion of health and prevention of disease among women of childbearing age, infants, children, adolescents and their families, with special emphasis on the development and implementation of family-centered, comprehensive, care-coordinated, community-based and culturally competent systems of care for such populations. Specifically: (1) Administers a program which supports the development of systems of care and services for mothers, children, and their families; (2) develops policies and guidelines and promulgates standards through research, professional and public education, analysis, and computer science and IRM application activities for the Bureau; (3) accounts for the administration of funds and other resources for grants, contracts and programmatic consultation and assistance; (4) coordinates with other MCHB Divisions and Offices in promoting program objectives and the mission of the Bureau; (5) serves as the focal point within the Bureau, in collaboration with other MCHB Offices and Divisions, in implementing research, professional and public education, quantitative and qualitative analytic activities, and computer science and IRM application requirements for State programs for women of childbearing age, infants, children, adolescents, children with special health care needs, and their families; (6) provides consultation and technical assistance to State programs and local communities, consistent with a Bureau-wide technical assistance consultation plan, working with other agencies and organizations; (7) serves as the focal point in the Bureau for IRM functions and activities, including the planning, directing, and coordination of IRM acquisitions, and development and support of Bureau-wide and Regional Office staff information systems; (8) provides liaison with public, private, professional and voluntary organizations on programs and activities; (9) coordinates within this Agency and with other Federal programs (particularly Title XIX of the Social Security Act) to extend and improve comprehensive, coordinated services and promote integrated State-based systems of care; (10) disseminates information on research, professional and public education, analysis, and computer science and IRM activities to States and localities related to preventive health services, health promotion efforts, and advances in the care and treatment of women of childbearing age, infants, children, adolescents, children with special health care needs, and their families; (11) participates in the development of strategic plans, regulatory activities, policy papers, legislative proposals, and budget submissions; (12) provides a focus for international health activities of the Bureau relating to research, professional and public education, analysis, and computer science and IRM activities for the Bureau; and (13) participates in the development of interagency agreements of Federal assignees to State MCH programs.

Division of Healthy Start (HBM5)

Provides national leadership in planning, directing, coordinating, monitoring and evaluating the implementation of the Presidential Healthy Start Initiative to strengthen and improve the delivery of health services in the 15 Healthy Start communities. Specifically: (1) Administers a national Healthy Start program which collects and analyzes information regarding the Healthy Start projects; (2) provides program policy direction, technical assistance, and professional consultation on Healthy Start activities; (3) accounts for the administration of funds and other resources for grants, contracts and programmatic consultation and assistance; (4) coordinates with other MCHB Divisions and Offices in promoting program objectives and the mission of the Bureau; (5) services as the focal point within the Bureau in implementing programmatic requirements for a national Healthy Start program; (6) coordinates Healthy Start activities within this Agency, particularly with the PHS Interagency Committee on Infant Mortality and with the Office of Communications pertaining to its national public information and public education campaign, and with other Federal programs, such as the Health Care Financing Administration, and the Administration for Children and Families; (7) provides liaison with public, private, professional and voluntary organizations on programs designed to improve delivery of health care and social services for Healthy Start projects; (8) disseminates information on Healthy Start activities; (9) participates in the development of strategic plans, regulatory activities, policy papers, legislative proposals, and budget submissions relating to Healthy Start activities; and (10) provides a focus for international health activities of the Bureau of Healthy Start activities.

Section HB–49, Delegations of Authority

All delegations and redelegations of authorities to officers and employees of the Maternal and Child Health Bureau 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 reorganization.

This reorganization is effective February 28, 1995.

Dated: May 24, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–13753 Filed 6–5–95; 8:45 am]

BILLING CODE 4165–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. FR–3908–D–01]

Redelegation of Authority

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Assistant Secretary for Housing—Federal Housing Commissioner redelegates to certain HUD officials in local field offices the power and authority to order Limited Denials of Participation (LDPs). A Limited Denial of Participation is a sanction which may be imposed against contractors and participants in HUD programs under certain circumstances. The Assistant Secretary for Housing redelegates authority, as specified, to the Office of Housing Director in each category AA (Super A) local field office; to the Single Family Housing Division Director for each field office; and to the Multifamily Housing Division Director for each field office.

EFFECTIVE DATE: May 30, 1995.

FOR FURTHER INFORMATION CONTACT: Robert G. Hunt, Department of Housing and Urban Development, 451 7th Street, S.W., Room 9116, Washington, D.C. 20410, (202) 708–0826. A telecommunications device for the hearing-impaired is available at 202–708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The HUD regulations at 24 CFR 24.700 provide that officials designated by the Secretary, including the Assistant Secretary for Housing—Federal Housing Commissioner, are authorized to order Limited Denials of Participation (LDPs) and to redelegate this authority. The Assistant Secretary for Housing has redelegated the authority to order LDPs to the Department's Deputy Assistant Secretary for Single Family Housing and Deputy Assistant Secretary for Multifamily Housing; that redelegation, at 59 FR 34857, published July 7, 1994, remains in effect. In addition, the Assistant Secretary for Housing has redelegated to field officials the authority to order LDPs pertaining to certain multifamily housing programs; that redelegation, at 59 FR 62739, published December 6, 1994, also remains in effect.

In the present redelegation, the Assistant Secretary for Housing redelegates to each Office of Housing Director the authority to order Limited Denials of Participation relating to programs under the jurisdiction of the Assistant Secretary for Housing—Federal Housing Commissioner. The Assistant Secretary for Housing also redelegates, within the limits specified, authority to order LDPs relating to single family housing programs to the Single Family Housing Division Director for each field office; and the authority to order LDPs relating to multifamily housing programs (including hospital mortgage insurance programs) to the Multifamily Division Director for each field office.

Accordingly, the Assistant Secretary for Housing—Federal Housing Commissioner redelegates authority as follows:

Section A. Authority Redelegated

The power and authority to order Limited Denials of Participation pursuant to 24 CFR 24.700 are redelegated to HUD officials in the field offices as follows:

1. To the Office of Housing Director in each category AA local field office (also known as a ''Super A'' or ''Double A'' office), the authority to order LDPs whenever the program under which the cause for LDP arose is a program under the jurisdiction of the Assistant Secretary for Housing—Federal Housing Commissioner.

2. To the Single Family Housing Division Director for each local field office, the authority to order LDPs whenever the program under which the cause arose is a single family housing program under the jurisdiction of such Director.

3. To the Multifamily Housing Division Director for each local field office, the authority to order LDPs whenever the program under which the cause arose is a multifamily housing program (including but not limited to a hospital mortgage insurance program) under the jurisdiction of such Director.

4. The scope of any LDP issued pursuant to this redelegation of authority shall be limited in accordance with the provisions of 24 CFR 24.710.

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

Dated: May 30, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 95–13721 Filed 6–5–95; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of 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.*):

PRT–802946

Applicant: Dr. Byron J. Freeman, University of Georgia, Athens, Georgia.

Collection and retainment of *Percina antesella, Percina aurolineata, Percina jenkinsi, Etheostoma etowahae,* and *Etheostoma scotti* for the purposes of the enhancement of propagation and survival of the species.

PRT–802948

Applicant: Mr. Hugh L. Porter, Morehead City, North Carolina.

Collection of the dwarf wedge mussel, *Alasmidonta heterdon,* and Carolina heelsplitter, *Lasmigona decorata,* for purposes of enhancement of survival.

Written data or comments on any of these applications should be submitted to: Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received 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, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Permit Coordinator), telephone: 404/679–7110 or fax: 404/679–7280.

Dated: May 30, 1995.

Noreen K. Clough,

Regional Director.

[FR Doc. 95–13781 Filed 6–5–95; 8:45 am]

BILLING CODE 4310–55–P

U.S. Geological Survey

Mineral Exploration Company Consortium; Contribution Acceptance

SUMMARY: Notice is hereby given that the U.S. Geological Survey has accepted from a consortium of twelve major mineral exploration companies a contribution of $9,632 to support studies to determine the effectiveness of electro-geochemical sampling with the newly developed NEOCHIM electrode for locating buried gold deposits in northern Nevada.

DATES: This notice is effective June 6, 1995.

ADDRESSES: Information on the work is available to the public upon request at the following location: U.S. Geological Survey, Branch of Geochemistry, Denver Federal Center, MS–973, P.O. Box 25046, Denver, Colorado 80225–0046.

FOR FURTHER INFORMATION CONTACT: Reinhard Leinz of the U.S. Geological Survey, Branch of Geochemistry, at the

address given above; telephone 303/236–24419 or Donald Hoover, U.S. Geological Survey, Branch of Geophysics; telephone 303/236–1326.

P. Patrick Leahy,

Acting Chief Geologist.

[FR Doc. 95–13724 Filed 6–5–95; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

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 May 27, 1995. Pursuant to section 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, D.C. 20013–7127. Written comments should be submitted by June 21, 1995.

Antoinette J. Lee,

Acting Chief of Registration, National Register.

GEORGIA

Taliaferro County

Stephens, A. H., Memorial State Park, GA 22, N side, Crawfordville vicinity, 95000764

SOUTH DAKOTA

Brown County

Karl, Art, Farm, (Rural Resources of Brown County MPS), Jct. of SD 21 and SD 14, SE corner, West Gem Township, Aberdeen vicinity, 95000777,

Modern Woodmen of America Hall, (Rural Resources of Brown County MPS),Jct. of Main and Second Sts., NW corner, Mansfield, 95000775,

Plana School, (Rural Resources of Brown County MPS), 7 mi. N of SD 12 and 1 mi. E of SD 16, Plana vicinity, 95000773

Ryman, Melchior, Farm, (Rural Resources of Brown County MPS), 2 mi. W of SD 281, 3 mi. N of Mansfield, Mansfield vicinity, 95000771

Welsh Presbyterian Church, (Rural Resources of Brown County MPS), 7 mi. N of SD 12 and 1 mi. E of SD 16,, Plana, 95000776

Custer County

Buffalo Gap Historic Commercial District, (Rural Resources of Eastern Custer County MPS), Roughly, area surrounding Main, Second and Walnut Sts., Buffalo Gap, 95000774

Fairburn Historic Commercial District, (Rural Resources of Eastern Custer County MPS), Roughly, area surrounding Main St. between First and Second Sts., Fairburn, 95000772

Streeter, Norman B., Homestead, (Rural Resources of Eastern Custer County MPS), Streeter Ranch, near Beaver Creek, Buffalo Gap vicinity, 95000765

Pennington County

Dean Motor Company, 329 Main St., Rapid City, 95000768

Motor Service Company, 402 St. Joseph St., Rapid City, 95000766

Rapid City Laundry, 312 Main St., Rapid City, 95000767

Rapid City West Boulevard Historic District (Boundary Increase), Roughly, area surrounding 9th, 10th and 11th Sts. from Kansas City St. to St. Andrews St., Rapid City, 95000770

TEXAS

Brazoria County

GENERAL C.B. COMSTOCK (Dredge), Address Restricted, Surfside vicinity, 95000762

WEST VIRGINIA

Taylor County

Tygart Dam, On the Tygart River, 2.25 mi. S of Grafton, Grafton vicinity, 95000763

WISCONSIN

Grant County

Bode—Wad—Mi Rockshelter, (Wisconsin Indian Rock Art Sites MPS), Address Restricted, Castle Rock vicinity, 95000760

Iowa County

Rainbow Cave, (Wisconsin Indian Rock Art Sites MPS), Address Restricted, Barneveld vicinity, 95000761

[FR Doc. 95–13821 Filed 6–5–95; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32549]

Burlington Northern, Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka, and Santa Fe Railway Company

Burlington Northern, Inc., and its subsidiary, Burlington Northern Railroad Company, and Santa Fe Pacific Corporation, and its subsidiary, The Atchison, Topeka, and Santa Fe Railway Company, have applied to the Interstate Commerce Commission (''Commission'') for authority to merge and consolidate their companies in Finance Docket No. 32549. The proposed merger also includes eleven rail construction projects in the states of Texas, Oklahoma, and Illinois.

The Commission's Section of Environmental Analysis (SEA) has prepared an Environmental Assessment (EA). Based on the information provided and the environmental analysis conducted to date, this EA concludes that this proposal should not significantly affect the quality of the human environment if the recommended mitigation measures set forth in the EA are implemented. Accordingly, SEA preliminarily recommends that the Commission impose on any decision approving the proposed merger and consolidation conditions requiring Burlington Northern/Santa Fe Railway Company to implement the mitigation contained in the EA. The EA will be served on all parties of record as well as all appropriate Federal, state and local officials and will be made available to the public upon request. SEA will consider all comments received in response to the EA in making its final environmental recommendations to the Commission. Because of the expedited schedule in this proceeding, the comment period is 20 days. The Commission will then consider SEA's final recommendations and the environmental record in making its final decision in this proceeding.

Comments (an original and 10 copies) and any questions regarding this Environmental Assessment should be filed with the Commission's Section of Environmental Analysis, Office of Economic and Environmental Analysis, Room 3219, Interstate Commerce Commission, Washington, D.C. 20423, to the attention of Phillis Johnson-Ball (202) 927–6213. Requests for copies of the EA should also be directed to Ms. Johnson-Ball.

Date made available to the public: June 26, 1995.

Comment due date: June 26, 1995.

By the Commission, Elaine K. Kaiser, Chief, Section of Environmental Analysis, Office of Economic and Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 95–13929 Filed 6–5–95; 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) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) 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 a Currently Approved Collection

(1) Application for Registration, Application for Registration Renewal.

(2) DEA Form 225, DEA Form 225a. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Business or other for-profit. Others: Individual or households, Not-for-profit institutions, State, local or Tribal Government. The Controlled Substance Act requires all firms and individuals who manufacture, distribute, import, export, conduct research, or dispense controlled substances to register with the Drug Enforcement Administration. Registration provides a closed system of distribution to control the flow of controlled substances through the distribution chain.

(4) 10,000 annual respondents at .5 hours per response.

(5) 5,000 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: June 1, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–13751 Filed 6–5–95; 8:45 am]

BILLING CODE 4410–09–M

Notice of Lodging of Amendment To Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed amendment to the consent decree in *United States* v. *GATX Corporation and General American Transportation Corporation*, Civil Action No. 94–312E, was lodged on June 1, 1995 with the United States District Court for the Western District of Pennsylvania. The original Consent Decree requires the defendants to excavate and incinerate contaminated soils and sludges at the Site at the Saegertown Industrial Area Site in Saegertown, Crawford County, Pennsylvania. The Consent Decree also requires the defendants to pay a portion of the United States past and future costs associated with the Site. Further, the consent decree requires the defendants to reimburse the United States for damages caused to the natural resources within the trusteeship of the U.S. Fish and Wildlife Service.

The proposed amendment to the Consent Decree modifies the clean up that the defendants must perform. Instead of on-site incineration, the proposed amendment would require transportation of the sludges and soils to an off-site cement kiln, where the materials will be used as an alternative fuel.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *GATX Corporation and General American Transportation Corporation*, DOJ Ref. #90–11–2–870.

The proposed consent decree may be examined at the office of the United States Attorney, 633 Post Office & Courthouse, 7th & Grant Streets, Pittsburgh, PA 15219; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $44.55 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelbert,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–13804 Filed 6–5–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

May 31, 1995.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) of 1980, as amended (Pub. L. 96–511). Copies may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley (202) 219–5095. Comments and questions about the ICRs listed below should be directed to Ms. O'Malley, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10325, Washington, DC 20503 (202) 395–7316.

Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Type of Review: Extension.

Agency: Occupational Safety and Health Administration.

Title: Occupational Exposure to Cotton Dust.

OMB Number: 1218–0061.

Frequency: On occasion.

Affected Public: Businesses or other for-profit.
Number of Respondents: 597
Estimated Time Per Respondent: 350 hours.
Total Burden Hours: 209,265.
Description: The Cotton Dust Standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to Cotton Dust. The Standard requires that employers must establish and maintain a training and compliance program, including exposure monitoring and medical surveillance records. These records are used by employees, physicians, employers and the Occupational Safety and Health Administration (OSHA) to determine the effectiveness of the employers' compliance efforts. Also, the standard requires that OSHA have access to various records to ensure that employers are complying with the disclosure provisions of the Cotton Dust Standard.

Type of Review: Extension.
Agency: Occupational Safety and Health Administration.
Title: Occupational Exposure to Acrylonitrile.
Agency Number: 1218–0126.
Frequency: On occasion.
Affected Public: Businesses or other for-profit.
Number of Respondents: 26.
Estimated Time Per Respondent: 348 hours.
Total Burden Hours: 9,052.
Description: The Acrylonitrile Standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to Acrylonitrile. The Standard requires that employers must establish and maintain a training and compliance program, including exposure monitoring and medical surveillance records. These records are used by employees, physicians, employers and the Occupational Safety and Health Administration (OSHA) to determine the effectiveness of the employers' compliance efforts. Also, the standard requires that OSHA have access to various records to ensure that employers are complying with the disclosure provisions of the Acrylonitrile Standard.

Type of Review: Extension.
Agency: Pension and Welfare Benefits Administration.
Title: Prohibited Transaction Class Exemption 76–1.
OMB Number: 1210–0058.
Agency Number: 76–1.
Frequency: On occasion.
Affected Public: Businesses or other for-profit; Not-for-profit institutions.
Number of Respondents: 3,000.
Estimated Time Per Respondent: 15 minutes.
Total Burden Hours: 750.
Description: The paperwork requirements included in this Prohibited Transaction Class Exemption 76–1 are maintenance of written records documenting the agreement between a plan and a participating employer concerning payment of delinquent plan contributions; the agreement between a plan and participating employer regarding the terms under which a plan makes a loan to the employer for construction; and, the agreement concerning the leasing of office space, provisions of administrative services or sale/leasing of goods by a plan to an employer.

Type of Review: Extension.
Agency: Employment Standards Administration.
Title: Employment Information Forms English and Spanish.
OMB Number: 1215–0001.
Agency Number: WH–3 and WH–3 Sp.
Frequency: Annually.
Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.
Number of Respondents: 30,000.
Estimated Time Per Respondent: 20 minutes.
Total Burden Hours: 10,000.
Description: The WH–3 form, English and Spanish version, is used to obtain information from individuals about alleged violations of various laws enforced by the Wage and Hour Division. It is also used as a screening device to determine whether the Division has jurisdiction in handling the alleged violations.

Type of Review: New.
Agency: Bureau of Labor Statistics.
Title: National Longitudinal Surveys of Youth Profile's Pretest.
Affected Public: Individuals or households.

15–23 year olds			12–14 year olds		
Instrument	No. of respondents	Minutes per response	No. of respondents	Minutes per response	Burden per instrument
CAT–ASVAB	2,250	150	300	50	352,500.
Interest Finder	2,250	50	300	30	121,500.
On Line Demographic Items	2,250	5	[1]250	5	12,500.
On Line Evaluation	2,250	15	[1]250	15	37,500.
Total Burden	2,250	220	300	100	524,000 mins. or 8,733 hours.

[1] The 50 participants in Study II will not complete the demographics and evaluation items.

The information provided by this pretest will be used by the Department of Labor and other government agencies to evaluate and report on the planning, operation, and administration of the computer-delivery of the Armed Forces Vocational Aptitude Battery (ASVB) and Interest Finder (IF) for the designated age populations in preparation for the National Longitudinal Survey of Youth 1996 study.

Type of Review: Reinstatement.
Agency: Bureau of Labor Statistics.
Title: August 1995 Veterans Supplement to Current Population Survey (CPS).
OMB Number: 1220–0102.
Frequency: On occasion.
Affected Public: Individuals or households.
Number of Respondents: 57,000.
Estimated Time Per Respondents: 1 minute.
Total Burden Hours: 969.

This supplement data will provide estimates of disabled and Vietnam-theater veterans in the labor force, recently separated veterans, the number of veterans who feel their disability affects labor force participation, and

information about veterans who use the programs that are available to them. Data are necessary to evaluate veterans' programs.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 95–13750 Filed 6–5–95; 8:45 am]

BILLING CODE 4510–24–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–034]

Intent To Grant a Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to Grant an Exclusive Patent License.

SUMMARY: NASA intends to grant Total Quality Measures, Inc., a Corporation of the State of New Hampshire, having its headquarters in Merrimack, New Hampshire, an exclusive, royalty-bearing revocable license to practice U.S. Patent No. 5,333,931, entitled Portable Seat Lift. U.S. Patent No. 5,333,931 is for a portable seat lift that can help individuals either (1) lower themselves to a sitting position or (2) raise themselves to a standing position. The portable seat lift consists of a seat mounted on a base with two levers, which are powered by a drive unit. The patent license will be for a limited number of years and will contain appropriate terms and conditions in accordance with the Department of Commerce patent licensing regulations, 37 CFR 404.1 *et seq.* NASA will grant the patent license in accordance with these licensing regulations unless the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation, within 60 days of the date of this notice. The Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the license.

DATES: Written objections to this proposal license grant must be received by August 7, 1995.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, NASA, Director of Patent Licensing at (202) 358–2041.

Dated: May 21, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–13767 Filed 6–5–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* June 29, 1995.
Time: 8:30 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review proposals submitted to the May 1, 1995 deadline in the Office of Challenge Grants Program, for projects beginning after December 1, 1995.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 95–13782 Filed 6–5–95; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–458]

Entergy Operations, Inc. 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–47, issued to Entergy Operations, Inc. (the licensee), for operation of the River Bend Station, Unit 1 (RBS), located in West Feliciana Parish, Louisiana.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment will replace the existing Technical Specifications (TSs) in their entirety with the Improved Technical Specifications (ITSs).

The proposed action is in accordance with the licensee's amendment request dated November 30, 1993, as supplemented January 18, 1995.

The Need for the Proposed Action

It has been recognized that nuclear safety in all plants would benefit from improvement and standardization of the TSs. The ''NRC Interim Policy Statement on Technical Specification Improvements for Nuclear Power Reactors,'' (**Federal Register** 52 FR 3788, February 6, 1987) and later the Final Policy Statement, formalized this need. To facilitate the development of individual ITSs, each reactor vendor owners group (OG) and the NRC staff developed Standard TSs. For General Electric (GE) plants, the Standard TSs (STS) are NUREG–1433 for BWR/4 reactor facilities and NUREG–1434 for BWR/6 facilities. NUREG–1434 formed the basis of the RBS ITSs.

Description of the Proposed Change

The proposed revision to the TSs is based on NUREG–1434 and on guidance provided in the Policy Statement. Its objective is to completely rewrite, reformat, and streamline the existing TSs. Emphasis is placed on human factors principles to improve clarity and understanding. The Bases section has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1434, portions of the existing TSs were also used as the basis for the ITSs. Plant-specific issues (unique design features, requirements, and operating practices) were discussed at length with the licensee, and generic matters with GE and other OGs.

The proposed changes from the existing TSs can be grouped into four general categories, as follows:

1. Non-technical (administrative) changes, which were intended to make the ITSs easier to use for plant operations personnel. They are purely editorial in nature or involve the movement or reformat of requirements without affecting technical content. Every section of the RBS TSs has undergone these types of changes. In order to ensure consistency, the NRC staff and the licensee have used NUREG–1434 as guidance to reformat and make other administrative changes.

2. Relocation of the requirements, which includes items that were in the existing RBS TSs, but did not meet the criteria set forth in the Policy Statement for inclusion in the TSs. In general, the proposed relocation of items in the RBS TSs to the Updated Safety Analysis Report (USAR), appropriate plant-specific programs, procedures and ITS Bases follows the guidance of the BWR/6 STS, NUREG–1434. Once these items have been relocated by removing them from the TSs to other licensee-controlled documents, the licensee may revise them under the provisions of 10 CFR 50.59 or other NRC staff-approved control mechanisms which provide appropriate procedural means to control changes.

3. More restrictive requirements, which consist of proposed RBS ITS items that are either more conservative than corresponding requirements in the existing RBS TSs, or are additional restrictions which are not in the existing RBS TSs, but are contained in NUREG–1434. Examples of more restrictive requirements include: placing a Limiting Condition of Operation (LCO) on plant equipment, which is not required by the present TSs to be operable; more restrictive requirements to restore inoperable equipment; and more restrictive surveillance requirements.

4. Less restrictive requirements, which are relaxations of corresponding requirements in the existing RBS TSs which provided little or no safety benefit and placed unnecessary burden on the licensee. These relaxations were the result of generic NRC action or other analyses. They have been justified on a case-by-case basis for RBS as described in the safety evaluation to be issued with the license amendment, which will be noticed in the **Federal Register.**

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TSs. Changes which are administrative in nature have been found to have no effect on technical content of the TSs, and are acceptable. The increased clarity and understanding these changes bring to the TSs are expected to improve the operator's control of the plant in normal and accident conditions.

Relocation of requirements to other licensee-controlled documents does not change the requirements themselves. Future changes to these requirements may be made by the licensee under 10 CFR 50.59 or other NRC-approved control mechanisms, which assures continued maintenance of adequate requirements. All such relocations have been found to be in conformance with the guidelines of NUREG–1434 and the Policy Statement, and, therefore, to be acceptable.

Changes involving more restrictive requirements have been found to be acceptable.

Changes involving less restrictive requirements have been reviewed individually. When requirements have been shown to provide little or no safety benefit or to place unnecessary burden on the licensee, their removal from the TSs was justified. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of a generic NRC action, or of agreements reached during discussions with the OG and found to be acceptable for RBS. Generic relaxations contained in NUREG–1434 have also been reviewed by the NRC staff and have been found to be acceptable.

In summary, the proposed revision to the TSs was found to provide control of plant operations such that reasonable assurance will be provided that the health and safety of the public will be adequately protected.

These TS changes will not increase the probability or consequences of accidents, no changes are being made in the types of any effluent 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 impacts associated with the proposed TS amendment.

With regard to potential non-radiological impacts, the proposed amendment involves features located entirely within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendment, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed amendment, the staff considered denial of the amendment. Denial of the amendment would result in no change in current environmental impacts. The environmental impacts of the proposed amendment and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the River Bend Station, Unit 1.

Agencies and Persons Consulted

In accordance with its stated policy, on May 16, 1995, the staff consulted with the Louisiana State official, Dr. Stan Shaw, Assistant Administrator of the Louisiana Radiation Protection Division, Department of Environmental Quality 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 for the proposed amendment.

For further details with respect to this proposed action, see the licensee's letter dated November 30, 1993, as supplemented January 18, 1995, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Dated at Rockville, Maryland this 30th day of May 1995.

For the Nuclear Regulatory Commission.

David L. Wigginton,

Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13757 Filed 6–5–95; 8:45 am]

BILLING CODE 7590–01–M

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations; Biweekly Notice

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 15, 1995, through May 25, 1995. The last biweekly notice was published on Tuesday, May 23, 1995 (60 FR 27334).

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. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By July 7, 1995, 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 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, 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, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: March 24, 1995.

Description of amendment requests: The proposed amendments would make numerous changes to Technical Specification (TS) 3/4.8.1, ''A.C. Sources,'' and the associated TS Bases, for Palo Verde Units 1, 2, and 3. The proposed amendments would implement recommended changes from NUREG–1432, ''Standard Technical Specifications: Combustion Engineering Plants''; Generic Letter (GL) 94–01, ''Removal of Accelerated Testing and Special Reporting Requirements for Emergency Diesel Generators''; and GL 93–05, ''Line-Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operation.'' The proposed changes are intended to increase emergency diesel generator (EDG) reliability by reducing the stresses on the EDGs from unnecessary testing. Additional changes have also been proposed to TS 3/4.8.1 to further enhance EDG reliability, to achieve consistency with NUREG–1432, Combustion Engineering Standard TS, and to improve the TS presentation.

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 to TS 3/4.8.1 and the associated Bases affect the required actions in response to inoperable offsite and onsite AC sources, surveillance requirements for the EDG, and reporting requirements for EDG failures. The majority of the proposed changes are based on the recommendations of NUREG 1432, GL 94–01, and GL 93–05. These proposed changes have been extensively reviewed by the NRC during the preparation of these documents, and by APS during the development of this request for TS amendment. The proposed changes are expected to result in improvements in EDG performance and reduce EDG aging due to excessive testing. The proposed changes will permit the elimination of the unnecessary mechanical stress and wear on the EDGs while ensuring that the EDGs will perform their design function. The elimination of mechanical stress and wear will improve reliability and availability of the EDGs which will have a positive effect on the ability of the EDGs to perform their design function. The proposed changes to [do] not affect the availability or the testing requirements of the offsite circuits.

Because the proposed changes do not affect the design or performance of the EDGs or their ability to perform their design function, the changes are expected to result in a decrease in the probability or consequences of an accident previously evaluated. The proposed changes will increase EDG reliability, thereby increasing overall plant safety. Because these changes do not affect the probability of accident precursors (EDGs do not initiate any accidents), the proposed type license amendment does not involve a significant increase in the probability or consequence 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 to TS 3/4.8.1 and the associated Bases do not introduce any new modes of plant operation or new accident precursors, involve any physical alterations to plant configurations, or make any changes to system setpoints which could initiate a new or different kind of accident. The proposed changes do not affect the design or performance characteristics of any EDG or its ability to perform its design function. No new failure modes have been defined nor new system interactions introduced for any plant system or component, nor has any new limiting failure been identified as a result of the proposed changes. The proposed changes will eliminate unnecessary EDG testing, increasing EDG reliability and availability, and thereby having an overall positive affect on plant safety. Accidents concerning loss of offsite power and a single failure (e.g., loss of an EDG) have previously been evaluated. 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 TS requires during power operation. Therefore, the proposed license amendment 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.

Under the proposed changes to TS 3/4.8.1 and the associated Bases, the EDGs will remain capable of performing their safety function. The changes do not affect the design or performance of any EDG, but will increase EDG reliability and availability by reducing the stresses and the effects of aging on the EDG by eliminating unnecessary testing. This will result in an overall increase in plant safety. Since the ability of the EDGs to perform their safety function will not be degraded, the proposed license amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that

review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for 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: William H. Bateman.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: March 31, 1995.

Description of amendment requests: The proposed amendment would clarify the shutdown margin definition, change the shutdown margin applicability and surveillance requirements to comply with safety analysis assumptions for subcritical inadvertent control element assembly withdrawal (UFSAR Section 15.4), and expand the applicability for core protection calculator (CPC) operability. In addition, the proposed amendment would add a reference to the Core Operating Limits Report (COLR) for the MODE 6 refueling boron concentration limit. The proposed amendment would also change the power calibration requirements for the linear power level, the CPC delta T power, and CPC nuclear power signals to allow more conservative settings than presently required.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis about 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.

These changes are being made to ensure compliance with the safety analysis assumptions for subcritical inadvertent CEA [control element assembly] withdrawal. These changes also ensure that the boron concentration in the reactor is sufficient to prevent criticality if an inadvertent withdrawal of a shutdown CEA bank were to occur with all other CEAs inserted. Therefore, the consequences of the inadvertent CEA withdrawal is no greater than those of the event previously evaluated. This change also has no affect on the probability of an accident since it is not introducing or changing any accident initiating mechanism.

The analysis of uncontrolled CEA withdrawal from MODES 2 and 3 subcritical with four RCPs [reactor coolant pumps] running is presented in UFSAR Section 15.4.1 as an anticipated operational occurrence. The consequences of this event are that the acceptable fuel design limits are not exceeded (General Design Criterion 25 as specified in the NRC Standard Review Plan). The proposed change to TS requiring that either the CPCs or Logarithmic Power Level—High trip (trip setpoint lowered to 10^{-4}% of Rated Thermal Power) are Operable in MODES 3, 4, and 5, ensures that an inadvertent CEA withdrawal with less than four pumps operating, results in consequences no greater than those of the previously evaluated uncontrolled CEA withdrawal event.

The revised TS will also ensure that the reactivity worth of any full-length CEAs not capable of being inserted is accounted for in the determination of the shutdown margin. This change will ensure the shutdown margin will continue to be within safety analysis assumptions for previously evaluated accidents.

The proposed changes to TS, replacing the MODE 6 boron concentration specification with the requirement to maintain the boron concentration within the limit specified in the COLR, will not affect the probability or consequences of an accident, because it is not changing the MODE 6 reactivity requirement of K_{eff} less than or equal to 0.95, but provides a specific boron concentration value in the COLR to ensure the MODE 6 required K_{eff} value of less than or equal to 0.95 is met.

The proposed changes will reduce the amount of non-conservatism presently allowed for the linear power level, the CPC delta T power and CPC nuclear power signals. Changing the tolerance range from plus or minus 2% to between −0.5% and 10% between 15% and 80% RATED THERMAL POWER, except during initial post refueling power ascension and restricting recalibration, will allow more conservative settings than currently required.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously analyzed.

The changes revising the mode applicabilities are being made to comply with safety analysis assumptions for subcritical CEA withdrawal. The SR [surveillance requirement] ensures that the shutdown margin is within the safety analysis assumptions when the reactor trip breakers are open and any full-length CEA is not fully inserted. No new or different kind of accident will be initiated since this change will ensure that the required shutdown margin is maintained when the reactor trip breakers are closed.

The proposed change to TS, requiring either the CPCs or Logarithmic Power Level—High trip to be operable, will provide protection from inadvertent CEA withdrawal when less than four RCPs are operating. No new or different kind of accident will be initiated by this change, since this change incorporates TS limitations to ensure protection for an existing accident scenario.

The revised TS shutdown margin definition ensures that the reactivity worth of any full-length CEAs not capable of being inserted is accounted for in the determination of the shutdown margin. This ensures the shutdown margin will continue to be within safety analysis assumptions. Maintaining the shutdown margin within the safety analyses assumption will not create any new or different kind of accident.

The proposed changes to TS power calibration tolerance limits are conservative relative to the current TS requirements and therefore will not create any new or different kind of accident.

The proposed change to TSs replacing the MODE 6 boron concentration specification with the requirement to maintain the boron concentration within the limit specified in the COLR does not create the possibility of a new or different kind of accident from any accident previously analyzed. The proposed change is not changing the MODE 6 reactivity requirements of less than or equal to 0.95 while providing a specific boron concentration value in the COLR to ensure the MODE 6 required K_{eff} value of less than or equal to 0.95.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed change to TS adds an additional requirement for the CPCs or Logarithmic Power Level—High trip to be operable in MODES 3, 4, and 5. This change maintains the margin of safety in the safety analysis by providing a TS that will ensure appropriate protection is provided in the event of an inadvertent CEA withdrawal with less than four RCPs operating.

The proposed changes to TS (Boration Control, Shutdown Margin), revising the mode applicabilities, maintains the margin of safety provided in the TS by ensuring that the safety analysis assumptions for subcritical CEA withdrawal are met. The new SR does not reduce the margin of safety since the shutdown margin assumed in the safety analysis will be maintained by this TS.

The revised TS shutdown margin definition ensures that the reactivity worth of any full length CEAs not capable of being inserted is accounted for in the determination of shutdown margin. This ensures shutdown margin will continue to be within safety analysis assumptions. This change maintains the margin of safety that is currently provided by TS.

The proposed changes to TS, reducing the amount of non-conservatism in the safety system power indications, maintains the margin of safety for design basis events which take credit for the linear power level, the CPC delta T power, and CPC nuclear power signals.

The proposed change to TS moves the specific MODE 6 boron concentration value to COLR. The proposed change does not change the MODE 6 reactivity requirement of K_{eff} of less than or equal to 0.95, but provides a specific boron concentration value in the COLR to ensure the MODE 6 required K_{eff} value of less than or equal to 0.95 is met. Therefore, the margin of safety is not affected by the proposed change.

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: William H. Bateman.

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 amendment request: December 8, 1992, as supplemented on September 10, 1993, and May 17, 1995.

Description of amendment request: As a result of findings by a Diagnostic Evaluation Team inspection performed by the NRC staff at the Dresden Nuclear Power Station in 1987, Commonwealth Edison Company (ComEd, the licensee) made a decision that both Dresden Nuclear Power Station and sister site Quad Cities Nuclear Power Station, needed attention focused on the existing custom Technical Specifications (TS) used.

The licensee made the decision to initiate a Technical Specification Upgrade Program (TSUP) for both Dresden and Quad Cities. The licensee evaluated the current TS for both Dresden and Quad Cities against the Standard Technical Specifications (STS) contained in NUREG–0123, ''Standard Technical Specifications General Electric Plants BWR/4.'' The licensee's evaluation identified numerous potential improvements such as clarifying requirements, changing TS to make them more understandable and to eliminate interpretation, and deleting requirements that are no longer considered current with industry practice. As a result of the evaluation, ComEd has elected to upgrade both Dresden and Quad Cities TS to the STS contained in NUREG–0123.

The TSUP for Dresden and Quad Cities is not a complete adaptation of the STS. The TSUP focuses on (1) Integrating additional information such as equipment operability requirements during shutdown conditions, (2) clarifying requirements such as limiting conditions for operations and action statements utilizing STS terminology, (3) deleting superseded requirements and modifications to the TS based on the licensee's responses to Generic Letters (GLs), and (4) relocating specific items to more appropriate TS locations.

The December 8, 1992, application, as supplemented on September 10, 1993, and May 17, 1995, proposed to upgrade only Section 3/4.1 (Reactor Protection System) of the Dresden and Quad Cities TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Implementation of these changes will provide increased reliability of equipment assumed to operate in the current safety analysis, or provide continued assurance that specified parameters remain within their acceptance limits, and as such, will not significantly increase the probability or consequences of a previously evaluated accident.

Some of the proposed changes to the current Technical Specifications (CTS) represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. The proposed amendment for Dresden and Quad Cities Station's Technical Specification Section 3/4.1 are based on BWR–STS (NUREG–0123, Revision 4 ''Standard Technical Specifications General Electric Plants BWR/4) guidance or NRC accepted changes at later operating BWR plants. Any deviations from BWR–STS and CTS requirements do not significantly increase the probability or consequences of any previously evaluated accident for Dresden and Quad Cities Station. These proposed changes are consistent with the current safety analyses and have been previously determined to represent sufficient requirements for the assurance and reliability of equipment assumed to operate in the safety analysis, or provide continued assurance that specified parameters remain within their acceptance limits. As such, these changes will not significantly increase the probability or consequences of a previously evaluated accident.

The associated systems that make up the Reactor Protection System are not assumed in any safety analysis to initiate any accident sequence for both Dresden and Quad Cities Stations; therefore, the probability of any accident previously evaluated is not increased by the proposed amendment. In addition, the proposed surveillance requirements for the proposed amendments to these systems are generally more prescriptive than the current requirements specified within the Technical Specifications. These more prescriptive surveillance requirements increase the probability that the Reactor Protection System will perform its intended function. Therefore, the proposed TS will improve the reliability and availability of all affected systems and reduce the consequences of any accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously evaluated because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Others represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. These changes do not involve revisions to the design of the station. Some of the changes may involve revision in the operation of the station; however, these changes provide for additional restrictions which are in accordance with the current safety analyses, or are to provide for additional testing or surveillances which will not introduce new failure mechanisms beyond those already considered in the current safety analyses. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment for Dresden and Quad Cities Station's Technical Specification Section 3/4.1 is based on BWR–STS guidelines or NRC accepted changes at later operating BWR plants. The proposed amendment has been reviewed for acceptability at the Dresden and Quad Cities Nuclear Power Stations considering similarity of system or component design versus the BWR–STS or later operating BWRs. Any deviations from BWR–STS or CTS requirements do not create the possibility of a new or different kind of accident than previously evaluated for Dresden and Quad Cities Stations. No new modes of operation are introduced by the proposed changes. Surveillance requirements are changed to reflect improvements in technique, frequency of performance or operating experience at later plants. Proposed changes to action statements in many places add requirements that are not in the present technical specifications or adopt requirements that have been used at other operating BWRs with design similar to Dresden and Quad Cities. The proposed changes maintain at least the present level of operability. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The associated systems that make up the Reactor Protection System are not assumed in any safety analysis to initiate any accident sequence for Dresden and Quad Cities Stations. In addition, the proposed surveillance requirements for affected

systems associated with the Reactor Protection System are generally more prescriptive than the current requirements specified within the Technical Specifications; therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Involve a significant reduction in the margin of safety because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Others represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. Some of the later individual items may introduce minor reductions in the margin of safety when compared to the current requirements. However, other individual changes are the adoption of new requirements which will provide significant enhancement of the reliability of the equipment assumed to operate in the safety analysis, or provide enhanced assurance that specified parameters remain within their acceptance limits. These enhancements compensate for the individual minor reductions, such that taken together, the proposed changes will not significantly reduce the margin of safety.

The proposed amendment to Technical Specification Section 3/4.1 implements present requirements, or the intent of present requirements in accordance with the guidelines set forth in the BWR–STS. Any deviations from BWR–STS and CTS requirements do not significantly reduce the margin of safety for Dresden and Quad Cities Stations. The proposed changes are intended to improve reliability, usability, and the understanding of technical specification requirements while maintaining acceptable levels of safe operation. The proposed changes have been evaluated and found acceptable for use at Dresden and Quad Cities based on system design, safety analysis requirements and operational performance. Since the proposed changes are based on NRC accepted provisions at other operating plants that are applicable at Dresden and Quad Cities and maintain necessary levels of system or component readability, the proposed changes do not involve a significant reduction in the margin of safety.

The proposed amendment for Dresden and Quad Cities Stations will not reduce the availability of systems associated with the Reactor Protection System when required to mitigate accident conditions; therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Detroit Edison Company, Docket No. 50–341, Fermi-2, Monroe County, Michigan

Date of amendment request: July 29, 1993.

Description of amendment request: The proposed amendment would extend the instrument calibration intervals for selected plant instrumentation from 18 months to 36 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:

The proposed change to extend to 36 months the calibration interval of selected instrumentation does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The purpose of the proposed Technical Specification change is to extend calibration interval testing requirements for selected instrumentation. However, because of the continued application of redundant Technical Specification requirements such as channel checks, channel functional tests, and logic system functional tests, the performance of these instruments will be maintained within the acceptance limits assumed in plant safety analyses and required for the successful mitigation of an initiating event. The proposed Technical Specification changes do not affect the capability of the associated systems to perform their intended function within their instrument settings.

These other tests are sufficient to identify failure modes or degradations in instrument performance and ensure operation of the associated systems within acceptance limits. There are no credible failure modes that can be detected by instrument calibration that cannot also be detected by other Technical Specification tests.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. As discussed above, the proposed Technical Specification changes do not affect the capability of the associated systems to perform their intended function within the acceptance limits assumed in plant safety analyses and required for successful mitigation of an initiating event. All plant systems continue to operate in an identical manner. No new accident modes are created.

(3) Involve a significant reduction in a margin of safety. The current Technical Specification allowable values are based on the maximum analytical limits assumed in the plant safety analyses. These analyses conservatively establish the margin of safety. The proposed Technical Specification changes do not affect the capability of the associated systems to perform their function within the instrument settings used as the basis for the plant safety analyses. Plant and system settings to an initiating events will remain in compliance within the assumptions of the safety analyses, and therefore the margin of safety is not affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Cynthia A. Carpenter, Acting.

Detroit Edison Company, Docket No. 50–341, Fermi-2, Monroe County, Michigan

Date of amendment request: December 15, 1994.

Description of amendment request: The proposed amendment would relocate, revise, or delete various Technical Specification (TS) provisions. Administrative controls on working hours in TS 6.2.2.f, the Independent Safety Engineering Group requirements in TS 6.2.3, the unit staff qualification requirements in TS 6.3, the reportable event requirement for the Onsite Review Organization (OSRO) in TS 6.6.1.b, the radiation protection program requirements in TS 6.11, the record retention requirements in TS 6.10, and the review and audit functions in TS 6.5 (with the exception of TS 6.5.2.8), would be relocated to Chapter 13 of the Updated Final Safety Analysis Report (UFSAR). The review and approval process for temporary changes to each TS 6.8.1 plant procedure listed in TS 6.8.4 would also be relocated to Chapter 13 of the UFSAR.

The requirements of TS 6.5.2.8, the review and approval process for administrative procedures in TS 6.8.2, and the review and approval process for plant procedures in TS 6.8.3, would be relocated to the Fermi 2 Quality Assurance program. The in-plant radiation monitoring program requirements in TS 6.8.5.b, and the high radiation area requirements in TS 6.12 would be relocated to Chapter 12 of the

UFSAR. The radiological environmental monitoring program requirements in TS 6.8.5.f would be relocated to Chapter 11 of the UFSAR. The Process Control Program (PCP) requirements in TS 6.13 would be relocated to the PCP.

The requirements for OSRO to review the Security Plan in TS 6.5.1.6.j and to have Security Plan implementing procedures in TS 6.8.1.e would be relocated to the Fermi 2 Security Plan. The requirements for OSRO to review the Emergency Plan in TS 6.5.1.6.k and to have Emergency Plan implementing procedures in TS 6.8.1.f would be relocated to the Fermi 2 Emergency Plan.

The unit staff qualification requirements, as specified in the H. R. Denton (NRC) letter of March 29, 1980, in TS 6.3, would be deleted. The licensee states these have been superseded by 10 CFR Part 55 and Generic Letter (GL) 87–07. The training requirements in TS 6.4 would be deleted. The licensee states that other Section 6.0 TS and NRC regulations provide sufficient control of these training requirements. The submittal requirement of the annual radioactive effluent release report in TS 6.9.1.8 would be revised from ''within 90 days after January 1 * * *'' to ''prior to May 1. * * *''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes are administrative in nature. None of the proposed changes involve a physical modification to the plant, a new mode of operation or a change to the UFSAR transient analyses. No Limiting Condition for Operation, ACTION statement or Surveillance Requirement is affected by any of the proposed changes. Also, these proposed changes, in themselves, do not reduce the level of qualification or training such that personnel requirements would be decreased. Therefore, this change is administrative in nature and does not involve a significant increase in the probability or consequences of an accident previously evaluated. Further, the proposed changes do not alter the design, function, or operation of any plant component and therefore, do not affect the consequences of any previously evaluated accident.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not introduce a new mode of plant operation, surveillance requirement or involve a physical modification to the plant. The proposed changes are administrative in nature. The changes propose to revise, delete or relocate the stated administrative control provisions from the TS to the UFSAR, plant procedures or the QA Program whereby, adequate control of information is maintained. Further, as stated above, the proposed changes do not alter the design, function, or operation of any plant components and therefore, no new accident scenarios are created.

(3) The proposed changes do not involve a significant reduction in a margin of safety because they are administrative in nature. None of the proposed changes involve a physical modification to the plant, a new mode of operation or a change to the UFSAR transient analyses. No Limiting Condition for Operation, ACTION statement or Surveillance Requirement is affected. The proposed changes do not involve a significant reduction in a margin of safety. Additionally, the proposed change does not alter the scope of equipment currently required to be OPERABLE or subject to surveillance testing nor does the proposed change affect any instrument setpoints or equipment safety functions. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Cynthia A. Carpenter, Acting.

Duquesne Light Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania

Date of amendment request: April 26, 1995.

Description of amendment request: The proposed amendment would add a requirement to Technical Specification (TS) 4.5.2.a to periodically verify that the High Head Safety Injection (HHSI) pump minimum flow valve, 2CHS*MOV373, is maintained open during plant operation in Modes 1, 2, and 3. Valve 2CHS*MOV373 must be maintained open to provide a minimum flowpath for the HHSI pumps and thereby minimize the likelihood of HHSI pump damage due to operating the pumps with insufficient flow. The proposed change would allow flexibility for local verification of valve position or flow indication if the control room indication is not available. The proposed amendment would also make several editorial changes to TS 3/4.5.2 for consistent format with other TSs.

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?

Maintaining 2CHS*MOV373 in a de-energized locked open position ensures charging/High Head Safety Injection pump (HHSI pump) minimum flow remains available for normal operation and design basis accidents. It has been determined that with 2CHS*MOV373 in the open position there is no significant increase in radiation levels and no change to the existing environmental qualification or personnel access routes. Sufficient injection flow to the core will be maintained during events requiring a Safety Injection (SI) actuation. Potential HHSI pump damage due to low flow will be prevented during periods of high Reactor Coolant System (RCS) pressure following a steam line break and SI. It has also been determined that the HHSI pumps will remain capable of performing their safety function with a continuous minimum flow. There is no impact on analysis assumptions or radiological consequences of an accident.

There are no postulated events in the Updated Final Safety Analysis Report (UFSAR) which require that 2CHS*MOV373 be closed. Thus, the decision to de-energize and lock open the valve ensures adequate minimum flow for the HHSI pumps.

The proposed addition of 2CHS*MOV373 to Technical Specification 3.5.2 enhances the operator's ability to verify the valve position. The proposed surveillances and footnote will be used to monitor the valve position, the status of motor operator, and the valve position indicating lights. Therefore, the proposed change to the technical specification will ensure that the HHSI pump minimum flow is always available.

Several editorial changes were also made to Technical Specification 3.5.2. These changes do not alter the intent of the technical specification and as such have no impact on previously evaluated accident scenarios.

Therefore, the proposed change will 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?

The proposed addition of 2CHS*MOV373 to the technical specifications does not involve changes to the physical plant. The proposed change adds surveillance requirements and a footnote which monitor the valve position, the lack of power to the

motor operator, and the valve position indicating lights. This assures that the minimum flow valve is open to maintain the HHSI pumps operable under all conditions.

Therefore, the 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 proposed change provides additional action to ensure that 2CHS*MOV373 remains open and minimum HHSI pump flow remains available. Safety limits and limiting safety system settings are not affected by this proposed change. There are no changes to the offsite dose consequences resulting from this request.

Therefore, use of the proposed technical specification would 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: 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: John F. Stolz.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 18, 1991, as supplemented by letters dated March 16, and December 2, 1994, and March 9, 1995.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) on control Room Air Conditioning System (CRACS) by separating the current composite requirements of TS 3.7.6 into four TSs covering three separate functions; control room emergency air filtration system (two mode sets), control room air temperature, and control room isolation and pressurization. The changes also increase the allowed outage time to identify and correct breaches to the control room envelope, adds requirements for make-up air flow rate to be used in conjunction with existing differential pressure requirements, and adds toxic gas specifications for Modes 5 and 6. The amendment is related to a revision to the Technical Specification Bases approved by the NRC in a letter dated August 9, 1988. The March 16, and December 2, 1994, and March 9, 1995 submittals provided additional information and included some additional restrictions in proposed changes by original application dated July 18, 1991. The original notice was published on September 4, 1991 (56 FR 43808). The additional submittals do not change the no significant hazard consideration determination previously made by the licensee.

Basis for proposed no significant hazards consideration determination: The proposed change would create new Specifications as follows: 3/4.7.6.1 Emergency Air Filtration, Modes 1–4; 3/4.7.6.2 Emergency Air Filtration, Modes 5 and 6; 3/4.7.6.3 Control Room Air Temperature; 3/4.7.6.4 Control Room Isolation and Pressurization. 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 limiting accidents against which the CRACS protects are:

- All Chapter 15 scenarios involving a release of radiation to the environment outside the containment,
- Toxic gas releases, and
- Smoke resulting from control room envelope fires.

Limiting accidents against which the emergency air filtration system protects are all Chapter 15 scenarios involving release of radiation to the environment outside the containment.

The probability and consequences of any of the limiting accidents listed above are unchanged by the specialization of the plant TSs. As pointed out in the description of the change, TSs 3/4.7.6.1 and 3/4.7.6.2 have retained all requirements from the existing TS with the addition of one action statement based on the inoperability of both trains, and the exception of one action statement based on one inoperable train in Modes 5 or 6. This action statement is unnecessary since it is only applicable in a mode unlikely to experience the limiting design basis accidents against which this system protects. Therefore, the protection of the original specification is uncompromised for the function of emergency air filtration.

There are two differences between the existing TS and the proposed TS 3/4.7.6.3 regarding control room air temperature. The first is the three hour outage allowed when both air conditioning units are inoperable [this was withdrawn by licensee's March 9, 1995, letter].

This corrects most types of failures. Although three hours are less restrictive than TS 3.0.3, it is not significantly less and therefore, does not seriously reduce the protection of the original specification. The other change is the reduction of the surveillance temperature from 110°F to 80°F. This is more restrictive than the existing version. All other requirements for air conditioning are retained in the proposed TS.

Proposed TS 3/4.7.6.4, which concerns control room isolation and pressurization, allows more limited continued plant operation than the existing TS. When compared to existing actions required for continued operation with a known breach, the proposed specification recognizes the potential consequences that could arise from operation with an unidentified breach in the envelope and imposes more restrictive actions.

Engineering analysis also shows that, for most of the time, toxic chemical concentrations in the control room envelope after a postulated release are largely the result of in-leakage from the RAB [reactor auxiliary building] after isolation. This has the effect of reducing the chemical concentration of gas leaking into the control room by at least an order of magnitude and ultimately results in a control room chemical concentration buildup rate slower than previously assumed. These characteristics make it likely that the operators would have sufficient time to don the breathing apparatus installed in the control room. It is also noteworthy that this emergency breathing apparatus is considered by Regulatory Guide 1.78 to provide sufficient operator protection for those cases where chemical toxicity limits might be exceeded.

The limited continued operation allowed by the proposed change, the design characteristics of the control room, and the installed breathing apparatus provides a reasonable level of protection for plant personnel. Some new restrictions are identified for the control room isolation and pressurization. These were not previously identified and therefore offer enhanced protection to the TS. All existing requirements specific to the isolation and pressurization function are retained in the proposed version. As such, the proposed specification offers more protection than the existing TS.

Based on the above, these revisions to the TS will not adversely affect the reliability or performance of any installed equipment. There are no design changes associated with this proposed amendment, consequently, all aspects of the safety analysis will remain unchanged and there will be no physical change to the facility, and operation of Waterford 3 in accordance with these proposed changes will not involve a significant increase in the probability or consequence of any accident previously evaluated.

To create a new or different kind of accident, these changes must introduce a new failure path. In this regard, these revisions are benign since they do not alter the system or its operation. With a few exceptions, all existing TS restrictions have been retained. The exceptions have been shown to have insignificant impact. Furthermore, several additional restrictions, not in the existing specification, have been added.

Based on the above information, these changes do not introduce a new failure path and therefore, cannot create a new, unevaluated sequence of events. The current plant safety analyses are bounding and this revision will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Safety margins related to the control room envelope air systems are established for control room temperature and the habitability of the control room following all credible accidents. This change does not modify the equipment installed in the plant or its operation. Therefore, existing margins of safety are retained, and the operation of Waterford 3 in accordance with this proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005–3502.

NRC Project Director: William D. Beckner.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 12, 1995.

Description of amendment request: The proposed change modifies surveillance requirements associated with containment leakage Technical Specification (TS) 3.6.1.2 by removing scheduler requirement for Type A tests to be performed specifically at 40 plus or minus 10 month intervals and, instead, reference Type A testing in accordance with 10 CFR part 50, appendix J. The proposed change adopts the wording for primary containment integrated leak rate testing that is consistent with the requirements of the Combustion Engineering Improved Standard Technical Specifications (NUREG–1432). The proposed change also includes several administrative changes. The May 12, 1995, submittal superseded the November 16, 1993, submittal in its entirety. The November 16, 1993, submittal was noticed in **Federal Register** on January 5, 1994 (59 FR 619).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change will not affect the assumptions, design parameters, or results of any accident previously evaluated. The proposed change does not add or modify any existing equipment. The proposed Type A test schedule will continue to be consistent with 10 CFR 50 Appendix J. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change does not involve modifications to any existing equipment. The proposed change will not affect the operation of the plant or the manner in which the plant is operated. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The margin of safety for the containment barrier is, in part, preserved by compliance with 10 CFR 50 Appendix J. Although the proposed change will allow greater flexibility in meeting Appendix J requirements, the TS will continue to preserve compliance with 10 CFR Appendix J. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005–3502.

NRC Project Director: William D. Beckner.

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: May 1, 1995.

Description of amendment request: The proposed amendment would provide a special test exception that would allow an extension of the standby diesel generator (SDG) allowed outage time for a cumulative 21 days on each SDG once per fuel cycle, and it would also allow an extension of the essential cooling water (ECW) loop allowed outage time for a cumulative 7 days on each ECW loop once per fuel cycle. These extended allowed outage times will be used to perform required inspections and maintenance on the SDGs and the ECW system during power operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Standby Diesel Generators are not accident initiators, therefore the increase in Allowed Outage Times for this system does not increase the probability of an accident previously evaluated. The three train design of the South Texas Project ensures that even during the seven days the Essential Cooling Water loop is inoperable there are still two complete trains available to mitigate the consequences of any accident. If the Essential Cooling Water loop is not operable during the 21 days the Standby Diesel Generator is inoperable, the Standby Diesel Generator's Engineered Safety Features bus and equipment in the train will be operable. This ensures that all three redundant safety trains of the South Texas Project design are operable. In addition the Emergency Transformer will be available to supply the Engineered Safety Features bus normally supplied by the inoperable Standby Diesel Generator. These actions will ensure that the changes do not involve a significant increase in the consequences of previously evaluated accidents.

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 affect only the magnitude of the Standby Diesel Generator and Essential Cooling Water Allowed Outage Times once per fuel cycle as identified by the marked-up Technical Specification. As indicated above, the proposed change does not involve the alteration of any equipment nor does it allow modes of operation beyond those currently allowed. Therefore, implementation of these proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes result in no significant increase in core damage or large early release frequencies.

Three sets of PSA results have been presented to the NRC for the South Texas Project. One submitted in 1989 from the initial Level 1 PSA of internal and external events with a mean annual average CDF estimate of 1.7 x 10(−4), a second one submitted in 1992 to meet the IPE requirements from the Level 2 PSA/IPE with a CDF estimate of 4.4 x 10(−5), and an update of the PSA that was reported in the August 1993 Technical Specifications submittal with a variety of CDF estimates for different assumptions regarding the rolling maintenance profile and different combinations of modified Technical Specifications. The South Texas Project PSA was updated in March of 1995 to include the NRC approved Risk-Based Technical Specifications, Plant Specific Data and incorporate the Emergency Transformer into the model. This update resulted in a CDF

estimate of 2.07 x 10(−5). When the requested changes are modeled along with the compensatory actions, the resulting CDF estimate is 2.30 x 10(−5). While this is slightly higher (approx. 11%) than the updated results, it is still significantly lower (approx. 46%) than the previous Risk-Based Evaluation of Technical Specification submitted in 1993. Therefore, it is concluded that there is no significant reduction in the margin of safety.

Based on the above evaluation, Houston Lighting & Power has concluded that these changes do not involve any significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges, Learning Center, 911 Boling Highway, Wharton, TX 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.

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: May 2, 1995.

Description of amendment request: The proposed amendment would revise Technical Specifications 3.4.2.2 and 3.7.1.1 (Table 3.7–2) by relaxing the lift setting tolerances of the pressurizer safety valves from plus or minus 1% to plus or minus 2% and the main steam safety valves from plus or minus 1% to plus or minus 3%, respectively. In addition, a footnote would be added to require that the pressurizer safety valves and main steam safety valves setpoint tolerances be restored to within plus or minus 1% whenever a lift setting is determined to be outside plus or minus 1% following valve testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because:

The proposed changes increase the ''as-found'' setpoint tolerances for the Pressurizer Safety valves from plus or minus 1% to plus or minus 2% and the Main Steam Safety valves from plus or minus 1% to plus or minus 3%. The proposed changes do not involve any hardware modifications to plant structures, systems, or components. An evaluation has determined that the proposed changes do not significantly affect the structural integrity of either the reactor coolant system or the main steam system.

The proposed setpoint tolerance of plus or minus 2% for the Pressurizer Safety valves and plus or minus 3% for the Main Steam Safety valve ''as-found'' condition was previously evaluated as part of the evaluation for the transition to VANTAGE 5H fuel. The evaluation was reviewed and approved by the NRC Staff as part of License Amendment Nos. 61 and 50 to Operating License NPF–76 and NPF–80. Since the VANTAGE 5H fuel evaluation incorporated these proposed changes, the calculated radiological release associated with that evaluation is unaffected. Similarly, this applies to the radiological dose associated with a steam generator tube rupture.

Additionally, the proposed change [sic] are consistent with the guidance provided by Section III and XI of the ASME Code.

Based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because:

Since the lift setting of a Pressurizer Safety valve or Main Steam Safety valve will be restored to plus or minus 1% whenever it is determined to be outside plus or minus 1%, the ''as-left'' setpoint tolerances for the Pressurizer Safety valves and Main Steam Safety valves are unchanged. The ''as-left'' setpoint will continue to satisfy the current technical specification requirement on lift setting tolerance. As such, there is no change in plant operation or equipment performance. Since neither plant operation or equipment performance is affected by the proposed changes, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The proposed change does not involve a significant reduction in a margin of safety because:

Since the proposed changes are consistent with the guidance provided by Section III and XI of the ASME Code, and the proposed lift setting tolerance of plus or minus 2% for the Pressurizer Safety valves and plus or minus 3% for the Main Steam Safety valves has been incorporated into the design basis accident analyses, the proposed changes do not involve a significant reduction in the margin of safety.

Based on the safety evaluation presented above for the proposed changes, Houston Lighting & Power has determined that the health and safety of the public will not be jeopardized. Therefore, the proposed changes do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges, Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, N.W., Washington, D.C. 20036.

NRC Project Director: William D. Beckner.

Indiana Michigan Power Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of amendment request: April 13, 1995.

Description of amendment request: The proposed amendment would modify the Technical Specifications to allow use of laser-welded sleeves to repair defective steam generator tubes.

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:

Conformance of the proposed amendments to the standards for a determination of no significant hazard as defined in 10 CFR 50.92 (three factor test) is shown in the following:

(1) Operation of CNP [Cook Nuclear Plant] Unit 1 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The TS [tubesheet] or TSP [tube support plate] intersection LWS [laser-welded sleeve] configuration has been designed and analyzed in accordance with the requirements of the ASME [American Society of Mechanical Engineers] Code and RG [Regulatory Guide] 1.121. Fatigue and stress analyses of the sleeved tube assemblies produced acceptable results. Mechanical testing has shown that the structural strength of the Alloy 690 sleeves under normal faulted and upset conditions is within acceptable limits. Leak testing has demonstrated that primary to secondary leakage is not expected during all plant conditions, including the case where the seal weld is not produced in the lower joint of the TS sleeve. Testing shows that non-welding TS sleeve lower joints remained leaktight at temperature and pressure conditions representative of normal and accident conditions. Since laser welding produces a hermetic seal between the tube and sleeve, no leak path can be realized under any condition. Therefore, installation of LWSs will not influence offsite dose

calculation for a postulated steam line break event.

The proposed technical specification change to support the installation of Alloy 690 LWSs does not adversely impact any previously evaluated design basis accident or the results of accident analyses for the current technical specification minimum reactor coolant system flow rate. The results of the qualification testing, analyses, and plant operating experience demonstrate that the sleeve assembly is an acceptable means of maintaining tube integrity. These aforementioned analyses and tests demonstrate that installation of sleeves spanning degraded areas of the tube will restore the tube to a condition consistent with its original design basis. Plugging limit criteria are established using the guidance of RG 1.121. Furthermore per RG 1.83 recommendations, the sleeved tube can be monitored through periodic inspections with present eddy current techniques.

Conformance of the sleeve design with the applicable sections of the ASME Code and results of the leakage and mechanical tests, support the conclusion that installation of laser-welded tube sleeves will not increase the probability or consequences of an accident previously evaluated. Depending upon the break location for a postulated steam generator tube rupture event, implementation of tube sleeving could act to reduce the radiological consequences to the public due to reduced flow rate through a sleeved tube compared to a non-sleeved tube based on the restriction afforded by the sleeve wall thickness.

(2) The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of laser-welded sleeving will not introduce significant or adverse changes to the plant design basis. Stress and fatigue analysis of the repair has shown the ASME Code and RG 1.121 allowable values are met. Implementation of laser-weld sleeving maintains overall tube bundle structural and leakage integrity during all plant conditions at a level consistent to that of the originally supplied tubing. Leak and mechanical testing of sleeves supports the conclusions of the calculations that the sleeve retains both structural and leakage integrity during all conditions. Sleeving of tubes does not provide a mechanism resulting in an accident outside of the area affected by the sleeves. Any hypothetical accident as a result of potential tube or sleeve degradation in the repaired portion of the tube is bounded by the existing tube rupture accident analysis. Since the sleeve design does not affect any other component or location of the tube outside of the immediate area repaired, in addition to the fact that the installation of sleeves and the impact on current plugging level analyses is accounted for, the possibility that laser-weld sleeving creates a new or different type of accident is not supported.

The design of thermally treated Alloy 600 and 690 sleeved tube assemblies have performed well historically with regard to corrosion. There are no reported instances of Alloy 600 thermally treated or Alloy 690 sleeve degradation for the greater than 35,000 sleeves that Westinghouse has installed in the U.S. Accelerated corrosion test results show the free span laser-weld joint (LWJ) (with post weld heat treatment) is capable of exhibiting a resistance to corrosion of greater that 10 times that of rolled tube transitions. Most LWS corrosion specimens did not experience degradation and were subsequently removed from the corrosion test media after a substantial testing period (supporting the 10x factor compared to roll transitions) was achieved. Several mill annealed Alloy 600 material heats were used for corrosion specimen preparation. All were documented by previous test to have been highly susceptible to PWSCC. The post weld heat treatment process applied to LWS free span joints is designed to achieve a minimum tube OD wall temperature of 1400°F adjacent to the weld and within the laser weld heat affected zone. Since the target temperature of 1400°F is achieved on the tube OD, a slightly higher temperature is achieved at the tube ID surface, where the weld cooling stresses are concentrated. Also, since the axial length of the laser weld and laser weld heat affected zone are relatively narrow compared to other sleeve welding processes, a narrower section of tube is required to be heat treated. Since the length of tube required to be heat treated is shorter in the LWS process than with other sleeving processes, lower residual stresses in the tube can be expected. Accelerated corrosion tests also show that non-heat treated laser-weld free span joints exhibit resistance to stress corrosion cracking equal to or greater than rolled tube transitions. An extensive data base exists on LWS joint performance in foreign plants in which the free span joints are not heat treated. Of the approximately 18,000 non-heat treated joints in service, none has exhibited a rapid corrosion potential. Corrosion testing of the TS sleeve lower joint LWJs exhibit a resistance to corrosion cracking of three to four times that of rolled tube transitions. These factors suggest postulated sleeve/tube assembly degradation would occur at a rate less than rolled transitions, and the potential for a sleeve/tube assembly with accelerated degradation rate characteristics more severe than rolled transitions, and the potential for a sleeve/tube assembly with accelerated degradation rate characteristics more severe than roll transitions is negligible.

Approximately 800 LWSs are currently in operation in the U.S. Some of these have been in service since April 1992. The plants in which these sleeves are installed have not experienced any adverse operational issues (such as primary to secondary leakage) as has been detected at other plants with sleeves which have experienced rapid corrosion of the parent tube.

(3) The proposed license amendment does not involve a significant reduction in a margin of safety.

The laser-welded sleeving repair of degraded steam generator tubes as identified in WCAP–13088 Rev. 3 has been demonstrated to restore the integrity of the tube bundle under normal and postulated accident conditions. The safety factors used in the design of sleeves for the repair of degraded tubes are consistent with the safety factors the ASME Boiler and Pressure Vessel Code used in steam generator design. The plugging limit criteria for the sleeve has been established using the methodology of RG 1.121. The design of the sleeve joints have been verified by testing to preclude leakage during normal and postulated accident conditions. Implementation of laser-welded sleeving will reduce the potential for primary to secondary leakage during a postulated steam line break while maintaining available primary coolant flow area in the event of a LOCA. By removing from service degraded intersections through repair, the potential for tube leakage during a steam line break is reduced. These degraded intersections now are returned to a condition consistent with the design basis. While the installation of a sleeve causes a reduction in flow, the reduction is far below the reduction incurred by plugging. Therefore, far greater primary coolant flow area is maintained through sleeving. Use of RG 1.121 criteria assures that the margin of safety with respect to structural integrity is the same for the sleeves as for the original steam generator tubes.

The portions of the installed sleeve assembly which represent the reactor coolant pressure boundary can be monitored for the initiation and progression of sleeve/tube wall degradation, thus satisfying the requirements of RG 1.83. Portions of the tube bridged by the sleeve joints are effectively isolated from the pressure boundary, and the sleeve then forms the pressure boundary in these areas. The areas of the sleeved tube assembly which require inspection are defined in Attachment 4 [WCAP–13088, ''Westinghouse Series 44 and 51 Steam Generator Generic Sleeving Report, Laser Welded Sleeves,'' January 1994].

In addition, since the installed sleeve represents a portion of the pressure boundary, a baseline inspection of these areas is required prior to operation with sleeves installed. As stated previously, weld fusion zone width is established using UT testing. The minimum acceptable weld width as determined by UT examination is approximately 50% wider than the minimum weld width which satisfies the stress conditions of the ASME Code.

The generic evaluation uses the pressure stress equation of Section NB 3224.1 of the ASME Code which is used to establish the minimum required wall thickness for the sleeve design and subsequently used to determine the level of sleeve wall degradation (depth by eddy current determination) that would require the sleeve to be removed from service. Using the $[Delta]P_{Norm.\ Op.}$ value of 1530 psi from Attachment 4 [WCAP–13088, ''Westinghouse Series 44 and 51 Steam Generator Generic Sleeving Report, Laser Welded Sleeves,'' January 1994] the limiting minimum required sleeve wall thickness is established. The sleeve wall plugging limit (using Attachment 4 [WCAP–13088, ''Westinghouse Series 44 and 51 Steam Generator Generic Sleeving Report, Laser Welded Sleeves,'' January 1994]) of 25% is subsequently established, and includes an allowance of 10% for eddy current uncertainty and 10% for growth, although sleeve wall degradation has not been observed to date in Westinghouse

sleeves. The generic evaluation used the ASME Code minimum property values to establish the sleeve plugging limit. Certified material test reports indicate that the sleeve material properties are significantly higher than the ASME Code minimum values. The generic evaluation considered a primary to secondary pressure differential of 1530 psia, with a steam pressure of 720 psia, for normal operating conditions. CNP Units 1 can operate at full power with a reduced T_{hot} value and RCS pressure of 2250 psi. Steam pressure can be maintained as low as 650 psi (to keep T_{hot} as low as possible), but cannot go lower than 650 psi or the steam generator operating requirement of a primary to secondary [Delta]P of 1600 psi (max) will be exceeded. At this [Delta]$P_{Norm. Op.}$ value of 1600 psi, the sleeve minimum wall thickness requirement (and subsequently sleeve pressure boundary plugging limit) using ASME Code minimum material properties can be recalculated. For this condition (normal operating [Delta]P equal to 1600 psi), the sleeve minimum wall plugging limit is defined to be 23%. An allowance for eddy current uncertainty and continued degradation are included in this value. The minimum required wall thickness is determined by examining plant conditions at normal, upset, faulted, and test conditions. For Model 51 steam generators, the normal operating condition results in the limiting minimum wall thickness requirement.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: Cynthia A. Carpenter, Acting.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment requests: December 20, 1993, as supplemented July 19, 1994, and February 28, 1995.

Description of amendment requests: The proposed amendments would revise the Technical Specifications to change Train A and B emergency loads from 8 hour to composite 4 hour, delete a load on the Train B batteries load list, and revise the operational loads on the Train N batteries. The supplemental submittals, made in response to NRC staff concerns, would also add surveillance requirements for a battery with signs of degradation and modify performance testing requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which was published in the **Federal Register** on February 2, 1994 (59 FR 4939). This analysis was not changed by the supplemental submittals.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests, including the supplemental submittals, involve no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: Cynthia A. Carpenter, Acting.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment requests: March 31, 1995.

Description of amendment requests: The proposed amendments would revise the technical specifications to provide increased flexibility in the operation of the containment personnel airlocks during core alterations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Per 10 CFR 50.92, a proposed change does not involve a significant hazards consideration if the change does not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated,

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.

Criterion 1

The design basis fuel handling accident is the rupture of the highest rated fuel assembly. As discussed previously [in the application], the consequences of an accident inside containment (i.e., site boundary dose) with both airlock doors are bounded by the existing fuel handling accident currently presented in our UFSAR [Updated Final Safety Analysis Report].

Since the containment airlock doors do not affect the failure mechanism of a fuel assembly during a fuel handling accident, we believe that this amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated. Additionally, no credit was taken for containment closure in the accident analysis. Therefore, based on these considerations, it is concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2

As stated in response to criterion one, the position of the containment airlock doors in no way affects the mechanism by which a spent fuel assembly is damaged during a fuel handling accident. Thus, it is concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3

The margin for safety as defined in 10 CFR 100 has not been reduced. As discussed previously, the existing fuel handling accident analysis for an event inside containment takes no credit for the isolation of containment. As a result, the position of the airlock doors has no impact on the analyzed site boundary doses resulting from such an accident. Based on these considerations, it is concluded that the 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 requests involve no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: Cynthia A. Carpenter, Acting.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: May 2, 1995.

Description of amendment request: This license amendment request revises Surveillance Requirement (SR) 4.7.A.2.f.1 to allow a one-time schedular extension of the two year Type B Local Leak Rate Test (LLRT) interval required for the Drywell Head and Manport (penetrations DWH and X–4 respectively). This extension will allow

the Type B testing of penetrations DWH and X–4 to be deferred from the current due date of July 17, 1995, until Refueling Outage No. 16 (RE–16), which is currently scheduled to commence in October 1995.

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 enclosed Technical Specifications change is judged to involve no significant hazards based on the following:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

This license amendment request revises Surveillance Requirement (SR) 4.7.A.2.f.1 to allow the one-time schedular extension of the two year Type B Local Leak Rate Test (LLRT) interval required for the Drywell Head and Manport (Penetrations DWH and X–4 respectively). This extension will allow Penetrations DWH and X–4 to be Type B tested during Refueling Outage No. 16 (RE–16), which is currently scheduled to commence October 1995. Currently, the two year maximum interval for these penetrations comes due July 17, 1995. The District has concluded that a one-time extension of approximately six months beyond the two year limit will not result in a significant increase in the probability of these penetrations failing to perform their safety function. This conclusion is based on the previous LLRT surveillance history of Penetrations DWH and X–4, which have not failed an LLRT in the last 19 years. The surveillance history demonstrates that these penetrations are not subject to leak related failures.

Additionally, the seals associated with these penetrations will not have experienced significantly more radiation and heat exposure by the conclusion of the proposed extension than they would have during the current two year interval. Although some radiation and heat is present during plant shutdowns, the seal degradation resulting from these conditions is significantly slower. Because seal degradation is a function of heat and radiation, and is generally not a function of time, the District has concluded that the one-time extension will not result in a significant increase of seal degradation. Because seal failure for these penetrations is largely based on the rate of seal degradation, the probability of the failure of these penetrations is not significantly increased. Therefore, a significant increase in the probability or consequences of an accident is not created.

This proposed change does not introduce any new modes of plant operation, make any physical changes, or alter any operational setpoints. The change does not degrade the performance of any safety system assumed to function in the accident analysis. Therefore, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility for a new or different kind of accident from any accident previously evaluated?

This license amendment request involves the one-time schedular extension of the LLRT interval requirement for Penetrations DWH and X–4. SR 4.7.A.2.f.1 is being revised to extend the surveillance test interval for Penetrations DWH and X–4 to coincide with RE–16, currently scheduled to commence October 1995. A one-time extension of the subject surveillance interval does not involve the creation, deletion, or modification of the function of any structure, system, or component, nor does this change introduce or change any mode of plant operation. This proposed change does not create the possibility for a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change create a significant reduction in the margin of safety?

This license amendment request involves the one-time extension of the two year maximum surveillance test interval for Penetrations DWH and X–4 from the current due date of July 17, 1995, to instead coincide with RE–16, which is scheduled to commence October 1995. By the time these tests are performed, the penetration seals will not have experienced significantly more radiation and heat than they would have during the previous test intervals. Therefore, the penetration seals will not have experienced significant degradation as a result of the extended interval. Furthermore, Penetrations DWH and X–4 have not failed an LLRT in the last 19 years. The surveillance history demonstrates that these penetrations are not subject to leak related failure. This proposed change does not involve any change to plant design, equipment instrument setpoints, or operation. Therefore, this proposed change does not create 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: Auburn Public Library, 118 15th Street, Auburn, NE 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Project Director: William D. Beckner.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: March 29, 1995.

Description of amendment request: The request will revise Technical Specification Section 3.10.5 to allow more than one control bank to be fully withdrawn from the core simultaneously for rod drop time response testing. Specifically, the change will delete, (1) the limiting condition for operation (LCO) 3.10.5.a and (2) a reference to the full length shutdown rods from LCO 3.10.5. The change will also add a statement that ''The SHUTDOWN MARGIN requirement of Section 3.1.1.1.2 shall be met without credit for withdrawn control rods.'' Other editorial changes are to be made for consistency.

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 (SHC), which is presented below:

* * * The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes cannot initiate an event since the plant will be maintained shutdown at all times. Thus, there is no increase in the probability of occurrence of an accident previously evaluated.

The proposed changes do not degrade the performance of any safety system nor do they alter any assumptions made in the accident analyses. Currently, the technical specifications allow the rod position indication system to be disabled for each control bank while performing this test. In addition, this system is not a safety system credited in the accident analyses. Therefore, allowing more than one bank to have its indication removed during the test does not degrade any safety system. Since the shutdown margin will be maintained without crediting these rods, there is no change to the assumptions made in the accident analyses. Thus, there is no increase in the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes do not position the control rods into any new configurations or sequence not previously analyzed. Ejected rod worths are evaluated for ARI–1 (all rods in with the most reactive rod out) and, therefore, bound the test configuration. In addition, the reactivity state of the system is maintained shut down by the margin required in Technical Specification 3.1.1.1.2 without crediting the control rods. Therefore, there is no possibility of a new or different type of accident than previously analyzed.

3. Involve a significant reduction in the margin of safety.

The proposed changes do not impact any of the physical protective boundaries, safety systems, or operating conditions. The plant

will be maintained shut down without crediting the control rods. The accident analyses is not impacted and, therefore, there is no 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: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L.M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141–0270.

NRC Project Director: Phillip F. McKee.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: April 28, 1995.

Description of amendment request: The request will revise the diesel generator (DG) fuel oil testing that is performed on new fuel prior to the addition of the new fuel to the storage tank.

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 (SHC), which is presented below:

* * * The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes: correct a typographical error by providing the appropriate range for the Saybolt viscosity; replace the qualitative clear and bright test with a quantitative water and sediment test for new fuel prior to adding it to the storage tank; and clarify that a calculated cetane index may be performed in lieu of obtaining the cetane number for the fuel. The water and sediment test provides a quantitative method for evaluating water and sediment, and will require a more restrictive limit of 0.05 percent by volume of water and sediment than the 0.10 percent recommended by the manufacturer. The cetane index has been shown to be representative of the cetane number for the fuel. The DG capability to start and operate is enhanced by the proposed changes. Therefore, the changes have no negative effect on the consequences of the previously evaluated accidents.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter or affect the design, function, failure mode, or operation of the plant. The proposed changes have no adverse effect on the quality of the fuel oil that is utilized by the DG. The proposed changes are administrative in nature and do not involve any physical alteration to any plant system or change the method by which any safety-related system performs its function. For these reasons, there is no possibility of an accident of a different type than previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes will assure that the DG fuel oil meets DG manufacturer's quality requirements by the performance of the recommended testing of the DG fuel oil. The proposed changes will not impact 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: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141–0270.

NRC Project Director: Phillip F. McKee.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: April 28, 1995.

Description of amendment request: The proposed revision to the Action Statement of Limiting Condition for Operation (LCO) 3.7.5 would permit Millstone Unit No. 3 to remain in Modes 1 through 4 with the average water temperature of the ultimate heat sink (UHS) greater than 75°F (but lower than 77°F) for 12 hours. An additional action would be added which would require the plant to be placed in at least HOT STANDBY within 6 hours and in COLD SHUTDOWN within the following 30 hours upon identifying that the UHS temperature is greater than 77°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 (SHC), which is presented below:

* * * The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed addition of a 12-hour period to monitor the UHS temperature to the Technical Specification LCO Action Statement does not involve an increase in the probability of an accident previously evaluated. The probability of an accident previously evaluated is not increased by a short-term increase in the UHS temperature. The probability of FSAR Chapter 15 Condition IV accidents occurring in conjunction with the short duration increase in service water inlet temperature above 75°F is low enough such that they are not risk significant. Further, an evaluation has been performed that safe shutdown will be achieved and maintained for a loss of offsite power event and a steam generator tube rupture event with the additional consideration of a single failure with service water inlet temperatures as high as 77°F. There has been no significant increase in the consequences of these events previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed technical specification change does not create the possibility of a new or different kind of accident previously evaluated. The addition of a 12-hour time period to monitor the UHS temperature increases the amount of time that is allowed for the plant to be in HOT STANDBY from 6 to 18 hours should the UHS temperature increase above 75°F. This extension of the time allowed for the plant to be in HOT STANDBY does not change the plant configuration. As such, the change does not create the possibility of a new or different kind of accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed technical specification change does not involve a significant reduction in the margin of safety. The addition of a 12-hour time period to monitor the UHS temperature increases the time required for the plant to be in HOT STANDBY from 6 to 18 hours should the UHS temperature exceed 75°F. An evaluation has been performed to demonstrate that the risk significance associated with the increased action time is very low. In addition, safe shutdown capability has been demonstrated for service water inlet temperatures as high as 77°F.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center,

Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L.M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141–0270.

NRC Project Director: Phillip F. McKee.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: May 1, 1995.

Description of amendment request: Technical Specifications that specify an 18-month surveillance will be changed to state that these surveillances are to be performed at least once each refueling (i.e., 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 (SHC), which is presented below:

* * * The proposed change does not involve an SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed change to Surveillance Requirement 4.6.3.2 of the Millstone Unit No. 3 Technical Specifications extends the frequency for verifying that each containment isolation valve actuates to its required position in response to Phase A and Phase B isolation test signals, and for verifying that each containment purge supply and exhaust isolation valve actuates to its required position in response to a containment high radiation test signal. The proposal would extend the frequency from at least once per 18 months to at least once per refueling interval (24 months).

The proposed change to Surveillance Requirement 4.6.3.2 does not alter the intent or method by which the surveillances are conducted, does not involve any physical changes to the plant, does not alter the way any structure, system, or component functions, and does not modify the manner in which the plant is operated. As such, the proposed change to the frequency of Surveillance Requirement 4.6.3.2 will not degrade the ability of the containment isolation valves to perform their safety function. Also, the containment isolation valve arrangements are not vulnerable to single failures, because they provide at least two barriers between the atmosphere outside the containment and the atmosphere within the containment, the reactor coolant system, or systems that would become connected to the containment atmosphere or the reactor coolant system as a result of, or subsequent to, a DBA.

Additional assurance of containment isolation valve operability is provided by Surveillance Requirements 4.6.3.1 and 4.6.3.3. Surveillance Requirement 4.6.3.1 requires that a containment isolation valve will be restored to an operable status following the performance of work on the containment isolation valve or its ancillaries. Surveillance Requirement 4.6.3.3 requires the confirmation of the mechanical operability of the containment isolation valves by the inservice inspection program. The proposed change does not modify these requirements.

Additionally, Surveillance Requirements 4.3.2.1 and 4.3.3.1 assure the operability of the automatic isolation logic (Phase A and Phase B isolation signals and containment high radiation signal) for the containment isolation valves by performing tests on a monthly basis. This proposed change does not modify these Surveillance Requirements.

Equipment performance over the last four operating cycles was evaluated to determine the impact of extending the frequency of Surveillance Requirement 4.6.3.2. This evaluation included a review of surveillance results, preventive maintenance records, and the frequency and type of corrective maintenance. It has been concluded that the containment isolation valves are highly reliable, and that there is no indication that the proposed extension could cause deterioration in valve condition or performance.

Based on the above, the proposed change to Surveillance Requirement 4.6.3.2 of the Millstone Unit No. 3 Technical Specifications does 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 previously analyzed.

The proposed change to Surveillance Requirement 4.6.3.2 of the Millstone Unit No. 3 Technical Specifications extends the frequency for verifying that each containment isolation valve actuates to its required position in response to Phase A and Phase B isolation test signals, and for verifying that each containment purge supply and exhaust isolation valve actuates to its required position in response to a containment high radiation test signal. The proposal would extend the frequency from at least once per 18 months to at least once per refueling interval (24 months).

The proposed change does not alter the intent or method by which the surveillances are conducted, does not involve any physical changes to the plant, does not alter the way any structure, system, or component functions, and does not modify the manner in which the plant is operated. As such, the proposed change in the frequency of Surveillance Requirement 4.6.3.2 will not degrade the ability of the containment isolation valves to perform their safety function. Also, the containment isolation valve arrangements are not vulnerable to single failures, because they provide at least two barriers between the atmosphere outside the containment and the atmosphere within the containment, the reactor coolant system, or systems that would become connected to the containment atmosphere or the reactor coolant system as a result of, or subsequent to, a DBA.

Based on the above, the proposed change to Surveillance Requirement 4.6.3.2 of the Millstone Unit No. 3 Technical Specifications will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in the margin of safety.

The proposed change to Surveillance Requirement 4.6.3.2 of the Millstone Unit No. 3 Technical Specifications extends the frequency for verifying that each containment isolation valve actuates to its required position in response to Phase A and Phase B isolation test signals, and for verifying that each containment purge supply and exhaust isolation valve actuates to its required position in response to a containment high radiation test signal. The proposal would extend the frequency from at least per 18 months to at least once per refueling interval (24 months).

The proposed change does not alter the intent or method by which the surveillances are conducted, does not involve any physical changes to the plant, does not alter the way any structure, system, or component functions, and does not modify the manner in which the plant is operated. As such, the proposed change in the frequency of Surveillance Requirement 4.6.3.2 will not degrade the ability of the containment isolation valves to perform their safety function. Also, the containment isolation valve arrangements are not vulnerable to single failures, because they provide at least two barriers between the atmosphere outside the containment and the atmosphere within the containment, the reactor coolant system, or systems that would become connected to the containment atmosphere or the reactor coolant system as a result of, or subsequent to, a DBA.

Additional assurance of the operability of the containment isolation valves is provided by Surveillance Requirements 4.6.3.1 and 4.6.3.2. Also, assurance of the operability of the automatic actuation logic of the containment isolation valves is provided by Surveillance Requirements 4.3.2.1 and 4.3.3.1.

Equipment performance over the last four operating cycles was evaluated to determine the impact of extending the frequency of Surveillance Requirement 4.6.3.2. This evaluation included a review of surveillance results, preventive maintenance records, and the frequency and type of corrective maintenance. It has been concluded that the containment isolation valves are highly reliable, and that there is no indication that the proposed extension could cause deterioration in valve condition or performance.

Based on the above, the proposed change to Surveillance Requirement 4.6.3.2 of the Millstone Unit No. 3 Technical Specifications does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141–0270.

NRC Project Director: Phillip F. McKee

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: May 8, 1995.

Description of amendment request: The proposed amendment would change Technical Specifications 2.3, 3.1, 3.2, 3.3 and 3.6. These changes are in accordance with the guidance of Generic Letter 93–05, ''Line Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation,'' dated September 27, 1993.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

GL 93–05, Item 4.2, Control Rod Movement Test; Specification 3.2, Table 3–5, Item 2

Omaha Public Power District (OPPD) proposes to extend the control element assembly (CEA) partial movement surveillance test of Specification 3.2, Table 3–5, Item 2 from a biweekly to a quarterly frequency. This change is based on operating experience and the recommendation of Generic Letter (GL) 93–05, Item 4.2.1. A review of previous surveillance tests and interviews with personnel familiar with the test did not identify any prior surveillance test failures. Industry experience has shown that this test can cause reactor trips, dropped rods and unnecessary challenges to safety systems as stated in NUREG–1366, ''Improvements to Technical Specification Requirements,'' dated December 1992. Therefore, extending the frequency of conducting this surveillance test may be beneficial to plant operations and does not involve a significant increase in the probability or consequences of an accident previously evaluated.

GL 93–05, Item 5.14, Radiation Monitors; Specification 3.1, Table 3–3, Items 3b, 4 and 5b

OPPD proposes to replace descriptive wording in Specification 3.1, Table 3–3, Items 3a/b and 5a/b with defined terms. OPPD also proposes to extend surveillance of the area, post-accident and primary to secondary leak-rate radiation monitors (Specification 3.1, Table 3–3, Items 3b and 5b) from a monthly to a quarterly frequency as recommended by GL 93–05, Item 5.14. Most of these monitors are new (i.e., installed within the last two cycles) or contain many new components. The value of monthly testing is greatly reduced as the new monitors include self checking circuitry that will indicate monitor failure, loss of power, or loss of background. Although post accident radiation monitors RM–091 A/B are not new, Station operating experience has shown that they are reliable. In cases where new components interface with older components, the older components have a history of reliable operation.

Readings and internal test signals are used to verify instrument operation on a daily basis. In addition, the proposed frequency (quarterly) is the same frequency currently specified for the containment radiation high signal (CRHS) monitors (Specification 3.1, Table 3–2, Item 6b), which generate an engineered safeguards signal. Replacing descriptive words with defined terms ensures consistency and that the surveillance test accomplishes its purpose.

A quarterly surveillance conserves resources, increases the availability of the area, post-accident and primary to secondary leak-rate detection radiation monitors and is consistent with CRHS monitor testing. These proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

OPPD proposes to delete Specification 3.1, Table 3–3, Item 4 on surveillance testing of the emergency plan radiation instruments. These are portable instruments stored in specified locations for use by emergency response personnel in the event of an accident. The instruments may be used to survey onsite/offsite areas for radioactivity or to facilitate the decontamination of personnel following an accident. No limiting condition for operation (LCO) action statement is associated with these instruments. As a result, there is no basis for the TS to contain a surveillance requirement for them. In addition, retaining this surveillance in the TS is unnecessary since it does not meet criteria 1 through 4 of the Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors, dated July 22, 1993. Therefore, since these instruments are not utilized until after an accident has occurred, and do not assist in accident mitigation, deleting this surveillance requirement does not involve a significant increase in the probability or consequences of an accident previously evaluated.

GL 93–05, Item 6.1, Reactor Coolant System Isolation Valves; Specification 3.3(2)a

The reactor coolant system (RCS) pressure isolation valves have proven to be very reliable. Therefore, OPPD proposes to extend the time that the plant can be in cold shutdown before the test is required (Specification 3.3(2)a) from 72 hours to 7 days, following the recommendation of GL 93–05, Item 6.1. A review of previous surveillance tests and interviews with personnel familiar with the test did not identify any prior surveillance test failures. This proposed change will reduce radiation exposure and does not involve a significant increase in the probability or consequences of an accident previously evaluated.

GL 93–05, Item 7.4, Accumulator Water Level and Pressure Channel Surveillance Requirements; Specification 2.3(2)g, Specification 3.1, Table 3–2, Item 14a

OPPD proposes to revise Specification 2.3(2)g following the recommendation of GL 93–05, Item 7.4. This revision will clarify that the safety injection tank (SIT) level and/or pressure instrumentation may be inoperable, which does not alter the intent of the Specification, but is more accurate in defining when the Specification applies. This revision also extends the time limit for inoperability of SIT instrumentation from 1 hour to 72 hours, which is justified based upon a review of historical data. As stated in NUREG–1366: ''While technically inoperable, the accumulator [SIT] would be available to fulfill its safety function during this time, and thus, this change would have a negligible increase on risk.''

Currently, Specification 2.3(2)g allows only one hour for SIT level and pressure instrumentation to be inoperable, which is insufficient time to initiate repairs. A review of historical data determined that SIT water level stays relatively constant while pressure decreases slightly over time. It is unlikely that SIT pressure would decrease below the Specification 2.3(1)c limit of 240 psig during the proposed 72-hour LCO, since SIT pressure is normally maintained around 255 psig (Updated Safety Analysis Report (USAR), Section 6.2.3.5).

OPPD's proposal to revise Specification 3.1, Table 3–2, Item 14a to require shiftly verification that SIT level and pressure are within limits and remove reference to verifying ''indications are between independent high and low alarms for level and pressure,'' is consistent with the guidance of GL 93–05, Item 7.4. As stated in GL 93–05, Item 7.4, the operability of SIT instrumentation is not directly related to the capability of a SIT to perform its safety function. OPPD proposes to suspend this surveillance on the affected SIT while the instrumentation is being repaired, since as stated above, SIT level and pressure are expected to stay within the limits of Specification 2.3(1)c during the proposed 72 hour LCO. Therefore, these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

GL 93–05, Item 8.1, Containment Spray System; Specification 3.6(2)b

OPPD proposes to extend the surveillance frequency for verifying that the containment spray nozzles are open (Specification 3.6(2)b) from five to ten years following the recommendation of GL 93–05, Item 8.1. Minor revisions to statements in the basis of Specification 3.6 that refer to conducting this test at five year intervals are proposed also. OPPD has not experienced problems with

obstructions in the containment spray nozzles as determined by a review of previous surveillance tests and personnel interviews. Of the three instances reported in NUREG–1366 concerning obstructions of containment spray nozzles, all were problems related to construction errors. Any construction errors in the FCS containment spray system would have been found by previous surveillance tests.

The problem that occurred at San Onofre Unit 1 (clogging of several containment spray nozzles following the application of a coating material to the carbon steel piping) is not a concern at FCS since the FCS containment spray system piping and valves are constructed of stainless steel (USAR Table 6.3–2). Thus, extending the surveillance frequency of Specification 3.6(2)b from five to ten years does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

GL 93–05, Item 4.2, Control Rod Movement Test; Specification 3.2, Table 3–5, Item 2

OPPD's proposal to extend the CEA partial movement surveillance test (Specification 3.2, Table 3–5, Item 2) to a quarterly frequency is based on operating experience and the recommendation of GL 93–05, Item 4.2.1. The proposed change only lengthens the time between surveillance tests and will not result in any physical alterations to the plant configuration, changes to setpoint values, or changes to the application of setpoints or limits. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

GL 93–05, Item 5.14, Radiation Monitors; Specification 3.1, Table 3–3, Items 3b, 4 and 5b

OPPD proposes to replace unnecessary wording in Specification 3.1, Table 3–3, Items 3a/b and 5a/b with defined terms and to extend the surveillance frequency of Items 3b and 5b from monthly to quarterly based on the recommendation of GL 93–05, Item 5.14. Most of the area, post accident and primary to secondary leak-rate detection radiation monitors are new or contain new components. The new monitors include self checking circuitry that provides failure notification. Although post accident radiation monitors RM–091 A/B are not new, they have an excellent operating history. The proposed changes introduce consistent use of terminology and lengthen the time between surveillance tests and will not result in any physical alterations to the plant configuration, changes to setpoint values, or changes to the application of setpoints or limits. Therefore, these proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

OPPD's proposal to delete Specification 3.1, Table 3–3, Item 4 on surveillance testing of the emergency plan radiation instruments will not result in any physical alterations to the plant configuration, changes to setpoint values, or changes to the application of setpoints or limits. Since these instruments are not utilized until after an accident has occurred, and do not assist in accident mitigation, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

GL 93–05, Item 6.1, Reactor Coolant System Isolation Valves; Specification 3.3(2)a

The RCS pressure isolation valves have proven to be very reliable. As a result, OPPD proposes to extend the time that the plant can be in cold shutdown before the test is required (Specification 3.3(2)a) from 72 hours to 7 days following the recommendation of GL 93–05, Item 6.1. The proposed change will reduce radiation exposure and does not result in any physical alterations to the plant configuration, changes to setpoint values, or changes to the application of setpoints or limits. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

GL 93–05, Item 7.4, Accumulator Water Level and Pressure Channel Surveillance Requirements; Specification 2.3(2)g, Specification 3.1, Table 3–2, Item 14a

OPPD's proposal to revise Specification 2.3(2)g following the guidance of GL 93–05, Item 7.4 more accurately states when the specification should apply and extends the time limit for inoperability of SIT instrumentation from 1 hour to 72 hours based upon a review of historical data. The proposed change will not result in any physical alterations to the plant configuration, changes to setpoint values, or changes to the application of setpoints or limits. As stated in NUREG–1366: ''While technically inoperable, the accumulator [SIT] would be available to fulfill its safety function during this time, and thus, this change would have a negligible increase on risk.''

OPPD's proposal to revise Specification 3.1, Table 3–2, Item 14a to require shiftly verification that SIT level and pressure are within limits and remove reference to verifying ''indications are between independent high and low alarms for level and pressure,'' is consistent with the guidance of GL 93–05, Item 7.4. As stated in GL 93–05, Item 7.4, the operability of SIT instrumentation is not directly related to the capability of a SIT to perform its safety function. OPPD proposes to suspend this surveillance on the affected SIT while the instrumentation is being repaired, since SIT level and pressure are expected to stay within the limits of Specification 2.3(1)c during the proposed 72 hour LCO. Therefore, since these proposed changes do not result in any physical alterations to the plant configuration, changes to setpoint values, or changes to the application of setpoints or limits, they do not create the possibility of a new or different kind of accident from any accident previously evaluated.

GL 93–05, Item 8.1, Containment Spray System; Specification 3.6(2)b

OPPD's proposal to extend the surveillance frequency for verifying that the containment spray nozzles are open (Specification 3.6(2)b) from five to ten years as recommended by GL 93–05, Item 8.1 is justified by operating experience. OPPD has not experienced problems with obstructions in the containment spray nozzles as determined by a review of previous surveillance tests and personnel interviews. The problem that occurred at San Onofre Unit 1 (clogging of several containment spray nozzles following the application of a coating material to the carbon steel piping) is not a concern at FCS since the FCS containment spray system piping and valves are constructed of stainless steel (USAR Table 6.3–2).

The proposed change only extends the time between surveillance tests and revises associated basis statements to support the extension. The proposed change will not result in any physical alterations to the plant configuration, changes to setpoint values, or changes to the application of setpoints or limits. Therefore, OPPD's proposal to extend the surveillance frequency of Specification 3.6(2)b from five to ten years does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

GL 93–05, Item 4.2, Control Rod Movement Test; Specification 3.2, Table 3–5, Item 2

OPPD's proposal to extend the CEA partial movement surveillance test of Specification 3.2, Table 3–5, Item 2 to a quarterly frequency is based on operating experience and the recommendation of GL 93–05, Item 4.2.1. A review of previous surveillance tests and interviews with personnel familiar with the test did not identify any prior surveillance test failures. Industry experience has shown that this test can occasionally cause reactor trips, dropped rods and unnecessary challenges to safety systems as stated in NUREG–1366. Therefore, extending the frequency of conducting this surveillance test may be beneficial to plant operations and does not involve a significant reduction in a margin of safety.

GL 93–05, Item 5.14, Radiation Monitors; Specification 3.1, Table 3–3, Items 3b, 4 and 5b

OPPD proposes to replace descriptive wording in Specification 3.1, Table 3–3, Items 3a/b and 5a/b with defined terms and to extend the surveillance frequency of Items 3b and 5b from monthly to quarterly based on the recommendation of GL 93–05, Item 5.14. Most of the area, post accident and primary to secondary leak-rate detection radiation monitors are new or contain new components. Post accident radiation monitors RM–091 A/B are not new but have a history of reliable operation. The value of monthly testing is greatly reduced since the new monitors include self checking circuitry that provides failure notification. The proposed changes introduce consistent use of terminology and lengthen the time between surveillance tests and therefore do not involve a significant reduction in a margin of safety.

OPPD's proposal to delete Specification 3.1, Table 3–3, Item 4 is justified because the

emergency plan radiation instruments are portable instruments that are not utilized until after an accident has occurred. The instruments are checked for proper operation before use and since these instruments do not assist in accident mitigation, the deletion of this surveillance requirement does not involve a significant reduction in a margin of safety.

GL 93–05, Item 6.1, Reactor Coolant System Isolation Valves; Specification 3.3(2)a

The RCS pressure isolation valves have proven to be very reliable. Therefore, consistent with the guidance of GL 93–05, Item 6.1, OPPD proposes to revise Specification 3.3(2)a and extend the time that the plant is allowed to be in cold shutdown before this surveillance test is required from 72 hours to 7 days. This change will reduce radiation exposure and does not involve a significant reduction in a margin of safety.

GL 93–05, Item 7.4, Accumulator Water Level and Pressure Channel Surveillance Requirements; Specification 2.3(2)g, Specification 3.1, Table 3–2, Item 14a

OPPD's proposal to revise Specification 2.3(2)g following the guidance of GL 93–05, Item 7.4 more accurately states when the specification applies and extends the time limit for inoperability of SIT instrumentation from 1 to 72 hours based upon historical data. As stated in NUREG–1366: ''While technically inoperable, the accumulator [SIT] would be available to fulfill its safety function during this time, and thus, this change would have a negligible increase on risk.''

OPPD's proposal to revise Specification 3.1, Table 3–2, Item 14a to require shiftly verification that SIT level and pressure are within limits and remove reference to verifying ''indications are between independent high and low alarms for level and pressure,'' is consistent with the guidance of GL 93–05, Item 7.4. As stated in GL 93–05, Item 7.4, the operability of SIT instrumentation is not directly related to the capability of a SIT to perform its safety function. OPPD proposes to suspend this surveillance on the affected SIT while the instrumentation is being repaired, since SIT level and pressure are expected to stay within the limits of Specification 2.3(1)c during the proposed 72 hour LCO. Therefore, these proposed changes do not involve a significant reduction in a margin of safety.

GL 93–05, Item 8.1, Containment Spray System; Specification 3.6(2)b

OPPD's proposal to extend the surveillance frequency for verifying that the containment spray nozzles are open (Specification 3.6(2)b) from five to ten years as recommended by GL 93–05, Item 8.1 is justified by operating experience. OPPD has not experienced problems with obstructions in the containment spray nozzles as determined by a review of previous surveillance tests and personnel interviews.

The problem that occurred at San Onofre Unit 1 is not a concern at FCS since the FCS containment spray system piping and valves are constructed of stainless steel (USAR Table 6.3–2). Therefore, OPPD's proposal to extend the surveillance frequency of Specification 3.6(2)b from five to ten years and revise associated basis statements 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: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: James R. Curtiss, Winston & Strawn, 1400 L Street, Washington, DC 20005–3502.

NRC Project Director: William H. Bateman.

Pacific Gas and Electric Company, Docket No. 50–133, Humboldt Bay Power Plant, Unit 3, Humboldt County, California

Date of amendment request: April 10, 1995.

Description of amendment request: The proposed amendment would revise License No. DPR–7, to permit the provisions of 10 CFR 50.59 to be applied with respect to changes to the facility or procedures described in the Decommissioning Plan or changes to the Decommissioning Plan, and the conduct of tests or experiments not described in the Decommissioning Plan.

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 or consequences of an accident previously evaluated will not be effected by the ability to perform safety analyses. As outlined in 10 CFR 50.59, the impact of performing special tests, experiments, and modifications would be evaluated to verify there would be no impact on previously evaluated accidents or increase the probability or consequences of an accident occurring.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

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 create the possibility of a new or different kind of accident from any accident previously evaluated because there is no physical alteration to any plant system, nor is there a change in the method in which any quality-related activities are performed or any direct change in equipment or system function or operation. The proposed change is administrative in nature.

Therefore, the 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 proposed change to the HBPP License does not affect the margin of safety of any accident analysis since it does not affect the parameters for any accident analysis, and has no effect on the current operating methodologies or actions that govern plant performance.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis of the licensee 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: Humboldt County Library, 636 F Street, Eureka, California 95501.

Attorney for licensee: Christopher J. Warner, Esquire, Pacific Gas & Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: Seymour H. Weiss.

PECO Energy 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: January 17, 1995 as supplemented by letter dated March 30, 1995.

Description of amendment request: The proposed change revises the Peach Bottom Atomic Power Station, Units 2 and 3 technical specifications to reflect the replacement of the source range monitor (SRM) and intermediate range monitor (IRM) systems with a new system referred to as the wide range neutron monitoring system (WRNMS).

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 use of the WRNMS as discussed herein will not increase the probability or consequences of an accident previously evaluated.

The probability (frequency of occurrence) of design basis accidents (DBAs) occurring is not affected by the WRNMS. The only plant safety analysis affected by WRNMS is the Rod Withdrawal Error (RWE) at low power, and a reanalysis assuming use of WRNMS shows that the criteria of 170 cal/gm for fuel enthalpy increase under RWE is satisfied; thus, RWE is not a limiting event. Scram setpoints (equipment settings that initiate automatic plant shutdowns) will be established such that there is no increase in scram frequency due to the WRNMS. No new challenges to safety-related equipment will result from WRNMS.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

As summarized below, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The components of the WRNMS will be supplied to equivalent or better design and qualification criteria than is currently required for the plant. Equipment that could be affected by WRNMS has been evaluated. No new operating mode, safety-related equipment lineup, accident scenario, system interaction, or equipment failure mode was identified. Therefore, the WRNMS will not adversely affect plant equipment.

3. The proposed changes do not involve a significant reduction in a margin of safety.

All the SRM/IRM functions required in the Technical Specifications are replaced with equivalent (more reliable) WRNMS functions. The accuracy and response times of the WRNMS are superior to those of the SRM/IRM subsystems. Implementation of the WRNMS does not affect any fuel or safety limit. The applicable Bases of the Technical Specifications have been rewritten, and the new Bases maintain the equivalent margin of safety as was provided by the SRM/IRM Bases.

The WRNMS (a) does not decrease a channel trip occurrence beyond its acceptable limit, (b) does not increase a channel response time beyond its acceptable limit, (c) increases indicated accuracies, and (d) does not cause any plant parameter for any analyzed event to fall outside of its acceptable limit(s).

The surveillance test frequency change of 7 to 31 days is based on the WRNMS having (1) fixed in-core detectors, (2) greater reliability than the SRMs and IRMs, and (3) self test features. The 13 second allowable value for the WRNM Period-Short surveillance, and the surveillance test frequency change of 184 days to 24 months is based on trip setpoint calculations using GE's standard (NRC approved) setpoint methodology.

The WRNMS will not involve a reduction in a margin of safety, as loads on plant equipment will not increase, and reactions to or results of transients and postulated accidents will not increase from those presently approved by the NRC.

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, PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania 19101.

NRC Project Director: John F. Stolz.

Pennsylvania Power and Light Company, Docket No. 50–387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of amendment request: April 11, 1995.

Description of amendment request: This amendment would extend on a one time basis the allowed outage time in the Susquehanna Steam Electric Station Technical Specification 3.8.1.1 from 3 to 7 days for one offsite circuit being out of service. This change will provide additional time if needed to complete modifications to an offsite circuit.

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:

I. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The consequences of losing offsite power have been evaluated in the FSAR [Final Safety Analysis Report] and the Station Blackout evaluation. Increasing the AOT [allowed outage time] for T–10 [an offsite power source] from 3 to 7 days does not increase the consequences of a LOOP [loss of offsite power] event nor change the evaluation of LOOP events as stated in the FSAR or Station Blackout evaluation.

Allowing T–10 to be removed from service for an additional 4 days does increase slightly the possibility of a LOOP event as shown in PP&L's [Pennsylvania Power & Light Company's] engineering study. However, implementing the following compensatory actions reduces the probability of a LOOP event:

1. prohibiting high risk activities within the confines of the plant or the grid system that may result in a loss of T–20 [the second offsite power transformer] during the T–10 outage,

2. performing the modification during the Fall when the frequency of grid and weather related LOOPs are reduced,

3. requiring a unit shutdown if the HPCI [high pressure core injection] system becomes inoperable during the T–10 outage,

4. requiring a unit shutdown if the SLCS [standby liquid control system] becomes inoperable during the T–10 outage,

5. requiring that within 24 hours prior to taking T–10 out of service, Surveillance 4.8.1.1.2.a.4 be successfully completed on the aligned diesel generators, and

6. maintaining the following equipment operable during the T–10 work window and restoring any failed system/component to operable status as soon as possible (The failed system/component shall be worked around the clock):

- Both CRD [control rod drive] pumps,
- Diesel fire pump, yard fire hydrant (1FH122) and associated hydrant hose station,
- RHR [residual heat removal system]/RHRSW [residual heat removal service water system]/ESW [emergency service water system] for suppression pool cooling,
- RHR/RHRSW cross tie valves,
- RCIC [reactor core isolation cooling]
- CIG [containment instrument gas] 150 psig header and bottles,
- Turbine Building Closed Cooling Water System (one pump and heat exchanger),
- Portable diesel generator,
- HV–141–F019.

Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

II. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Allowing the AOT for T–10 to increase from 3 to 7 days is a one time exemption in order to install the new T–10 tap and 230 kV switch yard. The accident analyses affected by this extension are the LOOP events. The remaining portions of the station and equipment are not altered by this change. The potential for the loss of other plant systems or equipment to mitigate the effects of an accident are not altered. One offsite source of power will be out of service for an additional 4 days and compensatory actions will be initiated to lessen the effect of having the offsite power source out of service for an additional 4 days. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

III. Involve a significant reduction in a margin of safety.

The proposed change allows, on a one time basis, T–10 to be out of service for an additional 4 days. This increase in AOT for T–10 results in a slight decrease in the margin of safety (defined as core damage frequency) with respect to having two offsite sources available per Specification 3.8.1.1. By implementing the compensatory measures as described in Item 1 above, the margin of safety is increased to be the equivalent of allowing the offsite power source (T–10) to be out of service for 3 days as is allowed by the existing Specification. Therefore, this one time exemption will not involve a significant reduction in safety margin.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Pennsylvania Power and Light Company, Docket Nos. 50–387 and 50–388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: April 10, 1995.

Description of amendment request: This amendment would relocate response time limit tables from the Susquehanna Steam Electric Station Unit 1 and Unit 2 Technical Specifications (TS) to the Final Safety Analysis Report. This modification is a line item improvement to the TS as described in Generic Letter 93–08, ''Relocation of the Technical Specification Tables of Instrument Response Time Limits,'' dated December 29, 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:

I. This proposal does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The purpose of the proposed Tech. Spec. [Technical Specification] change is to delete and subsequently relocate Tech. Spec. Table 3.3.1–2, Table 3.3.2–3, and Table 3.3.3–3, to the SSES FSAR consistent with the guidance provided in Generic Letter 93–08. This is a line item Tech. Spec. improvement change recommended by the NRC in Generic Letter 93–08. This change will allow PP&L [Pennsylvania Power & Light Company] to administratively control subsequent changes to the response time limits in accordance with 10CFR50.59. The procedures that contain the various response time limits are also subject to the change control provisions in the Administrative Controls section of the Tech. Specs. The proposed change only relocates the existing response time limits; the surveillance requirements and associated Actions are not affected and remain in the Tech. Specs. Relocating the response time limit information does not affect the analysis of any design basis accident. The response times of these systems will be maintained within the acceptance limits assumed in SSES [Susquehanna Steam Electric Station] safety analyses and required for successful mitigation of an initiating event. Also, since any subsequent changes to the FSAR or procedures will be evaluated in accordance with 10 CFR 50.59, no increase in the probability or consequences of an accident previously evaluated will occur. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

II. This proposal does not increase the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the proposed Tech. Spec. changes do not affect the capability of the associated systems to perform their intended function within the acceptance limits assumed in SSES safety analyses and required for successful mitigation of an initiating event. The proposed change does not involve a physical modification of the plant or changes in methods governing normal plant operations. The proposed change will not impose any different operational or surveillance requirements. This change only proposes to relocate these requirements to other plant documents whereby adequate control of information will be maintained. No new failure modes will be introduced. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

III. This change does not involve a significant reduction in a margin of safety.

The proposed change will not reduce a margin of safety because it has no impact on any safety analysis assumption. The proposed change does not alter the scope of equipment currently required to be OPERABLE or subject to testing, nor does the proposed change affect any instrument setpoints or equipment safety functions. Since any future changes to these requirements in the FSAR or procedures will be evaluated per the requirements of 10 CFR 50.59, no reduction in a margin of safety will occur. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: May 2, 1995.

Description of amendment request: The amendments would eliminate the manual start for auxiliary feedwater from the Technical Specification for Engineered Safety Feature (ESF) Actuation System Instrumentation. The manual start will be tested during the quarterly pump test. This change is consistent with NUREG–1431, ''Standard Technical Specifications-Westinghouse Plants.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The change to the ESF Actuation Instrumentation specification to eliminate the requirements for manual initiation of the [Auxiliary Feedwater] (AFW) Pumps does not change any operating characteristics of the plant. The change will eliminate unnecessary AFW Pump starts which increase wear on system components. Manual initiation is not credited in the Salem safety analyses. Manual initiation is verified quarterly on a staggered test basis by performance of specification 4.7.1.2.b. Therefore, the proposed changes do not 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.

The proposed technical specification modifications do not change system configurations, plant equipment or safety analyses. Therefore, the proposed modifications will not increase the possibility of a new or different kind of accident from any accident previously identified.

3. Involve a significant reduction in a margin of safety.

The proposed change to the ESF Actuation Instrumentation Specification does not affect the ability of the AFW System to perform its design function. The manual initiation of the AFW Pump is not credited in the Salem safety analyses. Manual initiation is verified quarterly by performance of specification 4.7.1.2.b. Therefore, these changes do not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: John F. Stolz.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: January 4, 1995 (TS 355).

Description of amendment request: The proposed amendment changes the applicability and surveillance requirements for the intermediate range monitor (IRM), average power range monitor (APRM), and APRM Inoperative Trip functions. The proposed amendment adopts provisions of the Improved Standard Technical Specifications (NUREG–1433).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[1]. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises the frequency of functional tests for the IRM and APRM High Flux (15% Scram) Trip Functions and eliminates operability requirements for the IRM, APRM High Flux (15% Scram), and APRM Inoperative Trip Functions in certain modes of operation. The operation of these trip functions is not a precursor to any design basis accident or transient analyzed in the Browns Ferry Updated Final Safety Analysis Report. Therefore, this change does not increase the probability of any previously evaluated accident.

The proposed change will eliminate the requirement to re-perform the functional tests for these trip functions prior to each startup if the test is within its periodicity (once per 7 days). It will also eliminate the operability requirement for the IRM High Flux Trip Function in the Shutdown Mode and IRM, APRM High Flux (15% Scram), and APRM Inoperative Trip Functions during the Refuel Mode except when any control rod is withdrawn from a core cell containing one or more fuel assemblies. The Specifications will still provide for operability of the equipment in Modes where credit is taken in the safety analysis. Therefore, this change does not increase the consequences of any previously evaluated accident.

[2]. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the Technical Specification requirements for the IRM, APRM High Flux (15% Scram) and APRM Inoperative Trip Functions does not involve a modification to plant equipment. No new failure modes are introduced. There is no effect on the function of any plant system and no new system interactions are introduced by this change. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

[3]. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change will eliminate the requirement to re-perform the functional test for the IRM and APRM High Flux (15% Scram) Trip Functions prior to each startup if the tests are within their periodicity (once per 7 days). The proposed change will also eliminate operability requirements for modes of operation in which the IRM, APRM High Flux (15% Scram) and APRM Inoperative Trip Functions provide no useful function. Since the ability of the trip functions to perform their safety function will not be degraded, the proposed amendment does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units, 1, 2 and 3, Limestone County, Alabama

Date of amendment request: March 31, 1995 (TS 349).

Description of amendment request: The proposed amendment changes the reactor pressure vessel pressure-temperature (P–T) curves, lowering the temperature at which the reactor vessel head bolting studs may be tensioned.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[1]. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Units 1, 2, and 3 change deals exclusively with the reactor vessel P–T [pressure-temperature] curves, which define the permissible regions for operation and testing. Failure of the reactor vessel is not a design basis accident. Through the design conservatism used to calculate the P–T curves, reactor vessel failure has a low probability of occurrence and is not considered in the safety analyses. These changes do not alter or prevent the operation of equipment required to mitigate any accident analyzed in the BFN Browns Ferry Nuclear Plant] Final Safety Analysis Report. Therefore, this change does not increase the probability or consequences of any previously evaluated accident.

[2]. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the Units 1, 2, and 3 reactor vessel P–T curves does not involve a modification to plant equipment. No new failure modes are introduced. There is no effect on the function of any plant system and no new system interactions are introduced by this change. The calculation of the proposed P–T curves was in accordance with Regulatory Guide 1.99, Revision 2, and the requirements of 10 CFR 50, Appendix G. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

[3]. The proposed amendment does not involve a significant reduction in a margin of safety.

The ductile to brittle transition temperature is shifted approximately 10°F at higher temperatures and approximately 30°F at lower temperatures on the proposed P–T curves. While this represents a decreased margin against non-ductile fracture during heatup, cooldown and hydrotesting, the proposed curves conform to the guidance contained in Regulatory Guide 1.99, Revision 2, and maintain the safety margins specified in 10 CFR 50, Appendix G. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET llH, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: May 11, 1995 (TS 359).

Description of amendment request: The proposed amendment adds a scram pilot air header low pressure reactor trip to Browns Ferry Unit 3. The proposed amendment also clarifies a note regarding reactor protection system instrumentation requirements for all three units.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[1]. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The scram pilot air header low pressure switches perform the same function as the high water level switches in the scram charge instrument volume. They automatically initiate control rod insertion (SCRAM) in the event that degraded conditions are detected in the BWR [boiling water reactor] CRD [control rod drive] System. Since the scram pilot air header pressure trip function ensures that the CRD System is available to mitigate the consequence of an accident or transient, and the addition of the scram pilot air header low pressure trip scram function does not affect the precursors for any accident or transient analyzed in Chapter 14 of the BFN Updated Final Safety Analysis Report (UFSAR), there is no increase in the probability of any accident previously evaluated.

The design criteria for the scram system is contained in the generic SER [safety evaluation report], which was transmitted by NRC letter to All BWR Licensees, dated December 9, 1980, BWR Scram Discharge System. The scram pilot air header pressure trip function ensures that the CRD System is available to mitigate the consequence of an accident or transient, and the overall scram system design, with the addition of the scram pilot air header low pressure trip function, satisfies the criteria contained in the generic SER. Since the scram function would be successfully performed, the addition of the scram pilot air header low pressure trip scram function does not involve a significant increase in the consequences of any accident previously evaluated.

The clarification of the description of the SDV [scram discharge volume] high water level bypass in the RPS [reactor protection system] does not, by itself, reflect a modification to plant equipment, maintenance activities, or operating instructions. The revised description does not effect the precursors for any accident or transient analyzed in Chapter 14 of the BFN UFSAR or equipment used in the mitigation of these accidents or transients. Therefore, there is no increase in the probability of any accident previously evaluated nor an increase in the consequences of any accident previously evaluated.

[2]. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The scram pilot air header low pressure trip performs the same protective function as the SDV high water level trip. Both trip functions ensure that a reactor scram is initiated while sufficient volume remains in the SDV to accept discharged water from the CRDs.

The scram inlet and outlet valves are held closed by the air pressure in the scram air header. The scram outlet valves begin to unseat as the air pressure drops below 43 psig (which is higher than the pressure that scram inlet valves begin to unseat). The scram pilot air header low pressure switches detect losses in air pressure and initiate an anticipatory scram to ensure the scram is complete prior to the possible onset of hydraulic locking in the SDV. The proposed trip level setting of 50 psig is conservative and assures a trip signal and successful reactor scram is accomplished prior to hydraulic locking occurring in the SDV as a result of significant flow past the scram outlet valves.

The overall scram system design, with the addition of the scram pilot air header low pressure trip function is in conformance with the generic SER. No new system failure modes are created as a result of adding the scram pilot air header low pressure trip scram function. Therefore, the addition of the scram pilot air header low pressure trip scram function does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The clarification of the description of the SDV high water level bypass in the RPS does not, by itself, reflect a modification to plant equipment, maintenance activities, or operating instructions. No new external threats, system interactions, release pathways, or equipment failure modes are created. Therefore, the clarification of this description does not create the possibility of a new or different kind of accident from any accident previously evaluated.

[3]. The proposed amendment does not involve a significant reduction in a margin of safety.

The overall scram system design, with the addition of the scram pilot air header low pressure trip function is in conformance with the generic SER. Since the scram system would successfully operate to mitigate the consequences of accidents and transients previously analyzed, the proposed amendment does not involve a significant reduction in the margin of safety.

The clarification of the description of the SDV high water level bypass in the RPS does not, by itself, reflect a modification to plant equipment, maintenance activities, or operating instructions. There is no change to the licensing or design basis of the RPS. Therefore, the revised description does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET llH, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: April 28, 1995.

Description of amendment request: The proposed amendment would remove the license conditions for the Transamerica Delaval, Inc. emergency diesel generators specified by paragraph 2.C.(9) and defined in Attachment 2 to the Operating License.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change involves the removal of license conditions associated with teardowns and certain inspections on the Transamerica Delaval, Inc. (TDI) Emergency Diesel Generators (EDG). A failure of an EDG is not an initiating event for any Updated Safety Analysis Report (USAR) Chapter 15 accident scenario. Accordingly, there could be no increase in the probability of any accident previously evaluated. The availability and reliability of the EDGs will remain within the limits previously assumed in the safety analyses. Eliminating the disassembly and specified inspections would actually tend to decrease the consequences of an accident because, as indicated in Topical Report TDI–EDG–001–A, ''Basis for Modification to Inspection Requirements for Transamerica Delaval, Inc., Emergency Diesel Generators,'' this action will improve the availability of the engines for service, especially during outages, while maintaining current reliability levels. Therefore, removal of the existing conditions from the operating license will not result in an increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed removal of the license conditions associated with the TDI diesel generators does not affect the design or function of any plant system, structure, or component, nor does it change the way plant systems are operated. No modifications or additions to plant equipment are involved. Therefore, removal of the existing conditions from the operating license will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not result in a significant reduction in the margin of safety.

The proposed removal of the EDG license conditions from the Operating License does not affect any parameters which would result in a significant reduction in margin of safety because the results of the operational data and inspections have demonstrated that the additional license conditions are not required to ensure that the EDGs will be maintained with a reliability consistent with that assumed for the safety analyses. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Gail H. Marcus.

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 2, 1995.

Description of amendment request: The proposed amendment would modify Technical Specification (TS) Table 15.4.1, ''Minimum Frequencies for Checks, Calibrations, and Tests of Instrument Channels.'' The radiation monitoring system channel requirements would be deleted, the main steam line radiation channel requirements would be added, and the containment high range radiation channel requirements would be changed. Administrative changes, consistent with the proposed modifications, would also be made.

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 radiation monitors being removed from Table 15.4.1–1 are not directly involved with mitigating an offsite release in the case of an accident. The surveillance requirements for monitors which would measure and mitigate such a release are listed in Technical Specifications Section 15.7.4, ''Radioactive Effluent Monitoring Instrumentation Surveillance Requirements.'' Post-accident radiation monitors will still be included in Table 15.4.1–1. Monitors to be removed include area and non-RETS [radiological effluent technical specification] required process monitors. These are necessary to monitor plant conditions and will still be subject to surveillance requirements. The removed monitors do not have any safety function with regard to radioactive releases. Therefore, the consequences of an accident will not be increased. The radiation monitors are not initiators for any accident analyses in the FSAR, therefore, the probability of an accident previously evaluated is not increased.

2. The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated. There is no physical change to the facility, its systems, or its operation, therefore, a new or different kind of accident cannot occur.

3. The proposed change will not involve a significant reduction in the margin of safety. The removal of much of the RMS equipment from the Technical Specifications will not affect the surveillance program already in place. The change in test frequency for the post-accident monitoring instrumentation will not have a significant impact on the margin of safety. Test frequencies continue to meet acceptable standards. RETS required effluent monitors, which are of prime importance due to their release mitigation function, are checked quarterly in accordance with Technical Specifications Section 15.7.4, ''Radioactive Effluent Monitoring Instrumentation Surveillance Requirements.'' Therefore, the margin of safety is not 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: Gail H. Marcus.

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.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: May 15, 1995.

Description of amendment request: The proposed amendment would authorize a reconfiguration of the cooling water flow to the reactor building emergency cooling system.

Date of individual notice in the **Federal Register**: May 22, 1995 (60 FR 27144)

Expiration date of individual notice: June 21, 1995.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

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, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: November 2, 1994.

Brief description of amendments: These amendments delete the condenser vacuum exhaust release point reference on Figure 5.1–3 and combine it with the plant vent exhaust release point on the revised Figure 5.1–3. In addition to the figure change, Bases Section 3/4.3.3.6 is changed to reflect the removal of radiation monitor RU–142 and the relocation of RU–144 and RU–146 from Table 3.3–13 (deleted by amendments 62, 48, and 34, for Units 1, 2, and 3, respectively) to the Offsite Dose Calculation Manual.

Date of issuance: May 25, 1995.

Effective date: May 25, 1995, to be implemented within 45 days of issuance.

Amendment Nos.: Unit 1—Amendment No. 91; Unit 2—Amendment No. 79; Unit 3—Amendment No. 62.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 21, 1994 (59 FR 65810). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 25, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: April 13, 1994, as supplemented December 20, 1994, January 12, January 31, March 17, and April 5, 1995. Brief description of amendment: The amendment revises TS Sections 3.1.F and 4.13 to allow the repair of steam generator tubes by sleeving using laser welded sleeves.

Date of issuance: May 19, 1995.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 183.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 25, 1994 (59 FR 27051). The December 20, 1994, January 12, January 31, March 17, and April 5, 1995, submittals provided clarifying information that did not change the initial no significant hazards determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: December 29, 1994, as supplemented February 2 and May 4, 1995.

Brief description of amendment: This amendment revises the iodine removal system Technical Specification (TS) to reflect replacement of the sodium hydroxide requirements with trisodium phosphate requirements. The revised TS defines operability, applicability, and associated action statements for the new system. Associated surveillance requirements and bases have also been revised.

Date of issuance: May 19, 1995.

Effective date: May 19, 1995.

Amendment No.: 165.

Facility Operating License No. DPR–20. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 1, 1995 (60 FR 6299). The February 2 and May 4, 1995, submittals provided clarifying information which was within the scope of the initial application and did not affect the staff's initial proposed no significant hazards consideration findings. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

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 application for amendments: April 19, 1994, as supplemented March 31, 1995.

Brief description of amendments: These amendments revise the Appendix A Technical Specifications (TSs) 3.4.9.3 and 3.4.11 to incorporate changes to the power operated relief valve TSs in accordance with the guidance in 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),'' as implemented in the NRC's Improved Standard Technical Specifications (NUREG–1431) with some exceptions and modifications to reflect plant-specific design features. The amendment includes several administrative changes (e.g., renumbering sections, spelling out mathematical symbols, changes in nomenclature for consistency, and relocation of sentences and paragraphs).

Date of issuance: May 15, 1995.

Effective date: May 15, 1995.

Amendment Nos.: 187 and 69.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 6, 1994 (59 FR 34661). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 15, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: July 22, 1993.

Brief description of amendment: The amendment revised the value of the Unit 1 reactor building volume as listed in the technical specifications. The amendment was submitted after a more precise calculation of the reactor building volume was completed.

Date of issuance: May 22, 1995.

Effective date: May 22, 1995.

Amendment No.: 181.

Facility Operating License No. DPR–51: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 22, 1993 (58 FR 76843). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: June 25, 1993, as supplemented by letter dated April 13, 1995.

Brief description of amendment: This amendment deleted portions of the current Technical Specifications (TSs) Surveillance Requirements (SRs) for the inboard Main Steamline Isolation Valve Leakage Control System (MSIV–LCS) heaters and blowers. The deleted MSIV–LCS SRs will be relocated to documents that are included by reference in the Updated Final Safety Analysis Report (UFSAR) and are controlled by the licensee under the provisions of 10 CFR 50.59. The change is consistent with the format and content of the Improved Standard Technical Specifications (NUREG–1434, Revision O).

Date of issuance: May 22, 1995.

Effective date: May 22, 1995.

Amendment No. 122.

Facility Operating License No. NPF–29. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: July 21, 1993 (58 FR 39050). The additional information contained in the supplemental letter dated April 13, 1995, was clarifying in nature and thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120.

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 application for amendments: March 18, 1994, as supplemented by letters dated February 28 and March 17, 1995.

Brief description of amendments: The amendments revise Technical Specification (TS) 3/4.3.3.6, Accident Monitoring Instrumentation, TS 3/4.6.4.1, Hydrogen Monitors, and their associated Bases to incorporate the technical substance of Specification 3.3.3 from NUREG–1431, Revision O (Standard Technical Specifications) for the Westinghouse Owners Group.

Date of issuance: May 15, 1995.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 85 and 63.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 28, 1994 (59 FR 22008). The February 28 and March 17, 1995, letters provided clarifying information that did not change the scope of the March 18, 1994, application and initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 15, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830.

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: March 16, 1995.

Brief description of amendments: The amendments revised Technical Specification 4.6.1.2, regarding the test frequency requirements for the overall integrated containment leakage rate tests, so that it references 10 CFR part 50, appendix J and approved exemptions, rather than paraphrase the regulation.

Date of issuance: May 19, 1995.

Effective date: May 19, 1995.

Amendment Nos.: Unit 1—Amendment No. 75; Unit 2—Amendment No. 64.

Facility Operating License Nos. NPF–76 and NPF–80. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 26, 1995 (60 FR 20517). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 19, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: April 14, 1995.

Brief description of amendment: The amendment allows the use of the Westinghouse Electric Corporation sleeving process for repairing steam generator tubes.

Date of issuance: May 22, 1995.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 150.

Facility Operating License No. DPR–36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 22, 1995 (60 FR 19969). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: January 25, 1995, and oral request of May 16, 1995.

Description of amendment request: This amendment revises the Appendix

A Technical Specifications (TS) relating to the schedule for performing Type A containment Integrated Leak Rate Tests (ILRTs). Specifically, the amendment replaces the prescribed number of ILRTs to be performed and the associated schedule with the requirement to conduct ILRTs at intervals as specified in Appendix J to 10 CFR Part 50.

Date of issuance: May 17, 1995.

Effective date: May 17, 1995.

Amendment No.: 37.

Facility Operating License No. NPF–86. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 15, 1995 (60 FR 8754). The licensee's oral request of May 16, 1995, provided a minor clarifying addition, but does not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: October 4, 1993.

Description of amendment request: The amendment revises the Appendix A Technical Specifications (TS) relating to A.C. power sources during operation in Modes 1 through 4. Specifically, the amendment deletes the diesel engine speed specification from Surveillance Requirement (SR) 4.8.1.1.2a.5 and replaces the diesel engine speed requirement with an electrical frequency requirement in SR 4.8.1.1.2g.

Date of issuance: May 19, 1995.

Effective date: As of the date of its issuance, to be implemented within 60 days of issuance.

Amendment No.: 38.

Facility Operating License No. NPF–86. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 2, 1994 (59 FR 4941). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, NH 03833.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: October 7, 1994.

Description of amendment request: The amendment modifies Technical Specification (TS) 6.4.1.6, 6.4.3.8, and 6.7.1 relating to Administrative Controls. Specifically, the amendment removes certain audit responsibilities of the Nuclear Safety Audit Review Committee and certain review responsibilities of the Station Operation Review Committee relating to the Emergency Plan and the Security Plan and their implementing procedures, and deletes the requirements for written procedures relating to the Emergency Plan and Security Plan.

Date of issuance: May 19, 1995.

Effective date: May 19, 1995.

Amendment No.: 39.

Facility Operating License No. NPF–86. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 7, 1994 (59 FR 63125). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: May 6, 1994, supplemented March 27, 1995.

Brief description of amendment: The amendment incorporates additional sections and their associated surveillance requirements and bases into the Millstone Unit 2 TS that impose additional requirements on components that are credited to provide feedwater isolation in the event of a main steam line break inside containment. In addition, the amendment makes modifications to the TS Bases Sections ¾.3.1 and ¾.3.2 by denoting that the feedwater pumps are assumed to trip immediately upon receipt of a main steam line isolation signal; and makes several miscellaneous editorial changes.

Date of issuance: May 17, 1995.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 188.

Facility Operating License No. DPR–65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 22, 1994 (59 FR 32232). The March 27, 1995, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut Date of application for amendment: April 21, 1994.

Brief description of amendment: The amendment revises Technical Specification (TS) 3.1.2.4, ''Charging Pumps-Operating,'' by adding a note that indicates that the provisions of TS 3.0.4 and 4.0.4 are not applicable for entry into MODE 4 from MODE 5.

Date of issuance: May 18, 1995.

Effective date: As of the date of issuance.

Amendment No.: 189.

Facility Operating License No. DPR–65. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (60 FR 21558, May 2, 1995). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by June 1, 1995, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated May 18, 1995.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 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: December 9, 1994, as supplemented March 28, 1995.

Brief description of amendment: The amendment eliminates certain surveillance requirements for the emergency diesel generators, in accordance with staff guidance contained in Generic Letter 93–05, ''Line Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing during Power Operation,'' dated September 27, 1993.

Date of issuance: May 12, 1995.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 112.

Facility Operating License No. NPF–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 15, 1995 (60 FR 8749). The March 28, 1995, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 12, 1995. 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, CT 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: January 18, 1995.

Brief description of amendment: The amendment revises the Technical Specifications to increase the minimum required boron concentration in the boric acid tank (BAT) from 6300 to 6600 ppm. The increase is required to meet the latest analysis for Cycle 6 which includes additional conservatisms which are meant to ensure the new required boron concentration will bound future cycle variations.

Date of issuance: May 17, 1995.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 113.

Facility Operating License No. NPF–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 15, 1995 (60 FR 8753). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 1995. 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, CT 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: January 24, 1995, as supplemented March 22 and 29, 1995, and April 25, 1995.

Brief description of amendment: The amendment revises Technical Specification 3.2.3.1.a and Table 2.2–1 to reduce the minimum reactor coolant system (RCS) flow rate by 4%, with corresponding changes in loop flow. The current minimum RCS flow rate of 387,480 gallons per minute (gpm) is reduced to 371,920 gpm for four-loop operation.

Date of issuance: May 23, 1995.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 114.

Facility Operating License No. NPF–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 1, 1995 (60 FR 11136) and April 12, 1995 (60 FR 18626). The April 25, 1995, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 23, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: January 9, 1995, as supplemented February 7, March 15, March 27, April 3, and April 20, 1995.

Brief description of amendments: The amendments revise the Technical Specifications (TS) for the Prairie Island Nuclear Plant to allow using an alternate steam generator tube plugging criteria (F*) for the part of the tubes within the tubesheet. The amendments incorporate revised acceptance criteria (F*) for tubes with degradation in the tubesheet roll expansion and enable the licensee to avoid unnecessary plugging of steam generator tubes. NRC will issue a separate safety evaluation for the L* criteria at a later date.

Date of issuance: May 15, 1995.

Effective date: May 15, 1995, with full implementation within 30 days.

Amendment Nos.: 118/111.

Facility Operating License Nos. DPR–42 and DPR–60. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 15, 1995 (60 FR 14023). The March 15, March 22, April 3, and April 20, 1995, letters provided updated TS pages and clarifying information in response to NRC's requests for additional information. This information was within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 15, 1995. 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.

PECO Energy Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: August 3, 1994.

Brief description of amendments: The amendments implement a snubber functional test surveillance interval of 24 months. The amendments change the current one-time snubber functional test interval to a permanent interval of 24 months.

Date of issuance: May 16, 1995.

Effective date: May 16, 1995.

Amendments Nos.: 201 and 204.

Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 18, 1995 (60 FR 3676).The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 16, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: September 29, 1994.

Brief description of amendments: The amendments remove from the Technical Specifications the sections entitled ''Seismic Instrumentation'' and ''Meteorological Instrumentation'' and relocate the information and testing requirements to the Salem Updated Final Safety Analysis Report.

Date of issuance: May 22, 1995.

Effective date: May 22, 1995.

Amendment Nos. 167 and 149.

Facility Operating License Nos. DPR–70 and DPR–75. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 23, 1994 (59 FR 60385). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 22, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: November 3, 1993.

Brief description of amendments: These amendments revise Technical Specification (TS) 3/4.6.3, ''Containment Isolation Valves,'' to require valves listed in Section D of existing Table 3.6–1, ''Containment Isolation Valves,'' to be in an action statement when secured in their engineered safety feature actuation system (ESFAS) actuated position. Bases 3/4.6.3 is also revised to reflect these changes.

Date of issuance: May 17, 1995.

Effective date: May 17, 1995, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2—Amendment No. 119; Unit 3—Amendment No. 108.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 16, 1994 (59 FR 7699). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 17, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: October 25, 1994.

Brief description of amendments: The amendments revise the NA–1&2 Hydrogen Recombiner System surveillance requirements in accordance with Generic Letter 93–05, ''Line-Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operation.'' Also, the amendments delete the surveillance requirement to operate the containment purge blower and clarifies that the surveillance requirement applies only to the hydrogen recombiner purge blowers.

Date of issuance: May 12, 1995.

Effective date: May 12, 1995.

Amendment Nos.: 192 and 173.

Facility Operating License Nos. NPF–4 and NPF–7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 23, 1994 (59 FR 60388). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 12, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: March 2, 1995.

Brief description of amendments: The amendments revise the NA–1&2 Technical Specification 4.6.1.2.a to permit approved exemptions to the containment integrated leak rate test frequency requirements.

Date of issuance: May 15, 1995.

Effective date: May 15, 1995.

Amendment Nos.: 193 and 174.

Facility Operating License Nos. NPF–4 and NPF–7: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 12, 1995 (60 FR 18629). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 15, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Washington Public Power Supply System, Docket No. 50–397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendments: September 2, 1992.

Brief description of amendment: The amendment revises Figure 3.1.5–2, ''Sodium Pentaborate Tank, Volume Vs. Concentration Requirements,'' to reflect the actual low-volume-alarm and low-limit values for the standby liquid control tank.

Date of issuance: May 17, 1995.

Effective date: May 17, 1995, to be implemented within 30 days of issuance.

Amendment No.: 138.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 23, 1994 (59 FR 60388). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 1995. 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: March 21, 1995.

Brief description of amendment: This amendment revises Technical Specification Surveillance Requirement 4.6.2.1.d, ''Containment Spray System,'' to change the surveillance interval specified for the performance of an air or smoke flow test through the containment spray header from at least 5 years to at least once per 10 years.

Date of issuance: May 17, 1995.

Effective date: May 17, 1995, to be implemented within 30 days of issuance.

Amendment No.: 86.

Facility Operating License No. NPF–42: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 12, 1995 (60 FR 18631). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 1995. 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 31st day of May, 1995.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13759 Filed 6–5–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–389A; DD–95–10]

Florida Power & Light Company' St. Lucie Plant, Unit #2; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission (NRC), has issued the Director's Decision concerning the petition dated July 2, 1993, filed by Robert A. Jablon, Esq., et. al, on behalf of the Florida Municipal Power Agency (petitioner). The petitioner requested that the NRC take certain enforcement actions against the Florida Power & Light Company (FPL) for allegedly violating the antitrust license conditions applicable to Unit 2 of the St. Lucie plant.

After consideration and careful review of the facts available to the staff and the decision reached in a parallel proceeding involving the same parties and similar issues before the Federal Energy Regulatory Commission (FERC), the Director has determined that the issues raised by the petitioner that could be remedied by the NRC have addressed and resolved in the FERC proceeding(s) so as to require no further action by the NRC. As a result, no proceeding in response to the petition will be instituted. The reasons for this decision are explained in the ''Director's Decision under 10 CFR 2.206'' (DD–95–10), which is published below.

A copy of the Director's Decision has been filed with the Secretary of the Commission for Commission review in accordance with 10 CFR 2.206(c). The Decision will become the final action of the Commission 25 days after issuance, unless the Commission on its own motion institutes review of the Decision within that time as provided in 10 CFR 2.206(c).

Copies of the Petition, dated July 2, 1993, and the Notice of Receipt of Petition for Director's Decision under 10 CFR 2.206 that was published in the **Federal Register** on September 23, 1993 (58 FR 47919), and other documents related to this Petition are available in the NRC Public Document Room, the Gelman Building, 2120 L Street NW. (Lower Level), Washington, DC 20555 and Local Public Document Room at the Indian River Community College, 3209 Virginia Avenue, Ft. Pierce, FL 33450.

Dated at Rockville, Maryland, this 26th day of May 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13758 Filed 6–5–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–213, 50–245, 50–336, 50–423]

Northeast Utilities; Haddam Neck Plant and Millstone Nuclear Power Station, Units 1, 2, 3; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition dated March 3, 1994, by Mr. Ronald Gavensky (Petition for action under 10 CFR 2.206). The Petition pertains to the Haddam Neck Plant and Millstone Nuclear Power Station, Units 1, 2, and 3.

In the Petition, Petitioner, a quality control receipt inspector raises, numerous concerns regarding receipt inspection activities by Northeast Utilities at both the Haddam Neck Plant and Millstone Nuclear Power Station, Units 1, 2, and 3, Petitioner alleges violations of 10 CFR Part 50, Appendix B, by Northeast Utilities in the receipt inspection area. Petitioner alleges that parts represented as having been inspected and accepted for use were in fact deficient. Petitioner alleges that adequate training, skilled personnel, and necessary tools were not available to perform adequate receipt inspections. Petitioner alleges that he observed unethical and incorrect methods of receipt inspection, and that he sought to identify quality problems within his own department, along with recommendations and solutions, but was not permitted to do so. Finally, Petitioner accuses Northeast Utilities of ''white washing'' his concerns in the receipt inspection area. Petitioner alleges that, on two occasions, Northeast Utilities' management hired investigators to pursue concerns raised by Petitioner only to conclude that there were no problems. Petitioner requests that the licenses of Northeast Utilities be temporarily revoked until after the NRC conducts an investigation of Petitioner's allegations.

The Director of the Office of Nuclear Reactor Regulation has determined to deny the Petition. The reasons for this denial are explained in the ''Director's Decision Pursuant to 10 CFR 2.206'' (DD–95–11), the complete text of which follows this notice, and is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document rooms located at the Russell Library, 123 Broad Street, Middletown, CT 06457 for the Haddam Neck Plant, and at the Learning Resources Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360, for Millstone Nuclear Power Station, Units 1, 2, and 3.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commissions regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission on its own motion institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 31st day of May 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

I. Introduction

On March 3, 1994, Mr. Ronald Gavensky (Petitioner) filed a Petition with the U.S. Nuclear Regulatory Commission (NRC) pursuant to 10 CFR 2.206. In the Petition, the Petitioner, a Northeast Utilities (NU) quality control inspector raised concerns regarding receipt inspection activities by NU at the Haddam Neck Plant and the Millstone Nuclear Power Station.[1]

The Petitioner alleged violations of 10 CFR Part 50, Appendix B, by NU in the receipt inspection area. He alleged that parts represented as having been inspected and accepted for use were in

[1] Northeast Nuclear Energy Company (Millstone licensee), an electric operating subsidiary of Northeast Utilities (NU), holds licenses for the operation of Millstone Nuclear Power Station, Units 1, 2, and 3. The Connecticut Yankee Atomic Power Company (Haddam Neck licensee), an electric operating company owned in part by NU, holds the license for the Haddam Neck Plant. Reference in the Petition to the ''license of Northeast Utilities'' refers to the licenses of the Haddam Neck Plant and Millstone Nuclear Power Station, Units 1, 2, and 3.

fact deficient; that adequate training, skilled personnel, and necessary tools were not available to perform adequate receipt inspections; and that he had observed unethical and incorrect methods of receipt inspection, and that he had sought to identify quality problems within his own department, along with recommendations and solutions, but had not been permitted to do so. Finally, the Petitioner accused NU of ''whitewashing'' his concerns. Specifically, the Petitioner alleged that on two occasions NU's management had hired investigators to investigate concerns he had raised only to conclude that there were no problems. The Petitioner requested that the ''license of Northeast Utilities'' be temporarily revoked until after the NRC investigates his allegations.

On May 9, 1994, I informed the Petitioner that the Petition had been referred to my office for preparation of a Director's Decision. I further informed the Petitioner that his issues were not considered immediate safety concerns and, therefore, did not warrant immediate shutdown of the Haddam Neck Plant and Millstone Nuclear Power Station, Units 1, 2, and 3. I also informed the Petitioner that the NRC would take appropriate action within a reasonable time regarding the specific concerns raised in the Petition. By letter dated November 28, 1994, following a telephone conversation with the Petitioner of November 15, 1994, this office provided him portions of NRC Inspection Reports that relate to his concerns and a copy of a Brookhaven National Laboratory Associated Universities, Inc. report of an evaluation of 30 bolts chosen at random from the Millstone Warehouse in November 1993. This office also provided the Petitioner status reports of the Director's Decision concerning his Petition pursuant to 10 CFR 2.206 of March 3, 1994, by letters dated February 23, and May 9, 1995.

NU voluntarily submitted a response to the NRC on July 26, 1994 (NU response), regarding the issues raised in the Petition. The Petitioner voluntarily submitted a response dated August 16, 1994, regarding the issues raised in the NU response. Based on a review of the issues raised by Petitioner as discussed below, I have concluded that no substantial health and safety issues have been raised that would require the initiation of formal enforcement action.

II. Discussion

In the Petition, the Petitioner raised numerous concerns regarding receipt inspection activities by NU at the Haddam Neck Plant and Millstone Nuclear Power Station, Units 1, 2, and 3. The issues raised in the Petition are summarized and evaluated below.

A. Adequacy of the NU Receipt Inspection Program

The Petitioner alleged that NU did not have skilled personnel or the necessary tools or equipment to perform adequate receipt inspection until 1990 for the Haddam Neck Plant and could not have had a properly executed receipt inspection department until 1989 for the Millstone Nuclear Power Station, Units 1, 2, and 3. He alleged that at the present time there are only two skilled mechanical receipt inspectors at the Millstone Nuclear Power Station. Also, all current receipt inspectors are qualified at Level 2 to ANSI/ASME Standard N45.2.6–1972. However, most lacked the actual experience in mechanical receipt inspection required by the standard to which NU is committed.

The Petitioner alleged that, when he was first employed by NU 16 years ago, he found parts still packed in the original containers unopened but green tagged (acceptable for use). He also found cracked parts, bent parts, mismatched parts, all of which were green tagged, and many bad parts accepted for use by the architect-engineer, Stone and Webster Engineering Corporation (SWEC) and wrongly installed.

The Petitioner also claimed that he had observed unethical and incorrect methods of receipt inspection and that he was prevented from raising quality problems either by his supervisor or the Director of Quality.

Most of the specific concerns raised by the Petitioner appear to relate to NU procurement activities before 1990. At that time, NU, as indicated in the NU response to the Petition, maintained an approved-suppliers list and relied heavily, like most utilities, on vendor audits and certifications to ensure the adequacy of procured parts. Because of extensive use of an approved-suppliers list, NU stated that its internal programs, including elements for ensuring independently the quality of procured parts, were not relied on to the same extent as they are now. NU considered this approach appropriate at the time, given the number of vendors who maintained 10 CFR Part 50, Appendix B quality assurance programs.

As the number of vendors maintaining Appendix B programs declined and the instances of counterfeit and fraudulent products increased, the nuclear industry, including NU, found it necessary to develop more sophisticated internal programs to qualify commercial-grade parts procured for nuclear safety-related applications. Generic Letter 89–02, ''Actions To Improve the Detection of Counterfeit and Fraudulently Marketed Products,'' dated March 21, 1989, describes these emerging procurement issues. To address these issues, Generic Letter 89–02 conditionally endorsed Electric Power Research Institute (EPRI) Report NP–5662, ''Guideline for the Utilization of Commercial Grade Items in Nuclear Safety Related Applications (NCIG–07),'' dated June 1988. On June 28, 1990, the Nuclear Management and Resources Council (NUMARC) board of directors directed licenses to adhere to the guidance in EPRI Report NP–5652 and to review and strengthen their procurement programs in accordance with specific guidance in NUMARC 90–13, ''Nuclear Procurement Program Improvements.'' The procurement programs for the Haddam Neck Plant and Millstone Units 1, 2, and 3 were significantly upgraded in response to Generic Letter 89–02 and the NUMARC initiatives.

In February 1989, the vendor interface and procurement programs at Haddam Neck were inspected (see NRC Inspection 50–213/89–200 dated May 25, 1989) as part of an initial group of 13 team inspections conducted by the NRC to evaluate licensee procurement and commercial-grade dedication programs. That inspection identified several deficiencies including weaknesses in the procurement and dedication of commercial grade items for safety-related applications at the Haddam Neck Plant.

Upgraded procurement programs have been implemented at the Haddam Neck Plant and Millstone Nuclear Power Station, Units 1, 2, and 3. The programs at the Millstone units were inspected by the NRC (NRC Inspection Reports 50–245/91/–201, 50–336/91–201, and 50–423/92–201 dated November 5, 1991). The upgraded program at the Haddam Neck Plant, while not inspected by the NRC in the level of detail as Millstone, was reviewed in part during the resolution of the identified deficiencies from NRC Inspection 89–200 as well as the 1990 Maintenance Team Inspection. The inspection at Millstone found that, before June 1987, commercial-grade items were purchased and receipt inspected with acceptance criteria primarily based on verification of the correct part number. Between 1988 and 1990, NU upgraded its procedures to upgrade its procurement inspection services. The NRC assessment team noted that NU had made a significant effort to strengthen the commercial-grade dedication program and that its

overall program description was generally consistent with the dedication approaches described in EPRI Report NP 5652. The team found that receipt inspection capabilities at Millstone Nuclear Power Station, Units 1, 2, and 3 had undergone several improvements. The Millstone Nuclear Power Station receipt inspectors had a new enclosed facility. The facility's equipment was being enhanced and included micrometers, gage blocks, a metal sorter, a shadow graph, and a variety of electronic devices. The improved receipt inspection facility and improved testing and inspection equipment had enhanced the capability of the receipt inspection process to detect misrepresented parts, equipment, and material. The procurement inspection services consisted of 12 inspectors and 1 supervisor. The receipt inspectors were certified under requirement established by procedures. The assessment team identified several procedural weakness and implementation weaknesses involving the improper identification of design criteria, safety function(s), critical characteristics, and methods for verifying the critical characteristics. The assessment team found strengths and potential strengths in such areas as receipt inspection testing capabilities at the Metallurgy Laboratory Facilities in Berlin, Connecticut, and at the Millstone Nuclear Power Station site, self assessments of the commercial-grade dedication program, the 4-day procurement and commercial-grade dedication training course, the review project of previous commercial-grade inspections at Millstone Nuclear Power Station and the general consistency of the program with the dedication approaches of EPRI NP–5652. In addition, the quality, attitude, and dedication of the licensee's personnel were evident. The team concluded that, with appropriate modifications to address the weaknesses, the program, if properly implemented, would provide adequate control over the commercial-grade procurement process.

Additional inspections of the procurement programs for the Haddam Neck Plant and Millstone Units 1, 2, and 3 have been conducted by the NRC (NRC Inspection Reports 50–423/92–11 dated May 30, 1992, 50–213/92–14 dated August 12, 1992, 50–423/92–24 dated January 12, 1993, 50–423/93–26 dated January 14, 1994, and 50–336/94–21 dated August 31, 1994). In 1992, after its inspection of the Haddam Neck Plant, the NRC staff concluded that adequate measures were in place to ensure that the level of quality of procured items was commensurate with their safety-related application. In 1993, the NRC staff reported that NU's receipt inspection program at Millstone Nuclear Power Station, Units 1, 2, and 3 was deliberate, controlled, and consistent in the choice of attributes required to be inspected and the documentation of results. After its inspection of NU's procurement program late in 1993, the NRC staff found no significant safety issues. In 1994, the NRC staff reported in NRC Inspection Report 50–336/94–21 that NU's procurement inspection services inspections were performed by personnel certified under NU's Quality Services Department Procedures QSD 1.08, ''Department Indoctrination, Training and Qualification,'' and QSD 2.08, ''Selection, Training, Qualification and Certification of Inspection, Examination and Testing Personnel.'' The Quality Department Inspector Training Program served as the basis of the training required for certification. The program emphasized technical knowledge, skill development, and problem solving. The procurement inspection personnel were well trained, with 10 of 12 inspectors certified to a Level 2 in at least two disciplines. In addition, refresher training was provided to maintain proficiency and certification of personnel. Also in 1994 (NRC Inspection Report 50–336/94–21), the NRC staff reported that NU's procurement inspection services maintained an inventory of over 500 tools for measuring and testing and that appropriate inspectors were trained and certified in the use of these tools. Such tools are typical of many nuclear power plants' inventory. NU also stocked some exceptional tools such as an optical comparitor shadowgraph, an Ames hardness tester and an alloy analyzer. In summary, during these post-1990 inspections, the NRC staff noted procurement program upgrades and found no significant safety issues in the procurement area.

B. Quality of Fasteners Installed at Northeast Utilities Facilities

Petitioner has an extensive background in the area of receipt inspection of fasteners of NU nuclear facilities and has raised a number of specific concerns regarding the quality of fasteners. The focus of the NRC evaluation of the Petitioner's concerns is receipt inspection of fasteners and assurance that fasteners will perform their intended function. NU acknowledged in its response of July 26, 1994, the Petitioner's efforts in raising and aggressively pursuing valid issues. NU acknowledged that, in March 1992, the Petitioner had issued six nonconformance reports (NCRs) based on his visual inspection of various surplus fasteners procured in 1983 for use at Millstone Unit 3. Later, he issued an additional NCR, citing potential programmatic deficiencies by SWEC, concerning procurement of various other materials installed at Millstone Unit 3.

The concerns of the Petitioner were verified in NRC Inspection Report 50–423/92–11 dated May 30, 1992. In the report, the staff noted that an inspection in 1992 by NU of 6 of the 43 items obtained from SWEC stock that were designated for transfer to the Millstone Nuclear Power Station stores resulted in an initial rejection of all 6 items. An item was defined as all of a specific type of bolt or fastener material, e.g., 600 5/16″×4½″ bolts were classified as one item. Six NCR reports were written concerning these findings and indicated that all of the material constituting the 6 items was scrapped.

Also, the staff noted that 32 of 48 items that had been transferred from SWEC stock and introduced into Millstone Nuclear Power Station stores in 1990 were receipt inspected and green tagged without proper dedication. These items were considered acceptable for use as safety-related material for installation in the three Millstone Units 1, 2, and 3. An NCR report was written concerning this finding. Further, NU identified work orders indicating that fastener material (bolts, nuts, washers) from the 32 items had been used in Millstone Units 1, 2, and 3 during the previous 2 years. The bolts were used principally in the mounting of electrical components (relays, terminal boards, etc.), fans, ventilation housing, and cable trays. The materials were also used on various safety-related systems, such as Millstone Unit 1 reactor protection system bypass switches, Millstone Unit 2 containment air recirculation fans, and Millstone Unit 3 shutdown margin monitor.

In NRC Inspection Report 50–423/92–11, the staff noted that NU had tested 6 bolts from the lots of the 32 items and had found that the chemical properties and tests to determine tensile properties were acceptable. A Corrective Action Request (CAR) that was initiated on April 27, 1992, as a result of the NCRs, indicated that these 6 bolts were the poorest appearing bolts of the lots. Thus, NU determined that the bolts were functionally acceptable. In NRC Inspection Report 50–423/92–16 dated September 3, 1992, the staff reported that, as a result of its questions about whether the 6 tested fasteners adequately represented the population of fasteners installed, NU tested an

additional 30 fasteners randomly selected from the warehouse and one sample chosen by the NRC staff that had linear indications running from the body into the head of the fastener. NU determined that all the fasteners met specification requirements for material and mechanical properties. The NRC staff raised a second concern, that is, that the sample did not represent all the fasteners because all the manufacturers were not represented. NU then took another sample of 30 fasteners from each of 3 manufacturers. The testing of these bolts showed that all the fasteners, except for one cap screw, were acceptable. The one cap screw had a tensile strength of only 121.3 ksi rather than the specified strength of 125 ksi. However, the cap screw did have an acceptable yield strength. The licensee performed a statistical analysis on the results of the testing and determined that the probability of an installed bolt from the 32 items failing to perform its safety function is extremely small (in the order of 1 chance in 345,000). The NRC staff concluded in NRC Inspection Report 50–423/92–24 dated January 12, 1993, that the results for all the fasteners tested except one were acceptable and that the nonconforming conditions, including some visual deficiencies, would not have impaired the capability of the fasteners to perform their functions, and that NU's current inspection program was deliberate and controlled.

NU initially indicated that the remaining fasteners transferred from SWEC to the Millstone Nuclear Power Station stores would be scrapped. However, it did install some of the fasteners in the units after performing additional inspections and dedicating the fasteners before they were installed.

Finally, a random sample of 30 bolts of various sizes was taken from the Millstone Nuclear Power Station warehouse bins during November 1993 for laboratory tests. They were tested by the Brookhaven National Laboratory Associated Universities, Inc., and 26 of the 30 met specification requirements for chemical, mechanical, and dimensional properties. Four bolts did not pass the thread fit inspection with a ''Go'' gage. However, the discrepancies would not have prevented the bolts from performing their function. (See letter dated May 2, 1994, from Brookhaven National Laboratory Associated Universities, Inc., to Mr. James A. Davis, NRC, which is available in the NRC's Public Document Room). In summary, on the basis of the extensive tests of samples of fasteners taken from the warehouse bins, the NRC staff concludes that materials in the bins are acceptable for use.

The possibility of nonconforming fasteners already installed in safety-related applications was addressed in an NU letter to the NRC staff dated September 22, 1994. NU concluded that this issue did not warrant action for the Haddam Neck Plant and Millstone Units 1, 2, and 3. NU indicated that periodic testing and inspection are performed on installed fastener components. Further, safety-related plant equipment is periodically tested to ensure that fasteners have not degraded. Piping systems and valves are pressure tested periodically and fasteners are visually inspected. Other components, such as pumps, are tested and key fasteners are checked for tightness and degradation. These inspections ensure that components remain fastened. Loose components, when found, are evaluated for generic implications, such as installation errors or defective materials, and are repaired or replaced as necessary. Plant walkdowns are performed in accessible areas at least three times a day by trained individuals able to identify abnormal conditions. Components that have degraded because of fastener problems are more likely to leak initially than suffer a catastrophic failure and are, therefore, likely to be identified and repaired. In addition, the NRC staff notes that fastener installations typically provide for large safety margins in application. Also, fastener inspection continues through the installation phase and nonconforming conditions, particularly visual defects, are likely to be identified and corrected. On the basis of these considerations, the NRC staff concludes that the possibility of installed nonconforming fasteners is not a significant safety issue.

C. Alleged ''Whitewashing'' of Petitioner's Concerns

The Petitioner alleged that the procurement inspection services supervisor and his manager had performed perfunctory investigations into his concerns related to the adequacy of NU's receipt inspection program and the Millstone Unit 3 construction.

The first investigation was one commissioned by the NU Nuclear Safety Concerns Program (NSCP) and was performed between May 18 and May 29, 1992, by an independent review team (IRT) composed of outside consultants. The IRT investigated five areas of concern identified by the Petitioner. These areas included NU's control and oversight of the SWEC Quality Assurance Program, NU control of vendor activities, adequacy of NU receipt inspection program in the areas of training and adequacy of tools, adequacy of the NCR process in the receipt inspection area, and adequacy of the transfer of materials with respect to ''visual damage'' inspection. In addition, the IRT interviewed the Petitioner and most, if not all, of the members of the Procurement Inspection Services Department.

In NRC Inspection Report 50–423/92–16 dated September 3, 1992, the NRC staff presented the results of its review of the first investigation. The staff found that the IRT review was cursory in nature in two areas and that the IRT had not supported its conclusions in these areas. Specifically, (1) the IRT had not reviewed, in detail, the SWEC lower tier procedures and procurement documents pertaining to the fasteners transferred from SWEC to the Millstone Nuclear Power Station stores, and (2) the IRT concluded that NU's oversight of SWEC's quality assurance program was satisfactory without determining how the nonconforming fasteners were accepted and placed in stock and whether a programmatic problem existed that allowed the acceptance of the discrepant fasteners.

The NRC staff made an additional observation regarding the IRT review of the concern regarding guidance for inspecting for visual damage. The concern submitted by the Petitioner to the NSCP was the lack of guidance for performing inspections for visual damage during receipt inspection. On the basis of its review, the IRT concluded that damage would be identified. However, the examples chosen to support the claim that instruction was given on identifying visual damage were examples for inservice inspection, not receipt inspection. The Quality Services Director committed to review the definition of visual damage and revise its as necessary for use in receipt inspection.

Although the IRT report may have been cursory in two areas, it was comprehensive in the other areas investigated: the Combustion Engineering reactor head studs inspection, the A&G Engineering Inc. bolting, that tools available for use, and the training received by those performing receipt inspection. In addition, the IRT conducted a substantial number of interviews to support the investigation. During its inspection regarding the adequacy of the IRT report, the NRC staff could find no information that suggested a deliberate effort on the part of NU to color the results of the investigation.

''Whitewash'' implies a deliberate act to conceal a fault or defect in an effort to exonerate or give the appearance of soundness. Although the NRC staff found that the IRT investigation and report were not complete in two areas and in regard to the definition of ''visual damage,'' the NRC did not find evidence of a deliberate effort on the part of NU to conceal a defect or falsify records. Thus the NRC does not consider the IRT report as a ''whitewash.''

NRC Inspection Report 50–423/92–24 dated January 12, 1993, discusses the second investigation. This investigation evolved as a result of the NRC inspection findings on the IRT report concerning the effectiveness of NU's and SWEC's receipt inspection programs. It also was a result of a CAR initiated on April 27, 1992, as a result of several NCRs issued by the Petitioner. The CAR was initiated because a significant amount of bolting material had been transferred from SWEC quality assurance stock to NU and green tagged without proper receipt inspection and because there was a question about the SWEC receipt inspection program. NUNU initiated the CAR to resolve these concerns. The purpose of the CAR was to provide reasonable assurance that, under SWEC's quality assurance program for Category I, non-engineered items, nonconforming items were identified and were prevented from being installed at Millstone Unit 3. To accomplish this, UN reviewed SWEC's program for establishing purchase order and receipt inspections requirements. NU concluded that appropriate procedures existed to ensure the quality of Category I, non-engineered items. To review the implementation of the procedures, NU reviewed approximately 4500 receipt inspection reports (RIRs) and selected for detailed review 1000 that identified nonconforming conditions. From this review, NU concluded in closeout documents that SWEC's program was effective in ensuring the quality of Category I items.

The NRC staff reviewed a sample of RIRs and identified a small number of fasteners that were not inspected for specific attributes, such as the fabrication attribute or coating/preservatives, as required by Quality Assurance Directive (QAD) 7.7, ''Receiving Inspection—General.'' With the exception of these discrepant bolts, there were no other accepted nonengineered items which have subsequently been found to be nonconforming. Therefore, it appeared that the SWEC's receipt inspection program had been effective.

The staff did note that NU had closed the CAR without adequately justifying that SWEC receipt inspections had been conducted in accordance with quality assurance program requirements. The licensee's review of these concerns identified that SWEC inspections for non-engineered items relied heavily on the experience of the inspector and did not strictly follow QAD 7.7. Specifically, the receipt inspector would decide what needed to be inspected by review of procurement documents. The inspector conducted the inspections and documented the results on a generic checklist. Therefore, any required attribute could have been inspected and documented in another attribute of the inspector's choice.

Considering the extensive effort by NU to resolve this issue and in spite of the deficiencies noted during the NRC inspection, the NRC staff could find no information that suggested a deliberate effort on the part of NU to conceal a defect or falsify records. Thus, the NRC staff does not consider the closeout of the CAR as a ''whitewash.''

III. Conclusion

The institution of proceeding pursuant to 10 CFR 2.206 is appropriate only if substantial health and safety issues have been raised. *See Consolidated Edison Co. of New York* (Indian Point Units 1, 2, and 3) CLI–75–8, 2 NRC 173, 175 (1975) and *Washington Public Power Supply System* (WPPSS Nuclear Project No. 2), DD–84–7 19 NRC 899, 924 (1984). This is the standard that has been applied to the concerns raised by the Petitioner to determine whether the action requested by the Petitioner, or other enforcement action, is warranted.

On the basis of the above assessment, I have concluded that no substantial health and safety issues have been raised regarding the Haddam Neck Plant and Millstone Nuclear Power Station, Units 1, 2, and 3 that would require initiation of formal enforcement action. In particular, safety issues related to the Petitioner's allegations concerning discrepant fasteners were resolved by either removing those fasteners from stores or determining that they were functionally adequate. Therefore, no enforcement action is being taken in this matter.

Although the concerns raised did not warrant the action requested in the Petition, the Petitioner's initiative has led to improvements in the procurement receipt inspection program for the Haddam Neck Plant and the Millstone Nuclear Power Station.

Current inspection plans call for continued NRC inspection effort in this programmatic area for the Haddam Neck Plant and Millstone Units 1, 2, and 3 to ensure compliance with current requirements.

The Petitioner's request for action pursuant to 10 CFR 2.206 is denied. As provided in 10 CFR 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. This Decision will constitute the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the Decision in that time.

Dated at Rockville Maryland, this 31st day of May 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13766 Filed 6–5–95; 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is a proposed Revision 1 to Regulatory Guide 1.152, and it is temporarily identified as DG–1039, ''Criteria for Digital Computers in Safety Systems of Nuclear Power Plants.'' The guide will be in Division 1, ''Power Reactors.'' This regulatory guide is being revised to provide current guidance on methods acceptable to the NRC staff for promoting high functional reliability and design quality for the use of digital computers in safety systems of nuclear power plants. The term ''computer'' is used here has a system that includes computer hardware, software, firmware, and interfaces. This guide endorses the Institute of Electrical and Electronics Engineers Standard Std. 7–4.3.2–1993, ''Standard Criteria for Digital Computers in Safety Systems of Nuclear Power Generating Stations.''

The draft guide has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and

Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by July 31, 1995.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC NUREGs and RegGuides for Comment subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' For further information about options available for NRC at FedWorld, consult the ''Help/Information Center'' from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and data bases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, 703–321–3339, or by using Telnet via Internet, fedworld.gov. If using 703–321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mall.'' At that point, a menu will be displayed that has an option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

Although FedWorld can be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301)415–5780; e-mail AXD3@nrc.gov. For more information on this draft regulatory guide, contact S.K. Aggarwal at the NRC, telephone (301)415–6005; e-mail SKA@nrc.gov.

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(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 19th day of May 1995.

For the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 95–13768 Filed 6–5–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30–31765–CivP, ASLBP No. 95–708–01–CivP]

Oncology Services Corporation, Harrisburg, Pennsylvania; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding:

Oncology Services Corporation, Harrisburg, Pennsylvania

Byproduct Materials License No. 37–28540–01, EA 94–006

This Board is being established pursuant to the request of the Licensee for a hearing regarding an Order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, dated April 24, 1995, entitled ''Order Imposing Civil Monetary Penalties'' (60 Fed. Reg. 21560–69, April 24, 1995). The order directed the payment of penalties in the amount of $280,000.

The designation of a time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board consists of the following Administrative Judges:

Judge G. Paul Bollwerk III, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Judge George C. Anderson, 7719 Ridge Drive NE., Seattle, Washington 98115

Judge A. Dixon Callihan, 400 Avinger Lane, Apt. 408, Davidson, North Carolina 28036.

Issued at Rockville, Maryland, this 30th day of May 1995.

James P. Gleason,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 95–13756 Filed 6–5–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30–32493–CivP ASLBP No. 95–709–02–CivP]

Radiation Oncology Center at Marlton, Marlton, New Jersey; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700,

2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

Radiation Oncology Center at Marlton (ROCM), Marlton, New Jersey
Byproduct Materials License No. 29–28685–01, EA 93–072

This Board is being established pursuant to the request of the Licensee for an enforcement hearing regarding an Order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, dated April 24, 1995, entitled ''Order Imposing a Civil Monetary Penalty'' (60 Fed. Reg. 21570–75, May 2, 1995). The order directed the payment of penalties in the amount of $80,000.

The designation of a time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board consists of the following Administrative Judges:

Judge Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555
Judge Lester S. Rubenstein, 14540 N. Chalk Creek Drive, Oro Valley, Arizona 85737
Judge James C. Lamb III, 2401 Old Ivy Road, #1204, Charlottesville, Virgina 22903.

Issued at Rockville, Maryland, this 31st day of May 1995.

James P. Gleason,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 95–13754 Filed 6–5–95; 8:45 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Request for a Collection of Information Under the Paperwork Reduction Act; Customer Satisfaction Focus Groups for Premium Payers

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation has requested that the Office of Management and Budget (''OMB'') approve a new collection of information under the Paperwork Reduction Act. The purpose of this information collection, which will be conducted through focus group meetings, is to help the agency in assessing the efficiency and effectiveness with which it serves premium payers and in designing actions to address identified problems. The effect of this notice is to advise the public of the PBGC's request for OMB approval of, and to solicit public comment on, this collection of information.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 725 17th Street, NW., Room 3208, Washington, DC 20503. The request for approval will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, 1200 K Street, NW., Washington, DC 20005, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Holli Beckerman Jaffe, Attorney, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTAL INFORMATION: The Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) establishes policies and procedures for controlling the paperwork burdens imposed by Federal agencies on the public. The Act vests the Office of Management and Budget (OMB) with regulatory responsibility over these burdens, and OMB has promulgated rules on the clearance of collections of information by Federal agencies.

Executive Order 12862, Setting Customer Service Standards, states that, in order to carry out the principles of the National Performance Review, the Federal Government must be customer-driven. It directs all executive departments and agencies that provide significant services directly to the public to provide those services in a manner that seeks to meet the customer service standards established in the Executive Order.

The PBGC has decided to comply with Executive Order 12862 with respect to its premium-paying customers through a two-step methodology, *i.e.* focus groups followed by mail surveys. Because the mail surveys will depend, in part, on the customer expectations developed through the focus groups, the PBGC is requesting, at this time, approval of the focus group information collection only. the PBGC will publish, at a later date, an additional notice, with request for comments, on the second step of the proposed methodology, *i.e.*, a mail survey to be sent to a random sample of plan administrators, plan sponsors, and consultants involved in the PBGC premium payment process.

This collection of information will put a slight burden on a very small percentage of the public, and will affect only those members of the public who volunteer to participate. Five focus group meetings of up to 15 customers will be held. The 75 customers will be selected from plan administrators, plan sponsors, and consultants representing the 57,000 defined benefit pension plans subject to the PBGC premium requirement. The PBGC estimates that the total burden hours for each respondent will be 3 hours, consisting of a focus group meeting lasting 2 hours and round-trip transportation time of 1 hour, for a total of 225 burden hours (75 respondents at an estimated 3 hours each).

Issued at Washington, DC, this 1st day of June, 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–13809 Filed 6–5–95; 8:45 am]

BILLING CODE 7708–01–M

Request for Extension of Approval Under the Paperwork Reduction Act; Collection of Information Under 29 CFR Part 2648, Redetermination of Withdrawal Liability Upon Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: This notice advises the public that the Pension Benefit Guaranty Corporation has requested extension of approval by the Office of Management and Budget for a currently approved collection of information (1212–0034) contained in its regulation on Redetermination of Withdrawal Liability Upon Mass Withdrawal (29 CFR part 2648). Current approval of the collection of information expires on July 31, 1995.

ADDRESSES: All written comments should be addressed to: Office of Management and Budget, Paperwork Reduction Project (1212–0031), Washington, DC 20503. The request for extension will be 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 a.m. and 4 p.m..

FOR FURTHER INFORMATION CONTACT:

Deborah C. Murphy, Attorney, Office of the General Counsel, Suite 340, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This collection of information is contained in the Pension Benefit Guaranty Corporation's (''PBGC's'') regulation on Redetermination of Withdrawal Liability Upon Mass Withdrawal (29 CFR Part 2648).

Section 4219(c)(1)(D) of the Employee Retirement Income Security Act of 1974 (''ERISA'') requires that the PBGC prescribe regulations for the allocation of a multiemployer plan's total unfunded vested benefits in the event of a ''mass withdrawal,'' *i.e.,* either (1) A plan termination due to the withdrawal of every employer or (2) a withdrawal of substantially all employers pursuant to an agreement or arrangement to withdraw. The regulation on Redetermination of Withdrawal Liability Upon Mass Withdrawal is issued pursuant to this statutory requirement. The regulation also provides rules under ERISA section 4209(c), dealing with an employer's liability for *de minimis* amounts if the employer withdraws in a ''substantial withdrawal,'' *i.e.,* a withdrawal of substantially all employers within one year (without regard to whether there is an agreement or arrangement to withdraw).

The purpose of the regulation is to protect plan participants and beneficiaries against loss of non-guaranteed vested benefits, and the multiemployer plan insurance program against large claims, by requiring that all unfunded vested benefits be allocated to withdrawing employers. In a non-termination mass withdrawal case, the full allocation of unfunded vested benefits to withdrawing employers also reduces the burden on employers that remain in the plan, thus encouraging continuation of the plan. The reporting requirements in the regulation further these purposes by providing information to the PBGC so that it can monitor the plan.

The reports to the PBGC required by the regulation identify the reporting plan as having experienced a ''mass withdrawal'' or ''substantial withdrawal'' and provide certifications that the plan has determined and assessed mass withdrawal liability or liability for *de minimis* amounts, as appropriate. This enables the PBGC to monitor the plan's compliance with the relevant provisions of ERISA and the regulation. By assuring compliance with these rules, the PBGC guards against the increased risk of plan insolvency (with resulting benefit losses to participants and claims against the insurance program) cause by the ''mass withdrawal'' or ''substantial withdrawal.''

For purposes of estimating the burden of reporting under the regulation, the PBGC assumes that there is one ''mass withdrawal'' and one ''substantial withdrawal'' subject to the regulation each year. (Such events are actually experienced less frequently.) For each ''mass withdrawal'' subject to the regulation, a plan must send to the PBGC a notice of mass withdrawal (requiring about 40 minutes to prepare) and two certifications that liability has been determined and assessed as required by the regulation (requiring about 30 minutes each to prepare). For each substantial withdrawal subject to the regulation, a plan must sent to the PBGC a combined notice and certification (requiring about 1 hour to prepare). Accordingly, the PBGC estimates that the total annual burden of reporting under the regulation is 2 hours and 40 minutes.

Issued at Washington, DC, this 1st day of June 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–13808 Filed 6–5–95; 8:45 am]

BILLING CODE 7708–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21100; File No. 812–9426]

John Hancock Variable Series Trust I, et al.

May 30, 1995.

AGENCY: Securities and Exchange Commission (''SEC'' or the ''Commission'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: John Hancock Variable Series Trust I (the ''Trust''), any series of the Trust which may be established in the future, John Hancock Mutual Life Insurance Company (''John Hancock''), and all registered investment companies for which John Hancock may serve as the investment advisor in the future (the ''Funds'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Section 17(d) and Rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting the existing series of the Trust to pool daily uninvested cash balances, together with the balances of any futures series of the Trust and any of the Funds, into a joint account for the purpose of investing the cash balances in short-term repurchase agreements, commercial paper and other short-term investments.

FILING DATE: The application was filed on December 19, 1994, and Applicants represent that an amendment to the application will be filed during the notice period.

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 June 26, 1995 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicants: James C. Hoodlet, Law Department, T–55, John Hancock Mutual Life Insurance Company, P.O. Box 111, 200 Clarendon Street, Boston, Massachusetts 02117.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Senior Counsel, or Wendy Friedlander, Deputy Chief, both 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 Public Reference Branch of the SEC.

Applicants' Representations

1. The Trust, an open-end diversified management investment company of the series type, currently has nine separate investment portfolios (the ''Portfolios''), each of which has separate investment objectives, policies and restrictions.

John Hancock serves as the investment advisor to the Trust. Each Portfolio of the Trust pays John Hancock a management fee based on a percentage of the average daily net assets of that Portfolio. Shares of the Trust are sold to separate accounts (the ''Accounts''), funding both variable life insurance

policies and variable annuity contracts issued by John Hancock and John Hancock Variable Life Insurance Company. The Accounts are registered with the Commission as unit investment trusts.

2. Applicants state that at the end of each trading day, it is expected that some or all of the Portfolios will have uninvested cash balances in their custodian accounts. Applicants state that John Hancock would be required by the 1940 Act to purchase short-term investments for these uninvested cash balances on a Portfolio by Portfolio basis. Applicants argue that these separate purchases result in certain inefficiencies which limit the return each of the Portfolios may achieve. Accordingly, Applicants request an order to permit the Portfolios to deposit some or all of the uninvested cash balances into a single joint account. The balance in the joint account would then be used to enter into one or more short-term investment transactions.

3. Applicants state that the proposed joint account arrangement will result in the Portfolios saving significant amounts in yearly transaction fees. Moreover, Applicants argue that it is easier to negotiate a higher yield on large short-term investment transactions than on smaller transactions.

Additionally, Applicants state that, by reducing the number of trade tickets which would have to be written, the proposed joint account arrangement will simplify transactions and reduce the opportunity for errors. Further, Applicants state that flexibility in the management of the Portfolios' cash balances will be enhanced, and the possibility that any Portfolio will have a cash balance uninvested overnight will be reduced. Finally, Applicants argue that the joint account should result in an increase in the number of dealers willing to enter into short-term investment transactions with some of the smaller Portfolios.

4. Applicants state that each Portfolio requires that repurchase agreements always be at least 102% collateralized. The joint account would enter into repurchase agreements collateralized by either cash or United States government or agency securities, *i.e.*, securities issued or guaranteed as to principal or interest by the United States government or by any of its agencies or instrumentalities. The Portfolios will invest in repurchase agreements only to the extent such investment would be consistent with each Portfolio's investment objectives, policies and restrictions. Applicants represent that the joint repurchase transactions will comply with the standards and guidelines set forth in Investment Company Act Release No. 13005 (Feb. 2, 1983) and with any other existing and future positions the Commission or its staff may take regarding repurchase transactions, whether by rule, release, letter or otherwise. Applicants acknowledge that they have a continuing obligation to monitor the Commission's published statements on repurchase agreements, and, in the event that the Commission sets forth different or additional requirements, each Portfolio will modify its standards and guidelines accordingly.

5. Applicants state that the commercial paper purchased by the joint account will be interest bearing or discounted, and may include dollar denominated commercial paper of foreign issuers. Applicants further state that the market value of discounted commercial paper plus accrued interest will equal par value; and, for interest bearing commercial paper, cost, market and par value will be the same. Applicants represent that all commercial paper purchased by the joint account will be a ''First Tier Security'' as that term is defined in Rule 2a–7 under the 1940 Act.

6. Other short-term instruments purchased by the joint account will include: obligations issued or guaranteed as to principal or interest by the United States government, or any agency or authority thereof; and obligations (including certificates of deposit, time deposits and bankers acceptances) of banks and savings and loan associations which, at the date of the investment, have capital, surplus and undivided profits (as of the date of the most recently published financial statements) in excess of $100,000,000. The obligations may include those of foreign branches of United States banks and United States branches of foreign banks. Each of the obligations of banks and of savings and loan associations purchased by the joint account will qualify as a ''First Tier Security'' as that term is defined in Rule 2a–7 under the 1940 Act.[1]

7. As with repurchase agreements, Applicants acknowledge that they have an obligation to monitor published statements of the Commission regarding commercial paper and other short-term investment transactions, and, in the event that the Commission or its staff set forth guidelines with respect to such transactions, each Portfolio participating in the joint account will conform its investments to such guidelines and, as necessary, will adopt appropriate standards and guidelines.

8. Applicants state that each of the Portfolios will participate in the joint account on the same basis as every other Portfolio and in conformity with the Portfolio's fundamental investment policies and restrictions. John Hancock will have no monetary participation in the joint account, but will be responsible for investing amounts in the joint account, establishing accounting and control procedures, and ensuring the equal treatment of each Portfolio. Applicants state that the assets of the Portfolios will continue to be held under proper bank custodial procedures.

9. Applicants opine that the investment of a Portfolio in the joint account will not be subject to the claims of creditors, whether brought in bankruptcy, insolvency or other legal proceeding, of any other Portfolio participating in the joint account.

Applicants' Legal Analysis

1. Section 17(d) of the 1940 Act makes it unlawful for an affiliated person of a registered investment company, acting as principal, to effect any transaction in which the registered investment company is a joint or a joint and several participant with such person in contravention of rules and regulations prescribed by the Commission. Rule 17d–1 under the 1940 Act provides that an affiliated person of a registered investment company, acting as principal, shall not participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which the registered investment company is a participant unless the Commission has issued an order approving such arrangement.

2. Each Portfolio, by participating in the proposed joint account, and John Hancock, by managing the proposed joint account, may be joint participants in a transaction within the meaning of Section 17(d), and the proposed joint account could be a joint arrangement or joint enterprise within the meaning of Rule 17d–1 under the 1940 Act.

3. In passing upon applications under Rule 17d–1, the Commission may consider the extent to which an entity's participation in a joint arrangement or enterprise is on a ''basis different from or less advantageous than that of other participants.'' Applicants believe that the proposed joint account could have significant benefits for the participating Portfolios, and that no participating Portfolio will receive fewer relative benefits from the proposed joint account than any other participating Portfolio.

[1] Applicants represent that an amendment to the application will be filed during the notice period and that such amendment will include this representation.

Applicants represent that each Portfolio will participate in the proposed joint account on the same basis as every other Portfolio.

4. The trustees of the Trust have considered the proposed joint account and determined that the use of the joint account would be beneficial to each participating Portfolio. Applicants represent that the trustees have satisfied themselves that the proposed method of operation for the joint account will not result in any conflicts of interest between any of the Portfolios or between any Portfolio and John Hancock. The trustees have further determined that: there does not appear to be any basis upon which to predicate greater benefit to one Portfolio than to another; the operation of the joint account will be free of any inherent bias in favor of any one Portfolio over another; and, the anticipated benefits flowing to each Portfolio will fall within an acceptable range of fairness.

5. The trustees believe that the primary beneficiaries will be participating Portfolios and the owners of the contracts issued by the Accounts because the joint account may earn higher returns and result in lower transaction costs for the Portfolios, and will be a more efficient means of administering the Portfolios' daily investment transactions.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions.

1. A separate custodial account will be established for the joint account into which each Portfolio may deposit some or all of its uninvested cash balance after the conclusion of its daily trading activity. The joint account will not be distinguishable from any other accounts maintained by any Portfolio with the custodian except that monies of the Portfolios will be commingled. The joint account will not have any indicia of separate legal existence, and the sole function of the joint custodial account will be to provide a convenient way to aggregate individual transactions necessary for the management of each of the Portfolios' daily uninvested cash balance.

2. Cash in the joint account will be invested in one or more repurchase agreements, commercial paper and/or other short-term investment transactions which will have, with rare exceptions, an overnight, over the weekend, or over the holiday maturity, and in no event will have a maturity in excess of seven days.

3. Each of the Portfolios will participate in an investment through the joint account only to the extent consistent with that Portfolio's investment objectives, policies and restrictions.

4. John Hancock will maintain records in conformity with Section 31 of the 1940 Act and rules and regulations thereunder.

The records will document, for any given day, each Portfolio's aggregate investment in the joint account and its pro rata share of the joint account.

5. Repurchase agreements will be at least 102% collateralized at all times, and will satisfy the uniform standards set by the Portfolios for such investments. The securities subject to the repurchase agreement will be transferred to the joint custodial account and they will not be held by the Portfolio's repurchase counterparty or by an affiliated person of that counterparty.

6. Each portfolio relying upon Rule 2a–7 for valuation of its net assets based on amortized cost will use the average maturity of the investments made by the Portfolio participating in the joint account when computing that Portfolio's average portfolio maturity with respect to the portion of its assets held in the joint account on that day.

7. No Portfolio will be allowed to create a negative balance in the joint account for any reason, although the Portfolio will be permitted to withdraw all or a portion of its balance at any time. No Portfolio will be obligated either to invest in the joint account or to maintain any minimum balance in the joint account.

8. John Hancock will administer the investment of the cash balances in and operation of the joint account as part of John Hancock's duties under the general terms of each Portfolio's existing or any future investment management agreement. John Hancock will not collect any additional or separate fees for the management of the joint account.

9. The administration of the joint account will be within the fidelity bond coverage required by Section 17(g) of the 1940 Act and Rule 17g–1 thereunder.

10. Each of the Portfolios participating in the joint account will adopt procedures pursuant to which the joint account will operate and which will be reasonably designed to provide that the requirements set forth in the application are met. The trustees of the Trust will make and approve changes that they deem necessary to ensure that such procedures are followed. Additionally, the trustees of the Trust will be responsible for assuring that the joint account is operated in accordance with such procedures.

11. The trustees of the Trust and the boards of directors of any future Funds participating in the joint account will evaluate the joint account annually, and will continue the joint account arrangement only if the trustees and/or the boards, as applicable, determine that there is a reasonable likelihood that the joint account will benefit the Trust, the Funds and the owners of the life insurance policies and annuity contracts participating in the Trust and the Funds.[2]

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from Section 17(d) of the 1940 Act and Rule 17d–1 thereunder 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 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13802 Filed 6–5–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21099; 811–5117]

The Mackenzie Funds Inc.; Notice of Application for Deregistration

May 30, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: The Mackenzie Funds Inc.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATES: The application was filed on April 20, 1995 and amended on may 22, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be

[2] Applicants represent that they will file an amendment during the notice period and that such amendment will contain the representations set forth in condition 11.

received by the SEC by 5:30 p.m. on June 26, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, Via Mizner Financial Plaza, 700 South Federal Highway, Suite 300, Boca Raton, Florida 33432.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or C. David Messman, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. On April 16, 1987, applicant incorporated in the state of Maryland under the name The Canada Fund Inc. On the same date, applicant filed a Notification of Registration on Form N–8A and a registration statement on Form N–2 pursuant to section 8(b) of the Act and the Securities Act of 1933. On September 17, 1987, applicant changed its name and filed a pre-effective amendment to its registration statement on Form N–1A that registered an indefinite number of shares. The registration statement was declared effective on November 18, 1987, and applicant's initial public offering commenced shortly thereafter. Applicant consisted of three separate series: Mackenzie Short-Term U.S. Government Securities Fund (''Government Fund''), Mackenzie Canada Fund (''Canada Fund''), and Mackenzie Global Fund (''Global Fund'').

2. On September 29, 1994, applicant's Board of Directors (''Board'') approved a reorganization plan whereby shares of common stock of each series of applicant would be exchanged for shares of beneficial interest of separate series of Ivy Fund (the ''Acquiring Fund''). The Acquiring Fund is a series company organized as a Massachusetts business trust. The Acquiring Fund's Declaration of Trust authorizes the issuance of shares in different series and authorizes the trustees to establish and create additional series and designate the rights and preferences thereof. Pursuant to such authority, the trustees designated three new series of the Acquiring Fund to be known as Ivy Short-Term U.S. Government Securities Fund (''Ivy Short-Term Fund''), Ivy Canada Fund, and Ivy Global Fund (each a ''Series'').

3. The Board approved the reorganization because the Acquiring Fund would have thirteen series with the capacity to spread certain expenses over a broader shareholder base. As a result, the Board believed that the reorganization would reduce the total operating and administrative expenses now borne by applicant. In addition, the Board believed that the reorganization would attract new shareholders and provide the potential to further produce economies of scale.

4. The investment adviser for the Acquiring Fund, Ivy Management, Inc. is a wholly owned subsidiary of applicant's investment adviser, Mackenzie Investment Management, Inc. (''MIMI''). Accordingly, applicant and Acquiring Fund may be deemed to be affiliated persons by reason of being under the common control of the same investment adviser. Applicant therefore relied on the exemption provided by rule 17a–8 under the Act to effect the transaction. Consequently, the trustees of Acquiring Fund determined, in accordance with rule 17a–8, that the purchase of the assets of applicant by Acquiring Fund was in the best interest of the shareholders of Acquiring Fund, and that such purchase would not result in any dilution to the interests of the existing shareholders of Acquiring Fund.[1]

5. On September 30, 1994 preliminary copies of proxy materials were filed with the SEC. On October 25, 1994, definitive proxy materials were distributed to applicant's shareholders and transmitted to the SEC on November 4, 1994.

6. On December 31, 1994, Government Fund's shareholders approved the reorganization plan. On that date, applicant transferred all of Government Fund's assets and liabilities to Ivy Short-Term Fund in exchange for delivery to applicant of shares of beneficial interest, Class A and Class I shares, of Ivy Short-Term Fund. On that date, Government Fund had 903,236 Class A shares outstanding, and no Class I shares outstanding, with an aggregate and per share net asset value of $8,571,658 and $9.49, respectively.

7. On January 27, 1995, Canada Fund's shareholders approved the reorganization plan. On January 31, 1995, applicant transferred all of Canada Fund's assets and liabilities to Ivy Canada Fund in exchange for delivery to applicant of shares of beneficial interest, Class A and Class B shares, of Ivy Canada Fund. On that date, Canada Fund had 2,427,795.891 Class A shares outstanding, and 86,088.201 Class B shares outstanding, with an aggregate and per share net asset value of $19,896,976.18 and $7.91, respectively.

8. On January 27, 1995, Global Fund's shareholders approved the reorganization plan. On January 31, 1995, applicant transferred all of Global Fund's assets and liabilities to Ivy Global Fund in exchange for delivery to applicant of shares of beneficial interest, Class A and Class B shares, of Ivy Global Fund. On that date, Global Fund had 1,711,237.631 Class A shares outstanding, and 270,011.532 Class B shares outstanding, with an aggregate and per share net asset value of $21,204,845.52 and $10.72, respectively.

9. Shares of each Series were immediately distributed to applicant's shareholders. Each shareholder of the applicant received, in exchange for his or her shares in the applicant, an equal number of shares of each Series having a net asset value equal to the net asset value of his or her shares in the applicant immediately prior to the reorganization.

10. Total expenses of the reorganization were $28,669 for Government Fund, $35,261 for Canada Fund, and $30,963 for Global Fund. Of those amounts, applicant bore $7,228, $8,588, and $7,719, respectively, and the remainder was borne by MIMI and the Acquiring Fund. Such expenses were for printing, mailing, and proxy solicitation fees. The expenses of the dissolution and winding up of applicant's affairs are expected to be $9,000 and will be borne equally by Government Fund, Canada Fund, and Global Fund. Any such expenses in excess of $9,000 shall be borne by MIMI.

11. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding-up of its affairs.

12. On December 30, 1994, applicant terminated Government Fund's existence as a Maryland corporation. On January 31, 1995, applicant terminated

[1] Rule 17a–8 provides relief from the affiliated transaction prohibition of section 17(a) of the Act for a merger of investment companies that may be affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

Canada and Global Fund's existence as Maryland corporations.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13801 Filed 6–5–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2780 Alabama; and Contiguous Counties in Tennessee]

Declaration of Disaster Loan Area

Limestone and Madison Counties and the contiguous counties of Jackson, Lauderdale, Lawrence, Marshall, and Morgan in the State of Alabama, and Franklin, Giles, Lawrence and Lincoln Counties in the State of Tennessee constitute a disaster area as a result of damages caused by tornadoes which occurred on May 18, 1995. Applications for loans for physical damage may be filed until the close of business on July 31, 1995 and for economic injury until the close of business on March 1, 1996 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308 or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Other (including non-profit organizations) with credit available elsewhere	7.125
For Economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 278012 for Alabama and 278112 for Tennessee. For economic injury the numbers are 853100 for Alabama and 853200 for Tennessee.

Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 30, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–13794 Filed 6–5–95; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/72–0561]

Prospect Street NYC Discovery Fund, L.P.; Notice of Issuance of a Small Business Investment Company License

On Monday, February 27, 1995, a notice was published in the **Federal Register** (Vol. 60, 38 FR 10628) stating that an application had been filed by Prospect Street NYC Discovery Fund, L.P., at 250 Park Avenue, 17th Floor, New York, NY 10177, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business Tuesday, March 14, 1995 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/72–0561 on May 23, 1995, to Prospect Street NYC Discovery Fund, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 24, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–13726 Filed 6–5–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

May 30, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0786
Regulation ID Number: IL–50–86 Final (T.D. 8110)
Type of Review: Extension
Title: Sanctions on Issuers and Holders of Registration-Required Obligations Not in Registered Form
Description: The Internal Revenue Service needs the information in order to ensure that purchasers of bearer obligations are not U.S. persons (other than those permitted to hold obligations under section 165(j)) and to ensure that U.S. persons holding bearer obligations properly report income and gain on such obligations. The people reporting will be financial institutions holding bearer obligations.
Respondents: Business or other for-profit
Estimated Number of Respondents: 1,000
Estimated Burden Hours Per Respondent: 20 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 39,742 hours

OMB Number: 1545–0996
Regulation ID Number: EE–113–82 NPRM
Type of Review: Extension
Title: Required Distributions from Qualified Plans and Individual Retirement Plans
Description: The proposed regulations provide rules regarding the minimum distribution requirements applicable to section 403(b) contracts and accounts. Such minimum distribution rules do not apply to benefits accrued before January 1, 1987.
Respondents: State, Local or Tribal Government, Not-for-profit institutions
Estimated Number of Recordkeepers: 8,400
Estimated Burden Hours Per Recordkeeper: 36 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping Burden: 8,400 hours

OMB Number: 1545–1022
Form Number: IRS Form 7018–C
Type of Review: Revision
Title: Order Blank for Forms
Description: Form 7018–C allows taxpayers who must file information returns a systematic way to order information tax forms materials.
Respondents: Individuals or households, Business or other for-profit
Estimated Number of Respondents: 868,432
Estimated Burden Hours Per Respondent: 3 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 43,422 hours

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–13800 Filed 6–5–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

May 26, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0782
Regulation ID Number: LR–7 Final (T.D. 6629)
Type of Review: Extension
Title: Limitation on Reduction in Income Tax Liability Incurred to the Virgin Islands
Description: The Tax Reform Act of 1986 repealed the mandatory reporting and recordkeeping requirements of section 934(d) (1954 Code). The prior exception to the general rule of section 934 (1954 Code) to prevent the Government of the Virgin Islands from granting tax rebates with regard to taxes attributable to income derived from sources within the U.S. was contingent upon the taxpayers' compliance with the reporting requirement of section 934(d). The changes imposed by the Tax Reform Act of 1986 should reduce the number of responses to approximately 500.
Respondents: Individuals or households, Business or other for-profit
Estimated Number of Respondents/ Recordkeepers: 500
Estimated Burden Hours Per Respondent/Recordkeepers: 12 minutes
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 184 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–13799 Filed 6–5–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

May 26 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service (CUS)

OMB Number: 1515–0101
Form Number: None
Type of Review: Extension
Title: Records of Serially Numbered Substantial Holders or Containers
Description: The owner of duty-free containers or holders is required to keep adequate records open to inspection by Customs Officers to document that they are being used in international traffic and therefore, are still entitled to duty-free status. Owners are usually companies involved in foreign trade.
Respondents: Business or other for-profit
Estimated Number of Respondents: 20
Estimated Burden Hours Per Respondent: 437 hours
Frequency of Response: On occasion
Estimated Total Reporting Burden: 8,740 hours
Clearance Officer: Norman Waits, (202) 927–1551 U.S. Customs Service, Printing and Records Management Branch, Room 6426, 1301 Constitution Avenue NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–13798 Filed 6–5–95; 8:45 am]

BILLING CODE 4820–02–A

Public Information Collection Requirements Submitted to OMB for Review

May 26, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0083
Form Number: ATF F 1582–B (5130.6)
Type of Review: Extension
Title: Drawback on Beer Exported
Description: When taxpaid beer is removed from a brewery and ultimately exported, the brewer exporting the beer is eligible for a drawback (refund) of Federal taxes paid. By completing this form and submitting documentation of exportation, the brewer may have Federal taxes refunded.
Respondents: Business or other for-profit
Estimated Number of Respondents: 100
Estimated Burden Hours Per Respondent: 1 hour
Frequency of Response: On occasion
Estimated Total Reporting Burden: 5,000 hours

OMB Number: 1512–0334
Recordkeeping Requirement ID Number: ATF REC 5150/3
Type of Review: Extension
Title: Usual and Customary Business Records Relating to Tax-Free Alcohol
Description: Tax-free alcohol is used for non-beverage purposes by educational organizations, hospitals, laboratories, etc. Records maintain spirits accountability and protect tax revenue and public safety.
Respondents: Not-for-profit institutions, Federal Government, State, Local or Tribal Government
Estimated Number of Recordkeepers: 4,444

Estimated Burden Hours Per Recordkeeper: 1 hour
Frequency of Response: On occasion
Estimated Total Recordkeeping Burden: 1 hour
OMB Number: 1512–0335
Recordkeeping Requirement ID Number: ATF REC 5150/4
Type of Review: Extension
Title: Letterhead Applications and Notices Relating to Tax-Free Alcohol
Description: Tax-free alcohol is used for non-beverage purposes in scientific research and medicinal uses by educational organizations, hospitals, laboratories, etc. Permits/Applications control authorized uses and flow. Protect tax revenue and public safety.
Respondents: Not-for-profit institutions, Federal Government, State, Local or Tribal Government
Estimated Number of Recordkeepers: 4,444
Estimated Burden Hours Per Recordkeeper: 30 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping Burden: 2,222 hours
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–13795 Filed 6–5–95; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

May 30, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0373
Recordkeeping Requirement ID Number: ATF REC 5400/3
Type of Review: Extension
Title: RECORDS AND SUPPORTING DATA: Importation, Receipt, Storage, and Disposition by Licensed Explosives Manufacturers, Importers, Dealers, and Users
Description: These records show daily activities in the importation, manufacture, receipt, storage, and disposition of all explosive materials covered under 18 U.S.C. Chapter 40. The records are used to show where and to whom explosives materials are sent, thereby ensuring that any diversions will be readily apparent and, if lost or stolen, ATF will be immediately notified on discovery of the loss or theft.
Respondents: Business or other for-profit
Estimated Number of Recordkeepers: 13,708
Estimated Burden Hours Per Recordkeeper: 23 hours, 13 minutes
Frequency of Response: Other
Estimated Total Recordkeeping Burden: 318,300 hours
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–13796 Filed 6–5–95; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

May 26, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service (CUS)

OMB Number: 1515–0081
Form Number: CF 213
Type of Review: Extension
Title: Importer's Premises Visit-Significant Importation Report
Description: The Customs Form 213 constitutes a summary report of an interview conducted at the importer's premises by a Customs Officer. The Customs Form 213 provides for uniformity for the various importers. Customs conducts the interview based on its responsibilities involving appraisement, classification and admissibility with regard to imported merchandise.
Respondents: Business or other for-profit
Estimated Number of Respondents: 7,385
Estimated Burden Hours Per Respondent: 2 hours, 24 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 17,724 hours
OMB Number: 1515–0085
Form Number: CF 247
Type of Review: Revision
Title: Cost Submission
Description: The Customs Form 247 is used by importers to furnish cost information to Customs which is necessary to establish the appraised value of imported merchandise.
Respondents: Business or other for-profit
Estimated Number of Respondents: 1,000
Estimated Burden Hours Per Respondent: 50 hours
Frequency of Response: On occasion
Estimated Total Reporting Burden: 50,000 hours
Clearance Officer: Laverne Williams, (202) 927–0229, U.S. Customs Service, Printing and Records Management Branch, Room 6216, 1301 Constitution Avenue NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–13797 Filed 6–5–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: Locality Pay System Survey (Department of Veterans Affairs Nurse Pay Act of 1990), VA Form 10–0132

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

The Veterans Health Administration (VHA), Department of Veterans Affairs,

has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) the title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ann Bickoff, Veterans Health Administration (161B4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 565–7407.

Comments and recommendations concerning the proposed information collection should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by July 6, 1995.

Dated: May 26, 1995.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

Extension of a Currently Approved Collection

1. Locality Pay System Survey (Department of Veterans Affairs Nurse Pay Act of 1990)
2. VA will use this information collection for statistical purposes to determine the rates of pay for registered nurses, nurse anesthetists, and other health care personnel.
3. Business or other for profit—Not for profit institutions—Federal Government—State, Local or Tribal Government
4. 2,531 hours
5. 45 minutes per on-site visit
6. One time
7. 3,375 respondents

[FR Doc. 95–13706 Filed 6–5–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 108

Tuesday, June 6, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

FEDERAL REGISTER NUMBER: 95–13577.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 8, 1995, 10 a.m. Meeting open to the public.

THE FOLLOWING ITEM WAS DELETED FROM THE AGENDA: Advisory Opinion 1995–15: Beth Taylor (AllisonPAC) Allison Engine Company.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: Clinton/Gore '92 Committee—Proposed Letter (LRA #420).

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 95–13988 Filed 6–2–95; 3:48 am]

BILLING CODE 6715–01–M

LEGAL SERVICES CORPORATION

Board of Directors' Meeting Notice

TIME AND DATE: The Legal Services Corporation's Board of Directors has scheduled a meeting by telephone for Friday, June 14, 1995. The meeting will commence at 12:00 noon. Members of the public wishing to participate may do so via telecommunications equipment at the location noted below.

LOCATION: Legal Services Corporation, 750 First Street, N.E., 11th Floor, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda.
2. Consider and Act on Proposed Funding Policy for Implementation of Rescission.
3. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, (202) 336–8810.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Ruby McCollum, at (202) 336–8895.

Date issued: June 2, 1995.

Victor M. Fortuno,

General Counsel.

[FR Doc. 95–13997 Filed 6–2–95; 3:53 pm]

BILLING CODE 7050–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 5, 12, 19, and 26, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS; Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 5

Thursday, June 8

9:30 a.m.
Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301–415–7360)

11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, June 9

9:00 a.m.
Briefing by DOE on High Level Waste Program (Public Meeting)

10:30 a.m.
Briefing by DOE on Status of Multi-Purpose Canisters (MPC) (Public Meeting)

Week of June 12—Tentative

Wednesday, June 14

11:30 a.m.
Affirmation Discussion and Vote (Public Meeting)
a. Louisiana Energy Services (Claiborne Enrichment Center); Atomic Safety and Licensing Board March 3, 1995 Memorandum and Order (Docket No. 70–3070–ML) (Tentative)
(Contact: Andrew Bates, 301–415–1963)

Week of June 19—Tentative

Wednesday, June 21

9:00 a.m.
Discussion of Management Issues (CLOSED—Ex. 2 and 6)

10:30 a.m.
Briefing on NRC Use of Expert Elicitation in HLW Performance Assessments (Public Meeting)
(Contact: Janet Kotra, 301–415–6674)

Thursday, June 22

9:30 a.m.
Briefing on Results of Senior Management Review of Operating Reactors, Fuel Facilities, and Related Activities (Public Meeting)
(Contact: Victor McCree, 301–415–1711)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 26—Tentative

Thursday, June 29

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated; June 2, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–13980 Filed 6–2–95; 3:30 pm]

BILLING CODE 7590–01–M

Federal Register

Tuesday
June 6, 1995

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Critical Habitat for the Mexican Spotted Owl; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD02

Endangered and Threatened Wildlife and Plants; Determination of Critical Habitat for the Mexican Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) designates critical habitat for the Mexican spotted owl (*Strix occidentalis lucida*), a subspecies federally listed as threatened under the Endangered Species Act of 1973, as amended (Act). The Mexican spotted owl, also referred to herein as spotted owl or owl, inhabits canyon and montane forest habitats across a range that extends from southern Utah and Colorado, through Arizona, New Mexico, and west Texas, to the mountains of central Mexico. The designation includes 107 units totaling 1,874,935 ha (4,632,901 acres) in Arizona, Colorado, New Mexico, and Utah.

This critical habitat designation provides additional protection requirements under section 7 of the Act with regard to activities that are funded, authorized, or carried out by any Federal agency. As required by section 4 of the Act, the Service considered economic and other impacts of designation prior to making a final decision on the size and scope of critical habitat. Critical habitat is located primarily on Federal and Tribal land and, to a lesser extent, on state and private lands.

EFFECTIVE DATE: This rule becomes effective July 6, 1995.

ADDRESSES: The complete administrative record for this rule is on file at the U.S. Fish and Wildlife Service, New Mexico Ecological Services State Office, 2105 Osuna N.E., Albuquerque, New Mexico 87113; telephone: (505) 761–4525. The complete file for this rule will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jennifer Fowler-Propst, State Supervisor, at the above address.

SUPPLEMENTARY INFORMATION:

Background

The Mexican spotted owl is a medium-sized bird ranging from parts of central Colorado and Utah, south through Arizona, New Mexico, and western Texas, then south through Mexico to the States of Michoacan and Puebla. Mexican spotted owl habitat typically consists of dense, multi-storied, montane forests with closed canopies, and deep, cool, fractured canyons. Analysis by the Mexican Spotted Owl Recovery Team has determined that the owl is threatened primarily by modification of habitat caused by commercial timber harvest methods and wildfires.

Previous Federal Actions

The entire spotted owl species (*Strix occidentalis*) was classified on the Service's 1989 Animal Notice of Review (54 FR 554, January 6, 1989) as a category 2 species. A category 2 species is one for which listing may be appropriate, but for which additional biological information is needed to support a proposed rule. The northern spotted owl subspecies (*S. o. caurina*) was listed as a threatened species on June 26, 1990 (55 FR 26194), and critical habitat was designated for it on January 15, 1992 (57 FR 1796). The California spotted owl subspecies (*S. o. occidentalis*) remains a category 2 candidate.

On December 22, 1989, the Service received a petition submitted by Dr. Robin D. Silver requesting the listing of the Mexican spotted owl as an endangered or threatened species under the Act. On February 27, 1990, the Service found that the petition presented substantial information indicating that listing may be warranted and initiated a status review. In conducting its review, the Service published a notice in the **Federal Register** (55 FR 11413) on March 28, 1990, requesting public comments and biological data on the status of the Mexican spotted owl. On December 6, 1990, the Mexican Spotted Owl Status Review Team completed a draft report, and on February 20, 1991, the Service made a finding, based on the contents of the report, that listing the Mexican spotted owl pursuant to section 4(b)(3)(B)(i) of the Act was warranted. Notice of this finding was published in the **Federal Register** on April 11, 1991 (56 FR 14678). A proposed rule to list the Mexican spotted owl as threatened without critical habitat was published in the **Federal Register** on November 4, 1991 (56 FR 56344).

In the November 4, 1991, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information regarding whether the Mexican spotted owl should be listed. The comment period was reopened from May 11, 1992, to September 1, 1992 (57 FR 20073, May 11, 1992) to allow submission of additional comments. Appropriate Federal and state agencies, and Tribal and county governments, organizations, and other interested parties were directly contacted and requested to comment, and newspaper notices inviting public comment were published in Arizona, New Mexico, Utah, and Colorado. The Service held six public hearings, which were announced in the proposed rule. A notice of the hearing dates and locations was published in the **Federal Register** on January 2, 1992 (57 FR 35), and in notices published in Arizona, New Mexico, Utah, and Colorado newspapers. Interested parties were directly contacted and notified of the hearings.

After a review of all comments received in response to the proposed rule, the Service published a final rule to list the Mexican spotted owl as a threatened species on March 16, 1993 (58 FR 14248). Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. 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. At the time of listing, the Service found that, although considerable knowledge of Mexican spotted owl habitat needs had been gathered in recent years, habitat maps in sufficient detail to accurately delineate these areas were not available. Subsequent to listing, the Service began gathering the data necessary to develop a proposed rule. On March 17, 1993, letters requesting information on owl habitat and distribution were sent to 14 Federal agencies. On April 14, 1993, letters requesting information on owl habitat and distribution were sent to 37 Tribal agencies.

On June 25, 1993, and again on August 16, 1993, the Service received petitions to remove the Mexican spotted owl from the List of Endangered and Threatened Wildlife. In subsequent petition findings published in the **Federal Register** (58 FR 49467, 59 FR 15361) the Service addressed the issues raised in the petitions and determined that the delisting petitioners did not present substantial information indicating that the delisting of the Mexican spotted owl was warranted.

The petitioners have challenged this decision in Federal District Court in New Mexico in *Coalition of Arizona/ New Mexico Counties for Stable Economic Growth* v. *United States Fish and Wildlife Service, et al.,* CIV 94–1058–MV.

On February 14, 1994, a lawsuit was filed in Federal District Court in Arizona against the Department of the Interior for failure to designate critical habitat for the Mexican spotted owl (*Dr. Robin Silver, et al.* v. *Bruce Babbitt, et al.*, CIV–94–0337–PHX–CAM). On October 6, 1994, the Court ordered the Service to * * * ''publish a proposed designation of critical habitat, including economic exclusion pursuant to 16 U.S.C. 1533(b)(2), no later than December 1, 1994, * * * (and) publish its final designation of critical habitat, following the procedure required by statute and Federal regulations for notice and comment,'' by submitting the final rule to the **Federal Register** no later than May 30, 1995. Pursuant to an extension granted by the court, the Service issued the proposal rule to designate critical habitat on December 7, 1994 (59 FR 63162).

Prior to issuance of the proposed rule, the Service held a press briefing in Albuquerque, New Mexico, on November 30, 1994, announcing the proposal, and issued a press release to major regional newspapers. In addition, the proposed rule was sent to affected Federal, Tribal, state, county, and local agencies and governments, and notice of the availability of the rule were sent to all interested parties on the Service mailing list. Public legal notices of the proposal were also sent to 18 newspapers in Arizona, Colorado, New Mexico and Utah on December 5, 1994. The general and newspaper notices requested data and comments from the government and public on all aspects of the proposal, including data on the economic impacts of the designation. The notice also announced a 90-day comment period open until March 7, 1995.

On December 19, 1994, the Service sent a request for information on the potential economic impacts of designating critical habitat to 13 Federal, 12 Tribal, and 10 state agencies, and 4 Governors' and 42 county government offices. A Draft Economic Analysis (DEA) was prepared based on the information received and notice of its availability was published in the **Federal Register** on March 8, 1995 (60 FR 12728, 60 FR 12730). The publication also proposed several revisions to the original proposal, solicited additional information and comments, opened an additional 60-day comment period extending to May 8, 1995, and announced the schedule and location of public hearings. More than 700 parties on the Service's mailing list also received an announcement of the above subjects. On February 23, 1995, the Service also sent for publication as legal notices in 36 regional newspapers an announcement of the availability of the DEA, solicitation for additional information and comments, the opening of the additional comment period, and the schedule and location of public hearings. Public hearings were held in Santa Fe and Socorro, New Mexico, on March 22 and 23, 1995, and Tucson and Flagstaff, Arizona, on March 29 and 30, 1995. Comments from the public on the critical habitat proposal and DEA were recorded and evaluated for input to the final designation. More than 800 letters addressing the proposal were received during the comment periods. The correspondence and comments have been evaluated in the decision whether to designate critical habitat. Numerous other Federal actions have occurred in relation to the Mexican spotted owl, including the Service's recovery planning effort, plus management actions by other Federal agencies. Those topics are discussed under ''*Management Considerations*'', below.

Habitat Characteristics

The physical and biological habitat features essential to the conservation of the Mexican spotted owl, referred to as the primary constituent elements, include those that support nesting, roosting, and foraging. These elements were determined from studies of Mexican spotted owl behavior and habitat use throughout the range of the owl.

The vegetative communities and structural attributes used by the owl vary across the range of the subspecies. The vegetative communities consist primarily of warm-temperate and cold-temperate forests, and, to a lesser extent, woodlands and riparian deciduous forests. The mixed-conifer community appears to be most frequently used throughout most portions of its range (Skaggs and Raitt 1988; Ganey and Balda 1989, 1994; Service 1995).

Mixed-conifer forests contain several species of overstory trees. The most common are white fir (*Abies concolor*), Douglas fir (*Pseudotsuga menziesii*), and ponderosa pine (*Pinus ponderosa*). Less common species are southwestern white pine (*P. strobiformis*), limber pine (*P. flexilis*), aspen (*Populus tremuloides*), and corkbark fir (*Abies lasiocarpa* var. *arizonica*). The understory within mixed-conifer communities provides important roosting sites for Mexican spotted owls. The understory usually contains the same conifer species found in the overstory, with Gambel oak (*Quercus gambelii*), maples (*Acer grandidentatum* and *A. glabrum*), and New Mexico locust (*Robinia neomexicana*) also present. Montane riparian canyon bottoms used by owls in the mixed-conifer zone may contain box elder (*Acer negundo*), narrowleaf cottonwood (*Populus angustifolia*), maples (*Acer* spp.), and alders (*Alnus* spp.).

In southeastern Arizona, owl habitat types include mixed-conifer and Madrean Evergreen Forest and Woodland (Ganey and Balda 1989a; Duncan and Taiz 1992). Below the mixed-conifer vegetative zone are found two series of Madrean Evergreen Woodland: the upper oak-pine occurs at 1,675 to 2,200 meters (5,500 to 7,200 feet), and the lower evergreen oak (encinal) occurs at 1,525 to 1,980 meters (5,000 to 6,500 feet). Within these vegetative zones, and particularly at lower elevations, Mexican spotted owls are usually found in steep, forested canyons with rocky cliffs.

At the northern edge of their range in northeastern Arizona, southwestern Colorado, and southern Utah, Mexican spotted owls occur during the breeding season between 1,340 to 2,160 meters (4,400 to 7,100 feet) in canyon habitats within pinyon-juniper woodland (*Pinus edulis* and *Juniperus osteosperma*) or mixed-conifer forests. Canyon habitat is characterized by the cool, humid conditions found in the deep, steep-walled, fractured structures of sandstone slickrock. Canyons frequently contain riparian and conifer pockets, and adjacent slopes and mesa tops are vegetated by a variety of plant associations. Although no studies have been completed, preliminary studies show most Mexican spotted owl activity during the breeding season to occur within and in proximity to canyons. Owls roost in the riparian and coniferous pockets of canyon bottoms, on ledges, or in cavities in the slickrock canyon walls (Gutiérrez and Rinkevich 1991; van Riper and Willey 1992).

Structural characteristics associated with forested Mexican spotted owl habitat vary depending on the behavioral function it supports. Although Mexican spotted owl habitat is also regionally variable, some general attributes are common to the subspecies' life-history requirements throughout its range. Studies of nest and roost habitat use at both stand and site scales indicate that areas selectively used by owls contain attributes typically associated with older forest stands (Service 1995 and references therein). The attributes of

forested nesting and roosting habitat typically include a high basal area of large diameter trees; a moderate to high canopy closure; a pronounced large-tree component; a wide range of tree sizes suggestive of uneven-age stands; a multi-layered canopy with large overstory trees of various species; high plant species richness; high snag basal area; and high volumes of fallen trees and other woody debris. These attributes usually develop with increasing forest age, but their occurrence may vary by location, past forest management practices or disturbance events, forest type, and productivity. These characteristics may also develop in younger stands, especially when the stands contain remnant large trees or patches of large trees from earlier stands. Certain forest management practices may also enhance tree growth and mature stand characteristics where the older, larger trees are allowed to persist.

Spotted owls apparently use a wider array of habitat types for foraging than for nesting and roosting, including fairly open and non-contiguous forest, small openings, pure ponderosa pine stands, woodland, and rocky slopes. Ganey and Balda (1994) found a greater selectivity in forested habitat used for foraging than for random sample sites. As for roosting sites, foraging areas had larger logs, greater canopy cover, and higher densities and basal areas of both trees and snags than random sites. Owls also appeared to avoid foraging in stands in which the overstory had been partially harvested. However, the significance of this analysis may be low because of the limited sample size.

Little is known about the habitat requirements for dispersal. Habitat that meets the subspecies' needs for nesting and roosting may also provide for foraging and dispersal. The definition of the term ''dispersal'' is frequently limited to post-fledging movements of juveniles. For the purposes of this rule, the Service considers the term to include all movement, including winter shifts in territory and dispersal from natal areas, and to encompass the important biological concepts of connectivity within and between clusters of Mexican spotted owl territories. Although habitat that allows for dispersal may be marginal or unsuitable for nesting or roosting, it provides connectivity between blocks of nesting habitat both locally and over the Mexican spotted owl's range that is essential to demographic interaction and genetic flow. Thus, dispersal habitat includes unoccupied habitat of varying quality that may support intermittent use as a ''stepping stone'' between occupied areas.

Mexican spotted owls occur in relatively isolated mountain ranges, often separated by wide expanses of Sonoran, Chihuahuan, and Great Basin desert and other nonforested lands. Preliminary studies of juvenile owl dispersal in southern Utah (Willey 1993) and New Mexico (Peter Stacey, University of Nevada, Reno, *in litt.*, 1993) have shown movements across a wide variety of habitat types, including both riparian areas and vegetation types considered too open for consistent use by Mexican spotted owls.

The results of a 3 year telemetry study of owls and habitat in southern Utah have shown seasonal shifts in habitat use (van Riper and Willey 1992, Willey 1993). During the breeding season, up to 25 percent of adult owl locations occurred outside of steep canyon terrain. During the fall and winter seasons, about half of the locations occurred on mesa-tops, benches, and warm slopes above the canyons. Movements out of the summer home ranges during the winter season were highly variable. A few owls moved completely out of their summer ranges, several shifted into adjacent areas with some overlap of seasonal ranges, and others remained within the same area year round.

Current Situation

Federal, state, Tribal, and private lands contain habitat for the owl. The Forest Service, Bureau of Indian Affairs (BIA), National Park Service (NPS), Bureau of Land Management (BLM), and Department of Defense are the Federal land managing agencies for much of the lands harboring owl habitat and known owl sites. Efforts to estimate habitat acreage and survey efforts for owls have varied between agencies, with the most intensive work being done by the Forest Service.

Currently, most land-managing agencies characterize Mexican spotted owl habitat under the term ''suitable.'' Suitable habitat is often only applied to habitat able to sustain the combined nesting, roosting, and foraging needs of the Mexican spotted owl's life history. The definition often excludes additional habitat utilized only for foraging, and may underestimate the total habitat available within an owl territory and across the subspecies' range.

The Forest Service estimates that it manages about 1,853,000 ha (4,579,000 acres) of suitable owl habitat on 18 national forests in Arizona, New Mexico, Utah, and Colorado (Fletcher and Hollins 1994). Forest Service land in Arizona and New Mexico contains 1,161,000 ha (2,869,000 acres) of this total, with an additional 432,400 ha (1,068,500 acres) described as being ''capable'' of returning to suitable habitat condition. Colorado national forests are estimated to have about 355,300 ha (878,000 acres) and Utah national forests are estimated to have about 336,700 ha (832,000 acres) of forested suitable habitat. However, under a narrower set of definitions, a second recent estimate places suitable canyon habitat in Utah national forests at about 58,000 ha (143,000 acres) (Kate Grandison, Dixie National Forest, *in litt.*, 1994). No capable acreage figure is available for Utah and Colorado. Addition of the capable habitat figure yields a total owl habitat acreage of 1,593,500 ha (3,937,500 acres) for Forest Service lands in Arizona and New Mexico.

Forest Service inventories through 1994 resulted in the establishment of 841 management territories (MTs) in Arizona and New Mexico (Fletcher and Hollis 1994). Four MTs have been established from the six sites with owl detection records in Utah (K. Grandison, pers. comm., 1994). No MTs have been established from the six owl sites in Colorado (John Verner, Pike/San Isabel National Forests, pers. comm., 1994). Each MT represents the occurrence of either a single owl or pair of owls, and was either established from confirmed nest or roost locations, or from nighttime calling responses.

There are potentially up to 435,000 ha (1,075,000 acres) of Mexican spotted owl habitat on Indian reservations. The actual amount of habitat may be lower because estimates may be developed from forest cover timber-type maps containing little information about understory conditions or slope. On the other hand, the estimates may also omit minimally or non-forested canyon habitat acreage. Complete information is not available on owl survey efforts or results from several Tribes. As of the end of 1992, seven owl sites (three pairs and four singles) have been located on the Fort Apache Indian Reservation (White Mountain Apache Tribe, *in litt.*, 1993). No recent estimates were made available by the Tribe. Owl surveys on the Navajo Reservation have resulted in the confirmation of owls at 26 sites (13 pairs and 13 singles) (John Nysted, Navajo Fish and Wildlife Department, pers. comm., 1994). The Jicarilla and the Hualapai wildlife departments have conducted owl surveys; however, no owls have been detected. Current owl records exist, but only limited information is available on population estimates for the San Carlos Apache and Mescalero Apache Indian Reservations.

Only limited information specific to the Southern Ute Indian Reservation is available; however, presently the are no known owls, although occupied habitat on adjacent lands indicate owls may occur on Reservation land.

A total of 297,000 ha (734,000 acres) of potential owl habitat occurs on BLM lands in Colorado, Utah, Arizona, and New Mexico (BLM, Colorado State Office, *in litt.* 1990; BLM, Utah State Office, *in litt.* 1990; BLM, New Mexico State Office, *in litt.* 1990; Ted Cordery, Arizona BLM, pers. comm., 1992). In 1993, a total of 25 owl locations were known from BLM lands. There were 15 locations in Utah, 7 locations in Colorado, and 1 location in New Mexico. There are several historical records and two current records for sites on BLM lands in Arizona.

Most Mexican spotted owl habitat on national parks and monuments consists of minimally forested, steep, shaded canyons in the northern part of the owl's range. It is difficult to estimate acreage for this type of habitat. The NPS estimated that 23 parks and monuments in the southwest contained between 96,000 and 177,000 ha (238,000 to 438,000 acres) of Mexican spotted owl habitat (NPS, Southwest Region, *in litt.* 1990; NPS, Rocky Mountain Region, *in litt.* 1990; J. Ray, NPS, Grand Canyon National Park, pers. comm., 1990). As of 1995, the NPS had records for a total of 37 sites in Utah, Colorado, and New Mexico (NPS, unpublished data). No recent records were available for NPS land in Arizona.

Between 72,000 and 82,000 ha (177,000 to 202,000 acres) of New Mexico and Arizona State lands contain forests and canyons that could be suitable Mexican spotted owl habitat. Several historical and recent records exist for New Mexico State lands. In Arizona, surveys conducted by the Arizona State Land Department and the Coconino National Forest resulted in the establishment of three MTs. No information was available on suitable Mexican spotted owl habitat on State lands in Utah and Colorado. However, a single owl was recorded on Utah State lands in 1992.

Private lands in Arizona and New Mexico are currently estimated to contain up to 53,000 ha (130,000 acres) of owl habitat (Service 1994). No estimates exist for owl habitat acreage on private lands in Colorado and Utah. This is partly due to the difficulty in assessing the extent of existing canyon habitat in the Colorado Plateau physiographic province, and partly a result of the insufficient amount of owl surveys currently accomplished to accurately determine the limit of the subspecies' range.

The estimates, as reported by individual land managing agencies, of Mexican spotted owl suitable habitat within the United States total about 2,959,400 ha (7,312,500 acres). These estimates of habitat available for nesting and roosting activity are derived from median figures where estimates were given as an acreage range, include capable habitat estimates where available, and include the lower estimate for suitable habitat on Forest Service land in Utah. The approximate proportion of habitat for the Forest Service is 68 percent; Tribal, 15 percent; BLM, 10 percent; NPS, 5 percent; the States of Arizona and New Mexico, 1 percent; and private lands, 2 percent.

The proportion of total habitat for each landowner is probably fairly accurate. However, the total acreage of owl habitat is likely overestimated. The error is a result of inadequate information on land status and disagreement about the types of vegetative communities that provide owl habitat. For instance, the Forest Service included many acres of the ponderosa pine community type in its estimate of suitable and capable habitat. Several agencies expressed uncertainty about the accuracy of their habitat estimates.

Ninety-one percent of Mexican spotted owls known at the end of 1990 occurred on national forests, 4 percent on Indian reservations, 4 percent on national parks, and 1 percent on BLM lands. Because the Service has received incomplete 1991 to 1994 survey data, it is not possible to identify exact percentages since 1990.

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as: ''(i) the specific areas within the geographic area occupied by a species * * * on which are found those physical and biological features (I) essential to the conservation of the species, and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species.'' The term ''conservation,'' as defined in section 3(3) of the Act, means ''* * * to use and the use of all methods and procedures which are necessary to bring an endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary,'' i.e., the species is recovered and removed from the list of endangered and threatened species.

The Service is required to base critical habitat designations upon the best scientific and commercial data available (50 CFR 424.12) after taking into account economic impacts and other relevant data. In designating critical habitat for the Mexican spotted owl, the Service has reviewed the overall approach to the conservation of the Mexican spotted owl undertaken by land management agencies since its proposed listing in 1991. The Service has also reviewed available information that pertains to the habitat requirements of this subspecies, including material received during the public comment periods from state and Federal agencies, and other entities. Finally, the Service considered the economic and other relevant impacts of designation prior to making this final determination.

Role in Species Conservation

The use of the term ''conservation'' in the definition of critical habitat indicates that its designation should identify lands needed for a species' eventual recovery and delisting. However, when critical habitat is proposed or designated at the time a species is listed, the Service frequently does not know precisely what may be needed for recovery. In this regard, critical habitat serves to preserve options for a species' eventual recovery.

The designation of critical habitat will not, in itself, lead to recovery, but, through regulations under section 7 of the Act, may assist the Service and all Federal agencies in preventing the further deterioration of habitat and, in this way, contributing toward a species' conservation. Critical habitat helps focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements), regardless of whether they are currently occupied by the listed species, thus alerting the public and land managing agencies to the importance of an area in the conservation of a listed species. Critical habitat also identifies areas that may require special management or protection. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Aside from the added protection provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. The added protection of these areas may shorten the time needed to achieve recovery.

Designating critical habitat does not create a management plan for a listed species. Designation does not establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), nor does it have a direct effect on areas not designated as critical habitat. Recovery planning and critical habitat designation are different processes. Specific management recommendations for critical habitat are most appropriately addressed in recovery plans, management plans, and through section 7 consultation.

Critical habitat identifies specific areas essential to the conservation of a species. Areas not currently containing all of the essential features, but with the capability to do so in the future, may also be essential for the long-term recovery of the species, particularly in certain portions of its range, and may be designated as critical habitat. However, not all areas containing the features of a listed species' habitat are necessarily essential to the species' survival. Areas not included in critical habitat that contain one or more of the primary constituent elements are still important to a species' conservation and may be addressed under other facets of the Act, and other conservation laws and regulations.

Primary Constituent Elements

In identifying areas as critical habitat, the Service considers those physical and biological attributes that are essential to a species' conservation. In addition, the Act stipulates that the areas containing these elements may require special management considerations or protection. Such physical and biological features, as outlined in 50 CFR 424.12, include, but are not limited to, the following:

—Space for individual and population growth, and for normal behavior;
—Food, water, or other nutritional or physiological requirements;
—Cover or shelter;
—Sites for breeding, reproduction, or rearing of offspring; and
—Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements of critical habitat for the Mexican spotted owl include, but are not limited to, those habitat components providing or with the potential to provide for nesting, roosting, or foraging activities. Forested habitats used for nesting and roosting are typically characterized as supporting mature stand attributes including high canopy closure, multi-canopied structure, coniferous vegetation (sometimes including a hardwood understory), large diameter trees, high basal areas of live trees and snags, and high log volumes. Nesting and roosting habitat also supports owl foraging activity; however, a wider array of habitat attributes may be found in areas used solely for foraging, including fairly open and non-contiguous forest, small openings, woodland, and rocky slopes. Canyon habitat is typically characterized by the cool, humid conditions found in deep, steep-walled, fractured structures. Canyons frequently contain riparian and conifer pockets, and adjacent slopes and mesa tops are vegetated by a variety of plant associations. Owl habitat may also exhibit a combination of attributes between the forested and canyon habitat types. Habitat that meets the subspecies' needs for nesting, roosting, and foraging also provides for dispersal. However, habitat that provides for dispersal may not support the other primary constituent elements. Currently, little is known about the habitat requirements for foraging or dispersal.

Areas of designated critical habitat include both ''suitable'' and ''unsuitable'' forest and canyon habitat. Several definitions of ''suitable'' are currently used by different land managing agencies; however, the term ''suitable'' generally refers to habitat that supports the combined activities of nesting, roosting, and foraging. This critical habitat designation is not limited to habitat that meets ''suitable'' definitions, but includes habitat with any of the primary constituent elements described above.

Criteria for Identifying Candidate Critical Habitat Units

The primary objective in designating critical habitat is to identify existing and potential Mexican spotted owl habitat considered essential for the conservation of the subspecies, and to highlight specific areas where management considerations should be given highest priority. The Service focused on available nesting and roosting habitat to identify locales that provide a nucleus for delineation of critical habitat units. Additional habitat was added as needed to develop units based on the criteria described below. In the designation of critical habitat, the Service has considered all habitat types needed by the subspecies through its definition of the primary constituent elements.

The Service used owl habitat and territory maps, vegetation maps, aerial photography, and field verification to identify areas for designation as critical habitat. Because habitat maps available to the Service were generally based on the varying definitions of ''suitable habitat'' used by the agencies, the major focus was on habitat that provides nesting, roosting, and some foraging attributes. To assist in these determinations, the Service relied upon the following principles developed by the Interagency Scientific Committee (Thomas *et al.* 1990) for the northern spotted owl, and by others working in the field of conservation biology:

—Develop and maintain large contiguous blocks of habitat to support multiple reproducing pairs of owls;
—Minimize fragmentation and edge effect to improve habitat quality;
—Minimize distance between blocks to facilitate dispersal among blocks of breeding habitat; and
—Maintain range-wide distribution of habitat to facilitate recovery.

Several qualitative criteria were considered when determining identification of critical habitat. The following discussion describes the criteria and provides an explanation of their use in selecting and designating specific areas.

(1) *Currently Suitable Habitat:* The Service concentrated on the existence of currently suitable Mexican spotted owl forested and canyon habitat (primarily nesting and roosting, but also foraging) that contained one or more of the primary constituent elements. The Service evaluated the quality of existing habitat based on available habitat maps and delineated the best available habitat (i.e., the least fragmented, most contiguous forest habitat areas; areas showing characteristic topographic features of canyon habitat) in the critical habitat units.

(2) *Large Contiguous Blocks of Habitat:* The Service identified, where available, large, contiguous blocks of habitat or areas that mostly consist of Mexican spotted owl habitat. In forested habitat, areas were selected so that critical habitat units would include as little low quality habitat as possible. In canyon habitat, drainage systems and adjacent terrain determined the branching shape of critical habitat units.

(3) *Occupied Habitat:* In evaluating potential critical habitat units, the Service gave primary consideration to habitat currently occupied by pairs or resident singles; however, some unoccupied areas were selected if they were important for other reasons (e.g., territory cluster contiguity). Some habitat within units was selected based on suitability although no surveys were yet conducted. All areas selected,

however, have potential for supporting the territorial needs of Mexican spotted owls.

(4) *Rangewide Distribution:* The Service is designating critical habitat units well distributed within the existing United States range of the Mexican spotted owl to maintain demographic connectivity and genetic variation between territory clusters.

(5) *Special Management or Protection:* The Service evaluated the need for special management because of the existing situation (e.g., current quality of existing habitat), low population density, the relative importance of territory clusters, or management activities and threats. All areas were selected because of their need for special management or protection.

(6) *Adequacy of Existing Regulatory Mechanisms:* The Service considered the existing legal status of areas (i.e., reserved areas such as wilderness or parks) and, with few exceptions, has not designated reserved areas as critical habitat. In general, the current classification of wilderness areas and parks provides adequate protection against potential habitat-altering activities because they are primarily managed as natural ecosystems. These lands are often essential to the conservation of the subspecies, as they provide important links and contain large areas of habitat in relatively pristine condition. However, these lands by themselves do not provide adequate habitat to support a viable range-wide Mexican spotted owl population. The Service considered their relative contribution to the Mexican spotted owl's conservation but did not include them in critical habitat because of the protection afforded by their current classification unless there was a threat of significant impacts to habitat in these areas or they were inclusions within larger surrounding critical habitat units.

Critical Habitat Designation

The designation includes 107 critical habitat units totaling 1,874,935 ha (4,632,901 acres) in Arizona, New Mexico, Utah and Colorado. The approximate acreage of critical habitat by land ownership is shown in Table 1.

TABLE 1.—CRITICAL HABITAT ACREAGE BY LAND OWNERSHIP AND STATE

	Arizona	New Mexico	Colorado	Utah	Total
Forest Service	1,510,148	[a] 1,848,351	34,500	188,386	[a] 3,581,385
Bureau of Land Management	0	10,743	562	72	11,377
National Park Service	45,892	0	0	0	45,892
Department of Defense	2,013	0	0	0	2,013
State	3,333	5,847	620	20	9,820
Tribal	401,829	[b] 407,604	61,531	0	[b] 870,964
Private	28,396	[b] 75,621	6,890	543	[a] 111,450
Total	1,991,611	[a b] 2,348,166	104,103	189,021	[a b] 4,632,901
Total critical habitat units	38	62	7	1	[c] 107

[a] Includes a correction to acreages cited in the proposed rule.
[b] Includes changes to ownership and deletion of Jicarilla Apache acreages cited in the proposed rule.
[c] One critical habitat unit overlaps two States.

Management Considerations

Forest Practices

Management direction for lands with Mexican spotted owl habitat varies within and between agencies. A multiple-use management emphasis is in effect on much of Forest Service and Tribally managed land. Much BLM Mexican spotted owl habitat is managed primarily for natural resources extraction, including oil, gas, minerals, and timber, but is still available for wildlife and recreation. National Park Service lands are managed for recreation and preservation of natural values. State lands within owl habitat are typically intermingled with Federal lands and are usually not large enough to support owl territories of their own. State lands are managed to generate maximum financial return to the State trusts. Management emphasis on private lands providing Mexican spotted owl habitat varies.

Current Forest Service management plans call for harvestable timber land in Arizona and New Mexico to be primarily managed under even-aged shelterwood systems. Commercial forests on the Navajo Indian Reservation are being converted to shelterwood management (James Carter, BIA, pers. comm., 1990). Other commercial forests on Indian lands in the Southwest are managed primarily as uneven-aged stands by selective logging. Under the shelterwood system, a stand is scheduled for a series of harvests culminating in a full rotation cycle in 120 years or less. This cycle maximizes timber production, but does not provide enough time for stands to reach the mature to old-growth conditions characteristic of most forested Mexican spotted owl habitat, and results in forest age distributions unnaturally skewed toward younger stands. The past and threatened conversion of complex structured forest stands to even-aged stands was identified by the Service (Service 1991, 1993, 1995) as the greatest threat facing the Mexican spotted owl.

Half of all shelterwood management on national forests has been occurring in forest habitat suitable for nesting and foraging. The Service has determined habitat loss trends from current national forest plans, which provide the only available data on timber harvest trends into the future. An estimated 0.4 percent of Mexican spotted owl habitat is projected to be made unsuitable for breeding each year in the future if timber extraction continues as outlined under current forest plans.

Region 3 of the Forest Service is currently in the process of amending forest plans to incorporate the recommendations contained in the Service's draft Mexican Spotted Owl Recovery Plan (Service 1995), and to change the dominant silvicultural system in the southwest from even- to uneven-age management. Uneven-aged management maintains and promotes development of complex forest structures. Methods include individual tree selection and group selection. Individual tree selection entails the harvest of trees selected from a size-distribution curve appropriate for forest type, site conditions, and desired regeneration levels. Trees of various size and age classes are retained, and multi-storied attributes and vertical diversity are maintained. Group selection creates

openings in the forest stand from a fraction to a hectare (¼ to 2.5 acres) in size, developing small even-aged clumps of trees and within-stand horizontal diversity. The Service considers the use of uneven-age management the silvicultural method most compatible with maintenance of Mexican spotted owl habitat.

Previous Management Attempts

Prior to listing, the Migratory Bird Treaty Act (MBTA) provided the only Federal statutory protection for the Mexican spotted owl. Under the provisions of the MBTA, it is unlawful to pursue, hunt, take, capture, or kill in any manner any migratory bird unless permitted by regulations. Although the Mexican spotted owl typically remains in its summer range throughout the year, it is included on the list of birds protected under the MBTA.

An interagency agreement with the purpose of ensuring population viability of the spotted owl (*Strix occidentalis*), including the Mexican spotted owl, was signed by the Service, BLM, NPS, and Forest Service on August 12, 1988 (U.S. Department of Interior 1988). Under this agreement, each agency agreed to manage its lands to provide owl habitat, to carry out habitat and population inventories sufficient to indicate long term trends, and to carry out research activities sufficient to provide empirical information on the validity of planning assumptions. The degree to which this agreement has been implemented has varied within and among agencies.

The States of Arizona, Utah and Colorado list the Mexican spotted owl as a threatened species. Capture, handling, transportation, and take of the Mexican spotted owl are regulated by game laws and special licenses for live wildlife. Thus, the States only regulate hunting, recreation, and scientific investigation. Habitat management is not considered.

Most Federal agencies have policies to protect State threatened or endangered species, and some agencies also protect species that are candidates for Federal listing. The NPS Organic Act protects all wildlife on national parks and monuments. However, these general policies lack standards and guidelines that can be used to measure policy success. The Service believes that until agencies develop specific protection guidelines, evaluate them for adequacy, and test them through implementation, it is uncertain whether any general agency policies will adequately protect the Mexican spotted owl.

Specific management policies for the Mexican spotted owl have been developed by BLM in Colorado and New Mexico. The policy in Colorado states, ''In areas with a confirmed nest or roost site, surface management activities will be limited and will be determined on a case by case basis to allow as much flexibility as possible outside of the core area.'' Management policy in New Mexico states that habitat core areas and territories of appropriate size will be established and preserved wherever owls are found. The Service believes these policies are likely to be too general to ensure the Mexican spotted owl will be adequately protected on BLM lands.

Mexican spotted owl protection guidelines have been developed by the White Mountain Apache, Mescalero Apache, and Jicarilla Apache Tribes. The White Mountain Apache Mexican Spotted Owl Management Plan was discussed in some detail in the proposed rule for critical habitat designation. Details of the Mescalero Apache conservation plan are considered proprietary by the Tribe and are not available for release by the Service. The Jicarilla Apache conservation plan addresses the identified threats to owl habitat by maintaining sufficient suitable habitat across the landscape and the site-specific retention of complex forest structure following timber harvest. Nest/roost habitat, primarily mixed conifer and steep slope areas, are not managed for timber extraction and are to remain in suitable nest-roost condition. Foraging habitat consisting of ponderosa pine is to be managed almost entirely by uneven-aged methods. Timber harvest may lower the quality of a fraction of the foraging habitat base, but adequate residual structure remains such that the habitat rapidly reattains suitable condition. At any point in time the majority of foraging habitat remains in suitable foraging condition across the landscape. Site-specific management of territories address both habitat conditions and behavioral disturbance within owl territories. Territorial management includes the establishment of 300-acre protected activity centers around nest-roost sites. No timber, and oil and gas development is to occur within these areas, and no behaviorally disturbing activities are permitted within ¼ mile of any nest or roost site during the breeding season. Habitat in the areas surrounding the protected activity centers are to be managed as described above.

Detailed guidelines for Mexican spotted owl management have been developed by the Forest Service Southwest Region. The guidelines were first issued as Mexican spotted owl Interim Directive (ID) No. 1 in June 1989, and reissued as Mexican spotted owl ID No. 2 in June 1990. Utah and Colorado national forests adopted ID No. 2 in 1991. The guidelines expired December 26, 1991, but the Forest Service is continuing to manage under ID No. 2. The IDs require establishment of a Mexican spotted owl MT around each nest or roost site. Each MT has a core area of 182 ha (450 acres) and an overall size of 810 ha (2,000 acres). Activities within the core area are limited to road construction. Within the MT, activities, including timber harvest, are limited to a maximum of 314 ha (775 acres). The intent of the guidelines is to retain at least 405 ha (1,000 acres) of suitable habitat within the MT after proposed management activities are identified and located. Forest Service estimates indicate that suitable habitat within MTs currently averages 466 ha (1,150 acres) for territories in New Mexico and Arizona. In Utah, MTs encompass 1,340 ha (3,350 acres) with a core of 350 ha (875 acres) (K. Grandison, pers. comm., 1994). The IDs provide no protection for unoccupied suitable Mexican spotted owl habitat, nor do they address forest activities not related to timber harvest.

In March of 1995, the Service released for public review the draft Mexican Spotted Owl Recovery Plan (Service 1995). That plan, when finalized, will become the Service's policy on recommendations for managing Mexican spotted owls in the southwest. As previously mentioned, the Forest Service has shown interest in adopting the recommendations in the recovery plan by amending forest plans for National Forests in Arizona and New Mexico. It is the Service's hope that other involved Federal agencies, including other regions of the Forest Service, will adopt the Service's final recovery recommendations as spotted owl management policy.

Summary of Economic Impacts

The Act requires that critical habitat be designated after consideration of the economic impact, and any other relevant impact, of specifying any specific area as critical habitat. An area may be excluded from designation if the benefits of its exclusion outweigh the benefits of its inclusion in critical habitat, unless failure to designate the area would result in extinction of the species concerned. The Service has analyzed the probable impacts of designating critical habitat for the Mexican spotted owl. Availability of a draft economic analysis was announced in the **Federal Register** on March 8, 1995 (60 FR 12730), simultaneous with publication of a supplementary

proposed rule that proposed to exclude certain areas from critical habitat on economic grounds (60 FR 12728). Pursuant to an order of the United States District Court for the District of Arizona issued December 30, 1994, the Service was required to publish any proposed exclusions from the critical habitat for the Mexican spotted owl in the **Federal Register** and provide a 60-day comment period on them. Consequently, the only areas potentially subject to economic exclusion from this final designation are those treated in the supplementary proposal.

A final economic analysis has now been completed and will soon be made available to the public. Its principal findings are summarized below.

The study estimates the incremental economic effects of designating critical habitat for the owl. It does not estimate the economic benefits and costs related to other conservation measures in place as a result of listing the owl, or the economic effects of actions taken by other Federal or state agencies. The study assesses impacts on activities that occur on Federal land or are authorized, funded, or carried out by agencies of the Federal government. Activities that occur on private lands and that do not involve Federal authorization, funding, or assistance are not affected by critical habitat designation.

Analytical Methodology

The economic region described in the study includes 28 counties in four states that contain land proposed for designation as critical habitat for the owl. The subregions are groups of counties that allow evaluation of economic impacts in a smaller area. The Northeast subregion contains 2 counties in Colorado (Archuleta and La Plata) and 9 in New Mexico (Colfax, Los Alamos, Mora, Rio Arriba, Sandoval, San Miguel, Santa Fe, Taos, Torrance). The Southeast subregion comprises two counties in southern New Mexico (Lincoln and Otero). The West subregion is the largest and most populated, and includes 7 counties in Arizona (Apache, Coconino, Gila, Graham, Greenlee, Navajo, and Yavapai), 7 counties in New Mexico (Catron, Cibola, Grant, McKinley, San Juan, Sierra, and Socorro), and 1 in Utah (San Juan).

The economic subregions are defined by county boundaries, which are the smallest economic divisions available for analysis with the database used in the study. The subregions approximate as nearly as possible the counties in which critical habitat has been proposed. The profile of the economy of the region describes economic activity in 1991, prior to Federal listing of the owl and the proposal to designate critical habitat. The economic descriptions and the modeling of economic impacts were conducted primarily with Micro IMPLAN (Taylor et al. 1993) and the Micro IMPLAN database.

The economic analysis is restricted to effects anticipated in the foreseeable future within proposed CHUs. The effects of the proposed action on Federal agencies and other entities were estimated using data requested by the Service from Federal, state, county, and Tribal entities known to be involved in land management or ownership within the counties containing proposed critical habitat. The agencies were asked to estimate current and planned timber harvest that involved modification or destruction of owl habitat and that would be affected by the proposed action.

The economic effects of designation include those that result in changes in social welfare. Regional (distributional) economic impacts may include household income foregone from employees permanently displaced through critical habitat designation; changes in specific county tax revenues due to changes in land use; regional social costs and benefits from factors such as transient unemployment, job training, or redistribution of existing job-mix categories. The analysis of effects of critical habitat designation considers both national economic efficiency effects and regional (distributional) impacts when possible. These include effects on the changes in total employment, changes in household income, and the effects on local communities.

Regional Demographic Profile

Land Ownership

More than three-fourths of the acres proposed for critical habitat designation are federally owned, primarily under jurisdiction of the Forest Service. Much of the remaining land is within the boundaries of Tribal Reservations (20 per cent).

Critical habitat designation for the owl was proposed on 922,600 acres of Native American Tribal lands including land owned by five Tribes: Jicarilla Apache, Mescalero Apache, Navajo, San Carlos Apache, and Southern Ute. Tribal lands are included in CHUs in all three subregions, and represent 17 percent of the total proposed designated critical habitat in the Northeast and West subregions, and 38 percent of the Southeast subregion.

Human Population

The 1990 census reported the region's residents numbered 1,054,800, 20 percent higher than a decade earlier and double the population of 1960. The 1990 census reported 19 counties in the region that each had fewer than 50,000 residents; population exceeded 100,000 in one of the 28 counties in the region.

The region includes six incorporated communities with populations that exceeded 25,000 in 1990, including Flagstaff and Prescott, Arizona; and Alamogordo, Farmington, Rio Rancho, and Santa Fe, New Mexico. Santa Fe was the largest community in the region, reporting a 1990 census of 55,900 residents. The Arizona counties containing Phoenix (Maricopa County) and Tucson (Pima) and the New Mexico county containing Albuquerque (Bernalillo) are excluded from the region defined for this impact analysis because their large economies would substantially deemphasize the economic impacts in the remainder of the region. Pima County, which includes the Tucson metropolitan area, contains almost 34,000 acres proposed for critical habitat designation; however, current Forest Plans do not include timber harvest from the CHUs in Pima County.

Native Americans account for 24 percent of the population in the region, and the 250,000 residents of Native American descent represent 13 percent of the Native Americans in the United States. Residents of Hispanic descent account for 24 percent of the 1990 population in the region, or 258,000 residents.

Regional Economic Profile

Employment

Employment in the Mexican spotted region totaled 451,000 full- and part-time workers in 1991. The most striking characteristic of the region's employment base is the predominance of government employment. Nearly one-quarter (23.7 percent) of all jobs in the region in 1991 were based on Federal, State, and local governments—much higher than the rate of government employment in the national economy. Relative to the national economy, the region provided a higher proportion of employment in the Government, Retail Trade and Mining sectors, and a lower proportion of jobs in the Manufacturing and Services sectors. Employment in the Solid Wood & Paper sector represented 1.1 percent of the region's total job base, nearly matching the national rate of 1.2 percent.

Household Income

Household income totaled $13.9 billion in the region in 1991. The largest proportion of household income, $5.7 billion or 40.8 percent, was provided by sources outside the region, including pensions, government support payments, other ''unearned'' income, and wages paid by firms outside the region (e.g., wages paid to a resident of Sandoval County who works in Bernalillo County). The Government sector generated the second largest proportion of household income in the region (20.1 percent), followed by Services (12.8 percent). The Solid Wood & Paper sector provided $107.9 million in household income (0.8 percent of total) in the region in 1991.

Sales Revenues

Gross sales revenues (including resale of domestic and foreign imports and excepting the Trade sector which reports value added) in the region totaled $27.2 billion in 1991. The Mining sector generated about $4.5 billion in sales (16.6 percent of total), followed by the Services sector, the sales from which totaled $4.3 billion (15.8 percent). The Solid Wood & Paper sector generated $516 million (1.9 percent) of sales revenues in the region in 1991.

Role of Forests in the Region

Forests in the owl's range contribute to the regional economy as timber, a commodity input to the Solid Wood & Paper sector, and nontimber, a recreation resource and contributor to quality of life. The impacts created by commodity uses are market-based and measurable. The second set of impacts are partially nonmarket in nature, and are acknowledged to exist but often are difficult to quantify.

Timber Resources

Few timber harvest data are available for non-Federal lands in the region. The following analysis relates to timber harvest from Forest Service land, unless otherwise noted. Forest Service timber statistics for the Southwestern Region (includes all of Arizona and New Mexico) were used, and thus reflect an area slightly different than the region included in critical habitat. (The Southwestern Region statistics exclude the three counties in Colorado and Utah, and they include more than a dozen counties in Arizona and New Mexico outside the region).

During the last 20 years, timber harvest in the Southwestern Region exhibited two distinct periods, punctuated by the national recession in the early 1980s. From 1975 to 1980, harvest of all timber species averaged 378 million board feet (MMBF) annually. From 1983 to 1989, annual harvest averaged 460 MMBF. Timber harvests declined sharply in 1990 and again in 1993 as changes in forest management policies occurred. In 1990, the Forest Service projected a peak in employment in softwood lumber and plywood industries in the Rocky Mountain region (includes 12 States from Montana to New Mexico) by the turn of the century, with a steady decline in employment thereafter. The Forest Service forecast identified reduced harvest potential and the continued implementation of labor-saving technology as bases for the decline. Timber harvest from the Southwestern Region totaled 141 MMBF in 1993. The Southwestern Region supplied about 5.0 percent of the volume of timber harvested from the western U.S. during the last decade, ranging from 3.5 percent in 1993 (141 MMBF harvested from Arizona and New Mexico) to 5.9 percent in 1992.

The average price of timber harvested from Forest Service land has varied widely since 1975, but it has risen since 1990 (prices not adjusted for inflation). Timber price averaged $48/thousand board feet (MBF) from 1975 to 1990, before doubling to $103/MBF in 1993. Through the first nine months of 1994, 133 MMBF had been harvested with an average price of $113/MBF.

Employment

Timber cutting in the region directly provides employment in timber harvesting and processing industries. Employment also is generated indirectly in firms providing services and supplies to timber-related industries and their employees.

State-wide direct employment in wood industries in Arizona and New Mexico totaled 9,800 jobs in 1990. Direct employment in Solid Wood and Paper industries in the region totaled nearly 4,800 full- and part-time workers in 1991, just over one percent of the total jobs in the region. Sawmills provided the most jobs among Wood industries in 1991, followed by Logging Camps.

Household Income

Household income generated by the Solid Wood and Paper sector in the region totaled approximately $108 million in 1991, less than one percent of the $13.9 billion total household income in the region. Sawmills provided $40 million in household income in 1991 (37 percent of the Solid Wood and Paper sector's total in the region), followed by paper mills with $29 million (27 percent). Logging camps and millwork industries each provided about $11 million in household income in 1991.

Nontimber Forest Uses

Forests in the region support a variety of uses in addition to providing raw materials for wood and paper industries. Recreation, biological diversity, water quality protection, and intrinsic benefits all are generated by forests in the owl range. Some of these activities contribute directly to the regional economy; others are nonmarket impacts that benefit the public without affecting the market economy.

Reduced timber harvest on Federal land may improve natural resource-based recreational opportunities in the owl range if public access is not significantly affected. Recreation activities that depend on water quality (fishing, swimming, and boating), the presence and abundance of wildlife (wildlife viewing and nature study), and the general quality of forest surroundings (motorized and nonmotorized travel for sightseeing, camping, and picnicking) may increase in frequency and value with improved forest quality.

Spending on outdoor recreation by nonresidents brings money into the economy of the region. If the quality of natural resources declines, total spending by residents of the region is unlikely to change significantly; rather, spending will be redistributed from recreation to nonrecreation activities, or residents may increase recreation outside the region. In either case, the reduced quality of natural resources is likely to result in lower recreation expenditures in the region. That portion of spending that relocates outside the region represents a loss of economic activity due to the degradation of natural resources.

Recreational fishing occurred frequently throughout the region in 1991. Approximately 639,000 anglers fished in the region in 1991, recording nearly 4.9 millon angler days. These anglers spent about $50.42 per day, or $245.3 million in the region in 1991. About 196,000 anglers (31 percent) were nonresidents who fished 1.2 million angler days (24 percent) and spent about $88.17 per day, or $104.1 million (44 percent). More than 440,000 resident anglers averaged about $38.32 spending per day during 3.7 million angler days to record $141.2 million total spending.

Net benefits due to recreational fishing can be estimated for these fishing trips. Walsh et al. (1990) summarized net economic benefits for 39 coldwater fishing trips and found

these averaged about $30.62 per day in 1988. Assuming a per-day value of $36.69 ($30.62 adjusted for inflation to 1991 dollars), the 4.9 million fishing-days provided an estimated annual consumer surplus to anglers of $179.8 million in 1991.

Recreational hunting was pursued by 240,000 participants during 1991. These hunters recorded about 1.9 million days while hunting in the region, and spent about $29.49 per day, or $56.0 million during the year. About 48,000 participants (20 percent of total) were nonresidents who hunted 278,000 days (15 percent), averaging about $85.93 per day in expenditures, or $23.9 million annually (43 percent). The 192,000 resident hunters recorded 1.6 million days and spent $19.71 per day, or $31.6 million for the year.

Net benefits from recreational hunting can be estimated for these trips. Walsh et al. (1990) summarized net economic benefits for big-game and small-game hunting. Big-game hunting estimates in 1990 for net value per person per day averaged $45.47 while small-game hunting averaged $30.82. Assuming a daily value for hunting of $49.37 (inflation-adjusted weighted average of big- and small-game hunting), the 1.9 million days provided an estimated annual consumer surplus to hunters of $93.8 million.

Throughout the region in 1991, 884,000 participants observed, photographed, and fed wildlife. Nonresident participants numbered 340,000 (38 percent), while 544,000 participants lived in the region. In total, 4.6 million trips occurred during 7.1 million days in 1991 involving nonconsumptive wildlife activities.

These 884,000 participants spent an average $57.62 per day on nonconsumptive wildlife activities, for a total $50.9 million in 1991. These expenses included items such as field guides, binoculars and spotting scopes, cameras and accessories, bird seed, and feeder boxes. Net benefits can be estimated using the average of $22.20 per person per day obtained by Walsh et al. (1990) for wildlife observation. In 1991, the 7.1 million participant-days, at $26.60 per day ($22.20 adjusted for inflation to 1991 dollars) generated total net benefits for the region of $188.9 million.

A national survey sponsored by the Forest Service in April 1994 found there is strong support for conservation of public forests and preservation of threatened and endangered species. The survey results indicate the public's support for reduced commercial and recreation uses and increased conservation uses of national forests. When asked whether ''threatened and endangered species in American public forests and grasslands should be protected even if it has a negative economic impact on U.S. citizens,'' 61 percent of the survey respondents agreed or strongly agreed, while 24 percent disagreed or strongly disagreed. A larger majority (79 percent) agreed or strongly agreed with the statement ''(l)ong term health of public forest land should not be compromised by the short term need for natural resources.''

The survey indicates the environmental importance of the public lands over commercial uses and concern for future impacts of public forest uses. Eighty-two percent of respondents agreed that ''(t)he primary purpose of managing public forests is to maintain a healthy environment.'' The statement ''(t)he consumer needs of the American public should be satisfied even if the natural resources on public forests are eventually depleted'' elicited disagreement from 73 percent of respondents. Ninety percent of survey participants agreed or strongly agreed that ''(t)he Federal government has the responsibility of conserving public forest resources for future generations,'' and 80 percent agreed that ''(t)he need for the conservation of natural resources on public forest lands will increase in the 21st century.''

Economic Consequences of Designating Critical Habitat for the Mexican Spotted Owl

The Service has identified commercial timber harvest as the primary activity to be curtailed by proposed critical habitat designation, and concluded that activities such as recreational uses, cutting firewood for personal use, and surface disturbances (e.g., minerals extraction) that do not affect standing timber will not be affected by the proposed action. The time constraints under which the Economic Analysis was conducted allowed no independent estimates of timber harvest and little verification of agency responses. With few exceptions, therefore, the economic consequences are based on projections from the respondents outlined below.

Agency Responses

Three scenarios were presented to more than 80 Federal, State, county, and Tribal agencies by the Service in the request for information on economic impacts resulting from the proposed critical habitat designation. Two of the three centered on impacts resulting from changes to timber harvest volumes. ''Alternative 1'' was defined as the current management guidelines or baseline harvest, ''Alternative 2'' described the implementation of the draft Recovery Plan, and ''Alternative 3'' defined additional restrictions associated with the proposed designation of critical habitat above those described in the draft Recovery Plan. Therefore, the Economic Analysis estimates the reduction in timber harvest and accompanying costs in incremental steps, first from baseline harvest to allowable harvest under the draft Recovery Plan and then from that level to allowable harvest with critical habitat designation in place. The Economic Analysis also includes a measurement of impacts that would result from the critical habitat designation if the draft Recovery plan were not implemented, which essentially are the combined impacts on timber harvest under the draft Recovery Plan and critical habitat designation. This range of alternatives was presented to allow the Economic Analysis to fully consider the entire range of economic impacts that could result from the various management approaches to timber harvest.

During the comment period following publication of the proposed rule, there were numerous discussions within and between the Service and the Forest Service regarding various criteria to be used to determine potential effects to the owl and its critical habitat from timber harvest. As a result, Region 2 of the Service issued an interim policy on April 14, 1995, to clarify how section 7 consultations would be conducted. The interim policy stated, ''* * * any activity in compliance with the draft recovery plan should be considered insignificant in terms of effects on the species' recovery and survival.'' and therefore would not be required to undergo formal section 7 consultation. In essence, the policy made protective measures under the draft Recovery Plan and the proposed critical habitat designation equivalent; no additional restrictions would be applied within critical habitat units. Therefore, in the economic analysis, the costs attributable to critical habitat designation in areas managed to implement the Recovery Plan reflect a worst-case scenario, and are greater than what is expected under the interim policy. The costs resulting from the critical habitat designation are expected to be equivalent to those predicted under the draft Recovery Plan. The impacts on timber harvest within the region from the proposed action are presented in Table 2.

TABLE 2.—REDUCTIONS IN TIMBER HARVEST (IN THOUSAND BOARD FEET) FROM MANAGEMENT ALTERNATIVES

	Baseline level	Enaction of the proposed recovery plan	Critical habitat after enaction of the proposed recovery plan	Critical habitat without enaction of the proposed recovery plan
Non-Tribal Timber Harvest:				
Northeast	14,800	(3,400)	(3,400)	(6,800)
Southeast	1,500	(800)	(0)	(800)
West	57,700	(42,200)	(6,800)	(49,000)
Total	74,000	(46,400)	(10,200)	(56,000)
Tribal Timber Harvest:				
Northeast	3,600	(2,700)	(500)	(3,200)
Southeast	6,100	(4,400)	(700)	(5,100)
West	18,700	(10,800)	(7,700)	(17,800)
Total	28,400	(17,900)	(8,200)	(26,100)
Total Timber Harvest:				
Northeast	18,100	(6,100)	(3,900)	(10,000)
Southeast	7,600	(5,200)	(700)	(5,900)
West	76,400	(53,000)	(13,800)	(66,800)
Total	102,400	(64,300)	(18,400)	(82,700)

The following Federal agencies and Tribes responded to the Service's request to estimate impacts resulting from designating critical habitat as proposed.

The Acting Area Director of the Phoenix office of the Bureau of Indian Affairs (BIA) objected to the proposal to designate critical habitat on Tribal lands as ''contrary to policy direction and principles'' of standing agreements. Information he provided regarding possible impacts to the San Carlos Apache Tribe is described below.

The Acting Area Director of the Albuquerque office of the BIA objected to the proposal to designate critical habitat on Tribal lands for several primarily biological reasons. He estimated the impacts of the proposed critical habitat designation on the Jicarilla Apache, Mescalero Apache, and Southern Ute Tribes. His reply regarding timber harvest levels is also described below.

The Bureau of Land Management's (BLM) State offices in Arizona and New Mexico did not foresee economic or other impacts due to the proposed critical habitat designation. The BLM'S Colorado State office identified one area of potential timber harvest, but stated ''there are no current or future plans to harvest or conduct forest operations in the area.'' The area, if accessible, could yield 1.2 MMBF of timber. Because there are no plans to harvest this timber due to access problems, this timber volume was not included in the impact modeling. The Utah State office did not respond to the Service's request for data.

The NPS administers two sites (Canyon de Chelly and Walnut Canyon National Monument) in its Southwest Region that may be affected by the proposed critical habitat designation. The NPS Regional Director identified potential impacts to Native American residents at Canyon de Chelly, but was unable to quantify the effects or estimate the probability of the impacts being realized.

As requested, the Southwestern Region of the Forest Service provided three levels of timber harvest for each National Forest affected by the proposed critical habitat designation.

The Regional Forester from the Rocky Mountain Region (includes Colorado) foresaw no impacts due to critical habitat designation as proposed because no harvest is planned in CHUs.

The Intermountain Region of the Forest Service (includes Utah) did not expect Alternative 2 to impact timber sales, except in very limited areas (along the mesa rims) where mixed conifer occurs. With respect to Alternative 3, an Acting Forest Supervisor responded ''it is difficult to determine the costs and benefits from implementing these prescriptions because similar guidelines are already being considered in order to maintain ecosystem complexity and other rare species.''

The Acting Area Director of the Albuquerque Office of the BIA estimated the effect of the proposed designation on the Jicarilla Apache, Mescalero Apache, and Southern Ute Tribes. The BIA estimated that, currently, 23.5 MMBF are harvested annually from 9,700 acres (2,400 BF/acre), with a value of $7.8 million ($332/MBF). He stressed that Tribes have high unemployment and low per capita annual income, and that 60 percent of the jobs generated by timber harvest on the Reservations are held by Tribal members.

The BIA estimated that 184 jobs and $3.7 million in annual payroll ($20,100 per job annually) would be lost by implementing the proposed Recovery Plan and the proposed designation of critical habitat. The BIA's estimate of harvest quantity impacts to the three Tribes was difficult to evaluate for several reasons: (1) Alternative 1 was defined as the current management, yet the BIA predicted a reduction of harvest from present levels; (2) harvest levels under each alternative were not specified—impacts were stated in terms of protected activity centers (PACs), but the number of PACs was not specified; and (3) the effects for all three Tribes were aggregated. Timber harvests under each alternative were based on reduction patterns derived from other respondents (primarily the Forest Service).

The Southern Ute Tribe's timber harvest averaged about 1.6 MMBF during the last six years. Based on the Tribe's estimate of seven jobs per MMBF, just over 11 jobs per year were

created in the Solid Wood & Paper sector. Administration and reclamation efforts employ another six to nine persons annually, several of whom are Tribal members. For this analysis these are treated as direct jobs in the Solid Wood & Paper sector. The Tribe estimates critical habitat designation will affect about 75 percent of the Southern Ute timber harvest, impacting 1.4 MMBF (allowable harvest) and presumably a similar portion of jobs. This represents a slight increase of job losses (and a corresponding impact to income and revenues) from impacts originally estimated using data from the BIA.

The impact analysis assumes the timber harvested was processed in the counties according to the BIA reply. Two of the mills were located in Otero County, at which the timber (13.5 MMBF) from the Mescalero Apache Reservation was assumed to be processed. The remaining 10 MMBF were processed in Rio Arriba County and assumed to be harvested from the Southern Ute or Jicarilla Apache Reservations.

The current timber program of the Navajo Nation produced 12.4 MMBF in 1994 from the Chuska/Tsaile forest (within proposed critical habitat), and 6.7 MMBF from the Defiance Plateau forest (outside proposed critical habitat). This 19.1 MMBF of annual timber harvest was processed by the Navajo Forest Products Industry (NFPI) mill in Navajo, New Mexico, which provided 130 direct jobs before its temporary closure in July 1994 (approximately seven jobs per MMBF). The NFPI mill closed in July 1994 because the Navajo Nation Ten Year Forest Management Plan [FMP] was not complete. All timber harvest on the Navajo Nation has ceased until the FMP is complete, which is estimated to be around June or July 1996. The Navajo Nation reports that ''18 million board feet is needed for NFPI to operate feasibly'' and that critical habitat designation would reduce timber harvest below this level. The NFPI attempted to remain open (prior to closing in mid-1994) by purchasing timber outside of the Navajo Nation, but was unable to do so. Current Navajo Nation policies prohibit selling timber off the Reservation.

The Navajo Nation estimated that implementing the proposed Recovery Plan (Alternative 2) would reduce timber harvest from the Chuska/Tsaile forest to 6.2 MMBF (50 percent reduction), reducing potential timber harvest to 12.9 MMBF annually (including the undiminished harvest from the Defiance Plateau), a harvest level too low for the NFPI mill to operate. According to the Tribe, designating critical habitat as proposed will eliminate all harvest from the Chuska/Tsaile forest, thereby reducing the Nation's potential timber harvest to 6.7 MMBF (the harvest from the Defiance Plateau), also too low for the NFPI mill to operate profitably.

Per capita income in the Navajo Nation totaled $5,300 in 1994, much lower than the national average of $18,700 in 1990 (U.S. Bureau of the Census 1994). Unemployment in the Navajo Nation measured nearly 39 percent in 1992, sharply higher than the 28 percent rate in 1990, and matching the 39 percent unemployment in 1980. The Solid Wood & Paper sector provided 1.5 percent of employment to the Navajo Nation in 1992, a level slightly higher than regional (1.1 percent) and national (1.2 percent) proportions of the preceding year. Information provided by the Navajo Nation indicates the proportion of employment of wood-related employment was considerably lower by 1994. The NFPI mill was the 10th largest employer in the Navajo Nation before its temporary closure in mid-1994.

For purposes of the analysis, the sequence of implementation of management alternatives is essential to estimating the effects of critical habitat designation to the Navajo Nation. If the Recovery Plan is implemented *before* critical habitat designation (Alternative 2), the Nation's timber harvest already will have fallen to 12.9 MMBF, resulting in the closure of NFPI. Because the mill already will have closed (or not reopened) due to insufficient harvest, and timber is not sold off the Reservation, there would be no incremental effect of the designation. However, if critical habitat were designated first, the Navajo Nation timber harvest would fall from 19.1 MMBF to 6.7 MMBF—and the effects of the mill closure (or failure to reopen) would be attributable to the designation. These scenarios assume the mill's closure is temporary and will reopen upon approval of the FMP.

The proposed designation was estimated to disrupt timber availability to the San Carlos Apache sawmill, thereby possibly causing the enterprise's closure and loss of 31 Tribal jobs. Closing the sawmill would ''impair economic development [of the Tribe] beyond the sawmill enterprise.'' Neither the BIA nor the San Carlos Apache Tribe provided estimates of timber harvest under the three scenarios. The impact analysis assumes that harvest levels on the San Carlos Reservation are affected in proportions similar to those in other forests in the region.

Several state or county agencies provided information to the Service, as described below.

The Arizona Game and Fish Department concluded that it would not be affected by the proposed action.

The Arizona State Land Department (ASLD) identified four timber product sales that might be affected by designating critical habitat as proposed for the owl, one of which is planned for sale in 1995 and three of which will be sold in consecutive years beginning in 2007. According to the ASLD, none of the sales is ''likely to adversely affect the MSO.'' The impact analysis reflects the ASLD response that designating critical habitat for the owl will not affect timber harvest on Arizona State lands.

Graham County, Arizona estimated direct, indirect, and induced impacts totaling nearly $37 million due to factors ranging from reduced Federal timber harvest to decreased livestock grazing to canceled campground expansions. The impacts identified by the County included effects from spending multipliers, lost wages from displaced workers, and forfeited county share of Federal receipts. Because most impacts were site-specific the Arizona Ecological Services State Office reviewed the County's projections, and provided the following comments:

(1) The County estimated impacts of $24 million due to canceling construction-expansion on 8.6 acres at the Steward Observatory. Informal consultations in November 1993 on a portion of the 24-acre Observatory site had resulted in a '''not likely to adversely affect''' finding for the owl. If the Service conducted a section 7 consultation on the Steward Observatory project, it would be highly unlikely that an ''adverse modification'' determination would be made for these proposed actions; therefore only discretionary recommendations would be given by the Service. The action agency may choose whether or not to implement these recommendations.

(2) The County estimated impacts of $12 million due to canceling construction activities at Discovery Park, including a new visitor center and its access road. The visitor center is understood to be planned outside forested habitat, however, and therefore will not have an effect on proposed critical habitat. Repaving Discovery Trail in its existing road bed would not cause direct loss of critical habitat, while widening or realignment of the road would likely cause some habitat loss, but it is highly unlikely that enough habitat would be affected for

adverse modification to occur. Thus, only discretionary recommendations would likely be given.

(3) Impacts to timber harvesting (Federal timber and firewood use) will cost Graham County $78,000 annually in gross timber sale revenues, according to the County. Federal impacts are discussed above. Firewood harvest should not be impacted by designating critical habitat, and extractive use of small and mid-diameter trees is not a component that has been limited as a result of Service review and recommendations. In fact, projects (such as thinning and prescribed fire) that have sought to address some of the structural changes resulting in increased fire danger have been strongly encouraged by the Service.

(4) Graham County estimated impacts of $179,000 annually to electronic sites at Heliograph Peak due to the ''potential to adversely affect the communications industry.'' The existing electronic sites at Heliograph Peak are on a small unforested site, however, and given the site characteristics it would appear that no habitat modifying activity would be necessary to continue to operate this facility. There thus should be no effect attributable to critical habitat.

(5) The County estimated impacts to grazing would cost Graham County $445,000 annually. However, at this time there is no direct evidence that grazing adversely affects Mexican spotted owl critical habitat, and thus grazing allotments should not be affected by critical habitat designation. Further, the Service has not required discontinuation of grazing to protect the owl in any action related to critical habitat designation.

(6) The County estimated canceling expansions at three campgrounds would cause impacts of more than $120,000 annually. The sites may be affected by critical habitat designation, depending on their location and size. One of the three campgrounds identified by the County was issued an incidental take permit during previous formal consultations. The other two campgrounds could, but are not likely to, adversely modify critical habitat.

Graham County likely will incur added costs due to project redesigns or added costs of consultation, but these presently are not quantifiable. The impact to Graham County from reduced commercial timber harvest on Federal land as identified by the Forest Service is described below under ''Economic Impacts and Effects.''

Assessing the potential impacts to private landowners requires separation of the effects due to listing the owl and those of designation of critical habitat. Activities on private lands are affected by the designation only when a Federal nexus exists, such as mandatory authorization or permits, or when Federal funding is involved. Given that commercial timber harvest is the primary activity affected by the designation, private landowners are unlikely to be impacted by the proposal. None of the Federal agencies contacted by the Service identified ways in which private landowners might be affected indirectly by the proposed action.

Economic Impacts and Effects

The following are estimates of short-term consequences of the proposed designation of critical habitat for the Mexican spotted owl. Economic costs are created when the losses of income and employment are not temporary. Historically, a number of small communities in the region have received substantial employment and income generated by timber industries. Reducing a community's reliance on timber as a commodity to one based on other economic activity may negatively impact some communities.

From the agencies' responses, two levels of employment impacts were estimated: (1) Job losses attributable to implementing the proposed Recovery Plan, and (2) job losses attributable to the proposed critical habitat designation following the enactment of the proposed Recovery Plan. If the proposed Recovery Plan is not implemented the impacts from critical habitat designation as proposed would be the combined impacts of Alternatives 2 and 3. Once again, these estimates are based on an assumption that critical habitat designation has effects over and above those of implementing a recovery plan. Under current consultation policies, this assumption causes an overestimate of the impacts of designation. Short-term regional economic consequences are presented in Table 3.

Employment

Curtailing timber harvest due to the proposed designation of critical habitat will result in job losses in the short run, primarily in the timber industry. In addition to those jobs ''directly'' affected by reduced timber harvest, others will lose employment ''indirectly'' due to the reduced spending by employees and firms in the Solid Wood and Paper sector. To gauge the proportional impact, direct employment losses should be compared to employment in the Solid Wood and Paper sector, while total impacts (direct plus indirect) should be compared to employment in all sectors (Table 3).

The economy of the region would lose 366 jobs (0.08 percent of total regional employment) from implementation of the draft Recovery Plan. Of these, 271 jobs are direct employment in the Solid Wood and Paper sector (5.7 percent of 1991 employment in wood industries) and 94 are jobs in other sectors. Reduced Tribal timber harvest would account for the loss of 156 jobs of the 271 jobs lost in the Solid Wood and Paper sector (58 percent of direct employment losses), and 26 of 94 jobs lost in other sectors (28 percent of indirect employment losses).

The economy of the region would lose 147 jobs (0.03 percent of total regional employment), if the proposed critical habitat designation follows implementation of the proposed Recovery Plan. Of these, 120 jobs are direct employment in the Solid Wood and Paper sector (2.5 percent of 1991 employment in wood industries), and 27 are jobs in other sectors. Reduced Tribal timber harvest would account for the loss of 95 of 120 jobs lost in the Solid Wood and Paper sector (80 percent of direct employment losses), and 12 of 27 jobs lost in other sectors (44 percent of indirect employment losses).

The economy of the region would lose 513 jobs (0.11 percent of total regional employment), if critical habitat is designated without the proposed Recovery Plan having been implemented. Of these, 391 jobs are direct employment in the Solid Wood and Paper sector (8.1 percent of 1991 employment in wood industries), and 121 are jobs in other sectors. Reduced Tribal timber harvest would account for the loss of 250 of 391 jobs in the Solid Wood and Paper sector (64 percent of direct employment losses), and 37 of 121 jobs lost in other sectors (30 percent of indirect employment losses).

Household Income

The household income of some residents in the region will decline in the short run due to the proposed action. The households at greatest risk of income loss are those of employees of the timber industries. As timber industries reduce spending, the employment and income levels of other nontimber firms will also be negatively affected. Household income totaled $13.9 billion for the region in 1991 (Table 3).

TABLE 3.—REGION-WIDE SHORT-TERM EMPLOYMENT LOSSES AND REDUCTIONS IN HOUSEHOLD INCOME AND SALES REVENUES FROM MANAGEMENT ALTERNATIVES

	Baseline level	Enaction of the proposed recovery plan	Critical habitat after enaction of the proposed recovery plan	Critical habitat without enaction of the proposed recovery plan
Employment (in full- and part-time jobs):				
All sectors	451,050	(366)	(147)	(513)
Solid wood and paper sectors	4,770	(271)	(120)	(391)
Household Income (in $ million):				
All sectors	13,939	(4.7)	(1.3)	(6.0)
Solid wood and paper sectors	108	(3.3)	(0.9)	(4.2)
Sales revenues (in $ million):				
All sectors	27,189	(20.7)	(5.9)	(26.5)
Solid wood and paper sectors	516	(15.9)	(4.5)	(20.4)

The economy of the region would lose $4.7 million in household income (0.03 percent of total regional household income) from implementation of the proposed Recovery Plan. Of this amount, $3.3 million would be lost from the Solid Wood and Paper sector (3.0 percent of regional household income from the sector), and $1.4 million from other sectors. The loss of household income due to reduced Tribal timber harvest would total $1.4 million (30 percent of tribal household income lost).

The economy of the region would lose $1.3 million household income (0.01 percent of total regional household income), if the proposed critical habitat designation follows implementation of the proposed Recovery Plan. Losses from the Solid Wood and Paper sectors would total $0.9 million (0.8 percent of sector total), and $0.4 million from other sectors. Reduced Tribal timber harvest would account for the loss of $0.7 million (50 percent of tribal household income lost).

The economy of the region would lose $6.0 million household income (0.04 percent of total regional household income) from designating critical habitat if the proposed Recovery Plan has not been implemented. Of this amount, $4.2 million (3.8 percent of sector total household income) would be from the Solid Wood and Paper sector, and $1.8 million from nonwood industries. The household income lost from reduced Tribal timber harvest would total $2.0 million in (33 percent of tribal household income lost).

Sales Revenues

As timber harvests are curtailed throughout the region, business activity dependent on timber industries will slacken in the short run as well. Local governments' tax receipts may fall accordingly in the short-term. Total gross sales in the region totaled $27,189 million in 1991 (excepting the Trade sector, which reports value added), including gross sales revenues in the Solid Wood and Paper sector totaling $516 million (Table 3).

Gross sales revenues in the region economy would fall $20.7 million (0.08 percent of total regional sales revenues) from implementation of the proposed Recovery Plan. Of this, $15.9 million revenues would be lost from the Solid Wood and Paper sector (3.1 percent of 1991 sales by wood industries), and $4.8 million would be lost from other sectors.

Gross sales revenues in the economy of the region would fall $5.9 million (0.02 percent of total regional sales revenues), if the proposed critical habitat designation follows implementation of the proposed Recovery Plan. Of this, $4.5 million revenues would be lost from wood industries (0.9 percent of 1991 sales revenues by the Solid Wood and Paper sector), and $1.4 million of the reduction would be borne by nonwood sectors.

The economy of the region would experience a loss of $26.5 million of gross sales revenues (0.10 percent of total regional gross sales) if critical habitat is designated without enacting the proposed Recovery Plan. Of this amount, gross sales in the Solid Wood and Paper sector would fall by $20.4 million (3.9 percent of 1991 sales revenues in wood industries), and $6.1 million would be lost from other sectors.

Impacts to Local Communities and Counties

The proposed action could affect smaller communities and counties whose economies are closely tied to timber harvests. Most of the impacts that will occur from efforts to protect the owl probably have occurred already, brought about by listing of the owl and other species and by other management changes within the Forest Service. Nonetheless, the proposed critical habitat designation can further impact these counties by reducing taxable sales revenues and curtailing payments from Federal agencies.

Forest Service payments to counties may be reduced by the proposed critical habitat designation. The Forest Service pays 25 percent of its timber and other receipts to counties for support of county roads and schools. Most of the receipts in the region are from timber harvest. Forest Service receipts from timber harvest totaled about $32 million in 1989 and dropped to $22 million in 1993. Counties' shares totaled about $8 million in 1989 and about $5.4 million in 1993.

However, the actual impact to communities from reductions in Forest Service payments may be less than it seems at first. For most communities, reductions in payments from the Forest Service are offset by increases in other payments. Counties receive funds from the Federal government through payments in lieu of taxes (PILT). Among the factors that determine the amount of PILT paid to counties is Forest Service receipts. As Forest Service receipts decline, PILT payments increase. The impact on most counties is small, although a few counties in the region receive a substantial share of funds from the Forest Service and decreased timber receipts may not be offset entirely by higher PILT payments.

Catron County is one of the counties that receive a substantial share of Forest Service payments. In 1993, Catron County received $209,000 in county road and school funds from the Forest Service, an amount which would not be fully compensated for by PILT if it is lost. While it is unlikely that all of the Forest Service payments would be

eliminated, this amount is at risk in Catron County. Coconino County also is at risk from reduced timber harvests. The county received about $2.5 million in 1993 from Forest Service timber sales receipts. As with Catron County, a portion of these payments is at risk of not being replaced with PILT increases.

Nonmarket Benefits and Costs

Society stands to realize benefits and costs from the proposed designation of critical habitat for the owl. Economic benefits and costs are created when the effects of designation are not temporary, or do not adjust after the economy's transition. Benefits may include sustained biodiversity of the region, heightened intrinsic benefits from ensuring future environmental quality, and increases in the value of recreation opportunities. According to the Forest Service, ''Areas managed for Mexican spotted owl and northern goshawk habitat will have beneficial effects on the soil, water, and air resources due to restrictions on ground-disturbing activities.'' Costs may include increased expenses related to fire danger from limitations on some timber harvest activities, reduction of income to some sectors of the economy, and impact on tax receipts.

Arguments persist as to the economic sustainability of Federal timber programs in Arizona and New Mexico: critics point to Forest Service reports that show timber harvests in the region are conducted below cost, and claim harvest reductions will reduce losses to the U.S. Treasury. Supporters counter that Federal timber programs sustain the economies of rural communities and reduce the risk of stand replacing forest fires. An independent evaluation was not conducted for this analysis.

The nonmarket benefits accruing to society from species preservation are sometimes costly to quantify. Costs, in contrast, are more easily estimable and attract notice because effects often are market-based and localized. To properly compare benefits and costs, the full range of each must be considered. Benefits such as preserving species and increased environmental quality accrue to a large regional or national constituency. Costs follow an opposite trend; they are most significant locally but diminish rapidly as the focus becomes more national in scale. Data are not available at this time to estimate specifically the nonmarket costs and benefits of the designation.

One nonmarket benefit of the proposed action is the complementary impact on other listed and candidate species. The New Mexico Ecological Services State Office of the Service has described the benefits related to biological diversity that may result from the proposed critical habitat designation for the owl. The description is provided in the complete Economic Analysis.

Valuing Species and Their Habitat

Nonmarket economic benefits stemming from ecological preservation have not been quantified for the proposed action. However, other research has estimated benefits gained from preserving rare or endangered species and their habitat.

Estimates of species and habitat values, usually stated in terms of ''willingness to pay per household,'' range from $5.55/year per household (1984 dollars) for preserving habitat of the striped shiner to $86.32/year per household (1991 dollars) to preserve northern spotted owls and their old-growth habitat in the Pacific Northwest. These figures could be extrapolated from their sample sizes to a range of between $12 million per year for the striped shiner to residents of Wisconsin, and $8.287 billion per year for the northern spotted owl to households nationwide. Residents might be expected to be willing to pay within this range to preserve the Mexican spotted owl and its habitat.

Other empirical research offers evidence of nonmarket benefits of preserving components of ecological systems, including preventing forests from being developed, preserving air quality in parklands in the American Southwest, protecting spotted owls and old-growth forests in the Pacific Northwest, preserving river basins and preserving open space and ranchland from urbanization. These studies provide insights about public values for the presence (existence value), availability for future use (option value), and ability to preserve the resource for future generations (bequest value).

Nonconsumptive and recreation uses of the owl, such as viewing and photography, may be limited due to its nocturnal nature. However, protection of the owl's habitat may provide for recreation uses in the region, including increased enjoyment of a nonlogged environment and enhanced hiking and camping, photography, bird watching, and similar nonconsumptive uses.

Fishing, picnicking, horseback riding, and backpacking are examples of outdoor recreation that may be enjoyed in the range of the owl. These activities are not always sold in identifiable markets and thus their value must be quantified indirectly. Increased economic value from recreation can be observed from their contributions to sales and employment in sectors that provide outdoor recreationists with goods and services. In addition, ''net value'' to the consumer measures additional economic value after all costs to the consumer are subtracted. One survey-based study has estimated values on these types of outdoor recreation at between $17 and $49 per person per day (Walsh et al. 1990). These studies conclude that millions of dollars of net benefits are created annually for participants in these recreational activities.

The increased threat of fire is a potential cost of designation. Curtailing timber harvest within CHUs may cause an increase in tree density and fuel loads within the forest. This can increase fire danger, decreasing the value of the forests and increasing the threat to those living or recreating in or near forests. This threat may be mitigated in part through removal of the timber creating the danger.

According to the Forest Service (USDA 1994) fire suppression has allowed buildup of natural fuels, increasing the probability of fire spread and intensity. The Forest Service states that fire potential is affected by management activities—changing the age, distribution, density, and species selection can impact how fire affects the forest and habitat for the owl. The Forest Service supports proactive management practices such as prescribed fire and thinning treatments. A major obstacle preventing thinning may be the cost, as thinning has been supported by receipts from timber harvest.

The Service expressed concern for fire and other forest health issues when the owl was listed, and acknowledged that fire suppression has resulted in large tracts of small trees at high densities that are now susceptible to wildfires. The Service supports thinning and prescribed fire used to control the increased fire danger. The increased threat of fire danger is a factor related to forest management practices of the past, including fire suppression and timber harvest regimes in the region. The analysis does not assess specifically the economic consequences of increased fire threat.

The total value of social benefits of species preservation has been shown to be substantial in a variety of studies. The value of these benefits is expected to continue to rise over time as the number of households, relative to species and natural areas, increases. Given the information at hand, and without better understanding the network of consequences from management alternatives, it is not possible to disaggregate the sum of

benefits to identify that portion directly attributable to the designation.

Exclusion Process and Indian Lands

The maintenance of stable, self-sustaining, and well-distributed populations of Mexican spotted owls throughout their range is dependent upon habitat quality and its ability to support clusters of successfully reproducing owls that are sufficiently integrated to avoid or reduce demographic and/or genetic problems through time. Native American lands upon which units of critical habitat were designated were considered in a hierarchial fashion, first in terms of the quality of habitat and size of the cluster of owl territories, then for their relationship to surrounding units, and ultimately for their contribution to groups of units in larger, regional populations.

Native American lands occur in four general areas within the range of the Mexican spotted owl: the Four Corners Area where the states of Arizona, New Mexico, Utah, and Colorado meet; the Mogollon Rim Area extending in an arc across Arizona and New Mexico; the Western Basin and Range encompassing a small portion of southwestern New Mexico and the majority of southern Arizona; and the Eastern Basin and Range of central and eastern New Mexico.

The majority of the Four Corners Area is dominated by Great Basin desert scrub, grassland and woodland at lower elevations, and Petran montane conifer forests at higher elevations. Riparian vegetation is primarily confined to a relatively narrow band along water courses and is most apparent along major streams. Owl habitat is found in both montane forests and minimally or non-forested canyon habitats.

Navajo Nation

The habitat of the Mexican spotted owl on lands of the Navajo Reservation lie within the Chuska and Carrizo mountains. This region has had very limited survey work, and current records are restricted to 9 locales. The region may be an important demographic link between the subpopulations of owls to the east and southeast, and those owl clusters in the Colorado Plateau further to the northwest.

Due to rugged terrain, habitat in much of the forested and non-forested canyon habitat is expected to be in good condition. The more accessible forested areas on the mesas, the above-canyon flats, and foothills have had considerable overstory removal and are primarily second-growth, particularly on the Defiance Plateau. Even-aged silvicultural management across large management units has resulted in fairly extensive modifications of habitat (typically to those areas most likely to be utilized as foraging habitat).

Continued adverse modification of forest habitat is the greatest threat to habitat occupancy. Thorough application of even-age silviculture to large management units may result in extensive areas lacking minimal amounts of habitat able to sustain occupancy. Demographic persistence and connectivity between the smaller CHUs in the area may be hindered by the compounding factors of naturally disjunct habitat, the potential decrease in immigrants from larger neighboring clusters (AZ–NAIR–1), and the (primarily foraging) forest habitat being converted to young/mid-age and even-age/even-structure condition. The risk of catastrophic habitat loss due to fire at the lower and middle elevations is moderately high.

Critical Habitat Units

AZ–NAIR–1, AZ–NAIR–2, AZ–NAIR–3, AZ–NAIR–4, and AZ–NAIR–5

The CHUs comprise a chain of forested montane and canyon habitats in the Chuska Mountains and the adjacent Carrizo Mountains to the north; additionally units are located at the upper reaches of the Canyon de Chelly drainage system, and the Defiance Plateau.

Voluntary Tribal Conservation Measures

The Service is currently working with the Navajo Nation in the development of a Habitat Conservation Plan and the tribe and BIA are currently working on a 10-year management plan. However, these efforts have not yet culminated in planning documents. Although the Navajo Nation has not provided information concerning management and/or conservation of the Mexican spotted owl on the Reservation, the service understands that no timber harvesting will take place until those documents and the associated NEPA processes are completed, which is estimated to occur in June or July 1996.

Jicarilla Apache Indian Tribe

The Jicarilla Apache Indian Tribe and the Southern Ute Indian Tribe are also located in the Four Corners Area, in close proximity to the Santa Fe National Forest, Carson National Forest, and San Juan National Forest.

The region spans a large area at the interface of the Colorado Plateau and the Southern Rocky Mountains. Habitat ranges from heavily forested canyons and mesas, to rocky canyons with thin conifer/riparian stringers. Many of the territories have a high component of pinyon-juniper woodland in the more xeric areas. Rocky exposures may be an important component of owl habitat even at the close proximity to and influence of Southern Rocky Mountains. Habitat conditions vary between landownership. The habitats in the Southern Ute and the Jicarilla Apache Indian Reservations are managed with selective logging methods in the ponderosa pine stands, and minimal use is made of the mixed conifers that typically occurs on steep slopes. The CHUs on the San Juan and Santa Fe National Forests exhibit even-age/size and minimal mature overstory structure in most of the accessible, lower elevation forest stands. CHUs on the Carson National Forest are not exploited for timber, but are heavily roaded and have a high density of oil and gas well pads in many areas.

The region supports a long string of habitat and CHUs, it is directly connected by mostly forest and woodland habitat to the Jemez Mountains (Santa Fe National Forest) to the south, and less directly connected by woodland and grassland to Bureau of Land Management lands in Utah and Colorado.

Continued adverse modification of forest habitat and high levels of oil and gas development are the greatest localized threats to sustaining or recovering the subpopulation in the region. Demographic recovery and connectivity within the region and between this region and other critical habitat may be hindered by the compounding factors of naturally disjunct habitat, long dispersal distances, and much of the inter-CHU forest habitat being in generally young/mid-age and even-age/even-structure condition. The risk of catastrophic habitat loss due to fire is moderately high at lower and middle elevations.

Critical Habitat Units

NM–JAIR–1, NM–JAIR–2, NM–JAIR–3, NM–JAIR–4, and NM–JAIR–5

The five CHUs within the Jicarilla Apache Indian Reservation run north-south along a series of canyon incised mesas, and lie between the CHUs in the Santa Fe National Forest to the south and the Colorado-New Mexico State line. A parallel north-south series of CHUs in the Jicarilla Ranger District of the Carson National Forest lie 5 to 18 kilometers to the west. The majority of the high-potential breeding habitat (steep slope, mixed conifer) receives little or no timber management, and the

surrounding foraging habitat is managed primarily under uneven-age silviculture. The habitat within the Jicarilla Apache Indian Reservation has had limited survey to date. There are no known owls; however, two historical records exist for the Reservation, and territories and records exist for habitat to the north in Colorado, in the nearby Jicarilla Ranger District of the Carson National Forest, and on the adjacent Archuleta Mesa in NM–BLM–5. NM–JAIR–1 is contiguous to CO–SUIR–3.

Voluntary Tribal Conservation Measures

Informal discussions between the Service and the Jicarilla Game and Fish Department on owl-related issues were initiated during the data collection period for critical habitat development in early summer 1993. Continued discussions led to a mutual recognition of the significant differences between resource management and habitat conditions on federally administered lands and Jicarilla Reservation lands. These differences afforded an opportunity to address the threats identified in the listing proposal through the development of a tribal management plan for the owl. Working independently, the Jicarilla Game and Fish Department developed a draft ''Conservation Plan for the Mexican Spotted Owl on the Jicarilla Apache Reservation, New Mexico'' and requested review of the document by the Service at a meeting on November 21, 1994. Reviews were conducted and recommendations provided by the Service at that meeting and during subsequent telephone conversations with representatives of the Tribe. On December 16, 1994, the Jicarilla Apache Tribal Council approved the plan and formally submitted it to the Service.

The plan fully incorporates the Service's recommendations for management of critical habitat. These recommendations were adopted, in part, from the recommended guidelines outlined in the Draft Recovery Plan prepared by the Mexican Spotted Owl Recovery Team. In addition, the Jicarilla plan has increased protection in ponderosa pine foraging habitat above those levels identified in the Draft Recovery Plan.

Based on the removal of identified threats to the Mexican spotted owl and on the commitment of the Jicarilla Apache Tribe to enforce the Conservation Plan, the Service has proposed that the lands of the Jicarilla Reservation (101,923 acres within 5 critical habitat units) be deleted from further consideration for designation.

Southern Ute Indian Tribe

CO–SUIR–1, CO–SUIR–2, and CO–SUIR–3

The CHUs comprise a series of mesas with incised canyons. The habitat ranges from minimally forested canyon stringers to heavily forested slopes and mesa-tops. CO–SUIR–1 is contiguous and complementary to habitat in CO–SJNF–1; CO–SUIR–2 is contiguous and complementary to CO–SJNF–2; and CO–SUIR–3 is contiguous and complementary to NM–JAIR–1 and CO–BLM–4. The areas encompassed by the CHUs have not been surveyed, and no owls are known on the Reservation; however, a current record exists on BLM land (NM–BLM–5) across the Colorado-New Mexico State line in contiguous habitat.

Voluntary Tribal Conservation Measures

The Southern Ute Indian Tribe is engaged in continuing discussions with the Service. One of the goals of the discussions has been the development of a Memorandum of Understanding to facilitate cooperation between the Tribe and the Service. In a letter of April 28, 1995, on the proposal to designate critical habitat, the Southern Ute Tribe stated that, once a Memorandum of Understanding is in place, it is anticipated that cooperative efforts can be undertaken to develop mutually acceptable conservation plans for threatened and endangered species. At this time, no conservation plan for the Mexican spotted owl has been provided by the Tribe to the Service.

San Carlos Apache Indian Reservation

Owl habitat on the San Carlos Apache Reservation is located primarily in the Western Basin and Range province, and a portion of the Mogollon Rim area. The province is characterized by numerous mountain ranges that rise abruptly from broad plain-like valleys and basins. Within southern Arizona the mountain ranges are sometimes referred to as the ''Sky Islands'', and include the Mazatzal Mountains and the Natanes Plateau on the San Carlos Indian Reservation.

The isolated mountain ranges are vegetated by Madrean evergreen/oak woodland and chaparral, Madrean pine/oak forest, and mixed conifer forest; the mountains are surrounded by Sonoran and Chihuahuan desert-scrub.

Other CHUs of this region are administered by the Prescott, Tonto, Apache-Sitgreaves, and Coronado National Forests. The Army administers the lands within Fort Huachuca in the Huachuca Mountains. Although not included within critical habitat units, the Saguaro and the Chiricahua National Monuments also harbor some owl habitat.

Forested owl habitat on the San Carlos Apache Indian Reservation is predominately inaccessible and is in mostly suitable condition. Demographic persistence and connectivity may be hindered by the compounding factors of naturally disjunct habitat and the potential decrease in immigrants from larger neighboring clusters. The risk of catastrophic habitat loss due to wildfire is moderately high throughout the region.

Critical Habitat Units

AZ–SCIR–1, AZ–SCIR–2, and AZ–SCIR–3

The CHUs include fairly rugged forested and canyon habitats. Portions are contiguous with and complementary to habitat in AZ–FAIR–1 and AZ–ASNF–2. The habitat is mostly timber-unsuitable and in suitable habitat condition.

Voluntary Tribal Conservation Measures

Discussions between the Service and the San Carlos Apache Tribe are ongoing but have not yet resulted in the formulation of a conservation plan. Although there is good forested habitat on the reservation, much is inaccessible to timber harvest.

Mescalero Apache Indian Tribe

The Mescalero Indian Reservation encompasses a portion of the Sacramento Mountains, within the Eastern Basin and Range province that includes much of central and eastern New Mexico. The area is characterized by broad, flat basins and relatively isolated mountain ranges. The province includes the Manzano, San Andres, Sacramento, and Guadalupe mountains. The vegetation in the majority of this province is Chihuahuan desert scrub and Great Basin grasslands, with Great Basin woodland and Petran montane conifer forest at higher elevations. The Mescalero Indian Reservation borders sections of the Lincoln National Forest and includes a large area of critical habitat.

Forest habitat within the majority of the Sacramento Mountains had been railroad logged in the early part of the century. The high site productivity of the montane forests allowed for rapid regeneration of much of the owl habitat within 70 to 90 years. Currently, the majority of habitat is in suitable breeding and foraging condition. Habitat on the Mescalero Apache Indian Reservation is managed primarily under an uneven-age (selective) silviculture system. In general, most habitat on the

Reservation appears in suitable breeding habitat condition. In some areas, however, the widely applied uneven-age harvest methods appear to have resulted in homogenous stand conditions across the forested landscape. Large areas appear ''thinned'' and show little structural variance between stands. Stands may retain adequate structure and remain suitable for foraging, and be able to return rapidly to a suitable nesting condition, but at any one time, the lack of any significant amount of suitable nesting habitat may result in large areas subject to intermittent owl occupancy and unable to support breeding pairs.

The Sacramento Mountains support one of the largest owl clusters in the Southwest. Currently, there are 123 established territories on the Lincoln National Forest. There very limited available data on population size or owl occupancy for the Mescalero Apache Indian Reservation; however, the proximity of the Reservation lands to the Lincoln National Forest would lend support to the expectation of a significant number of territories (approximately 100) on the Reservation. Applying to this figure the average occupancy rates from the Lincoln National Forest gives an estimate of about 58 territories occupied by pairs, 21 territories occupied by single adults, and 21 unoccupied territories. This figure may be an overestimate, as occupancy rates are expected to be somewhat lower for the habitat patches at the northern end of the range (NM–LINF–1, NM–LINF–2, NM–LINF–3, and NM–LINF–4) due to disjunct habitat patches, small patch size, and relatively greater inter-habitat distances, and perhaps poorer habitat quality.

Continued adverse modification of forest habitat is the greatest threat to habitat occupancy. The area may also play an important role in source/sink dynamics with neighboring clusters. Diminished emigrant rates from the Sacramento Mountains may threaten the viability of the smaller, proximate clusters. The risk of catastrophic habitat loss due to fire at the lower and middle elevations is moderately high.

Critical Habitat Unit

NM–MAIR–1

The CHU is a large block of habitat comprising most of the northern half of the Sacramento Mountains. It is contiguous to NM–LINF–10 to the south, and NM–LINF–8, NM–LINF–6, and the White Mountain Wilderness to the north. There are no available data on owl occupancy; however, extrapolation of occupied habitat patterns to the north and south of the Reservation permits an estimate of about 100 territories for the CHU.

Voluntary Tribal Conservation Measures

The Service has met with representatives of the Tribe to discuss conservation planning for the Mexican spotted owl. The Mescalero Apache Tribe provided a rough draft (without biological or management details) of a conservation plan on May 3, 1995, for review by the Service. However, insufficient time remained in the comment period on the proposed designation of critical habitat to discuss Service recommendations for the document with the Mescalero Apache Tribe.

Delineation Criteria Applied to Indian Lands

Over and above the biological criteria used to delineate all areas, regardless of ownership, to be included in the proposal to designate critical habitat for the Mexican spotted owl, the Service also addressed the following considerations in determining to either retain or delete Native American lands in the final designation.

The restrictions are reasonable and necessary for the conservation of the Mexican spotted owl; and are the least restrictive available to achieve the conservation purpose.

The inclusion of Indian lands within critical habitat units was based solely on biology and the contribution of those lands to the conservation of the species. Where determined to be unnecessary, as with the removal of threats to the owl by the implementation of conservation plans by the White Mountain and Jicarilla Apache Tribes, the lands were either not proposed, or have been deleted from the final designation.

The interdependence of critical habitat and the recovery goals and management recommendations in the draft Mexican Spotted Owl Recovery Plan also present reasonable and necessary restrictions for the conservation of the species. The Mexican Spotted Owl Recovery Team has assembled and analyzed the best available data on the species, which were issued in the March 1995 publication of the Draft Recovery Plan. The goals are flexible and the guidelines for owl habitat management are considered the least restrictive for achieving recovery. The guidelines primarily limit management to protection of occupied sites and the highest quality nest/roost habitat. These are the minimum needed to ensure stable populations for the time necessary to assess population trends.

The restrictions do not discriminate against Indian activities.

The restrictions of critical habitat derive from the obligation, under the Endangered Species Act, of Federal agencies to ensure that their actions do not result in the destruction or adverse modification of critical habitat. The identified range-wide threat to the Mexican spotted owl is timber management relying on harvest methodologies that convert habitat that supports Mexican spotted owl to habitat that cannot. There is no prohibition of timber activities, nor of any other activity upon which the Indian Tribes might rely.

The Mexican Spotted Owl Recovery Team has a representative selected by the Tribal land management agencies. In addition, the Recovery Team frequently communicated with and solicited information from the Tribal land management agencies and governments. Tribal input was actively sought and received throughout the process.

The selection of Tribal lands for critical habitat was based on the biological significance of the contribution of those lands to the conservation of the Mexican spotted owl. The threats and the opportunities for recovery were considered on a range-wide basis and were not identified to discriminate or favor particular land owners.

The restrictions are necessary because current voluntary tribal conservation measures are not adequate to achieve the conservation purpose.

The proposed rule to designate critical habitat stated that ''If agreements can be reached (with the Tribes) and implementation ensured so that special protection is not necessary, the Service may consider excluding those areas from critical habitat.'' Conservation or management plans have been developed by the Jicarilla Apache and the White Mountain Apache tribes that meet these conservation objectives. Discussions are ongoing with several other tribes to develop conservation plans. However, at this time, implementation of those remaining plans under discussion is not ensured, and there are no final commitments that insure that owl populations and habitat will be managed to contribute to the survival and recovery of the species.

Consideration of Exclusions

Based on the analysis described above, the Service has considered whether the benefits of excluding any area proposed as critical habitat exceed the benefits of including it in the final designation. In particular, the areas proposed for potential exclusion in the

March 8, 1995, supplemental proposal have been considered for exclusion. At that time, lands of the Navajo Nation, and the Southern Ute, Mescalero Apache, and San Carlos Apache Tribes were proposed for exclusion under section 4(b)(2) of the Act contingent upon receipt and review by the Service of specific economic information pertinent to these lands and biological data concerning the presence, distribution, and habitat use of owls on these lands.

As described above, the data concerning the lands proposed for exclusion are presently inconclusive, and at this time do not provide an adequate basis upon which to exclude them from designation as critical habitat. Consequently, they have been retained within the critical habitat designated in this final rule. The Service will continue to provide technical assistance to the Tribes to develop an adequate database upon which to determine whether the benefits of their exclusion would exceed the benefits of including them in the designation.

The March 8 supplemental proposal also proposed to exclude lands of the Jicarilla Apache Tribe from final designation, not under section 4(b)(2) of the Act, but because that Tribe's Mexican Spotted Owl Conservation Plan, approved by the Jicarilla Apache Tribal Council, adequately addressed the conservation needs of the species and rendered these lands no longer in need of special management consideration or protection as specified in the Act's definition of critical habitat. The Service continues to consider the existing management of lands of the Jicarilla Apache Tribe to disqualify them from designation as critical habitat, and consequently critical habitat units NM–JAIR–1, NM–JAIR–2, NM–JAIR–3, NM–JAIR–4, and NM–JAIR–5 have been excluded from the final designation on these grounds.

The Service will continue to provide assistance to and cooperate with the other tribes on whose land critical habitat is being designated, with the goal of developing acceptable Mexican spotted owl conservation plans. When effective management regimes are developed for these lands as was done for those on the White Mountain Apache and Jicarilla Apache lands, the Service will propose revision of critical habitat to remove them from designation.

The final rule includes several revisions to the acreage indicated in the proposed rule. The change in the Forest Service acreage reflects a correction to an error in acreage accounting. The changes to BLM, Tribal, and private acres reflects a change in ownership for an area initially incorporated into critical habitat on the Jicarilla Apache Indian Reservation and subsequently removed from the final designation. The revisions are tabulated below in Table 4.

TABLE 4.—REVISIONS TO CRITICAL HABITAT ACREAGE BY LAND OWNERSHIP

	Proposed rule	Final rule	Revision
Forest Service	3,616,366	[a] 3,581,385	−34,981
Bureau of Land Management	11,424	11,377	−47
National Park Service	45,892	45,892	0
Department of Defense	2,013	2,013	0
State	9,820	9,820	0
Tribal	962,694	[b] 870,964	−91,730
Private	122,014	[b] 111,450	−10,564
Total	4,770,223	[a b] 4,632,901	−137,322

[a] Includes a correction to acreages cited in the proposed rule.
[b] Includes changes to ownership and deletion of Jicarilla Apache acreages cited in the proposed rule.

Available Conservation Measures

Recovery Planning

Recovery planning under Section 4(f) of the Act provides the guidance for the Act's activities and promotes a species' conservation and eventual delisting. Section 4(f)(1) requires the Secretary of Interior (usually delegated to the Director of the Service) to ''* * * develop and implement (recovery) plans for the conservation of endangered species and threatened species * * *'' Recovery plans may include population and habitat trend objectives, habitat management recommendations, and the steps necessary to remove a species from the List of Threatened and Endangered Wildlife and Plants.

The Service appointed the Mexican Spotted Owl Recovery Team (Team) in March 1993. Since that time, the Team has assembled all available data on Mexican spotted owl biology, the threats faced across the subspecies' range, current protection afforded the subspecies, and other pertinent information. Using that information, the Team developed the draft Mexican Spotted Owl Recovery Plan (Service 1995)(Plan or Recovery Plan) that outlines an initial short-term management strategy. If made final, the Plan will guide management until long-term guidelines are developed prior to delisting. The Plan recommends a short-term landscape management strategy to conserve the subspecies as population and habitat trends are assessed. Although a recovery plan is not a regulatory document, management recommendations outlined in the Plan are considered for application to critical habitat. The Forest Service Southwest Region has informally communicated its intent to incorporate the Plan's recommendations into all 11 national forests' Forest Land and Resource Management Plans (Forest Plans).

Section 7 Consultation

Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to destroy or adversely modify critical habitat. Regulations found at 50 CFR 402.02 define destruction or adverse modification of critical habitat as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations that adversely modify any of those physical or biological features that were the basis for determining the habitat to be critical. This Federal responsibility accompanies, and is in addition to, the requirement in section 7(a)(2) of the Act that Federal agencies ensure their actions do not jeopardize the continued existence of any listed species. As required by 50 CFR 402.14, a Federal agency must consult with the Service if it determines an action may affect a listed species or critical habitat. Thus, the requirement to consider adverse modification of critical habitat is an incremental section 7 consideration above and beyond section

7 review to evaluate jeopardy and incidental take of the species. Regulations implementing this interagency cooperation provision of the Act are found at 50 CFR part 402.

The Act's definition of critical habitat indicates that its purpose is to contribute to a species' conservation, which by definition is the process of bringing a species to the point of recovery and removal from the lists of endangered an threatened species. Section 7 prohibitions against the destruction or adverse modification of critical habitat apply to actions that would impair survival and recovery of a listed species, thus providing a regulatory means of ensuring that Federal actions within critical habitat are considered in relation to the goals and recommendations of a recovery plan. As a result of the direct link between critical habitat and recovery, the prohibition against destruction or adverse modification of the critical habitat should provide for the protection of the critical habitat's ability to contribute fully to a species' recovery.

A number of Federal agencies or departments fund, authorize, or carry out actions that may affect lands the Service is designating as critical habitat. Among these agencies are the Forest Service, BIA, BLM, Department of Defense, Bureau of Mines, and Federal Highway Administration. The Service has identified numerous activities proposed within the range of the Mexican spotted owl that are currently the subject of formal or informal section 7 consultations.

Examples of Proposed Actions

Section 4(b)(8) of the Act requires, for any proposed or final regulation to designate critical habitat, a brief description of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Activities that would have no effect on the critical habitat's primary constituent elements would not adversely affect critical habitat. However, although an action may not adversely affect critical habitat, it may still affect individual spotted owls (e.g., through disturbance) and, therefore, be subject to consultation under the jeopardy standard of section 7 of the Act.

An activity cannot cause adverse modification of critical habitat in an area that does not contain or have the potential to contain the physical and biological features comprising the primary constituent elements. Due to the limitations in the fineness of the mapping data and the interspersed nature of suitable and unsuitable habitat types, some such areas are incidentally included in the designation.

Activities that disturb or remove the primary constituent elements within designated critical habitat units may adversely modify the owl's critical habitat. These activities may include actions that reduce the canopy closure of a forest stand, reduce the density or the average diameter of the trees in a stand, modify the multi-layered structure of a stand, reduce the availability of nesting structures and sites, reduce regeneration or modify the structure of riparian habitat, reduce the suitability of the landscape to provide adequate cover, or reduce the abundance or availability of prey species.

Areas designated as critical habitat for the spotted owl support a number of existing and proposed commercial and noncommercial activities. Some of the commercial activities that may affect spotted owl critical habitat include timber harvest, timber salvage, tree density control activities such as thinning, insect and disease suppression activities, snag removal, livestock grazing in riparian habitat, certain fire suppression activities such as fire break construction and use of chemical fire retardants. Additional actions include land disturbance activities such as those associated with oil and gas leases, sand and gravel extraction, mining, military maneuvers, road development, construction of hydroelectric facilities, geothermal development, and construction of campgrounds, ski areas and associated facilities. However, whether the above activities would be prohibited or require modification under section 7(a) of the Act would depend on their magnitude of effects.

Actions not likely to destroy or adversely modify critical habitat include livestock grazing in upland habitats, ''personal use'' commodity production such as fuelwood, latilla and viga, and Christmas tree cutting, and most recreational activities including hiking, camping, fishing, hunting, cross-country skiing, off-road vehicle use, and various activities associated with nature appreciation. The Service does not expect any restrictions to those activities as a result of critical habitat designation.

Some activities may be considered to be of benefit to Mexican spotted owl habitat and, therefore, would not be expected to adversely modify critical habitat. Examples of activities that could benefit critical habitat may include some protective measures such as fire suppression, prescribed burning, brush control, snag creation, and certain silvicultural activities such as thinning.

Consultation Process

Federal agencies are responsible for determining the effects of an action and whether or not to consult with the Service. When requested, the Service will review the action agency's determination on a case-by-case basis to determine concurrence on whether the action is or is not likely to adversely affect critical habitat. Section 7 consultation on critical habitat focuses on the effects of actions on owl habitat regardless of occupancy. The presence or absence of individual or pairs of spotted owls does not factor into the determination on whether an action does or does not initiate section 7 consultation on effects to critical habitat. The trigger initiating consultation on critical habitat is the action agency's determination that a project may affect any of the primary constituent elements of critical habitat or reduce the potential of critical habitat to develop these elements, and is independent from any action that would affect known individuals. Federal project assessments should also take into consideration actions outside critical habitat that may affect areas within critical habitat.

In section 7 evaluation of proposed activities within critical habitat, the Service uses project descriptions and biological assessments provided by the action agency. Proposed actions are individually examined in terms of site-specific impacts to the primary constituent elements and the reasons for which the critical habitat unit has been designated. In addition to assessment of individual proposed actions, the Service also considers the additive effects of past, on-going, and proposed actions. Proposed projects within critical habitat are also examined spatially to determine adverse effects to habitat across the surrounding landscape. The additive effects of actions in proximity to the proposed project may collectively result in the appreciable reduction of the value of a critical habitat unit. Conversely, an isolated proposed action within a large expanse of unmodified habitat may not adversely affect the function for which a critical habitat unit was designed.

The range of the owl is subdivided into a number of provincial areas discussed in the Recovery Unit (RU) section of the draft Recovery Plan (Service 1995), which constitute the demographic units by which recovery is to be measured. These geographic subdivisions are based partly on physiographic and biotic factors, and patterns of owl distribution. The provinces and local sub-populations of owls are for the most part interrelated

and interconnected. Provinces, subprovinces, and individual critical habitat units are all part of a habitat network important to maintaining a stable and well-distributed population over the range of the owl. The loss of one or more provinces, or even a major part of a province, could lead to genetic and demographic isolation of parts of the subspecies' range. Potential isolation could have a greater near-term effect on some areas (e.g., the Southern Rocky Mountains—New Mexico and Colorado RU) because of the present status of owl numbers and distribution within those areas, than on other areas (e.g., Upper Gila Mountain RU). Population stability for the owl may depend on the relative location of large stable population reserves that act as sources for areas where mortality exceeds recruitment, or where owls are subject to population fluctuation, or exhibit low reproductive success (Thomas *et al.* 1990; Service 1995).

For a wide-ranging subspecies such as the Mexican spotted owl, where multiple critical habitat units are designated, each unit has both a local, regional, and rangewide role in contributing to the conservation of the subspecies. The loss of a single unit may not jeopardize the continued existence of the subspecies, but may result in local demographic instability and declines in local population trends. This may affect dispersal and connectivity, and thus, have a detrimental effect on the stability of the regional population or at the least on that portion of the region's population where the loss occurred. This, in turn, may have an adverse effect on linkage to other provinces leading to further isolation and instability, and reduce the likelihood of survival of the subspecies. Section 7 analysis of proposed activities should assess the baseline condition and expected role of the unit at several scales to determine whether any particular action would appreciably diminish the value of a critical habitat unit for the survival and recovery of the owl. These scales should include the management area and immediate surroundings, and the individual critical habitat unit and collective units that constitute a recovery unit.

Reasonable and Prudent Alternatives and Conservation Recommendations

Where a proposed action is likely to result in the destruction or adverse modification of critical habitat, the Service is required to provide reasonable and prudent alternatives to the proposed action, if any, in its biological opinion. Reasonable and prudent alternatives are designed to allow the intended purpose of the proposed action to go forward, and to remove or mitigate the conditions that would adversely modify critical habitat. The Service recommends that an action agency initiate discussions early enough in the planning process to reduce the likelihood that an action may result in the destruction or adverse modification of critical habitat, and to ensure that the planning process is not to the point where the development of alternatives is infeasible. Reviewing widespread and long-term actions such as timber sale and forest health programs on a programmatic basis would facilitate this process.

For actions that result in adverse effects but do not result in the destruction or adverse modification of critical habitat, the Service may provide discretionary conservation recommendations to minimize or avoid the adverse effects of a proposed action. The Service may suggest minor modifications to a proposed action that results in moderate impacts to critical habitat. For projects that may result in more severe impacts, more substantial project changes may be recommended. For example, in the case of a timber sale, the Service may recommend that certain cutting units be reduced in size, reconfigured, relocated, or dropped altogether to avoid impacts to primary constituent elements. The Service may also recommend alternate timber harvest prescriptions, or that specific features such as a minimum of large diameter live trees be retained for snag recruitment.

Other Conservation Measures

To the maximum extent possible, state and private lands were excluded from the delineation and designation of critical habitat. If an action carried out by a non-Federal entity affects spotted owls, that action would be subject to the prohibitions under section 9 of the Act, that prohibit intentional and non-intentional ''take'' of listed species and applies regardless of whether or not the lands are within critical habitat. The term ''take'', as defined by the Act, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

There may be some instances where activities on non-Federal lands may be subject to section 7 requirements. For example, a private party may require a right-of-way permit through critical habitat on Federal lands for an action on private lands. In this type of case a section 7 consultation may be required on the Federal land right-of-way permit because the action requires Federal involvement. The Service does not expect that there will be many of these types of situations and most may be handled through informal consultation. However, if a biological opinion is required, recommendations will be provided to help avoid impacts to critical habitat consistent with those examples identified in the previous section.

Frequently actions taken on Indian lands are authorized, funded or carried out by a federal agency. In those circumstances, that federal agency, which is frequently the Bureau of Indian Affairs, is required to consult under section 7 to insure that the action does not jeopardize a protected species or adversely modify or destroy critical habitat. However, a number of Tribes (and federal agencies as well) have begun working with the Service early in their resource management planning stage to insure that the plan builds in protections for listed and candidate species and their protected habitat. Although section 7 consultations may still be necessary, sound resource development/conservation plans minimize the need for additional mitigation measures.

Section 7 and section 10(a)(1)(B) authorize the Service to permit the taking of listed species incidental to otherwise lawful activities such as timber harvesting. Biological opinions completed as part of formal section 7 consultation may authorize a set amount of incidental take associated with Federal activities. For non-Federal actions, incidental take permit applications must be supported by a Habitat Conservation Plan (HCP) that identifies conservation measures that the permittee agrees to implement to conserve the species, usually on the permittee's lands. A key element of the Service's review of an HCP is a determination of the plan's effect upon the long-term conservation of the species. An HCP would be approved and a section 10(a) permit issued if it would minimize and mitigate the impacts of the taking and would not appreciably reduce the likelihood of the survival and recovery of that species in the wild.

The Service expects limited Federal involvement for projects on state lands and, therefore, few formal section 7 consultations on state lands that are included in designated critical habitat. For those areas of private land within critical habitat, section 7 would apply only for actions that are funded, authorized, or carried out by a Federal agency. The states and private individuals are still subject to the ''take'' prohibitions under section 9 of the Act,

however, and may enter into the section 10 HCP process where appropriate.

Other Federal laws, such as the National Forest Management Act, the Federal Land and Policy Management Act, the National Environmental Policy Act, and various other state and Federal laws and regulations, also require the conservation of endangered and threatened species.

Summary of Comments

The final rule listing the Mexican spotted owl as threatened was published in the **Federal Register** on March 16, 1993 and announcements of the listing and availability of the final rule were mailed to Federal, Tribal, state, county, and local agencies and governments, and all interested parties on the Service mailing list. The rule announced that the Service had concluded that designation of critical habitat was prudent, but found that critical habitat was not presently determinable, and was initiating the gathering of information and the studies needed to ascertain critical habitat areas. Based on the information received, the Service issued the proposal rule to designate critical habitat on December 7, 1994. The proposed rule was sent to affected Federal, Tribal, state, county, and local agencies and governments, and notices of the availability of the rule was sent to all interested parties on the Service's mailing list. Public notices of the proposal for publication as legal notices were also sent to 18 newspapers throughout the four-state region on December 5, 1994. The general mailing and newspaper notices requested data and comments from the government and public on all aspects of the proposal, including data on the economic impacts of the designation. The notice also announced a 90-day comment period open until March 7, 1995. On December 19, 1994, the Service sent a request for information on the potential economic impacts of designating critical habitat to 13 Federal, 12 Tribal, and 10 state agencies, and 4 Governor's and 42 county government offices. A Draft Economic Analysis (DEA) was prepared based on the information received and a notice of the availability of that draft was published in the **Federal Register** on March 8, 1995 (60 FR 12728; 60 FR 12730). The publication also proposed several revisions to the original proposal, solicited additional information and comments, opened an additional 60-day comment period extending to May 8, 1995, and announced the schedule and location of public hearings. More than 700 parties on the Service's mailing list also received an announcement of the above subjects. On February 23, 1995, the Service also sent for publication as legal notices in 36 regional newspapers, an announcement of the availability of the DEA, solicitation for additional information and comments, the opening of the additional comment period, and the schedule and location of public hearings.

Because of anticipated widespread public interest, the Service held 4 public hearings. Approximately 532 people attended the hearings. About 23 people attended the hearing in Santa Fe, New Mexico; 138 in Socorro, New Mexico; 46 in Tucson, Arizona; and 325 in Flagstaff, Arizona. Transcripts of these hearings are available for inspection by appointment (see **ADDRESSES**).

A total of 844 written comments were received at the Service's Ecological Services State Office in Albuquerque, New Mexico: 25 supported the proposed listing; 249 opposed the proposed listing; 9 either commented on information in the proposed rule but expressed neither support nor opposition, provided additional information only, or were non-substantive or irrelevant to the proposed listing; and 561 form letters expressed opposition to the designation. Oral or written comments were received from 158 parties at the hearings: 10 supported the proposed listing, 146 opposed the proposed listing, and 2 expressed neither support nor opposition.

In total, oral or written comments were received from 29 Federal, Tribal, and state agencies and offices; 31 local government offices; and 172 private organizations, universities, companies, and individuals. All comments, both oral and written, received during the comment period are addressed in the following summary. Comments of a similar nature are grouped into a number of general issues. These issues and the Service's response to each, are discussed below. Issues that were addressed in the final rule to list and the petition findings to remove the owl from the list of threatened species have not been reiterated and may be found in those **Federal Register** publications.

General Issues

Issue 1: The Service has characterized owl nesting and roosting habitat as having a high incidence of large trees with various deformities but has not quantified these attributes. In addition, the term old-growth is not properly used or defined when describing owl habitat and does not correspond to the definition used by the Forest Service. These inaccuracies preclude the inclusion of this habitat in critical habitat.

Service Response: The owl uses a variety of forest types, including deciduous riparian woodlands, pinyon-juniper, pine-oak, mixed conifer, and spruce-fir. The features and proportion of habitat serving the various life history needs of the owl also vary throughout the range of the subspecies and upon vegetation type. However, forested habitat used for nesting and roosting often contains mature or old-growth stands with complex structure (Skaggs and Raitt 1988; Ganey and Balda 1989a, 1989b; Kroel and Zwank 1991; Service 1995 and other references therein). The characteristics typically include a significant component of mature trees, high basal area, high canopy closure, multi-storied forest structure, and abundant dead and down woody material.

The commenter is correct in noting that old-growth definitions are often not quantified when used and may vary among both agencies and individuals using the term. However, the Service's use of the term has been limited to noting the incidence of specific attributes in mature and old-growth habitat, and summarizing the conclusions reached by studies that may use the term. Quantification of these attributes is not necessary for qualitative or summary descriptions of owl habitat, and detailed definitions and methodology may be found in the original literature source. Features such as large diameter trees, multi-layered canopy, and snags, may be found in any of numerous definitions of mature and old-growth conditions. Furthermore, the identification of owl habitat areas considered for inclusion in critical habitat did not depend on the identification of old-growth. Identification of habitat was based primarily on the owl habitat information provided by land-managing agencies to the Service.

Issue 2: Some commenters stated that pure ponderosa pine vegetative types are not suitable habitat for nesting and roosting, and should therefore not be included within critical habitat. Others believe that ponderosa pine is a habitat type used by the owl and should be included in critical habitat.

Service Response: Ponderosa pine is found in numerous vegetative associations. The Service does not consider ponderosa pine associations where other coniferous tree species such as Douglas fir and hardwoods such as Gambel oak are not found or exist as minor accidental occurrences to be habitat suitable for nesting and roosting. However, relatively pure ponderosa

pine associations may be used for foraging where they are found in proximity to other vegetative associations that do support nesting and roosting activity. Where ponderosa pine exists as a codominant with other tree species, the habitat may support the combined nesting, roosting, and foraging needs of territorial owls. The inclusion of ponderosa pine habitat types within critical habitat was determined by its presence in known owl territories and proximity to other nest/roost habitat. It also may occur as inclusions and intervening stretches between other habitat types. However, extensive areas of pure ponderosa pine were generally not included in critical habitat. Where these areas do occur and have no potential for use by foraging owls, they may be considered lacking primary constituent elements and be managed as unsuitable habitat.

Issue 3: The Service's premise that foraging areas may be determined by their proximity to areas serving as nest/roost habitat is unsubstantiated.

Service Response: Many of the habitat components that serve the nesting and roosting needs of individual owls are more restrictive and less widespread than those found in areas used solely for foraging activity, and are likely to be a limiting factor in determining owl presence and habitat use. In most cases, known territories determined the areas for inclusion in critical habitat. Where unsurveyed habitat or areas with low owl densities were considered, the Service identified areas of ''suitable'' or nest/roost habitat as essential ''nuclei'' for the delineation of habitat that may support the territorial needs of owls. Activity centers are areas within which owls find nest and roost sites, and in which a significant amount of foraging activity occurs (Gutiérrez *et al.* 1992; Service 1995). Owls appear to concentrate foraging activity within a relatively small portion of the home range, and this activity center is typically located around nest or roost sites. Foraging habitat can only be used by territorial owls if it lies within the effective radius of an owl home range. Therefore, it is reasonable to assume that, adjacent to habitat determined by land managing agencies to be suitable for nesting and roosting, may be areas available for foraging activity. Examination of territories delineated by land-managing agency biologists on the basis of detection locations supports this conclusion.

Issue 4: Owls may disperse in a wide variety of habitats. The inclusion in critical habitat of areas for facilitating dispersal is not justified.

Service Response: There is little information available on the dispersal behavior of the Mexican spotted owl. Consequently, it is not possible to describe any primary constituent elements or manage for the habitat attributes necessary to support this behavior. The Service did not select for inclusion in critical habitat any areas capable only of supporting dispersal movements. This type of habitat may be found only as inclusions and intervening stretches within larger areas identified with the potential to support owl territories.

Issue 5: The term ''capable habitat'' is not defined or supported by research, and should be excluded from critical habitat.

Service Response: The term ''capable'' is used in the proposed rule in the following context: ''* * * capable of returning to suitable condition * * *'' It is a term used by other land-managing agencies and in the geographic information provided to the Service. The Service acknowledges the qualitative nature of the term.

Issue 6: Total critical habitat acreage is greater than prior estimates of suitable owl habitat. Critical habitat contains much unsuitable habitat that should be excluded from the designation. Lands that are not occupied by the Mexican spotted owl and/or do not exhibit the physical and biological features essential to the owl should not be included in critical habitat. Potential habitat should not be included in critical habitat.

Service Response: Owl habitat includes a wide variety of vegetative and topographic features, and is fairly heterogeneous at both landscape and home-range scales. Habitat characterized by land-managing agencies as ''suitable'' is defined as areas able to support the combined nesting, roosting, and foraging needs of the subspecies. Suitable habitat occurs in a matrix of habitat suitable only for less restrictive behavioral needs such as foraging and dispersal, and may itself have inclusions and intervening stretches of unsuitable habitat. Based on previous land-managment agency estimates, there exists a wide range in the proportion of suitable habitat within owl home ranges. Frequently, the proportion of suitable to other habitat types may comprise half of a home range area. In canyon habitat characterized by minimal forest cover, the vegetative types classed as suitable may comprise a small fraction of the total area within a home range. Therefore, suitable and unsuitable habitat may occur in a combined area two to several times as large as the 2 to 4 million acres of suitable habitat cited by various agencies and Service estimates. Areas lacking or without the potential to regain primary constituent elements may be considered and managed as unsuitable habitat.

The use of the term ''potential'' in the proposed rule refers to the capability of a site that has undergone past habitat modification to return to a condition in which it may become owl habitat again. It does not refer specifically to any successional processes or management objectives to create owl habitat where none existed before. It also does not refer to uncertainty in whether an area actually serves as habitat.

Issue 7: The Service used data provided by the USFS Southern Forest Experiment Station (SFES) to determine the vegetation type of each proposed critical habitat unit. These data show that about 95% of the land included in critical habitat are not forest types the Service considers to be critical.

Service Response: The data compiled for the identification of areas to be included in critical habitat came from many disparate sources and land-managing agencies. None of the data used by the Service came directly from SFES, although some agencies may have derived some or all of their data from this source, and in turn have provided it to the Service. The ''95%'' figure cited from Table A3 of the Draft Economic Analysis does represent land cover summaries derived exclusively from SFES data. Further analysis of this data set showed that it used vegetative classifications that did not readily identify other vegetative associations and did not represent complete floristic compositions. Therefore, the ponderosa pine class in the SFES data set frequently includes other coniferous and hardwood tree species that under other classifications may be considered pine-oak or mixed conifer. Analysis of critical habitat using a more detailed data set provided a more accurate representation of vegetative associations within critical habitat. Table 5 below shows vegetative associations derived from U.S. Geological Survey land coverage (figures reflect revised acreages). As discussed previously, vegetative associations such as mixed conifer or pine-oak that support the combined nesting, roosting, and foraging needs (''suitable'') of the owl comprise only a portion of the total habitat utilized, and may occur within unsuitable habitat or habitat used only for foraging. Furthermore, within owl habitat there are inclusions of less frequently or non-utilized areas. These factors combine to limit the relative

proportion of critical habitat that comprises nest/roost habitat.

TABLE 5.—VEGETATION LAND COVER IN CRITICAL HABITAT BY STATE

Land cover	Arizona	Colorado	New Mexico	Utah	Total	Percent total
Agriculture	31,736	351	44,998	33,023	110,108	2.4
Alpine	.....	.....	285	.....	285	<0.1
Chaparral	82,508	.....	70,938	14,657	168,103	3.6
Grassland	4,461	.....	251	.....	4,712	0.1
Madrean Woodland	65,702	.....	64,465	.....	130,167	2.8
Mixed Conifer	505,688	67,255	1,103,408	53,759	1,730,110	37.3
Pine-Oak	81,352	494	29,931	1,589	113,366	2.4
Pinyon-Juniper	269,494	22,463	383,516	59,696	735,169	15.9
Ponderosa Pine	899,560	13,541	641,945	18,694	1,573,740	34.0
Shrub Steppe	50,862	.....	7,688	7,603	66,613	1.4
Water	247	.....	741	.....	988	<0.1
Total	1,991,610	104,104	2,348,166	189,021	4,632,901	100
Percent total	43.0	2.2	50.7	4.1	100	.....

Source: National Biological Service, Midcontinent Ecological Science Center.

Issue 8: The Service has not surveyed or determined that critical habitat possesses any or all of the components of suitable habitat. The macroanalysis of aerial photography and forest type maps is inadequate to distinguish the elements that the Service claims comprise suitable owl habitat.

Service Response: The Service relied primarily on map identification of owl habitat and occupancy provided by the land-managing agencies for the delineation of critical habitat. Additional information such as forest type maps and aerial photography was used to supplement owl habitat and site maps. Forest type maps may be compiled by land-managing agencies by use of information at a variety scales. Most scales are fine enough to locate specific areas to within a hundred feet. The Service used 1:24,000 scale aerial photography sufficiently detailed to pick out individual trees and identify vegetation types. Although nest/roost habitat comprises only a portion of the total critical habitat area at the home range scale and primary constituent elements are also only found in a subset of habitat at finer scales, all critical habitat areas have the capability of supporting territories at the landscape scale.

Issue 9: Regulations pertaining to the designation of critical habitat state that the entire geographic range that can be occupied by a species is not to be included in critical habitat. Unoccupied habitat may only be designated if determined to be essential to the conservation of the species.

Service Response: The Service has not designated the entire potential geographic range of the subspecies. However, critical habitat does include the entire subset of the known or expected owl population where there exist resource management actions with known or expected adverse habitat impacts. The Service believes that the current owl population is adequate to achieve delisting should the central subpopulations show stable or increasing demographic trends. Therefore, all known territories and supporting habitat are essential to the recovery and conservation of the subspecies.

Habitat may be unoccupied due to such disparate factors as demographic inviability and extirpation, or natural intermittency and movement between different habitat areas or alternate home ranges. Critical habitat includes some areas with low owl densities and intermittent occupancy. However, no critical habitat units were designated that are incapable of supporting spotted owls.

Issue 10: The Service cites the minimization of fragmentation as a guideline used in the delineation of critical habitat. Southwestern forests are naturally fragmented, and the guideline is not applicable to Mexican spotted owl habitat.

Service Response: The Service agrees that southwestern forests and owl habitat are characterized by heterogeneous and discontinuous vegetative cover types. The minimization of fragmentation, a principle emphasized by the Interagency Scientific Committee for the northern spotted owl (Thomas *et al.* 1990) and others working in the field of conservation biology, was only used in the delineation of critical habitat in the infrequent instances where there was some choice between areas of habitat fragmented because of management activities and other relatively unmodified areas. For the most part, delineation was determined by the presence of owl territories. Extensive tracts of unsuitable habitat were not included to increase the contiguity of critical habitat units.

Issue 11: The Service offers no evidence to support the statement in the proposed rule that National Park Service lands and wilderness areas are not sufficient to support a viable population of owls.

Service Response: The proposed rule states that ''* * * these lands by themselves do not provide adequate habitat to support a viable *range-wide* Mexican spotted owl population * * *'' (emphasis added). National Parks and wildernesses do not constitute a well-distributed land base nor contain a significant proportion of owl habitat. The largest of the wilderness areas supporting Mexican spotted owls are the Aldo Leopold and Gila Wildernesses. These fairly contiguous areas may support a relatively sizeable subpopulation of owls. However, the long-term viability of a population limited to the combined wilderness areas is low because of the local extent of available habitat and the susceptibility of relatively small populations to genetic, demographic and environmentally random events. The great distances between park and wilderness areas further reduce their ability to support viable populations without the complementary function of additional habitat outside the reserved areas. There is ample support for this

general observation in the available literature on the dynamics of small populations.

Issue 12: Exclusion of wilderness areas and National Parks from critical habitat is not justifiable.

Service Response: The Service considers management practices in place and threats to specific areas when determining which areas are in need of special management or protection and therefore meet the definition of critical habitat. The Service acknowledges that some resource extraction and human-caused habitat changes occur in both National Parks and wilderness areas. However, the threat of even-age timber management has been identified as a primary threat to owl habitat, and critical habitat was predominately identified in areas where that activity may occur. The Service is unaware of any plans for logging in wilderness areas or National Parks.

Issue 13: Successional changes in forest habitat types have resulted in forest health problems. Management of owl habitat will increase tree densities, canopy layers, and fuel loads, and in turn, increase the risk and intensity of wildfire. Critical habitat will also preclude the implementation of fire prevention activities.

Service Response: The Service agrees that many vegetative communities have undergone successional and structural changes as a result of past and current management practices. These practices include, to varying degrees, the combined effects of long-term and widespread fire suppression, reduction in surface fuels, rates of tree overstory removal and regeneration treatments on cycles shorter than those found in natural disturbance regimes, inadequate control of tree densities responding to fire suppression and tree harvest, and in xeric forest types, decreases in the proportion of the landscape in stands composed of more fire resistant large-diameter trees. The Service also agrees that the vegetative structural and landscape changes may require proactive management to restore an appropriate distribution of age classes, control regeneration densities, and reintroduce some measure of natural disturbance processes such as fire events. This may include prescribed fire and thinning treatments, restoration of the frequency and spatial extent of such disturbances as regeneration treatments, and implementation of prescribed natural fire management plans where feasible. The Service considers use of such treatments to be compatible with the ecosystem management of habitat mosaics and the best way to reduce the threats of catastrophic wildfire. The Service will fully support land management agencies in addressing the management of fire to protect and enhance natural resources under their stewardship.

Critical habitat objectives do not include the conversion of forest vegetative types, nor the prevention of actions designed to alleviate the risk of wildfire. Management approaches considered for critical habitat primarily focus on the maintenance of mature forest attributes in mixed conifer and pine-oak habitat types over a portion of the landscape and in areas that support existing territories. It does not emphasize the creation of these features where they do not currently exist. It also does not preclude the proactive treatments mentioned above. Clearly, the loss of owl habitat by catastrophic fire is counter to critical habitat management objectives.

It is important to stress several principles in the Service's policy on fire management. The first is that the Service always defers to the expertise and authority of the land-managing agency during response actions to fires. The second is that firefighter safety is of paramount importance and is never superseded by wildlife management objectives. The third is the Service has a responsibility to assist in the protection of life and property. The Service's primary role in dealing with the combined issues of both fire and critical habitat management is to assist in the development and implementation of management practices that incorporate the objectives discussed above without violating the aforementioned principles. These principles are set forth in an issue paper signed May 16, 1995, by the Regional Forester of the Southwest Region of the U.S. Forest Service and the Acting Regional Director of the U.S. Fish and Wildlife Service.

Issue 14: The range of the Mexican spotted owl has changed over the last 100 years. Pre-settlement forests were more open and dominated by ponderosa pine, and were therefore not owl habitat. Fire suppression allowed conversion of ponderosa pine forests to mixed conifer forests, allowing the spotted owl to occupy formerly unoccupied areas. Critical habitat should be limited to the historic distribution of mixed conifer forests.

Service Response: The Service agrees that some areas now occupied by spotted owls may not have been occupied in pre-settlement forests, which in certain vegetative associations were more open-canopied and composed of ponderosa pine rather than mixed conifer species. However, the Service is unaware of any way to estimate how many sites are ''recently'' occupied, nor can it determine where those sites are.

Conversely, the spotted owl was known to nest in the mature forests that dominated the lowland riparian areas in pre-settlement times but are now largely absent. Again, the Service is unable to quantify the number of nesting territories supported by that forest type. The result is that some formerly important areas have become unable to support owls, while other areas have only become owl nesting and roosting habitat recently. These phenomena undoubtedly offset one another but are not quantifiable. The Service recognizes that forest structure is the result of dynamic processes, but must base its decision on the current situation and the best available information.

Issue 15: According to the Forest Service, mixed conifer forest faces severe threats from insects and disease. This supports the position that before fire suppression these forests were less dense, and failure to treat this threat by timber harvest poses a significant threat to the owl.

Service Response: The Service acknowledges that this link may exist, especially in drier mixed conifer associations that under natural fire regimes experienced frequent low-intensity and spatially extensive understory fire events. These mixed conifer associations may have developed higher densities of small-diameter stems that have escaped the thinning effects of fire. In these situations, there may be some benefit from understory and small and mid-diameter tree density regulation. Designation of critical habitat does not preclude this type of management.

Issue 16: In the final rule to list the Mexican spotted owl as threatened, the Service stated that the national forest plans call for a conversion of habitat to an unsuitable condition at an annual rate of 0.4 percent. At that conversion rate it would take 250 years for suitable owl habitat to be completely destroyed. The Service stated in the listing rule that it takes 80 years for habitat recovery of a harvested area. This means that at least 60 percent of owl habitat will always remain, even at 1991 logging levels.

Service Response: The 0.4 percent conversion rate would represent a 250 year ''cycle'' assuming that the national forests operated on such a rotation length. However, most timber lands operate on cycles of 120 years or less, meaning that a stand would be ''regenerated'' as it begins to regain complex structural attributes.

Furthermore, stands that are managed under even-age systems become designated to continue under such a system, and will mostly remain as habitat incapable of supporting the more restrictive habitat needs of nesting and roosting owls. Continued conversion of habitat cumulatively adds to the habitat indefinitely retained in a modified condition.

The Service's statement in the listing rule that 80 years is required for habitat to recover was made in the context of forest habitat on the Lincoln National Forest where high site indices permit rapid recovery. Forest habitat in most other areas of the Southwest have lower indices and may be expected to require longer recovery periods. Fletcher (1990) estimated that 44 percent of habitat modified on national forests would require more than 100 years to recover. This implies that for recent modifications 100 years may be a minimal period of time for recovery. Actual recovery time may be expected to be greatly dependent on site quality, the nature and intensity of the initial modifying event, residual habitat components, and subsequent treatments or management actions.

Issue 17: The northern goshawk guidelines provide adequate protection for owl habitat. Critical habitat is not required where the goshawk guidelines are applied.

Service Response: In general, the guidelines outlined in ''Management Recommendations for the Northern Goshawk in the Southwestern United States'' (Reynolds *et al.* 1992) (guidelines) may support the development of some of the forest habitat attributes suitable for owl foraging activities. However, several premises to the guidelines result in conditions that are inadequate for their use as a comprehensive owl forest habitat management plan. The guidelines use a rotational system based on ''balanced'' (evenly apportioned) age/size classes or vegetative structural stages (VSS) not tempered by such factors as site quality, growing conditions, and management intensity. Inclusion of these factors into the calculation of VSS can result in figures significantly different from the allocations specified in the guidelines. The management strategy of apportioning percentages of the forest base to various VSS may also only be workable where each stage accurately reflects the length of time required by each successional phase, particularly in the older age classes. Currently, however, the application by the national forests of the guideline's VSS allocation percentages typically does not incorporate or reflect these factors, and may, therefore, result in landscapes deficient in or without late successional forest stands. In addition, the short time (between 0 and 65 years depending on said factors) allotted for a stand to abide in old-growth condition may not permit development of senescent forest features such as snags and large diameter logs.

The management guidelines also use a period of time that inadequately represents forest age rotations. Currently, the VSS allocations are based on the selection of a maximum growth period derived from the average life expectancy of individual trees. However, the low to moderate survivorship curves exhibited by populations of many tree species may be expected to heavily weigh and reduce the average life expectancy to relatively short lengths of time. Where a small proportion of all regeneration reaches maximum longevity, the use of median life expectancy may be a more appropriate target for setting forest age rotations.

Other guideline specifics such as the number of large diameter trees retained following harvest may result in deficiencies in age-size classes available for snag recruitment and large diameter logs. In addition, the guidelines are only applied to occupied habitat (with the exception of the forest-wide application by the Kaibab National Forest). Occupancy, and therefore management objectives may change over time and prevent the implementation of the long-term objectives required for development and maintenance of the amounts and distribution of late successional forest stages and forested owl habitat needed for the survival and recovery of the owl.

Issue 18: The Service is required to complete an Environmental Assessment and Environmental Impact Statement on the designation of critical habitat as required under the National Environmental Policy Act of 1969 (NEPA).

Service Response: The Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the NEPA, 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). The Ninth Circuit recently upheld this interpretation in *Douglas County* v. *Babbitt,* 48 F.2d 1498 (9th Cir. 1995), petition for rehearing pending. The Ninth Circuit reversed lower court decision and found the requirements for designating critical habitat pursuant to the Endangered Species Act displaced the requirements of NEPA; that NEPA does not apply to federal actions which do nothing to alter the natural physical environment; and the ESA, by preserving the environment and preventing the irretrievable loss of natural resources, furthers the goals of NEPA without requiring an Environmental Impact Statement. Before the Ninth Circuit issued its decision, a federal district court in New Mexico took the opposite position in *Board of County Commissioners of the County of Catron, New Mexico* v. *United States Fish and Wildlife Service,* No. 93–730–HB (D.N.M., October 13, 1994), appeal pending. There the federal district court set aside the final designation of critical habitat for two endangered fish: the spikedace and loach minnow, until NEPA compliance was completed. That case is currently on appeal before the Tenth Circuit. *Catron County Board* v. *U.S.F.W.S.,* No. 94–2280 (10th Cir.).

Issue 19: Following the filing of the lawsuit *Dr. Robin Silver, et al.* v. *Bruce Babbitt, et al.,* the Federal District Court in Arizona in October 1994, ordered the Service to ''publish a proposed designation of critical habitat, including economic exclusion pursuant to U.S.C. Sec. 1533(b)(2).'' The proposed rule does not contain any information on the areas to be excluded for economic reasons.

Service Response: An amendment to the proposed rule for the designation of MSO critical habitat, published December 7, 1994 (59 FR 63162), was published in the **Federal Register** on March 8, 1995 (Supplemental Proposed Rule, 60 FR 12728). The Supplemental Proposed Rule identified the critical habitat areas proposed for exclusion based on information obtained in the draft economic analysis indicating the designation might have disparate economic impacts in certain areas. Comment on the proposed revisions was specifically solicited. At the same time, the Service also published notice of the availability of the economic analysis (60 FR 12730), announced the dates, times and places for four public hearings and reopened the public comment period for an additional 60 days to assure that the public had an opportunity to comment on the economic analysis, the proposed rule and the proposed exclusions.

Issue 20: The conservation agreements developed or being pursued by the Service with various Tribal governments constitute major Federal actions and are subject to the NEPA process. The specifics in the conservation plan for the Mexican spotted owl developed by

the White Mountain Apache Tribe should be described in the proposed rule since it led to the exclusion of proposed critical habitat on the Tribe's lands.

Service Response: Although many have referred to ''conservation agreements'' with various tribes, actually individual tribes have been developing their own resource management plans. The Service has offered technical assistance in reviewing these plans to assure they contain adequate protections for protected species and habitat. However, the action is not a federal action, but a Tribal action. Both the White Mountain Apache and the Jicarilla Apache Tribes took this approach.

The Service, after examining the White Mountain Apache and Jicarilla Apache management plans for the Mexican spotted owl and each Tribe's ability and willingness to enforce the plans, determined the areas under these tribally managed plans did not require special federal management considerations or protection. Although the lands still had the physical and biological features essential to the conservation of the species, they no longer met the second half of the definition of critical habitat. See section 3(5)(A). It is the Service's position that NEPA process is not required for such decisions, since the process for designating critical habitat under the Endangered Species Act displaces further NEPA requirements. See *Douglas County* v. *Babbitt,* 48 F.2d 1498 (9th Cir. 1995), petition for rehearing pending; for further discussion, see Service's Response to Issue 16.

The Navajo Nation is taking another approach. They are developing a Habitat Conservation Plan (HCP) which will include protections for numerous species and their habitat. NEPA compliance will be done for both the HCP and for any application for an accompanying section 10(a) permit.

Issue 21: The Service failed to adequately notify the public of the proposed rulemaking and public hearings. The Service is required to provide for adequate input by the public and other affected parties such as counties and local governments.

Service Response: The Service has exceeded the requirements of the Administrative Procedure Act and the Endangered Species Act for public notification. The final rule listing the Mexican spotted owl as threatened was published in the **Federal Register** on March 16, 1993 (58 FR 14248), and announcements of the listing and availability of the final rule were mailed to Federal, Tribal, state, county, and local agencies and governments, and all interested parties on the Service's mailing list. The rule announced that the Service had concluded that designation of critical habitat was prudent, but found that critical habitat was not then determinable, and was initiating the gathering of information and the studies needed to ascertain critical habitat areas. On March 17, 1993, letters requesting information on owl habitat and distribution were sent to 14 Federal agencies. On April 14, 1993, letters requesting information on owl habitat and distribution were sent to 37 Tribal agencies. Based on the information received, the Service issued the proposal rule to designate critical habitat on December 7, 1994 (59 FR 63162). Prior to issuance of the proposed rule, the Service held a press briefing in Albuquerque, New Mexico, on November 30, 1994, announcing the proposal. In addition, the proposed rule was sent to affected Federal, Tribal, state, county, and local agencies and governments, and notices of the availability of the rule were sent to all interested parties on the Service mailing list. Public notices of the proposal for publication as legal notices were also sent to 18 newspapers throughout the four-state region on December 5, 1994. The general and newspaper notices requested data and comments from the government and public on all aspects of the proposal, including data on the economic impacts of the designation. The notice also announced a 90-day comment period open until March 7, 1995. On December 19, 1994, the Service sent a request for information on the potential economic impacts of designating critical habitat to 13 Federal, 12 Tribal, and 10 state agencies, and 4 Governors' and 42 county government offices. A Draft Economic Analysis (DEA) was prepared based on the information received, and a notice of the availability of that draft was published in the **Federal Register** on March 8, 1995 (60 FR 12728, 60 FR 12730). The publication also proposed several revisions to the original proposal, solicited additional information and comments, opened an additional 60-day comment period extending to May 8, 1995, and announced the schedule and location of public hearings. More than 700 parties on the Service's mailing list also received an announcement of the above subjects. On February 23, 1995, the Service also sent for publication as legal notices in 36 regional newspapers, an announcement of the availability of the DEA, solicitation for additional information and comments, the opening of the additional comment period, and the schedule and location of public hearings. Public hearings were held in Santa Fe and Socorro, New Mexico, on March 22 and 23, 1995, and Tucson and Flagstaff, Arizona, on March 29 and 30, 1995. Comments from the public on the critical habitat proposal and DEA were recorded and evaluated for input to the final designation. More than 800 letters addressing the proposal were received during the comment periods. The correspondence and comments have been evaluated in the decision whether to designate critical habitat.

Issue 22: The Service is incorrect in citing the use of clearcutting as the prevailing method of timber harvest, and timber harvest as the primary threat to the owl.

Service Response: The Service does not consider clearcutting to be the prevailing method of timber harvest. The final rule to list the owl as threatened and the proposed rule to designate critical habitat identify the even-age harvest methods of shelterwood treatments as the prevailing method of timber harvest, and their use and rate of implementation as the primary threat to the subspecies.

Issue 23: The Service should disclose the analysis and specific scientific data from it which derived its estimates and on which it based the proposal to designate critical habitat.

Service Response: The data and information used to develop the proposed rule to designate critical habitat were summarized in that document, as well as in the proposed and final rule to list the species as threatened, and the two delisting petition finding notices published in the **Federal Register**. Additional information is available in the references cited in these rules and notices. This final rule incorporates information from previous rules and notices, comments received on the proposed rule to designate critical habitat, and data presented in the draft Recovery Plan.

Issue 24: The conclusions drawn from the northern spotted owl (Interagency Scientific Committee) are not applicable to the Mexican spotted owl.

Service Response: The Service used four general principles developed by the Interagency Scientific Committee and others working in the field of conservation biology during the initial process of delineating proposed critical habitat units (see Background section, ''Criteria for Identifying Candidate Critical Habitat Units''). These principles are widely accepted by biologists as a means to achieve viable populations throughout the range of a

species, and to facilitate species' long-term survival and recovery. Specific conclusions drawn during the processes of listing and designation of critical habitat for the northern spotted owl were not used as a basis for this final rule.

Issue 25: Management of critical habitat will have impacts on highway maintenance and safety.

Service Response: Existing highway corridors typically do not have the habitat components relevant to management of owl critical habitat. Therefore, consultations on critical habitat would not be required where there is an action agency determination of ''no effect''. In instances where an action may affect critical habitat, consultation will be required. However, the Service does not anticipate that significant modification of planned highway projects will result from consultation on critical habitat.

Issue 26: Management of critical habitat will have an impact on livestock grazing.

Service Response: Livestock grazing is not known to have any direct impact to the components of upland forest and canyon owl habitats, and will likely not be subject to consultation or restriction in these areas. Livestock grazing may have both direct and indirect effects to the structural components of canyon and montane riparian habitat and to owl prey communities. If requested by Federal action agencies, consultation will likely entail the monitoring of grazing use, the establishment of conservative maximum allowable use levels and the implementation of grazing use standards that would attain or restore good to excellent range conditions in riparian habitats. Much of the consultation on livestock grazing in riparian habitat is expected to deal with implementation of *existing* action agency guidelines and standards.

Issue 27: Critical habitat will prevent recreational activities and access to public lands.

Service Response: Most recreational activities are not known to have any direct impact to the structural habitat components of upland forest and canyon habitats, and will likely not be subject to consultation on critical habitat in these areas. Some recreational activities may have both direct and indirect effects to the structural components of canyon and montane riparian habitat. If requested by Federal action agencies, consultation will likely entail the monitoring and regulation of the volume of recreational use where riparian habitat impacts have occurred or have the potential to occur. Few, if any, restrictions on recreational use of critical habitat areas are likely to result from critical habitat designation.

Issue 28: Water development projects for the City of Blanding, Utah, may be impacted by the designation of critical habitat.

Service Response: Future development of the City of Blanding's water rights on the Manti-La Sal National Forest is already subject to Forest Service review processes, including review for consistency with the Forest Plan standards and guidelines and NEPA procedures. Review of the effects of water development on critical habitat would be part of that process, and so should not impose an additional procedural burden on project applicants. Any activities proposed within the critical habitat unit would be evaluated for effects to primary constituent elements. The scope of such projects mostly entails limited, site-specific impacts that are unlikely to adversely affect the value of the critical habitat unit.

Issue 29: Management of critical habitat for the Mexican spotted owl will conflict with the management objectives of other animal and plant species, ecosystem objectives, and the Mexican gray wolf reintroduction program proposed for southern Apache National Forest.

Service Response: The comments received did not specify how conflicts may arise between owl critical habitat and other management objectives. Critical habitat management primarily focuses on the maintenance of habitat features in mixed conifer and pine-oak habitat types that support existing territories, and the maintenance of good montane riparian habitat conditions. It does not emphasize the creation of these features where they do not currently exist, or do not have the potential to naturally occur. It also does not require maintenance of owl habitat components across all areas.

The management approach to critical habitat addresses diversity at the landscape scale by maintaining spatial variation and distribution of age classes, and at the stand scale by managing for complex within-stand structure. The methods to attain or conserve the desired measure of diversity vary, but are designed to maintain existing mature/old forest characteristics while allowing some degree of timber harvest and management of other objectives such as tree density control and prescribed fire. Older forests are productive successional stages that provide favorable environments for diverse assemblages of plants and animals. The maintenance of this underrepresented seral stage at landscape and stand scales will provide and enhance biological diversity. Therefore, critical habitat management does not preclude managing for other objectives. In addition, critical habitat management is adaptive and will incorporate new information on the interaction between natural disturbance events and forest ecology. The Service continues to support sound ecosystem management and maintenance of biodiversity.

Issue 30: Areas within critical habitat with little or no timber harvest threats to owl habitat should be deleted from the final designation.

Service Response: The use and rate of timber harvest under even-age harvest systems were identified by the Service as the primary threat to the habitat of the Mexican spotted owl. However, other habitat modifying activities have also been identified in the proposed rule as potentially affecting owl habitat, and may require consideration of habitat impacts and consultation. These include vegetative treatments to manage insects and disease, timber salvage, density control of forest and woodland stands, and fire prevention and control programs. However, areas where there is no threat to owl habitat components are functionally excluded from critical habitat since no consultation would be required.

Issue 31: Critical habitat should be modified to reflect changing management practices. Specific areas of critical habitat should revised to reflect new or more detailed information.

Service Response: The Service will incorporate new or more detailed information as it becomes available and will reevaluate critical habitat areas as needed. Periodic modification of critical habitat may occur at later dates. The Service will work with interested agencies or entities with expertise and available data on the refinement and revision of designated critical habitat; however, the Service's court-ordered deadline and requirements for public notice and comment on exclusions preclude any significant revisions at this time.

Issue 32: One commenter maintained that critical habitat designation would have a significant economic impact on the Mount Graham Steward Observatory, Discovery Park and State Highway 366, electronic site development, and campground expansion projects.

Service Response: The Service's position (also stated in the Draft Economic Analysis) is that there is little or no potential for economic impacts as a result of consultation requirements to these proposed or ongoing projects. The

reasons for this are the limited amount of habitat affected by the projects and the negligible effects to the viability of the Pinalenos Mountains Critical Habitat Unit expected from these site-specific actions. Therefore, significant impact to these projects from critical habitat designation are unlikely.

Issue 33: The Service should describe the criteria used in the preparation of the management alternatives outlined in its request to land-managing agencies/governments for information on economic impacts of critical habitat designation. The Service should also describe how progress towards meeting critical habitat objectives is to be ascertained.

Service Response: The alternatives were developed based on existing and proposed management guidelines for owl habitat. The first alternative describes the guidelines developed by the Forest Service and in place up until formal adoption of the Mexican Spotted Owl Recovery Plan. The second alternative constitutes a summary of the draft Recovery Plan management recommendations for mixed conifer and pine/oak forest types. The third alternative includes the same Plan recommendations with additional management guidelines considered for ponderosa pine habitat types. The Service would measure progress towards achieving management objectives by evaluating action agency compliance during consultation.

Issue 34: The Forest Service is committed to implementing the Mexican Spotted Owl Recovery Plan; therefore, the Plan precludes the need for special management and critical habitat for the subspecies.

Service Response: The Service commends the Forest Service for initiating a process to incorporate recovery plan recommendations into their Forest Planning process and to move to mostly uneven age silvicultural regimes. However, the Recovery Plan is a draft document at this time, and the Service is awaiting the results of extensive peer review and public comment, which could result in a final recovery plan that differs from the draft document. In addition, the Recovery Plan is not a ''decision document'' as defined by NEPA, and does not allocate resources on public lands. The implementation of the recovery plan is the responsibility of Federal and state management agencies in areas where the subspecies occurs. Implementation is accomplished by the incorporation, as regulatory mechanisms, of the appropriate portions of the Recovery Plan into agency decision documents such as forest plans, park management plans, and state game management plans. Such documents are then subject to the NEPA process for public review and selection of alternatives. At that point, if implementation is effective, it may supersede the need for special management, and critical habitat may be withdrawn. Until public comment is received and analyzed on both the Recovery Plan and the Forest Service NEPA process, consideration of changes in Forest Service management would be predecisional and premature.

Issue 35: Service acceptance of management plans that preclude designation of critical habitat on certain lands is inappropriate.

Service Response: The Act provides for numerous mechanisms to conserve both listed and unlisted species. Critical habitat is one of those mechanisms. To qualify as critical habitat, an area must be one that may be in need of special management considerations or protection. The Service interprets that requirement to mean that if adequate management for a species is already in place, ''special management considerations or protection'' are not necessary, and the species can be conserved without the added regulatory requirements associated with critical habitat.

Issue 36: The Forest Plans are outdated and are not being followed in many respects. The Service should consider the management practices actually implemented in recent years. The Service should also consider the Forest Plan amendments in progress that provide for the needs of the subspecies. The Service should also consider a management plan for ponderosa pine habitats approved by the Manti-La Sal National Forest in 1994.

Service Response: The Service understands that the Forest Plans are outdated, and that other regulatory mechanisms such as Interim Directive #2 (ID2) have been in place to direct management of owl habitat. The Service is also aware of the amendments being prepared for all the national forests in the Southwest Region of the Forest Service. However, past practices such as ID2 and forest plan standards and guidelines were assessed as inadequate regulatory mechanisms and resulted in the listing of the owl. In addition, ongoing policy changes are often in flux, are sometimes contradictory, and until completed, do not constitute established policy that may be used to determine management objectives and directions.

The management plan for ponderosa pine habitats on the Manti-La Sal National Forest has not been provided to the Service by the Forest. Furthermore, the plan is an internal guideline and has not been incorporated into the Forest Plan. However, the Service strongly encourages the development and implementation of improved management plans, and their incorporation into Forest Plans.

Issue 37: The proposal to designate critical habitat does not coincide with the draft Mexican Spotted Owl Recovery Plan. For example, the recovery plan allows ''unrestricted'' management practices above 8,000 feet on the Kaibab Plateau, yet a considerable amount of critical habitat proposed in that area is above that elevation.

Service Response: Recovery planning and the designation of critical habitat are two different processes, each with its own time lines and purposes under the Act. Critical habitat designation is required, if both prudent and determinable, to be designated concurrently with the listing of a species. If not determinable at the time of listing, an additional year is allowed under law. Recovery plans, however, are not under statutory deadlines, although Service policy is to have final recovery plans in place within 30 months of listing a species as threatened or endangered. Thus, as a general rule, critical habitat precedes recovery plan development.

In the case of the Mexican spotted owl, the development of a critical habitat proposal was begun before the recovery planning process had begun, and was published in the **Federal Register** before the draft Recovery Plan was completed. The requirements of the Act and its implementing regulations, as enforced by a Federal Court, did not allow enough time for the Service to go back to the beginning of the critical habitat development process, develop a new proposed rule, and finalize critical habitat by the deadline ordered.

Critical habitat identifies areas containing the physical and biological features essential to the life history needs of a listed species, and that may need special management or protection. Designation of critical habitat does not specify what those special management considerations or protections are; those questions are addressed during the recovery planning process. In other words, critical habitat areas are those where the Service believes greatest management emphasis for a listed species should be placed, while recovery planning explains what that management should be.

In the specific instance involving the Kaibab Plateau, the area is ''unrestricted'' only if no nesting or roosting owls are located. The Recovery Team believes nesting and roosting is

unlikely to occur; however, the plan may be modified should a significant resident owl population be discovered prior the Service's adoption of a final recovery plan. At any rate, once a final recovery plan is adopted, the Service will consider whether to revise critical habitat through a separate rule making process.

Issue 38: Owl use of the habitat above canyon rims is minimal on the Monticello Ranger District of the Manti-La Sal National Forest. Radio telemetry indicates that fewer than 10 percent of recorded locations occur in these areas, with no data on actual use of the area.

Service Response: The Service agrees that very little, if any, nest/roost habitat exists on the mesa tops that constitute the critical habitat unit on the Manti-La Sal National Forest. However, radio telemetry data indicate owl presence in this habitat, and the 10 percent figure cited by the Forest may be considered a minimum, with radio locations probably making up between 10 to 25 percent of all locations (David Willey, High Desert Research Collective, pers. comm., 1995). The commenter is correct in noting that there are no data on the behavioral use of the habitat at the various locations. This is a limitation inherent in this method of analyzing the spatial use of habitat.

Issue 39: Additional areas in Utah should be considered since critical habitat contains less than five percent of known owl sites in Utah. In addition, these owl sites and habitat may experience threats from such sources as recreational activities.

Service Response: The Service, in the final rule to list and the critical habitat proposal, determined that the primary threat to the species was commercial timber harvest. The majority of owl sites in Utah are found in steep canyon habitats within areas not managed for timber harvest. Although there are other threats to canyon-nesting owls besides stand modifying activities, the Service has been unable to find evidence that these threats are significant to the owl population as a whole. The determination was made that these actions can be dealt with through consultation under section 7 of the Act without designation of critical habitat.

Economic Issues

Issue 40: Each critical habitat unit is a separate ''area'' as that term is used in 16 U.S.C. 1533(b)(2), and requires the Service to consider economic impacts by individual unit.

Service Response: The Service is required to use the best available data to conduct its economic analyses under the Endangered Species Act. In the case of the Mexican spotted owl, county level data were not sufficiently reliable to be used to estimate economic impacts for each of the 28 counties. Therefore, the data were aggregated into three subregions. This was the required aggregation for the purposes of creating a viable economic model that could be used in estimating economic impacts.

Issue 41: Several commenters were concerned that the economic analysis hides and dilutes the impact of actions on rural communities, especially when data includes large urban areas.

Service Response: The smallest subdivision with standard, meaningful economic data typically is an individual county; thus, economic impacts are based on county data for regional effects, whereas statewide or nationwide data and effects are addressed only when they become economically relevant. As stated in the economic analysis, urban areas within the region, including Albuquerque, Phoenix, and Tucson, were not included in order to avoid diluting impacts.

Issue 42: Several people stated that the economic analysis does not consider the multiplier effect of base manufacturing impacts including secondary and primary manufacturing jobs and sales, support industries, government jobs, and revenues to local counties.

Service Response: The analysis considers the full impacts due to changes in wood sector businesses and suppliers and the impact due to employee spending changes, all of which are the components of the multipliers. Impacts on communities' revenues and taxes were considered, based on available information, including what was provided by county officials.

Issue 43: Some respondents noted that the economic analysis did not consider reduced property and sales taxes due to the proposed action, and stated that the analysis used Federal payments in lieu of taxes (PILTs) as justification for reductions in counties' shares of timber sale receipts.

Service Response: The economic analysis discusses impacts on property taxes and offsetting PILT payments. According to sources used in the analysis, the net impact will not affect most counties, but will affect two counties more than others. While PILT payments are not stumpage taxes paid by the U.S. Forest Service, they are offsetting funds paid to the counties. Since they offset other taxes, they have little impact to the U.S. Treasury.

Issue 44: A few groups commented that the economic analysis fails to consider the increased cost of doing business for forest products companies, and fails to consider the potential impact to shareholders of the companies.

Service Response: The analysis reports changes in sales revenue for the region, which includes impacts to shareholders of companies in the region. The increased cost of doing business that may occur as a result of higher timber prices is a distributional effect within the region, in that the owners of the timber will benefit from higher timber prices.

Issue 45: One commenter noted that the analysis does not analyze the effects of the withdrawal of Federal timber from the market nor the subsequent changes in property and timber values for private timber owners.

Service Response: Critical habitat designation affects only Federal timber harvest; however, reductions in timber harvest from public lands could increase the value of timber on private lands, thereby benefitting non-Federal timber owners.

Issue 46: One comment was received that the proposed action would cause loss of employment for government workers involved in timber sales, and noted that the economic analysis does not adequately address the costs of not having a forest products industry in the Southwest operating on Federal forests.

Service Response: Most Federal forests in the region are not affected by the proposed action. The proposed CHUs within national forests represent less than 19 percent of the Federal forest acres in the Southwest region of the U.S. Forest Service—the timber harvest is estimated to decline about the same amount. This proposed action will not close down the forest products industry in the Southwest, nor substantially affect Federal employment related to timber sales.

Issue 47: One individual noted that the analysis does not address the impacts of designating critical habitat for the Mexican spotted owl to other previously listed species across the U.S.

Service Response: The impacts estimated in the report reflect only the proposed critical habitat designation for the Mexican spotted owl, as directed by the Endangered Species Act. Appendix E of the economic analysis provides information from the Service about other species that may be affected by this proposed action.

Issue 48: One commenter stated that public opinion polls and non-scientific work have no place in the economic analysis.

Service Response: Data from all credible available sources were considered in conducting the analysis.

In some cases, information requested from Federal, State, local, and Tribal agencies was not provided. Surveys relevant to the topics were used to indicate public preferences for policy actions, an important consideration to public agencies mandated to manage public resources.

Issue 49: A few comments were received maintaining that the exercise was conducted to prove that critical habitat designation is a minor inconvenience, and that the analysis was not an unbiased attempt to describe regional economic impacts.

Service Response: The analysis was undertaken without bias toward a particular goal or level of economic impacts. The results reflect appropriate impacts considering that most timber acres in the Southwest region are not affected by the proposed critical habitat designation.

Issue 50: One group stated that the nonmarket benefits mentioned in the economic analysis assume increased value due to recreational uses such as fishing, hunting, and picnicking, and ignore that these activities occur presently and historically, and that these activities are complementary to timber harvesting. The same group maintained that access to the forest will be reduced due to lack of road maintenance.

Service Response: Some recreational activities may benefit from timber harvest programs (e.g., hunting for species that rely on forest edges), while others (e.g., sightseeing and wilderness camping) will not. While timber programs may contribute to forest access, recreating in areas from which timber has been cut recently may be discontinued. The acres proposed as CHUs will continue to be accessible for recreational uses.

Issue 51: One person wrote that the economic analysis made nonmarket items appear to be the major areas of value resulting from the protection of the owl. Nonmarket values are value judgments, not pure science.

Service Response: Nonmarket values are likely to be the primary benefit resulting from the proposed action. Individuals hold values for resources for personal use and other reasons. People may value continued existence of a resource they do not personally use because of environmental concerns, to preserve the option to use the resource in the future, or to endow the resource to coming generations. Nonmarket values are estimated using contingent valuation method (CVM). This technique is generally accepted as an appropriate means of evaluating this class of values.

Issue 52: Several commenters criticized the report for not including dollar estimates of the nonmarket benefits resulting from the proposed action.

Service Response: Quantifying species benefits is a costly and lengthy process that was not possible within the time constraints of the project. Even with results from such a study, allocating the benefits of preservation and recovery of an endangered species among the various actions required is an extremely difficult task. If species conservation were accomplished entirely through designation of critical habitat, then the full value of benefits could be attributed to that action. However, conservation is achieved with multiple interactive actions (e.g., Federal listing, protection under State laws), each of which may be essential to recovery and no one of which can be singled out as the sole means by which a species is conserved or recovery attained. Without a clear delineation of the results of each management action, it is not possible to disaggregate the sum of benefits to identify that portion directly attributable to critical habitat designation.

Issue 53: The comment was made that the economic analysis omitted major items such as total cost when the Forest Service implemented its pre-listing owl management guidelines, and the resulting impacts on activities such as recreation, grazing, and mining.

Service Response: The economic analysis estimates the impact of the proposed critical habitat designation for the Mexican spotted owl. The Service has indicated in the proposal that the activity of concern is timber harvest. Other activities, such as recreation, mining, and grazing, would not be affected by the proposed action unless they involve changes to constituent elements of critical habitat. Listing a species provides protection under the jeopardy standard. Additional protection is provided through the adverse modification standard after critical habitat is designated. These are separate actions between which the economic analysis clearly distinguishes.

Issue 54: Several letters were received commenting that the analysis excluded the impacts of wildfire that will result from the proposed action.

Service Response: The Service recognizes the danger fire poses to the owl. When the owl was listed and when critical habitat was proposed the Service encouraged reducing this risk with proper forest management. A relatively small portion of the region identified by commenters as being ''under threat of catastrophic fire'' is proposed for designation. The 3.6 million acres of U.S. Forest Service land affected by this proposal represents less than 20 percent of the land under the agency's jurisdiction in the 28 counties. The trend of increased fire danger began decades ago with forest management practices since the 1950s, including fire suppression. This is not a new threat in the region, nor one that has suddenly arisen because of the proposed action. The forest in its current condition is noted as being highly susceptible to fire, *before* critical habitat was proposed.

Issue 55: One timber industry representative asked whether Table 8 reflects total national forest harvests or the harvest from CHUs.

Service Response: The annual harvest levels provided in the report reflect only the harvests projected from the proposed CHU acres. This harvest level was indicated by forest managers. More than 80 percent of Federal forests, and all of non-Federal forests are not affected by the proposed action, and timber harvest can continue in addition to the harvest levels estimated in the report.

Issue 56: Several respondents claimed the regulations proposed under critical habitat designation are targeted at specific mills or industries. Several letters stressed the importance of preserving and enhancing private sector employment in an area where over 23 percent of jobs are in government.

Service Response: While the impacts reflect changes in Federal and private sector activity, no specific firms or industries are targeted by the proposed action for closure or elimination.

Issue 57: A group of counties in eastern Arizona noted that the analysis failed to take into account the impacts of proposed timber harvest restrictions on local schools. For example, one county noted its schools depend heavily on Federal timber fees to maintain their programs—15 percent of the school district budget is derived from U.S. Forest Service fees. The counties claim loss of these revenues will result in closure of the schools.

Service Response: The county cited as an example has approximately 492,000 acres of National Forest, with about 164,000 acres (about one-third of the acres) proposed for inclusion in critical habitat. Based on the data from this comment, this implies that less than five percent (one-third of 15 percent) of the budget of these schools would be affected if all timber harvest and other activities were eliminated in the critical habitat units. This worst case scenario is unlikely to occur.

Issue 58: One letter stated that Appendix D of the draft economic

analysis reviews below-cost timber sales and indicates that critical habitat will reduce losses to the U.S. Treasury, in turn benefitting private timber owners who hold only 85,000 acres in proposed CHUs. The analysis was alleged to be incomplete, failing to account for gross ineffiencies of the Forest Service management, increased costs due to environmental regulations, and increased costs of managing forests under the National Environmental Policy Act.

Service Response: Appendix D provides an overview of below-cost timber sales, pointing out that the U.S. Treasury could benefit if timber harvests were reduced. The analysis recognizes but does not quantify the added costs of the proposed action to the U.S. Forest Service. The agency presently incurs management costs, and the cost of environmental and National Environmental Policy Act compliance. Adding to the costs incurred by the U.S. Forest Service would generate even larger deficits. The analysis cited one of the possible benefits as increased demand for timber from all private landowners in the region, not only the 85,000 acres in the critical habitat units.

Issue 59: Several people noted that increased sales from changes in recreation occur outside the region and do not provide additional value to the population within the region.

Service Response: Part of expenditures by those who recreate is outside the region, but part is within the region, possibly including lodging, gas, food, and other supplies, thereby increasing the economic level of the local community. Increased expenditures can include both increased levels per person and increased numbers of recreationists.

Issue 60: One writer stated that designation of critical habitat caused the closure of most sawmills in the region since 1989.

Service Response: The designation of critical habitat only becomes effective 30 days from the date of this final rule.

Issue 61: The analysis used 1991 data as a baseline, which does not isolate the impacts of critical habitat designation, rather it includes four years of impacts including listing. This fatally flaws the entire analysis.

Service Response: The baseline year used in the analysis is provided as a basis of comparison only, and is not intended to imply the changes have occurred since that year. The impact analysis was conducted using a ''with and without'' framework for comparison, rather than with a ''before and after'' framework in which the impacts would have included previous actions to protect the owl. The 1991 data are the most current available for conducting the impact analysis.

Issue 62: The economic analysis failed to consider impacts due to lumber price increases. The average framing lumber price in 1990 of $233.54 per 1000 board feet rose to a 1994 price of $411.02.

Service Response: Any recent changes in timber price are not due to the proposed action because the regulation has not yet been enacted.

National Environmental Policy Act

The 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).

Regulatory Flexibility Act and Executive Order 12866 (E.O. 12866)

This rule was not subject to Office of Management and Budget review under E.O. 12866. The Department of the Interior certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this designation. Further, the rule contains no recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

Takings Implications Assessment

The Service has analyzed the potential takings implications of designating critical habitat for the owl in a Takings Implications Assessment prepared pursuant to requirements of Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights.'' The Takings Implications Assessment, available upon request (see **ADDRESSES**) concludes that the designation does not pose significant takings implications.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the New Mexico Ecological Services State Office (see **ADDRESSES** above).

Author(s)

This final rule was prepared by Steve Spangle, U.S. Fish and Wildlife Service, Ecological Services—Endangered Species, Albuquerque, New Mexico; and Jennifer Fowler-Propst, Sonya Jarhrsdoerfer, and Marcos Gorresen, U.S. Fish and Wildlife Service, Ecological Services (see **ADDRESSES**).

The economic analysis was prepared by Richard L. Johnson and Dirk D. Draper, U.S. Fish and Wildlife Service, National Biological Services, Midcontinent Ecological Science Center, Fort Collins, Colorado; and Earl Ekstrand and John R. McKean, Colorado State University, Fort Collins, Colorado.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

PART 17—[AMENDED]

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; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. Section 17.11(h) is amended by revising the ''Critical habitat'' entry for ''Owl, Mexican spotted,'' under Birds, to read ''§ 17.95(b)''.

3. Section 17.95(b) is amended by adding critical habitat for the Mexican spotted owl *(Strix occidentalis lucida),* in the same alphabetical order as this species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) * * *

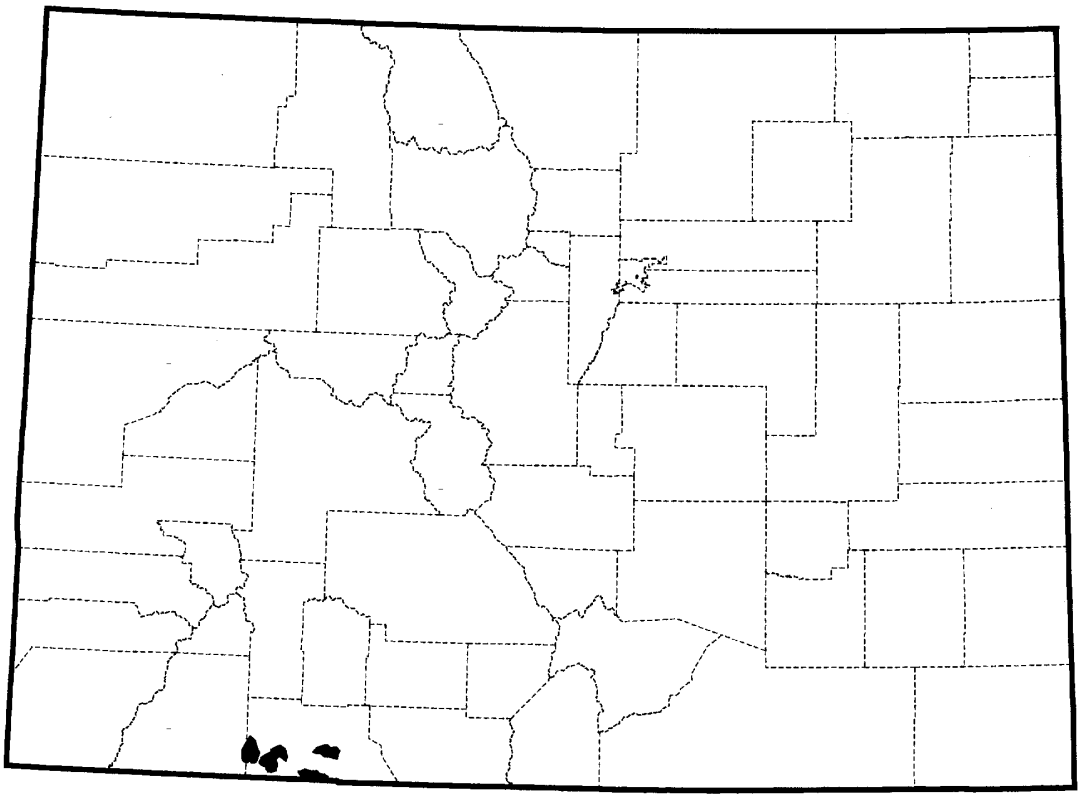
Mexican Spotted Owl *(Strix occidentalis lucida).*

For the States of Arizona, Colorado, New Mexico, and Utah, critical habitat units are depicted on maps on file and are available for inspection by appointment at: U.S. Fish and Wildlife Service, Arizona Ecological Services State Office, 2321 West Royal Palm Road, Phoenix, Arizona 85021, telephone (602) 640–2720; U.S. Fish and Wildlife Service, Colorado State Sub-Office, 764 Horizon Drive, South Annex A, Grand Junction, Colorado 81506, telephone (970) 243–2778; U.S. Fish and Wildlife Service, New Mexico Ecological Services State Office, 2105

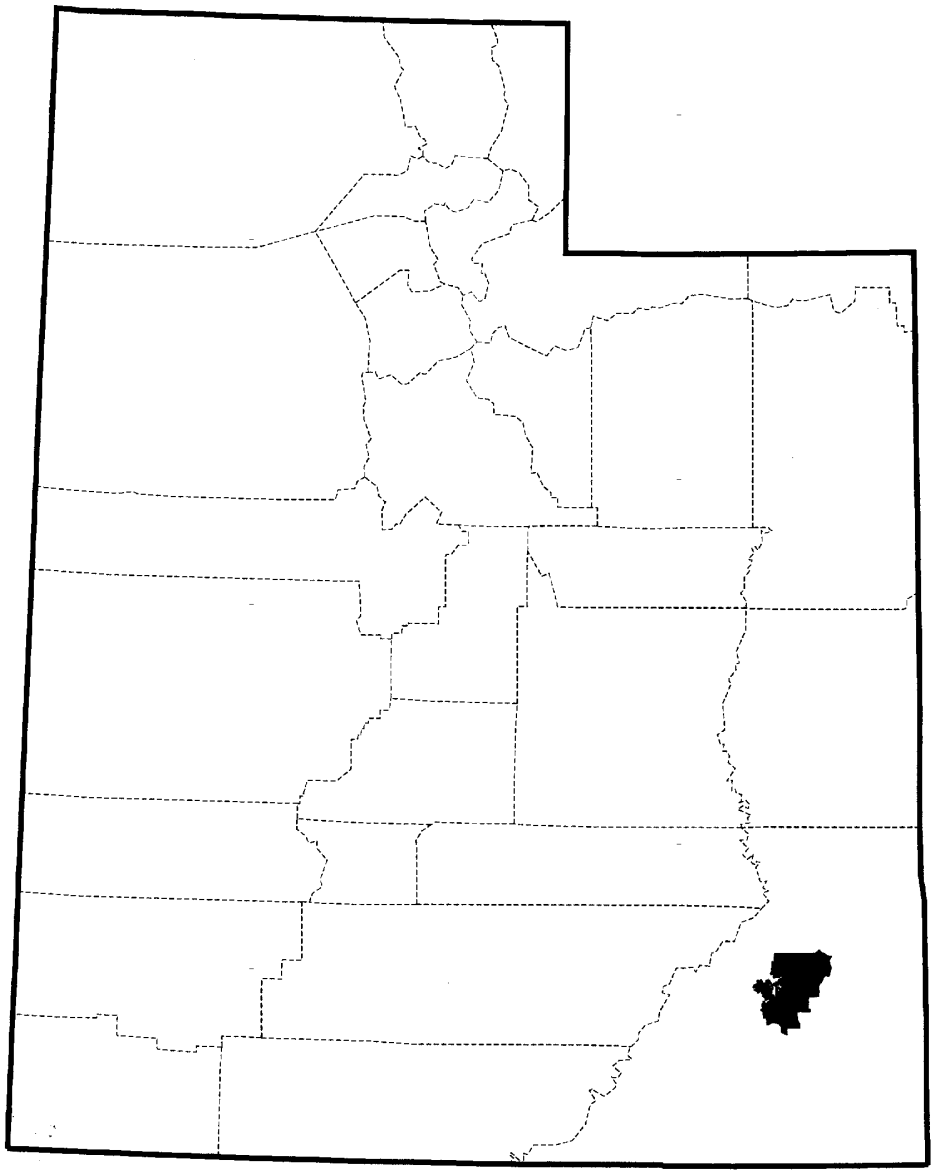
Osuna N.E., Albuquerque, New Mexico 87113, telephone (505) 761–4525; U.S. Fish and Wildlife Service, Utah Ecological Services Field Office, Lincoln Plaza, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115, telephone (801) 524–5001.

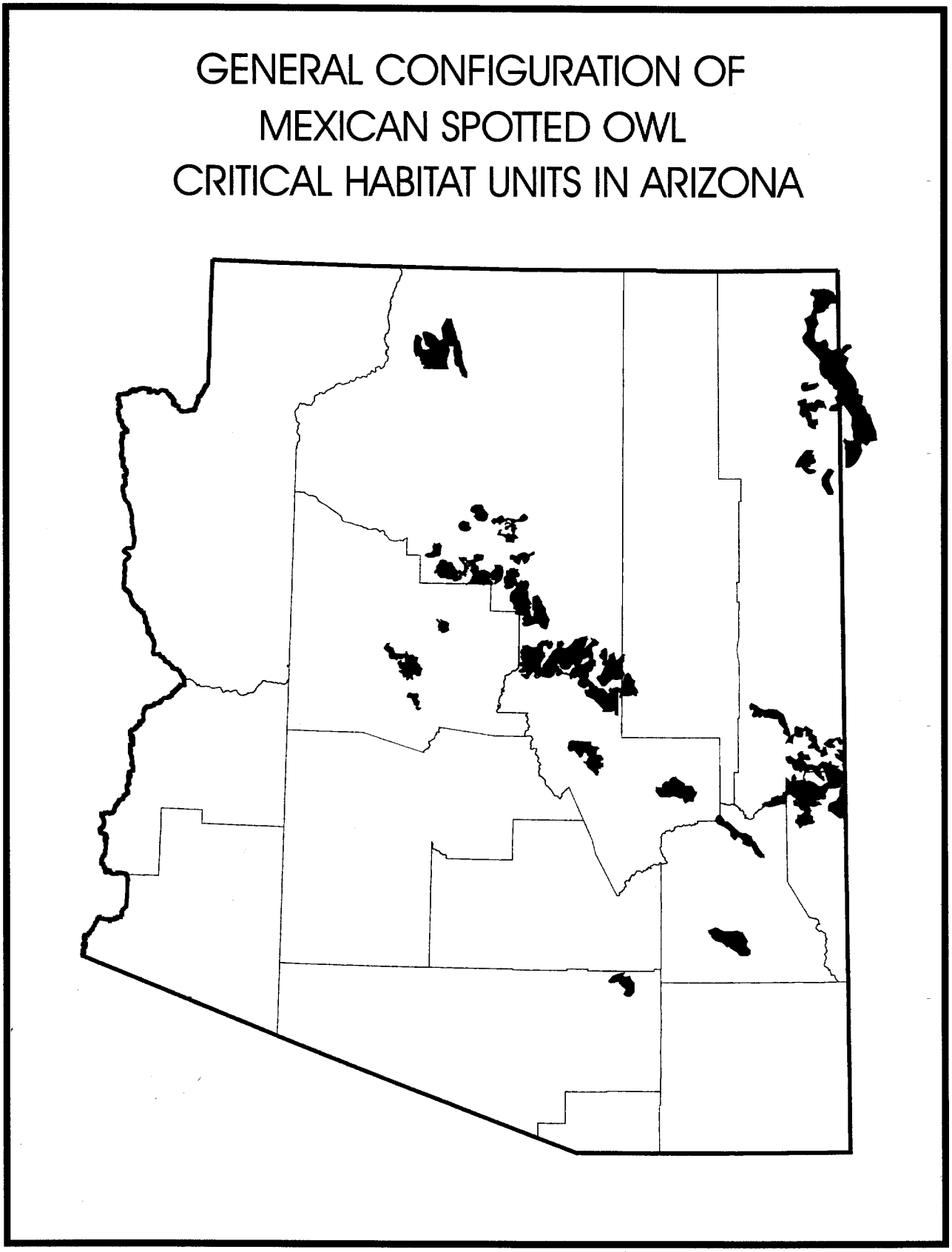
BILLING CODE 4310–55–P

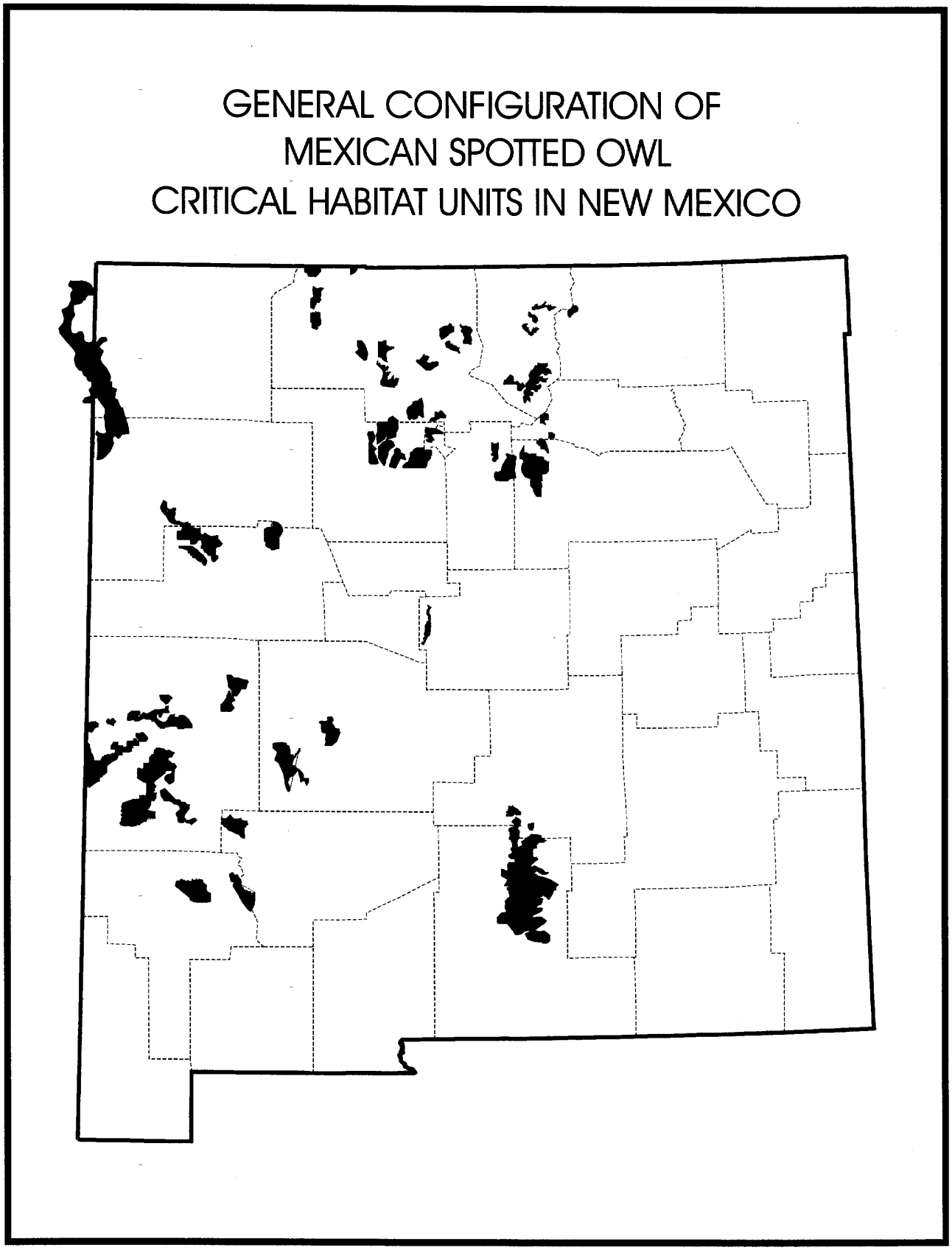
GENERAL CONFIGURATION OF MEXICAN SPOTTED OWL CRITICAL HABITAT UNITS IN COLORADO



GENERAL CONFIGURATION OF MEXICAN SPOTTED OWL CRITICAL HABITAT UNITS IN UTAH




GENERAL CONFIGURATION OF
MEXICAN SPOTTED OWL
CRITICAL HABITAT UNITS IN ARIZONA



BILLING CODE 4310–55–C

Primary constituent elements: Mexican spotted owl habitat that includes, but is not limited to, those habitat components providing or with the potential to provide for nesting, roosting, or foraging. Forested habitats used for nesting and roosting are characterized as supporting mature stand attributes including high canopy closure, multi-layered canopies, coniferous vegetation (sometimes including a hardwood understory), large diameter trees, high basal areas of live trees and snags, and high volumes of large logs. Nesting and roosting habitat also supports owl foraging activity; however, a wider array of habitat attributes may be found in areas used solely for foraging, including fairly open and non-contiguous forest, small openings, woodland, and rocky slopes. Canyon habitat is typically characterized by the cool, humid conditions found in deep, steep-walled, fractured structures. Canyons frequently contain patches or stringers of riparian and conifer forest, and adjacent slopes and mesa tops are vegetated by a variety of plant associations. Owl habitat may exhibit a mixture of attributes between the forested and canyon habitat types.

Dated: May 25, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–13606 Filed 6–5–95; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Tuesday
June 6, 1995

Part III

Environmental Protection Agency

40 CFR Part 9

OMB Approval Numbers Under the Paperwork Reduction Act; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[FRL–5216–6]

OMB Approval Numbers Under the Paperwork Reduction Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment.

SUMMARY: In compliance with the Paperwork Reduction Act, this document displays the Office of Management and Budget (OMB) control numbers issued under the Paperwork Reduction Act (PRA) for the ICR entitled ''Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures''.

EFFECTIVE DATE: June 6, 1995.

FOR FURTHER INFORMATION CONTACT: Amy Haseltine, 703–308–8898.

SUPPLEMENTARY INFORMATION: EPA is today amending the table of currently approved information. Today's amendment is prompted by the Office of Management and Budget's recent renewal and consolidation of the Office of Underground Storage Tank's ICRs into a single ICR entitled ''Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures''. The affected regulations are codified at 40 CFR part(s) 280 and 281. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR Part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This display of the OMB control number(s) and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR 1320.

The ICRs were previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is ''good cause'' under sections 553(b)(B) and (d)(3) of the Administrative Procedure Act (5 U.S.C. 553(b)(B) and (d)(3)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

List of Subjects in 40 CFR Part 9

Reporting and recordkeeping requirements.

Dated: May 8, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble 40 CFR part 9 is amended as follows:

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

Authority: 7 U.S.C. 135 et seq., 136-y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by revising the entries under the indicated headings to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (USTs)	
280.11(a)	2050–0068
280.20(a)–(b)	2050–0068
280.20(e)	2050–0068
280.22(a)–(f)	2050–0068
280.22(g)	2050–0068
280.31	2050–0068
280.33(f)	2050–0068
280.34(a)	2050–0068
280.34(b)	2050–0068
280.34(c)	2050–0068
280.40	2050–0068
280.43	2050–0068
280.44	2050–0068
280.45	2050–0068
280.50	2050–0068
280.53	2050–0068
280.61	2050–0068
280.62	2050–0068
280.63	2050–0068
280.64	2050–0068
280.65	2050–0068
280.66(a)	2050–0068
280.66(c)	2050–0068
280.66(d)	2050–0068
280.67	2050–0068
280.71(a)	2050–0068
280.72(a)	2050–0068
280.74	2050–0068
280.95	2050–0068
280.96	2050–0068
280.97	2050–0068
280.98	2050–0068
280.99	2050–0068
280.100	2050–0068
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280.104	2050–0068
280.105	2050–0068
280.106	2050–0068
280.107	2050–0068
280.108	2050–0068
280.109(a)	2050–0068
280.109(b)	2050–0068
280.110	2050–0068
280.111	2050–0068
280.111(b)(11)	2050–0068
280.114(a)–(d)	2050–0068
280.114(e)	2050–0068
Approval of State Underground Storage Tank Programs	
28.120(a)	2050–0068
28.120(g)	2050–0068
28.121	2050–0068
28.122	2050–0068
28.124	2050–0068
28.125	2050–0068
28.140	2050–0068
28.143(a)	2050–0068
28.150	2050–0068
28.152	2050–0068
28.161	2050–0068
* * * * *	

[FR Doc. 95–13790 Filed 6–5–95; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Tuesday
June 6, 1995

Part IV

The President

Proclamation 6807—National Homeownership Day, 1995

Federal Register
Vol. 60, No. 108
Tuesday, June 6, 1995

Presidential Documents

Title 3—

The President

Proclamation 6807 of June 2, 1995

National Homeownership Day, 1995

By the President of the United States of America

A Proclamation

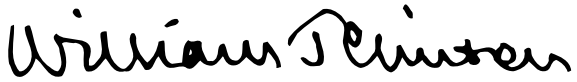
Throughout the more than two hundred years since our Nation was founded, Americans have embraced the dream of homeownership. Strengthening families, establishing communities, and fostering prosperity, homeownership is the cornerstone of our economy and a common thread in our national life. Thanks to a tradition of cooperation between government and industry, the doors of homeownership have been opened to millions of Americans. And the United States is one of the first countries in the world to make homeownership a reality for a majority of its people.

For the better part of this century, America has made homeownership a priority of national policy. The National Housing Act of 1934 created the Federal Housing Administration's home mortgage insurance program, empowering more than 23 million Americans to buy their own homes. In 1944, the GI Bill of Rights set up the Veterans Administration's home loan guaranty program, enabling millions of veterans to start a new life for themselves and their families. The Housing Act of 1949 declared that every American family should enjoy a ''decent home and a suitable living environment''—an ideal that has been reaffirmed in myriad ways since then.

Our country's long-standing commitment to this goal is a testament to the tremendous rewards of homeownership. Homeownership spurs the production and sales of goods and services, generating new jobs and brightening America's economic horizon. It encourages savings and investment, promotes economic and civic responsibility, and enhances the financial security of the American people. Perhaps most important, homeownership gives Americans pride in their neighborhoods and hope for a brighter tomorrow.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 5, 1995, as ''National Homeownership Day.'' I urge all of our citizens to observe this day with appropriate programs, ceremonies, and activities that celebrate the great American Dream.

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



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H.R. 1421/P.L. 104–14

To provide that references in the statutes of the United States to any committee or officer of the House of Representatives the name or jursdiction of which was changed as part of the reorganization of the House of Representatives at the beginning of the One Hundred Fourth Congress shall be treated as referring to the currently applicable committee or officer of the House of Representatives. (June 3, 1995; 109 Stat. 186; 3 pages)

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