12–4–96
Vol. 61 No. 234
Pages 64245–64440

# Federal Register

Wednesday
December 4, 1996

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

#### WASHINGTON, DC

WHEN: December 10, 1996 at 9:00 a.m.
WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

#### AUSTIN, TX

WHEN: December 10, 1996
9:00 a.m. to 12:00 p.m.
WHERE: Atrium
Lyndon Baines Johnson Library
2313 Red River Street
Austin, TX
RESERVATIONS: 1–800–688–9889 x 0
(Federal Information Center)

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**Reader Aids**
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

**Electronic Bulletin Board**
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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# Presidential Documents

Title 3—

The President

Proclamation 6960 of November 27, 1996

## National Drunk and Drugged Driving Prevention Month, 1996

By the President of the United States of America

A Proclamation

Driving under the influence of drugs or alcohol is a scourge on our society that we cannot ignore or treat lightly. Drunk and drugged driving has no geographic limits; it is a problem that afflicts cities and rural areas alike in every region of our country. And, most disturbing of all, it is a growing problem—last year, alcohol-related traffic deaths increased for the first time in a decade. Each of us and our loved ones are at risk of becoming victims of a driver impaired by drugs or alcohol. However, we can solve this problem if we make a national commitment to do so.

Two months ago, we charted a course that demands that those who drive must assume the responsibility of staying sober and drug-free behind the wheel. Targeting our youngest drivers first, we began by requiring, as a condition of receiving Federal highway funds, that every State pass a law making it illegal for anyone under 21 to drive with alcohol in their bloodstream.

Now, we must take the next step toward ridding our highways of drunk drivers.

Drivers between 21 and 34 years of age are most likely to drive under the influence of alcohol or other mind-altering drugs. We must not only redouble our efforts to educate those in this age group about the terrible risks posed by drunk and drugged driving, but we must also strengthen our law enforcement efforts to make clear that this behavior will not be tolerated.

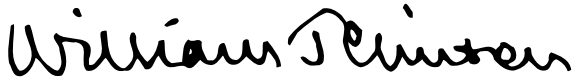
Addressing impaired driving by teens and young adults is important but, unfortunately, is not enough to solve the problem. No age group is immune to the temptation to drive under the influence of alcohol or drugs. Through peer pressure and education, we must convince all who would get behind the wheel drunk or drugged to change their behavior.

All of us can do our part to reduce the tragic loss of life and limb caused by drunk and drugged drivers. Parents can thoughtfully and candidly discuss the dangers with their children who drive; more States can pass Zero Tolerance laws; more citizens can prevent friends or acquaintances from getting behind the wheel while under the influence of drugs or alcohol; and more of us can volunteer to be ''designated drivers,'' pledged to abstain from alcohol when we are with others who might be drinking. By making clear that drunk and drugged driving is unacceptable and by resolving firmly to stop it, we can prevent thousands of tragic deaths and injuries each year.

I ask all Americans to observe a special day of remembrance of the victims of drunk and drugged driving by participating this year in ''National Lights on for Life Day.'' On Friday, December 20, I ask that drivers nationwide keep their headlights illuminated to call attention to this threat to the health and safety of our citizens. And I ask that we rededicate ourselves as a Nation to preventing drunk and drugged driving in our communities.

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 December 1996 as National Drunk and Drugged Driving Prevention Month. I urge all Americans to recognize the dangers of impaired driving; to take responsibility for themselves and others around them; to stop anyone under the influence of alcohol or drugs from getting behind the wheel of a vehicle; and to help teach our young people about the lifesaving benefits of safe driving habits.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of November, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.



[FR Doc. 96–31029
Filed 12–3–96; 8:45 am]
Billing code 3195–01–P

# Presidential Documents

Memorandum of November 20, 1996

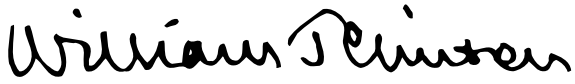
## Delegation of Authority Under Section 581(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997

Memorandum for the Secretary of State

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate the functions and authorities conferred upon the President by section 581(b) of the Foreign Operations, Export Financing, and Related Appropriations Act, 1997 (Public Law 104–208) to the Secretary of State, who is authorized to redelegate these functions and authorities consistent with applicable law.

Any reference in this memorandum to the provision of any Act shall be deemed to include references to any hereafter-enacted provision of law that is the same or substantially the same as such provision.

The Secretary of State is authorized and directed to publish this memorandum in the Federal Register.



THE WHITE HOUSE,
*Washington, November 20, 1996.*

[FR Doc. 96–31025
Filed 12–3–96; 8:45 am]
Billing code 4710–10–M

# Presidential Documents

Memorandum of November 21, 1996

## Delegation of Responsibilities Under the Iran and Libya Sanctions Act of 1996

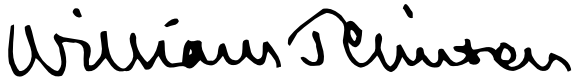
Memorandum for the Secretary of State, the Secretary of the Treasury, the Secretary of Commerce, [and] the United States Trade Representative

By the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to the Secretary of State the functions vested in the President by the following provisions of the Iran and Libya Sanctions Act of 1996 (Public Law 104–172) (''the Act''), such functions to be exercised in consultation with the Departments of the Treasury and Commerce and the United States Trade Representative, and with the Export-Import Bank and Federal Reserve Board and other interested agencies as appropriate: sections 4(c), 5(a), 5(b), 5(c), 5(f), 6(1), 6(2), and 9(c). I hereby delegate to the Secretary of State the functions vested in the President by the following provisions of the Act: sections 4(a), 4(b), 4(d), 4(e), 5(d), 5(e), 9(a), 9(b), and 10.

Any reference in this memorandum to provisions of any Act related to the subject of this memorandum shall be deemed to include references to any hereafter-enacted provision of law that is the same or substantially the same as such provisions.

The following functions vested in the President by the following provisions of the Act delegated by this memorandum may be redelegated: 4(a), 4(b), 4(d), 4(e), 5(d), 5(e), and 10. All other functions delegated by this memorandum may not be redelegated.

The Secretary of State is authorized and directed to publish this memorandum in the Federal Register.



THE WHITE HOUSE,
*Washington, November 21, 1996.*

[FR Doc. 96–31026
Filed 12–3–96; 8:45 am]
Billing code 4710–10–M

# Rules and Regulations

Federal Register
Vol. 61, No. 234
Wednesday, December 4, 1996



## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Parts 905 and 944

**[Docket No. FV96–905–4 IFR]**

## Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; and Import Regulations (Grapefruit); Relaxation of the Minimum Size Requirement for Red Grapefruit

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule makes a change in regulations under the Florida citrus marketing order and grapefruit import regulations. This rule relaxes the minimum size requirement for red seedless grapefruit from 3$^{9}/_{16}$ inches in diameter (size 48) to 3$^{5}/_{16}$ inches in diameter (size 56). The Citrus Administrative Committee (Committee), the agency that locally administers the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida, unanimously recommended this change. This change will enable handlers and importers to continue to ship size 56 red seedless grapefruit for the entire 1996–97 season.

**DATES:** Effective on November 11, 1996; comments received by January 3, 1997 will be considered prior to issuance of a final rule.

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

**FOR FURTHER INFORMATION CONTACT:** Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–8139, Fax # (202) 720–5698; or William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (941) 299–4770, Fax # (941) 299–5169. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax # (202) 720–5698.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905 (7 CFR Part 905), as amended, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the Act.

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

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

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

There are approximately 100 handlers of Florida citrus who are subject to regulation under the marketing order and approximately 11,000 producers of citrus in the regulated area, and about 25 grapefruit importers. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of handlers, producers, and importers of Florida citrus may be classified as small entities.

This rule relaxes the minimum size for the period November 11, 1996, through November 9, 1997. This rule is expected to have a positive impact on handlers and importers, as it will permit the shipment of smaller size grapefruit, allowing the industry to meet market needs. The relaxed minimum size requirement would be applied to both small and large handlers and importers in the same way. This size relaxation will enable Florida grapefruit shippers and importers of grapefruit to continue shipping size 56 red seedless grapefruit to the domestic market. This is consistent with current and anticipated demand in those markets for the 1996–97 season, which will provide for the maximization of shipments to fresh market channels and increase grower returns. Therefore, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

The order for Florida citrus provides for the establishment of minimum grade and size requirements. The minimum grade and size requirements are designed to provide fresh markets with fruit of acceptable quality, thereby maintaining consumer confidence for fresh Florida citrus. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of producers, packers, and consumers, and is designed to increase returns to Florida citrus growers.

This interim final rule invites comments on a change to the order's rules and regulations to relax the minimum size requirement for red seedless grapefruit allowing for the continued shipment of size 56 grapefruit. The Committee met October 8, 1996, and unanimously recommended this action.

This rule relaxes the red seedless grapefruit minimum size requirement from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter) for the period November 11, 1996, through November 9, 1997. Absent this change, the size will revert back to size 48 (3$^{9}/_{16}$ inches diameter), on November 11, 1996.

Section 905.52, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR 905.306) specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in Section 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b). Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under Section 944.106 (7 CFR 944.106), as reinstated on July 26, 1993 (58 FR 39428, July 23, 1993). Export requirements are not changed by this rule.

In making its recommendation, the Committee considered estimated supply and current shipments. According to both the National Agricultural Statistics Service and the Committee, production of red seedless grapefruit is expected to increase in comparison to last year (1995–96). Both sources estimate an increase in production for this season (1996–97) of about 10 percent to 31.5 million boxes and about 3 percent to 29 million boxes, respectively. The Committee reports that it expects that fresh market demand will be sufficient to permit the shipment of size 56 red seedless grapefruit grown in Florida during the entire 1996–97 season. The Committee believes that markets have been developed for size 56 and that they should continue to supply those markets.

This size relaxation will enable Florida grapefruit shippers to continue shipping size 56 red seedless grapefruit to the domestic market. This rule will have a beneficial impact on producers and handlers, since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet consumer needs. This is consistent with current and anticipated demand in those markets for the 1996–97 season, and will provide for the maximization of shipments to fresh market channels.

There are some exemptions to these regulations provided under the order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day. Handlers may also ship unlimited gift packages of up to 2 standard packed cartons of fruit per day, which are individually addressed and not for resale. Fruit shipped for animal feed is also exempt under specific conditions. Fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule will relax the minimum size requirement under the domestic handling regulations, a corresponding change to the import regulations must also be considered.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under Section 944.106 (7 CFR 944.106), as reinstated on July 26, 1993 (58 FR 39428, July 23, 1993). This rule relaxes the minimum size requirements for imported red seedless grapefruit to 3$^{5}/_{16}$ inches in diameter (size 56) for the period November 11, 1996, through November 9, 1997, to reflect the relaxation being made under the order for grapefruit grown in Florida. The minimum grade and size requirements for Florida grapefruit are specified in Section 905.306 (7 CFR 905.306) under Marketing Order No. 905.

During the last 5 years (1991–1995) imports to the United States of fresh grapefruit averaged less than 2 percent of total domestic consumption or less than 15,000 tons per year. Based on Departmental data, domestic consumption averaged 766,000 tons per year for that period. The major exporter of grapefruit to the United States was the Bahamas. The Bahamas shipped an average of 95 percent of all grapefruit imports to the United States during that time period. Other exporters of grapefruit to the United States included; Mexico, Jamaica, Dominican Republic, Netherlands, Israel, and Thailand.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this interim final rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that this interim final 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 rule until 30 days after publication in the Federal Register because: (1) This rule relaxes the minimum size requirements that would otherwise be in effect November 11, 1996, for grapefruit grown in Florida; (2) Florida grapefruit handlers are aware of this action which was unanimously recommended by the Committee at a public meeting, and they will need no additional time to comply with the relaxed requirements; (3) Florida grapefruit shipments began on September 1, 1996, and the season will be well underway by November 11, 1996; and (4) this rule provides a 30-day comment period and any comments

received will be considered prior to finalization of this interim final rule.

List of Subjects

*7 CFR Part 905*

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

*7 CFR Part 944*

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth above, 7 CFR parts 905 and 944 are amended as follows:

1. The authority citation for 7 CFR parts 905 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

## PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

2. Section 905.306 is amended by revising the entries for grapefruit in paragraph (a), Table I, to read as follows:

**§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation.**

(a) * * *

TABLE I

| Variety | Regulation period | Minimum Grade | Minimum diameter (inches) |
|---|---|---|---|
| (1) | (2) | (3) | (4) |
| * * * | * * * | * | * |
| Grapefruit: | | | |
| Seeded, red | Except on and after 9/01/94 | U.S. No. 1 | 3–12/16 |
| Seeded, red | On and after 9/01/94 | U.S. No. 1 | 3–12/16 |
| Seedless, red | 11/13/95–11/10/96 | U.S. No. 1 | 3–5/16 |
| | 11/11/96–11/9/97 | U.S. No. 1 | 3–5/16 |
| | On and after 11/10/97 | U.S. No. 1 | 3–9/16 |
| Seedless, except red | On and after 9/01/94 | U.S. No. 1 | 3–9/16 |
| * * * | * * * | * | * |

* * * * *

## PART 944—FRUITS; IMPORT REGULATIONS

4. In § 944.106, paragraph (a) is revised to read as follows:

**§ 944.106 Grapefruit import regulation.**

(a) Pursuant to Section 8e [7 U.S.C. Section 608e–1] of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], and Part 944—Fruits; Import Regulations, the importation into the United States of any grapefruit is prohibited unless such grapefruit meet the following minimum grade and size requirements for each specified grapefruit classification:

| Grapefruit classification | Regulation period | Minimum grade | Minimum diameter (inches) |
|---|---|---|---|
| (1) | (2) | (3) | (4) |
| Seeded | On and after 9/1/94 | U.S. No. 1 | 3–12/16 |
| Seedless, red | 11/13/95—11/10/96 | U.S. No. 1 | 3–5/16 |
| | 11/11/96—11/9/97 | U.S. No. 1 | 3–5/16 |
| | On and after 11/10/97 | U.S. No. 1 | 3–9/16 |
| Seedless, except red | On and after 9/1/94 | U.S. No. 1 | 3–9/16 |

* * * * *

Dated: November 27, 1996.

Robert C. Keeney,

*Director, Fruit and Vegetable Division.*

[FR Doc. 96–30861 Filed 12–3–96; 8:45 am]

BILLING CODE 3410–02–P

## 7 CFR Part 906

**[Docket No. FV96–906–2FR]**

## Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Change in Reporting Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule changes the reporting requirements currently prescribed under the Texas orange and grapefruit marketing order. The marketing order regulates the handling of oranges and grapefruit grown in three counties in the Lower Rio Grande Valley in Texas and is administered locally by the Texas Valley Citrus Committee (committee). Shipments of oranges and grapefruit out of the production area must meet minimum standards of grade, size, quality, and pack. Such shipments are subject to mandatory inspection. This final rule adds language in the

order's rules and regulations to require that all sales of over 400 pounds of oranges and grapefruit for resale inside the production area be covered by a ''Buyer Certification'' form (Certification Form). This requirement will ensure that handlers are aware of and accept responsibility for complying with the order's requirements and that buyers do not transport uninspected oranges and grapefruit out of the three-county production area.

**EFFECTIVE DATE:** This final rule becomes effective December 5, 1996.

**FOR FURTHER INFORMATION CONTACT:** Belinda G. Garza, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (210) 682–2833, Fax # (210) 682–5942; or Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 690–3670, Fax # (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax # (202) 720–5698.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Order No. 906 (7 CFR Part 906), as amended, regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This 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 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this final 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 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 15 handlers of oranges and grapefruit who are subject to regulation under the order and approximately 2,000 orange and grapefruit producers in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of Texas oranges and grapefruit may be classified as small entities.

This final rule establishes a requirement that handlers (sellers) complete a Certification Form on all sales of over 400 pounds of oranges or grapefruit, or both, destined for resale inside the production area to help ensure that such oranges or grapefruit do not leave the production area without meeting order requirements. The use of this new form was unanimously recommended by the committee at a public meeting on May 29, 1996.

Implementation of the requirement to submit Certification Forms will result in a small increase in reporting requirements imposed on handlers. The added cost of complying with this requirement will be minimal and will be offset by benefits derived from enhanced compliance with the order and more complete statistical data beneficial to the entire industry. Therefore, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Under the order, Texas orange and grapefruit shipments to fresh markets in the United States, Canada, and Mexico are required to be inspected and are subject to grade, size, quality, container and pack requirements. Exempt from such handling requirements are shipments made: (1) within the production area (Cameron, Hidalgo, and Willacy counties in Texas); (2) in individually addressed gift packages which are not for resale; (3) under the 400-pound minimum quantity exemption provision; and (4) for relief or charity. In addition, fruit shipped to approved processors for processing are exempt from handling requirements. These handling requirements do not change substantially from season to season, and are in effect on a continuing basis subject to amendment, modification, or suspension as may be determined by the Secretary. Currently, the handling regulations under the order are effective from September 1 through June 30 each year.

Section 906.51 of the order provides authority for the committee, with the approval of the Secretary, to require that each handler furnish to the committee reports and other information as may be necessary for the committee to perform its duties under the marketing order.

The committee recommended the establishment of a requirement that handlers of Texas oranges and grapefruit complete a Certification Form on all sales of over 400 pounds of oranges or grapefruit or a combination of both that are not intended to leave the production area. (The order currently provides that 400 pounds of Texas oranges or grapefruit or a combination of both not for resale may be shipped per day outside the production area without having to meet marketing order requirements.) The form will require the following information: (1) names and addresses of the seller and the buyer; (2) description and quantity of the oranges or grapefruit sold; and (3) the destination of the fruit. In addition, the buyer will certify that fruit that is subsequently taken outside the production area for resale will be inspected in accordance with the order and its rules and regulations. The information compiled from use of this form will also provide the committee, its staff, and the industry with valuable statistics on fruit sold and marketed within the production area.

Handling of oranges and grapefruit inside the production area is not

regulated. While monitoring compliance during the 1995–96 season, committee staff became aware of a lack of documentation on fruit intended for use within the production area. Such fruit was on occasion found outside the production area without having been inspected and certified as meeting marketing order requirements. The committee recognized the need to make handlers responsible for ensuring that sales of their fruit intended for resale inside the production area, but subsequently leaving the production area, meet the provisions of the order. The Certification Form was developed to help track such sales. Currently, documentation on sales to peddlers and cash buyers, and other transactions not supported by an inspection certificate or a diversion report (used to track shipments for processing, relief, or charity), is minimal or non-existent. In the process of conducting its compliance program, the committee encountered difficulty in tracking movement of such citrus and detecting violations of the order.

The form will be completed by the seller (handler) in triplicate. The buyer will sign the certification statement on the form. One copy will be submitted by the handler to the committee within 7 days after the sale. One copy will be retained by the handler and the third copy will be given to the buyer. The forms will be reviewed by the committee's compliance staff as they are received and will be compared against handler records and inspection certificates. In addition, the form will also provide valuable statistical information on fruit sold and marketed for use within the production area. Currently, there is no tracking system for local use fruit. Collection of this information will fill a void in the committee's statistical database which will be used to determine total utilization of fruit and further assist the industry in making marketing decisions.

Throughout the past season, the committee considered possible options to monitor shipments of uninspected oranges and grapefruit. It was noted that local use fruit is presently not accounted for, which leaves a significant void in the committee's database. The committee considered, for example, compiling an ''approved peddler'' list, and allowing uninspected fruit to be sold only to those appearing on the list. This option was determined to be impractical for the industry, as such a list would change constantly and could never be accurately maintained. Development of the Certification Form was the only option believed to be viable. Use of the form will raise awareness of both the sellers' and buyers' responsibility to comply with the provisions of the marketing order. This option will result in the smallest increase in regulatory burden of the options considered, including the establishment of additional regulatory requirements, such as inspection of all shipments, regardless of destination. Therefore, the committee recommended that § 906.151 be amended by designating the existing paragraph in this section as (a) and adding a new paragraph (b).

The proposed rule concerning this action was published in the September 18, 1996, Federal Register (61 FR 49078), with a 30-day comment period ending October 18, 1996. No comments were received. The proposed rule also announced AMS's intention to request a revision to the currently approved information collection requirements issued under the marketing order. The informal collection requirements in the referenced section have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB No. 0581–0068.

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.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register (5 U.S.C. 553) because: (1) the Texas citrus shipping season began in mid-September; (2) this rule was unanimously recommended by the committee at a public meeting and all interested persons had an opportunity to express their views and provide input; (3) Texas orange and grapefruit handlers are aware of this rule and need no additional time to comply with the requirements; and (4) a 30-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

## PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 906.151 the existing text is designated as paragraph (a) and new paragraphs (b) and (c) are added to read as follows:

**§ 906.151 Reports.**

* * * * *

(b) Each handler who sells over 400 pounds of oranges or grapefruit or a combination of both for resale inside the production area shall, for each transaction, report to the committee on a form approved by it the following information:

(1) Name and address of seller;

(2) Name and address of buyer;

(3) Description and quantity of oranges or grapefruit sold;

(4) Destination of fruit;

(5) A statement that the buyer certifies that fruit that is subsequently taken outside the production area for resale will be inspected; and

(6) Such other pertinent information as the committee may require.

(c) The handler shall prepare the report in triplicate. The buyer shall sign the certification statement. The pink copy shall be submitted to the committee within 7 days. The green copy shall be retained by the handler and the blue copy shall be given to the buyer. Such form shall be reviewed by the committee staff and the information compiled for the committee's use.

Dated: November 27, 1996.

Robert C. Keeney,

*Director, Fruit and Vegetable Division.*

[FR Doc. 96–30859 Filed 12–3–96; 8:45 am]

BILLING CODE 3410–02–P

## 7 CFR Parts 911

**[Docket No. FV96–911–1 FR]**

## Limes Grown in Florida and Imported Limes; Increase in the Minimum Size Requirement

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule increases the current minimum size requirement for limes grown in Florida and for limes imported into the United States. This change was recommended by the Florida Lime Administrative Committee (Committee), the agency responsible for the local administration of the

marketing order covering limes grown in Florida. This rule increases the minimum size requirement from 1⅞ inches to 2 inches in diameter during the period of January 1 through May 31. Larger fruit tend to have a higher juice content. Therefore, the increase in fruit size will enable handlers to better meet the 42 percent juice content requirement specified in the regulations for limes shipped to the fresh market. The changes in import requirements are necessary under section 8e of the Agricultural Marketing Agreement Act of 1937.

**EFFECTIVE DATE:** This final rule becomes effective January 3, 1997.

**FOR FURTHER INFORMATION CONTACT:** Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: 202–720–5127, or Fax # 202–720–5698; or Aleck J. Jonas, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 941–299–4770, or Fax # 941–299–5169. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: 202–720–2491, Fax # 202–720–5698.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement No. 126 and Order No. 911 (7 CFR part 911), as amended, regulating the handling of limes grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

This rule is also issued under section 8e of the Act, which requires the Secretary of Agriculture to issue grade, size, quality, or maturity requirements for certain listed commodities, including limes, imported into the United States that are the same as, or comparable to, those imposed upon the domestic commodities regulated under the Federal marketing orders.

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This 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 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this final 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 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. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 10 handlers subject to regulation under the order and approximately 30 producers of Florida limes. There are approximately 35 importers of limes. Small agricultural service firms, which include lime handlers and importers, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A majority of these handlers, producers, and importers may be classified as small entities.

This rule increases the minimum size requirement for Florida and imported limes, which could impose some additional costs on handlers and importers, including small entities. However, any additional costs are minimal and will not impose a significant economic impact. The minimum size requirement will be applied to both small and large handlers and importers in proportion to this. With an increase in the minimum size, the larger limes are more likely to meet the 42 percent minimum juice content requirement. This change is expected to reduce the incidence of repacking, resulting in lower costs to handlers and importers. Increasing the minimum size also ensures that such limes will be more mature and have a higher juice content, which encourages repeat purchases by consumers. This increase in quality to the consumer is expected to increase returns to handlers, importers, and producers. Therefore, AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Section 911.48 of the lime marketing order provides authority to issue regulations establishing specific pack, container, grade and size requirements. These requirements are specified under Sections 911.311, 911.329 and 911.344. Section 911.51 requires inspection and certification that these requirements are met. Currently, the minimum size requirement for Florida limes is that they measure at least 1⅞ inches in diameter.

The destruction caused by Hurricane Andrew in 1992 has drastically reduced the lime acreage in Florida from 6,500 acres to approximately 1,500 acres. During the 1991–92 season, prior to Hurricane Andrew, 1,682,677 bushels of limes were assessed. For the 1993–94 season, assessments were collected on 228,455 bushels, and for the 1994–95 season, assessments were collected on 283,977 bushels of limes. These factors led the Committee to reconsider current marketing order requirements, including the 1⅞ inches in diameter size requirement.

The Committee met on January 10, 1996, and recommended to increase the minimum size requirement for Florida limes from 1⅞ inches to 2 inches in diameter during the period of January 1 through May 31. The recommendation passed by a vote of seven in favor to one opposed. The one dissenting voter did not comment on why he was opposed to the increase.

Florida lime production and the quantity of lime imports into the United States reach their lowest point from January through May. During the 1994–95 season, 32,035 bushels of Florida

limes and 2,402,987 bushels of imported limes, were shipped to the fresh market during the January through May production period. In comparison, 257,178 bushels of Florida limes and 5,980,669 bushels of imported limes, were shipped to the fresh market during the peak production period of June through December.

This rule needs to be effective by January 1, 1997, because during the January through May period, prices are generally higher while lime quality is lower. Market demand however, remains the same as in the peak production period. These factors have resulted in an incentive to pack low quality fruit. Also, the juice content requirement for limes shipped to the fresh market is 42 percent. Handlers have had difficulty meeting the requirement during the low production period because limes are less mature and have thicker skins. The thicker-skinned limes tend to have lower juice content.

Limes that are 2 inches or larger in diameter have a higher juice content than smaller limes. The larger limes, therefore, have a greater chance of meeting the 42 percent juice content requirement. Increasing the minimum size to 2 inches in diameter is expected to result in more fresh limes meeting the 42 percent juice content requirement. These limes are more likely to pass inspection without the expense of repacking and regrading the fruit which will reduce handling costs.

The increase in minimum size has a positive cost effect on consumers because it allows handlers of limes to provide the consumer with higher quality fruit at a reasonable cost. According to the Committee, the industry's past sales records indicate that consumers have a preference for the larger sized limes. Producers and importers of limes will also benefit by experiencing higher return rates.

Section 8e of the Act provides that when certain domestically produced commodities, including limes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule increases the minimum size requirement for Florida limes, a corresponding change also applies to imports.

In a separate rulemaking action, as finalized in the Federal Register on August 21, 1996 (61 FR 43141), the Department reduced the regulatory period for Florida limes and limes imported into the United States. That action modified language in both the domestic and import regulations to change the regulatory period to January 1 through May 31 from a continuous, year round, implementation.

Minimum grade, size, quality, and maturity requirements for limes imported into the United States are currently in effect under § 944.209 (7 CFR 944.209). This rule increases the minimum size requirement for imported limes from 1⅞ inches to 2 inches in diameter during the period of January 1 through May 31. By increasing the minimum size, this rule will result in more imported limes passing the 42 percent juice content requirement, providing higher quality fruit at a reasonable cost.

The largest exporter of limes to the United States is Mexico, with the heaviest volumes of lime shipments occurring between June 1 and December 31. Mexico exported 6,075,685 bushels of fresh limes to the United States during the 1994–95 season, while other import sources shipped a total of 201,053 bushels, combined.

The 1⅞ inches in diameter size requirement is not specifically stated in the lime import regulation. Therefore, no change is needed in the text of § 944.209.

The proposed rule concerning this action was issued on July 31, 1996, and was published in the August 5, 1996, Federal Register (61 FR 40551), with a 60-day comment period ending October 4, 1996. No comments were received. However, a request to extend the comment period to October 31, 1996, was received. This request was denied as the proposed rule already had an extended 60-day comment period. Therefore, the Department continues to believe that this was sufficient time to file comments. This rule needs to be implemented by January 1. Due to market conditions, the period from January through May is when the prices for limes tend to be higher and the quality of limes tends to be lower. This creates an incentive to pack low quality fruit that can hurt the marketing of limes. Because of this situation, the Department has determined not to reopen the comment period.

After thoroughly analyzing the comments received and other available information, the Department has concluded that this final rule is appropriate.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

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.

List of Subjects in 7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

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

1. The authority citation for 7 CFR part 911 continues to read as follows:

Authority: 7 U.S.C. 601–674.

## PART 911—LIMES GROWN IN FLORIDA

**§ 911.344 [Amended]**

2. In Section 911.344, paragraph (a)(3) the words ''at least 1⅞ inches'' are revised to read ''at least 2 inches''.

Dated: November 27, 1996

Robert C. Keeney,

*Director, Fruit and Vegetable Division.*

[FR Doc. 96–30860 Filed 12–3–96; 8:45 am]

BILLING CODE 3410–02–P

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 60

**RIN 3150–AD51**

### Disposal of High-Level Radioactive Wastes in Geologic Repositories; Design Basis Events

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission is amending its regulations on the protection of public health and safety from activities conducted at a geologic repository operations area (GROA) before permanent closure. In particular, the final rule addresses the measures that are required to provide defense in depth against the consequences of ''design basis events.'' These measures include prescribed design requirements, quality assurance requirements, and the establishment of a preclosure controlled area from which members of the public can be excluded.

**EFFECTIVE DATE:** January 3, 1997.

**FOR FURTHER INFORMATION, CONTACT:** Dr. Richard A. Weller, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7287.

**SUPPLEMENTARY INFORMATION:**

Background

Under the Nuclear Waste Policy Act of 1982, as amended, the U.S. Nuclear

Regulatory Commission exercises licensing and related regulatory authority with respect to geologic repositories that are to be constructed and operated by the U.S. Department of Energy (DOE) for the disposal of high-level radioactive waste. The Commission's regulations pertaining to these geologic repositories appear at 10 CFR part 60. In recent years, NRC, in conjunction with its Federally-Funded Research and Development Center, the Center for Nuclear Waste Regulatory Analyses, completed a comprehensive review of the requirements of part 60 regarding their clarity and sufficiency to protect public health and safety. NRC focused particular attention on any matters that may be ambiguous, insufficient for their intended purpose, or inconsistent with other expressions of its regulatory policy. Independently, DOE conducted a similar review of part 60.

The NRC review identified deficiencies regarding the clarity and sufficiency of the current part 60 requirements to protect public health and safety for the full range of credible conditions or events that may occur at an operating repository, including those low-probability events that have potentially serious consequences. NRC also noted that certain elements of existing part 60 differ from counterpart requirements in other NRC rules where greater consistency in language would be beneficial. DOE's independent review of Part 60 requirements identified similar deficiencies in these requirements. To address these issues, DOE filed a petition for rulemaking (PRM), PRM–60–3, on April 19, 1990.

In response to the DOE petition and the results of the NRC review of part 60, the Commission published a proposed rule for public comment in the Federal Register on March 22, 1995 (60 FR 15180) to clarify the requirements for protection of public health and safety related to activities conducted at a GROA before its permanent closure. In particular, the proposed rule provided new and modified definitions for certain terms (including the definition of ''important to safety,'' with reference to structures, systems, and components), dose criteria for accident conditions, and requirements for the establishment of a preclosure controlled area from which members of the public can be excluded when necessary. In an accompanying notice (March 22, 1995; 60 FR 15190) the Commission also granted in part, and denied in part, the specific proposals in the DOE petition. For a fuller discussion of the PRM, the proposed rule, and the partial grant/partial denial of the DOE petition, see the Federal Register notices cited above. As noted in the Federal Register notice for the proposed rule (60 FR 15180) and as intended in subsequent discussions in this notice, unless the specific context suggests otherwise, the terms ''provisions,'' ''requirements,'' ''standards,'' and ''criteria'' are generally used interchangeably; the term ''limit'' (as in ''dose limit'') is generally used to refer to a specific type of requirement or criterion; and the term ''rule'' is generally used to refer to the entire set of requirements or criteria (e.g., part 60). This final rule completes NRC action related to PRM–60–3.

Lastly, the Commission notes that, consistent with the mandates of the Energy Policy Act of 1992, the Environmental Protection Agency (EPA) is developing site-specific environmental radiation protection standards for a potential repository at Yucca Mountain, Nevada. In this regard, the Act specifies that, within one year after promulgation of the EPA standards, the Commission must promulgate a rule so that Commission regulations are consistent with the new EPA standards. Although the primary focus of the new EPA standards is on the postclosure period of repository performance, the staff will ensure that the current modifications to part 60 proposed herein, which focus on the period of repository operations *before* permanent closure, are consistent with the new EPA standards. To the extent any inconsistencies between NRC and EPA requirements are identified, they will be addressed in the planned future rulemaking by NRC to address new EPA standards.

## Public Comments on the Proposed Rule

A period of 90 days was specified in the Federal Register for public comments on the proposed rule. The Commission specifically sought public comments on: (1) The appropriateness of the proposed 0.05 Sv (5 rem) dose limit in new 10 CFR 60.136 as the repository design basis for protection of public health and safety during accident conditions, and (2) the rationale supporting the proposed 0.05 Sv (5 rem) dose limit. Ten sets of comments were received on the proposed rule from the following organizations and individuals: (1) The Clean Water Fund of North Carolina (CWFNC); (2) Mr. Vernon J. Brechin; (3) DOE, Office of Civilian Radioactive Waste Management; (4) EPA, Office of Federal Activities; (5) Nye County, Nevada, Nuclear Waste Repository Project Office; (6) Virginia Power Company; (7) Nuclear Energy Institute (NEI); (8) Environmental Coalition on Nuclear Power (ECNP); (9) Wisconsin Electric Power Company; and (10) Mr. Marvin I. Lewis.

The principal issues raised in the comments are summarized below. (Comments that are duplicative, editorial, or beyond the scope of the rulemaking are not discussed herein but have been considered in the analysis of the public comments.) For the reasons indicated, the Commission has decided to adopt the amendments substantially in the form proposed in the March 22, 1995, Federal Register notice (60 FR 15180) but with the changes noted that reflect the Commission's analysis of the public comments.

### *1. Controlled Area—Waste Isolation*

DOE noted that the supplementary information in the proposed rule referred to the ''controlled area'' as one ''* * * (within which waste isolation is to be ensured after permanent closure),'' DOE observed that this is inconsistent with the part 60 definition of ''controlled area,'' which does not refer to waste isolation. DOE recommended that the Commission delete the parenthetical phrase in the supplementary information.

The Commission agrees that the parenthetical phrase does not properly characterize the definition of ''controlled area.'' However, rather than deleting the parenthetical phrase altogether, the Commission has modified the phrase to accurately reflect the definition of ''controlled area'' and its focus on postclosure activities.

### *2. Multiple Failure Scenarios*

DOE noted that the supplementary information under § 60.136 seemed to indicate that multiple independent failure scenarios would be considered to be Category 2 design basis events and observed that, typically, nuclear safety analyses are not required to assume multiple failures of safety-related systems unless they are all credible consequences of the initiating event. DOE recommended that the Commission clarify how it intends to review the acceptability of repository systems, structures, and components in the context of the new rule.

The Commission agrees with this comment and has revised the supplementary information to clarify how it intends to review the analysis in the DOE license application to demonstrate compliance with the requirements of § 60.136.

### *3. Probability Bounds for Design Basis Events*

In the Section-by-Section Analysis of § 60.136 in the proposed rule, the Commission indicated that the lower

bound for Category 2 design basis events is on the order of $1\times10^{-9}$ per year (i.e., events with probabilities of occurrence less than $1\times10^{-9}$ per year would generally be screened from further consideration due to their negligible contribution to overall risk). DOE and NEI objected that this lower bound is much too low and unjustified. DOE recommended a lower bound of $1\times10^{-6}$ per year and NEI recommended a lower bound in the range of $1\times10^{-6}$ per year to $1\times10^{-7}$ per year. On the other hand, ECNP recommended that the most improbable sequences and combinations of events and accidents (Category 2 and beyond) should be evaluated in repository accident analysis.

The Commission agrees with DOE and NEI that the lower probability bound discussed in the proposed rule for Category 2 design basis events is too low and is unjustified. The Commission considers that, on the basis of repository risk perspective, a lower probability bound of $1\times10^{-6}$ per year is appropriate for these events. The Commission recognizes that the estimated consequences from Category 2 design basis events are somewhat limited and would not likely exceed several tenths of Sv (several tens of rem). At this consequence level, the estimated risk of cancer fatality from events with a probability lower than $1\times10^{-6}$ per year is less than $1\times10^{-8}$ per year. To put this risk in perspective, the International Commission on Radiological Protection[1] notes that a fatal cancer risk in the range of $1\times10^{-6}$ to $1\times10^{-5}$ per year from exposure to radiation would likely be acceptable to members of the public. As such, Category 2 design basis events which result in fatal cancer risks on the order of $1\times10^{-8}$ per year or lower do not contribute significantly to individual risk. Accordingly, events with probabilities of occurrence lower than $1\times10^{-6}$ per year can be screened from further consideration in repository risk analysis.

The Commission has revised the Section-by-Section Analysis of § 60.136 to reflect a lower bound for Category 2 design basis events on the order of $1 \times 10^{-6}$ per year.

*4. Definition of ''Important to Safety''—Engineered Features*

DOE noted that the phrase ''engineered structures, systems, and components,'' currently in the definition of ''important to safety,'' was removed from the new definition and observed that it is clearly the intent of the regulation to apply the definition to engineered systems, not natural systems.

The Commission agrees with this comment and has revised the definition of ''important to safety'' to clarify this intent.

*5. Applicability of Environmental Protection Agency Standards to the Management and Storage of High-Level Waste*

DOE stated that the proposed rule did not address all of the regulatory uncertainty associated with dose limits for design basis events because both the existing rule and the proposed rule appear to require compliance with both EPA radiation protection standards and part 20 radiation standards and there is an inconsistency between these two standards. Virginia Power noted that the definition of ''important to safety'' establishes the part 20 limits that are referenced in 10 CFR 60.111(a) as the acceptance criteria for the Category 1 design basis events and concluded that this seems to be inappropriate. Virginia Power stated that part 20 establishes occupational dose limits and radiation dose limits for members of the public, that these limits are expressed as annual limits, and that these limits are associated with normal licensed activities—not design basis events. Virginia Power considered that it is not appropriate to use part 20 limits to evaluate specific events. Virginia Power further considered that acceptance criteria for design basis events are associated with the specific consequences of those events, as for example in § 60.136 for the Category 2 design basis events, and that appropriate acceptance criteria will need to be developed if Category 1 design basis events are retained by the final rule.

The Commission agrees with DOE that both the dose limits and the methodology for calculating doses to members of the public in the EPA standards differ from the dose limits and methodology for calculating doses to members of the public in part 20, subpart D. Notwithstanding the differences between these standards, the staff does not consider that there is any regulatory uncertainty regarding applicable dose limits for Category 1 design basis events. In DOE's demonstration of compliance, either the EPA standards or the part 20 standards may be more limiting or controlling than the other, but that does not relieve DOE of the requirement to comply with both standards. As such, the Commission has made no changes to the proposed rule to address DOE's concerns about the differences between part 20 and the EPA standards.

The Commission disagrees with Virginia Power that part 20 limits are inappropriate. The Commission's numerical radiation protection standards are codified in part 20 and apply to operations at a geologic repository by virtue of 10 CFR 20.1002 and § 60.111(a). However, it is not the Commission's intent that it is necessary to use the annual limits in part 20 to evaluate specific Category 1 design basis events on an individual basis. Instead the Commission intends that the *sum* of the annual doses, exposures, and releases from *all* Category 1 design basis events shall not exceed the limits specified in part 20 and in the EPA standards.

*6. Preclosure Controlled Area*

DOE expressed a concern that the use of the word ''immediately'' in the definition of ''preclosure controlled area'' could lead to an implication that the boundary must be next to the GROA. DOE also expressed a concern that the use of the word ''nearest'' in § 60.136(b) (i.e., '' * * * no individual located on or beyond the nearest boundary of the preclosure controlled area * * *'') is confusing.

The Commission agrees with these comments and has: (1) deleted the word ''immediately'' in the definition of ''preclosure controlled area'' in 10 CFR 60.2, (2) changed the phrase ''nearest boundary'' to ''any point on the boundary'' in the definition of ''important to safety'' in § 60.2 and in the design requirements of the geological repository operations area in § 60.136(b).

*7. Definition of Site*

DOE recommended that the definition of ''site'' should include ''preclosure'' and ''postclosure controlled areas.''

The Commission agrees with this comment and has modified the definition of ''site'' to reflect its meaning during the period before permanent repository closure (i.e., the operational period), as well as the period following permanent closure.

*8. Effluent Control*

DOE stated that, with the deletion of the term ''during normal operations,'' the application of the part 20 effluent limits invoked by § 60.111(a) is not clear. DOE recommended that 10 CFR 60.132(c)(1) be revised to clarify that the latter section is applicable only to Category 1 design basis events.

The Commission agrees with this comment and has revised § 60.132(c)(1)

[1] Recommendations of the International Commission on Radiological Protection. ICRP Publication 26, January 1977.

to clarify that this section is applicable only to Category 1 design basis events.

*9. Criticality Control*

DOE noted that the Commission intended to clarify the requirements pertaining to criticality control, currently in 10 CFR 60.131(b)(7), but that some confusion concerning those requirements remains. DOE pointed out that the proposed criticality control requirements in § 60.131(h) refer to ''isolation of radioactive waste,'' a phrase with postclosure connotations, while noting that systems ''must be designed for criticality safety assuming occurrence of design basis events,'' a phrase which has preclosure implications. Furthermore, DOE argued that the last sentence in § 60.131(h) could be interpreted as requiring a deterministic demonstration of criticality safety over the entire period of regulatory concern. However, given the time frames involved, DOE considered probabilistic analyses to be an essential part of demonstrating long-term criticality safety.

The Commission considers that the applicability of the criticality control requirements proposed in § 60.131(h) is clear with respect to preclosure considerations but agrees with DOE that uncertainty remains with respect to the applicability of the criticality control requirements to the postclosure period. However, the Commission intends to address this remaining uncertainty in a future rulemaking to make the NRC requirements consistent with the revised EPA standards that are currently under development, as mandated by the Energy Policy Act of 1992. Accordingly, in this final rule, § 60.131(h) is promulgated, as proposed in the proposed rule.

*10. The Use of the Terms ''Important to Safety,'' ''Accidents,'' ''Normal Conditions,'' ''Anticipated Operational Occurrences,'' and ''Design Basis Events'' in part 60.*

CWFNC stated that there was not any ambiguity in the current use of the terms ''important to safety'' and ''accidents'' in part 60. ECNP stated that the terms ''normal conditions,'' ''anticipated operational occurrences,'' and ''accidents'' are not equivalent to nor adequately described by the term ''design basis events.''

The Commission disagrees with CWFNC that there is no ambiguity in the current use of the terms ''important to safety'' or ''accidents'' in part 60. The latter term is undefined in part 60, and there is uncertainty about its meaning with respect to the range of events the term encompasses. The full range of Category 1 design basis events would not generally be considered as ''accidents,'' especially those events occurring regularly or moderately frequently. However, certain lower frequency Category 1 events, which occur one or more times during the operating lifetime of a facility and are otherwise known as ''anticipated operational occurrences,'' have at times been identified as ''accidents.'' But ''anticipated operational occurrences'' are conditions of normal operation which are not to be confused with the unlikely, but credible and potentially significant, Category 2 design basis events. As such, the current definition of ''important to safety'' is unclear with respect to its intended applicability to the design of structures, systems, or components for normal operations, including anticipated operational occurrences. Further, with the focus on protection of members of the public in unrestricted areas, the current definition of ''important to safety'' does not explicitly address protection for the occupational work force. The uncertainty is not related to interpreting the meaning of ''unrestricted area'' but, rather, is related to the narrow focus of public exposure in unrestricted areas. Lastly, the value of 0.005 Sv (0.5 rem) as a dose limit in unrestricted areas for ''accident'' conditions lacks consistency with a corresponding limit in Part 72 and with dose values established as guidance for selected accidents (fuel handling and cask drop events) at Part 50 facilities (commercial power reactors).

Notwithstanding the comments offered by ECNP, the Commission considers that the definition of ''design basis events'' in the proposed rule does adequately define that term and that the supplementary information in the proposed rule does adequately describe the relationship between the terms ''normal conditions,'' ''anticipated operational occurrences,'' ''accidents,'' and ''design basis events.'' In this regard, it was the Commission's intent to supplant undefined terms in the rule (i.e., ''normal conditions,'' ''anticipated operational occurrences,'' and ''accidents'') with a defined term (i.e., ''design basis events'').

For the above reasons, the Commission has not revised the definitions in the proposed rule for ''design basis events.'' As discussed in items 4 and 6 above, editorial changes have been made to the definition of ''important to safety,'' but these changes are unrelated to the arguments advanced by CWFNC or ECNP.

*11. Radiation Protection Standards*

CWFNC stated that a 0.005 Sv (0.5 rem) limit would not be overly protective of public health and safety and there is no reason to seek a weaker standard. CWFNC suggested modifying part 20 to clarify any ambiguities in radiation protection standards for repositories. ECNP offered a number of comments related to radiation protection standards:

- The Commission should require DOE to provide design basis accident analyses for more than undefined ''critical design basis events, singly'' and should require demonstration that doses would be kept far below the maximum permissible dose limits, with an as low as is reasonably achievable requirement at least comparable with that for operating reactors.
- The part 60 limits must be much more stringent than for operating nuclear facilities.
- The limit of radiation exposure should be no higher than the most restrictive exposure limit that EPA imposes for any licensee or other source of regulated nuclear activity.
- A 0.005 Sv (0.5 rem) limit should be impermissible for an individual dose from a waste site.
- The most stringent level of worker protection, better than part 20, should be required.
- Part 20 standards are not restrictive enough for the purpose of public health protection with respect to the storage and disposal of radioactive waste.
- The definitional alteration of the term ''important to safety'' is not adequate to assure health protection for the public because the proposed Categories 1 and 2 numerical limits for radiation exposures are based on standards that have failed to take into account the noncancer but adverse health effects of chronic low-dose radiation exposures that have been reported in the literature since development of NRC's part 20 revision.
- Extremely conservative radiation protection standards should be utilized in repository design and performance criteria, and a zero release facility design goal should be required for all radioactive waste management.
- An acceptable rationale for the 0.05 Sv (5 rem) dose limit proposed in the proposed rule is totally absent.

The Commission acknowledges that the 0.005 Sv (0.5 rem) dose limit in the definition of ''important to safety'' in the existing rule could be construed to be an implicit basis for designing structures, systems, and components to prevent or mitigate the consequences of accidents at the boundary of the

unrestricted area. On the other hand, the 0.005 Sv (0.5 rem) dose limit could also be interpreted more narrowly, to identify only those structures, systems, and components that are subject to additional design requirements and a quality assurance program to ensure performance of intended functions. See § 60.131(b) and § 60.151. In short, the 0.005 Sv (0.5 rem) dose limit in the definition of ''important to safety'' in the existing rule is, in the Commission's view, subject to conflicting interpretations.

As previously discussed, the Commission's comprehensive review of part 60 identified deficiencies in both the clarity and sufficiency of requirements to protect workers and public health and safety. Among the identified deficiencies is the regulatory uncertainty created by possible conflicting interpretations that could be given to the 0.005 Sv (0.5 rem) dose limit in the ''important to safety'' definition described above and by the absence of an explicit design basis dose limit in Subpart E of the existing rule. An objective of this rulemaking is, therefore, to resolve the uncertainty in part 60, as well as remedy the incomplete definition of ''important to safety'' that fails to address protection of both workers and members of the public during Category 1 design basis events (i.e., ''normal conditions,'' including ''anticipated operational occurrences''). The Commission has addressed these deficiencies with the addition of new § 60.136, which now provides explicit design basis accident dose criteria for repository structures, systems, and components, and modification of the definition of ''important to safety'' to include the broader interests of both worker and public health and safety for the full range of conditions or events that may occur before repository closure. The Commission believes that these amendments, as well as the others as described herein, clarify and enhance the provisions in the rule to protect worker and public health and safety.

It was not the intent of this rulemaking to modify, in any way, the Commission's numerical radiation protection standards. As discussed earlier, these standards are codified in part 20 and apply to operations at a geologic repository by virtue of § 20.1002, as well as § 60.111(a). The Commission believes that these standards continue to be appropriate for its licensees and provide adequate protection of worker and public health and safety at a repository. As such, comments by CWFNC and ECNP about possible modifications to the Commission's radiation protection standards as they would apply to an operating repository are beyond the scope of this rulemaking.

The Commission agrees with ECNP that the term ''critical design basis events'' is undefined and, in the Section-by-Section Analysis of § 60.21 of this final rule, has changed ''critical design basis events'' to ''Category 2 design basis events.'' With regard to the scope of design basis accidents that should be considered in the license application, the Commission previously addressed this issue in the discussion of probability bounds for Category 2 design basis events and determined that events with probabilities of occurrence lower than $1 \times 10^{-6}$ per year could be screened from further consideration due to their negligible contribution to individual risk.

Regarding the rationale for the 0.05 Sv (5 rem) dose limit in § 60.136, the Commission continues to believe that the potential risks to members of the public from an operating repository are very small. In light of this limited risk, the 0.05 Sv (5 rem) dose limit provides an adequate margin of safety and an appropriate basis for the design of repository structures, systems, and components to prevent or mitigate the consequences of low probability, but credible events. The Commission's reasoning behind the 0.05 Sv (5 rem) dose limit can be found in the Section-by-Section Analysis of § 60.136 that appears later in this notice.

*12. Exclusion of the Public From Preclosure Controlled Area*

Vernon J. Brechin objected to the use of the word ''can'' versus ''will'' in the description of preclosure controlled area.

The Commission disagrees with this comment. It is not the Commission's intention to generally exclude members of the public from the preclosure controlled area (which would be the ''controlled area'' as defined in 10 CFR 20.1003). However, access to the preclosure controlled area can be limited by the licensee for any reason (not necessarily one related to radiation protection). Within the preclosure controlled area will be a ''restricted area'' (as defined in § 60.2 and § 20.1003). Access to a restricted area must be controlled for purposes of radiation protection. Members of the public in the preclosure controlled area will be subject to the dose limits for members of the public in 10 CFR 20.1301. However, an individual who receives occupational dose in the preclosure controlled area will be subject to the occupational dose limits of part 20, subpart C. All doses in a restricted area are occupational doses. The size of the preclosure controlled area is not specified by the regulations because it will be dependent upon the particular activities conducted during the operational period.

*13. Definition of Design Basis Events*

Virginia Power and NEI recommended that the definition of ''design basis events'' should make clear that the normal operations associated with receiving, handling, packaging, storing, emplacing, and retrieving high-level waste are not design basis events.

The Commission disagrees with this comment. It is the Commission's intent that events occurring regularly or frequently during the course of normal operations *are* considered as Category 1 design basis events. Category 1 design basis events effectively embody repository activities and conditions previously identified in part 60 as ''normal operations, including anticipated operational occurrences.'' In this regard, the Commission intends the part 20 dose limits to be applicable to the conduct of repository activities, such as receiving, handling, packaging, storing, placing, and retrieving high-level waste.

*14. Definition of ''Important to Safety''—Function*

Virginia Power noted that in the proposed rule, the definition of ''important to safety'' refers to ''* * * (1) to provide reasonable assurance that high-level waste can be received, handled, packaged, stored, emplaced, and retrieved without exceeding the requirements of (10 CFR) 60.111(a) for Category 1 design basis events; or * * *.'' Virginia Power recommended that this part of the definition should be revised to make it clear that the focus of important to safety is design basis events and *not* the normal operations that are described by the definition in the proposed rule.

The Commission disagrees with this comment. As explained in Item 13, the Commission intends that events occurring regularly or frequently during the course of normal operations are considered as Category 1 design basis events.

*15. Definition of ''Important to Safety''—Quality Assurance Issues*

Virginia Power and NEI stated that the definition of ''important to safety'' proposed in the proposed rule would apply full Quality Assurance (QA) requirements to almost every system and component of the repository, and that the latter definition does not establish a graded QA system to

properly distinguish systems that are ''important to safety'' and ensure that the full QA program is only applied to those systems.

The Commission disagrees with this comment. When identifying items ''important to safety,'' if it is determined that a particular structure, system, or component is essential to maintaining doses below part 20 limits during normal operations (or during *any* Category 1 design basis event), then that structure, system, or component must be designated as ''important to safety.'' The list of structures, systems, and components ''important to safety,'' as well as the list of engineered barriers ''important to waste isolation,'' are collectively referred to as the ''Q-list'' and are subject to the QA provisions of part 60, subpart G. The Commission supports a graded approach to meeting the QA provisions of part 60. Such an approach is consistent with the NRC staff's ''Technical Position on Items and Activities in the High-Level Waste Geologic Repository Program Subject to QA Requirements (NUREG–1318).'' The guidance given in that technical position (TP) is still applicable under the rule's changes. The TP describes a graded application of QA measures consistent with that applied to other facilities (e.g., nuclear power reactors) licensed by the Commission. In this regard, the application of QA program requirements to repository structures, systems, and components would generally be commensurate with their importance to safety.

*16. Design Bases—Similarities Between GROA Facility and Other Facilities Licensed by NRC*

ECNP stated that it is wrong to liken design basis for a waste repository (or long-term storage) facility to design basis for an operating nuclear reactor or other contemporary nuclear facility because of the longevity of the hazard and uncertainties of future monitoring and control.

The Commission disagrees with this comment. The design bases provided in the rule are for operations at the GROA and not for postclosure performance. Because operations at the repository are expected to be similar to operations at other facilities licensed by the Commission (e.g., 10 CFR part 72 facilities), the Commission believes that it is appropriate that their design bases be comparable.

*17. The Phrase ''At All Times''*

ECNP recommended that the phrase ''at all times'' should be retained throughout part 60.

The Commission disagrees with this comment. The phrase ''at all times'' was originally included in the regulation to emphasize the need to design the GROA such that retrieval activities, if found necessary, would be conducted in accordance with part 20. The Commission continues to interpret the regulation in this manner but has removed the phrase ''at all times'' from § 60.111 in the rule to clarify that the limits of part 20 apply to Category 1 design basis events and that the separate design bases of § 60.136 apply for Category 2 design basis events. Further, the Commission recognizes that conformance to the regulations should not hinder any actions that are necessary to protect public health and safety, such as lifesaving or maintaining confinement of radioactive materials (May 21, 1991; 56 FR 23365). The phrase ''at all times'' is ambiguous in this respect and was therefore removed.

*18. As High as Reasonably Achievable (AHARA) Design Standard for the GROA*

ECNP recommended that NRC adopt an AHARA standard with respect to criteria for the design of the GROA. ECNP states that the purpose of such a standard would be to provide an extra measure of conservatism in the design. ECNP further states that, for an operating nuclear facility, regulatory changes over time that mandate tighter standards and reduced emissions can be accommodated by means of backfitting, but this is not so readily accomplished at a disposal facility.

The Commission disagrees with this comment and considers that the requirements of part 60, as amended in this rulemaking, are sufficient to ensure public health and safety. The Commission also considers that backfitting, if necessary, can be accomplished at a disposal facility.

Section-by-Section Analysis

*Section 60.2. Definitions*

The amendments involve 10 definitions needed in part 60.

The term ''preclosure controlled area'' is new. It is essentially the same as the term ''preclosure control area'' proposed by DOE in its petition (PRM–60–3) and corresponds closely to the term ''controlled area,'' as defined in 10 CFR 72.3. The term ''preclosure controlled area'' is adopted because part 60 already refers to a ''controlled area'' (which area has been committed to use as a geologic repository and from which incompatible activities would be restricted following permanent closure). The function of the new term is to delimit an area over which the licensee exercises control of activities to meet regulatory requirements. Control includes the power to exclude members of the public, if necessary. Because part 60 (unlike part 72) involves ongoing underground operations and timeframes of concern over centuries and millennia, language in the definition is included that, consistent with its function, limits the area to the surface and limits the duration to the period up to, and including, permanent closure.

The existing term ''controlled area'' is renamed ''postclosure controlled area,'' to avoid any confusion or misunderstanding about this term in relation to its use in parts 20 and 72. However, no substantive change is intended for the ''postclosure controlled area'' because this is a change in nomenclature only. Consistent with this nomenclature change, the term ''controlled area'' is changed to ''postclosure controlled area,'' where it appears in the definitions for ''accessible environment,'' ''disturbed zone,'' and ''site.''

The term ''important to safety'' is amended to address the issues previously discussed. The existing provision is unclear and fails to ensure proper levels of protection of public and worker health and safety for the broad range of conditions or events that might occur at a repository site. This is an important term because it is the predicate for required design features as well as required quality assurance measures that provide defense-in-depth. The Commission is retaining the quantitative features of the existing definition but is specifying different numerical limits for each of the two categories (1 and 2) of design basis events. The structures, systems, and components ''important to safety'' are those necessary: (1) To provide reasonable assurance that the requirements of § 60.111(a) would be observed for Category 1 design basis events; or (2) to prevent or mitigate Category 2 design basis events that could result in doses equal to, or greater than, the values specified in (new) § 60.136 to any individual located on or beyond any point on the boundary of the preclosure controlled area.

Although the term ''design bases'' appears in existing part 60, in § 60.21(c)(2), it was not defined. As the previous discussion makes clear, ''design bases'' should be understood in relation to that range of events, including external natural or man-induced events, that is taken into account in the design, and, in particular, in relation to conditions that could result in radiological consequences

beyond specified limits. The definition in part 72 is inserted, without change, into the list of defined terms in § 60.2.

The inclusion of a definition of ''design basis events'' serves two purposes. First, it identifies a set of events (referred to elsewhere as Category 1 design basis events) that must be taken into account in demonstrating compliance with the requirement to show, with reasonable assurance, that the provisions of part 20 will be met. (This set of events is described as ''* * * those natural and human-induced events that are reasonably likely to occur regularly, moderately frequently, or one or more times before permanent closure of the geologic repository operations area.'') Second, it identifies an additional set of events (previously referred to as Category 2 design basis events) that must be taken into account in applying the Commission's defense-in-depth philosophy. (This set of events is described as those ''* * * other natural and human-induced events that are considered unlikely, but sufficiently credible to warrant consideration, taking into account the potential for significant radiological impacts on public health and safety.'') The Commission recognizes that the criterion of ''sufficiently credible to warrant consideration'' is inexact, leaving its application to a consideration of the particular site and design that are the subjects of a license application. Generally, the Commission would expect that such design basis events would include as broad a range of external phenomena as would be taken into account in defining the design basis for other regulated facilities, including nuclear reactors. The Commission would also expect that the analysis of a specific design basis event would require an analysis which includes an initiating event (e.g., an earthquake) and the associated combinations of repository system or component failures that can potentially lead to exposure of the public to radiation.

The definitions of ''restricted area'' and ''unrestricted area'' are amended to conform with the definitions in part 20. The current definitions in part 60 do not precisely conform to the current part 20 because no change was made to these part 60 definitions when part 20 was revised.

The amendments of § 60.2 adopted in this final rule differ from the amendments of § 60.2 proposed in the proposed rule (March 22, 1995; 60 FR 15180) in the following respects: (1) The revised definitions of ''restricted area'' and ''unrestricted area'' were not proposed in the proposed rule; (2) in the definition of ''important to safety,'' the phrases ''features of the repository'' and ''nearest boundary'' in the proposed rule were changed to ''engineered features of the repository'' and ''any point on the boundary,'' respectively; (3) in the definition of ''preclosure controlled area'', the phrase ''immediately surrounding the geologic repository operations area'' in the proposed rule was changed to ''surrounding the GROA''; and (4) in the definition of ''site'', the phrase ''location of the postclosure controlled area'' was changed to ''location of the preclosure controlled area, or of the postclosure controlled area, or both.'' The rationale for the revised definitions of ''restricted area'' and ''unrestricted area'' is provided in the preceding paragraph. The rationale for the other changes is discussed under ''Response to Public Comments on the Proposed Rule.''

*Section 60.8. Information Collection Requirements: OMB Approval*

NRC is updating 10 CFR 60.8, ''Information Collection Requirements: OMB Approval,'' to reflect the fact that subsequent to the original issuance of part 60, NRC requested, and obtained Office of Management and Budget (OMB) approval for the part 60 ''Information Collection Requirements.'' Section 60.8 was to be corrected the first time other revisions were made.

The amendment of § 60.8 adopted in this final rule differs from the amendment of § 60.8 in the proposed rule (60 FR 15180) in that the term ''Paperwork Reduction Act of 1980,'' in the proposed rule, has been changed to the term ''Paperwork Reduction Act of 1995'' in the final rule.

*Section 60.21. Content of Application*

The DOE petition suggested that provision for accident analysis might be accomplished by amendment of § 60.111. The Commission, instead, is requiring an accident analysis as part of the content of the application section (i.e., § 60.21). The language requires that the application address the potential dose, to any individual located on or beyond any point on the preclosure controlled area boundary, that is attributable to Category 2 design basis events. The procedure that is envisaged is that the applicant would address the Category 2 design basis events, singly, and demonstrate, by its analysis, that the doses to any individual located on or beyond any point on the preclosure controlled area boundary would be in accordance with the applicable requirements. The language serves the same purpose as the counterpart section of part 72 (namely, 10 CFR 72.24[m]).

The final rule also reflects the position that the applicant must demonstrate that the requirements of part 20 and the EPA standards will be met, assuming the occurrence of Category 1 design basis events. For this analysis, the applicant would calculate the *sum* of the doses, exposures, and releases from *all* Category 1 design basis events to ensure that these results do not exceed the limits specified in part 20 and in the EPA standards.

The Commission also is eliminating certain terms in Part 60 that are undefined and may be subject to differing interpretations—specifically, the terms ''normal conditions,'' ''anticipated operational occurrences,'' and ''accidents.'' These terms are supplanted by the new term ''design basis events.'' Besides enhancing clarity of expression, the new language better reflects the articulated regulatory framework. Lastly, where the term ''controlled area'' appears in the language of this section, it is changed to ''postclosure controlled area.''

*Section 60.43. License Specification*

The term ''controlled area'' is changed to ''postclosure controlled area.''

*Section 60.46. Particular Activities Requiring License Amendment*

The term ''controlled area'' is changed to ''postclosure controlled area.''

*Section 60.51. License Amendment for Permanent Closure*

The term ''controlled area'' is changed to ''postclosure controlled area.''

*Section 60.102. Concepts*

The term ''controlled area'' is changed to ''postclosure controlled area.''

*Section 60.111. Performance of the Geologic Repository Operations Area Through Permanent Closure*

The Commission is deleting the phrase ''at all times'' from the performance objective of § 60.111(a). This change clarifies that this requirement does not apply to radiation exposures, levels, and releases from Category 2 design basis events.

*Section 60.121. Requirements for Ownership and Control of Interests in Land*

The term ''controlled area'' is changed to ''postclosure controlled area.''

*Section 60.122. Siting Criteria*

The term ''controlled area'' is changed to ''postclosure controlled area.''

*Section 60.130. Scope of Design Criteria for the Geologic Repository Operations Area*

The Commission is modifying the title of this section to the term ''General Considerations'' and is adding clarifying language, to the existing discussion, to indicate that §§ 60.131 through 60.134 specify the minimum criteria for the design of those structures, systems, and components important to safety, or important to waste isolation. These changes are necessary to provide consistency with the modified definition of ''important to safety'' (§ 60.2), as well as to clarify the purpose of these criteria. These changes also provide consistency with the corresponding ''minimum'' design criteria, for an MRS, in part 72.

*Section 60.131. General Design Criteria for the Geologic Repository Operations Area*

Consistent with the modifications to § 60.130, as described above, the Commission is deleting the reference to ''Structures, systems, and components important to safety,'' in the title of § 60.131(b), and re-numbering the current criteria in §§ 60.131(b)(1) through 60.131(b)(10), as appropriate. This change eliminates the confusion in the existing rule related to the identification of only the criteria in § 60.131(b) as ''important to safety.'' It also resolves the present incongruity with § 60.131(b)(7), ''criticality control,'' regarding the reference to waste ''isolation'' (a postclosure term) in the requirement.

The current rule employs the term ''normal and accident conditions,'' or similar expression, in several places. However, the conditions that must be addressed under this language are not well-defined. The Commission is remedying this situation by replacing current terminology with references to ''design basis events,'' thereby ensuring that the design appropriately takes into account the consequences of all design basis events (i.e., as discussed in this document, Category 1 and 2 design basis events). Accordingly, paragraphs (b)(5)(i), (b)(7), and (b)(8) are modified for this section. The Commission also is revising the language in § 60.131(b)(1), which refers to ''anticipated'' natural phenomena and environmental conditions, so as to encompass all design basis events. The ''necessary safety functions'' that must be accommodated in the design, pursuant to that paragraph, include whatever is necessary to meet the quantitative limits set out in the Commission's rules (i.e., in § 60.111(a) and § 60.136).

As discussed under ''Public Comments on the Proposed Rule,'' the Commission considers the applicability of the criticality control requirements in § 60.131(h) to be clear with respect to preclosure considerations. The Commission also believes that uncertainty remains with respect to the applicability of the criticality control requirements to the postclosure period. The Commission intends to address the remaining uncertainty in a future rulemaking to make the NRC requirements consistent with the revised EPA standards that are currently under development, as mandated by the Energy Policy Act of 1992.

*Section 60.132. Additional Design Criteria for Surface Facilities in the Geologic Repository Operations Area*

Section 60.132(c)(1) requires that the surface facilities must be ''* * * designed to control the release of radioactive materials in effluents during normal operations so as to meet the performance objectives of § 60.111(a).'' The design should ordinarily be sufficient to provide reasonable assurance of meeting part 20 not only during normal operations, but even for events that are likely to occur moderately frequently or one or more times before permanent closure of the geologic repository (i.e., all Category 1 design basis events). Deleting the phrase ''during normal operations,'' broadens the scope of this provision to reflect the Commission's intent more accurately.

The amendment of § 60.132 adopted in this final rule differs from the amendment of § 60.132 in the proposed rule in that the phrase ''in effluents'' in the proposed rule was changed to ''in effluents during Category 1 design basis events'' in the final rule. The rationale for this change was discussed in the ''Response to Public Comments on the Proposed Rule.''

*Section 60.133. Additional Design Criteria for the Underground Facility*

As in the case of the changes to 10 CFR 60.131, a reference to design basis events is substituted for the less precise ''normal operations and * * * accident conditions.''

*Section 60.136. Preclosure Controlled Area*

The final rule adopts the petitioner's concept of a preclosure control area under the name ''preclosure controlled area.'' The term delimits an area over which the licensee exercises control of activities to meet regulatory requirements. Control would include the ability to exclude members of the public, if necessary. The zone, and related dose limits, would also be used to analyze and identify structures, systems, and components that are important to safety under unusual conditions that have heretofore been characterized as Category 2 design basis events—credible, yet not likely to occur during the period of operations. The issue that is presented concerns the dose limits to ensure that the consequences of any events which occur present no unreasonable risk to the health and safety of the public. (Releases resulting from Category 1 design basis events would not be permitted to cause doses exceeding the limits of part 20.) The Commission adopts the basic provisions of part 72—namely, a 0.05 Sv (5 rem) dose limit, on or beyond the preclosure controlled area boundary—as modified to reflect the part 20 system of dose limits (see § 20.1201[a]). In addition to providing for separate dose limits for individual organs and tissue, the lens of the eye, and the skin, the use of ''total effective dose equivalent'' (TEDE) in part 20 explicitly accounts for exposures via the ingestion and inhalation dose pathways.

Modification of the 0.05 Sv (5 rem) dose limit, to reflect the part 20 system of dose limits, results in a family of dose limits: A TEDE of 0.05 Sv (5 rem); or the sum of the deep-dose equivalent and the committed dose equivalent to any individual organ or tissue (other than the lens of the eye) of 0.5 Sv (50 rem); an eye dose equivalent of 0.15 Sv (15 rem); and a shallow dose equivalent, to skin, of 0.5 Sv (50 rem).[2] The eye and skin dose limits are adequate to ensure that no observable effects (e.g., induction of cataracts in the lens of the eye) will occur as a result of any accidental radiation exposure. In implementing this provision, dose calculations should be made solely with reference to the consequence of the specific Category 2 design basis event, not cumulatively with other design basis events. To clarify this matter further, the analysis of a specific Category 2 design basis event would require an analysis which includes an initiating event (e.g., an earthquake) and the associated combinations of repository system or component failures that can potentially lead to exposure of the public to radiation. An example design basis event is a postulated earthquake (the initiating event) which results in: (1) The failure of a crane lifting a spent fuel waste package inside a waste handling building, (2) damage to the building ventilation filtration system, (3) the drop and breach of the

[2] Radiation exposure terminology is as used in part 20 (56 FR 23360; May 21, 1991).

waste package, (4) damage to the spent fuel, (5) partitioning of a fraction of the radionuclide inventory to the building atmosphere, (6) release of some radioactive material through the damaged ventilation filtration system, and (7) public exposure to the released radioactive material. It should be noted that it is not necessary to assume multiple failures of safety-related systems unless these multiple failures are credible consequences of the initiating event. An analysis of a specific event for a real repository would be dependent on the particular features of the facility design and related operating procedures. In general, credit for the proper functioning of repository structures, systems, and components in an analysis would be commensurate with the merits of the design. In the example cited above, a waste package designated ''important to safety'' would not necessarily be assumed to breach in a drop event if the maximum hypothetical drop falls within the design parameters of the waste package to withstand such an event. Similarly, repository ventilation filtration systems would be analyzed for their capability to withstand natural phenomena (e.g., earthquakes) and detect, isolate, or filter radioactive material in ventilation flow.

The only other noteworthy deviation from part 72 is to refer in § 60.136 to doses attributable to any ''Category 2 design basis event'' whereas the corresponding section (i.e., 10 CFR 72.106) in part 72 refers to doses attributable to any ''design basis accident.'' The term ''design basis event'' is used because it is a defined term in part 60. The change in terminology is not intended to be one of substance as Category 2 design basis events would generally be considered as accidents.

The 0.05 Sv (5 rem) dose limit is being adopted by the Commission as the appropriate design basis for protection of public health and safety from Category 2 design basis events at a GROA and will harmonize part 60 with part 72. In this regard, the Commission notes that part 72 applies to those facilities (MRS installations) most similar to the surface facilities of a repository and for which the kinds of design basis events are also expected to be similar. Further, the dose limit is consistent with dose values (0.06 Sv (6 rem) to the whole body) established as guidance for both fuel-handling accidents and spent-fuel cask-drop ~~accidents at~~ nuclear power plants.[3]

[3] NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants,'' June 1987.

Moreover, the dose limit is consistent with the accident-dose value (0.05 Sv (5 rem) effective dose equivalent) proposed by DOE in its PRM.

However, while consistency between the proposed 0.05 Sv (5 rem) dose limit for part 60 and other Commission rules or guidance documents is important, consistency alone does not necessarily ensure that there would be no unreasonable risk to the health and safety of the public associated with the proposed limit. As such, a perspective is provided on the risks associated with an operational repository and the appropriateness of the proposed 0.05 Sv (5 rem) dose limit as the design basis for protection of public health and safety from Category 2 design basis events.

Based on estimates provided by the National Council on Radiation Protection and Measurements[4], the lifetime risk to individuals in the general population is 0.05 fatal cancers per Sv of exposure. Therefore, the lifetime risk of fatal cancer from an assumed 0.05 Sv (5 rem) exposure resulting from a postulated Category 2 design basis event is 0.0025 (i.e., $2.5 \times 10^{-3}$) per individual exposed. While this assessment provides perspective on the risk associated with a hypothetical exposure of a 0.05 Sv (5 rem) dose, it does not provide perspective on the estimated actual risk associated with the spectrum of possible Category 2 design basis events at a repository during its operational lifetime (estimated to be about 100 years).

Perspective on actual risk must include consideration of the frequencies (i.e., probabilities) of occurrence of these events, as well as their consequences, as ''risk'' is defined as ''the probability of an event times its consequences.'' With respect to the range of probabilities of Category 2 design basis events, the upper bound is roughly $1 \times 10^{-2}$ per year (i.e., events with probabilities of occurrence greater than $1 \times 10^{-2}$ per year would generally be considered to be Category 1 events). Accordingly, assuming event consequences equivalent to the 0.05 Sv (5 rem) dose limit for part 60, the hypothetical upper bound on individual risk is $2.5 \times 10^{-5}$ fatal cancers per year. To put this risk in perspective, the International Commission on Radiological Protection[5] notes that, based on a review of information related to risks regularly accepted in everyday life for stochastic phenomena, a fatal cancer risk in the range of $1 \times 10^{-6}$ to $1 \times 10^{-5}$ per year from exposure to radiation would likely be acceptable to individual members of the public. Thus, while the risk associated with the consequences of a repository event at the dose limit and upper bound probability of occurrence exceeds this range by a small factor, and is at a level that the Commission considers safe for occupational exposures, the Commission believes this result significantly overestimates the actual risk of an operating repository. Similarly, the Commission considers that the lower bound of Category 2 design basis events is on the order of $1 \times 10^{-6}$ per year (i.e., events with probabilities of occurrence less than $1 \times 10^{-6}$ per year would generally be screened from further consideration due to their negligible contribution to overall risk). In the proposed rule (March 22, 1995; 60 FR 15180), the Commission had considered a probability of occurrence of $1 \times 10^{-9}$ per year as an appropriate lower bound. However, upon further analysis as discussed below, the Commission considers that a lower bound of $1 \times 10^{-9}$ per year is too low and unjustified, and that a lower bound of $1 \times 10^{-6}$ per year is appropriate. Screening out events with probabilities of less than $1 \times 10^{-6}$ is expected to provide conservative estimates of risk. A higher screening criterion could probably be justified given the magnitude of the consequences and risks from this facility, but this criterion is not expected to cause an excessive analytical burden for demonstrating compliance with § 60.136, consistent with the Commission's guidance on the application of probability risk assessment methods in licensing. It is important to note that the arguments advanced for this screening criterion apply solely to the period of repository operations before permanent closure.

Assuming bounding repository event consequences of roughly 0.2 Sv (20 rem), a lifetime risk to individuals in the general population of 0.05 fatal cancers per Sv of exposure, and a lower bound of $1 \times 10^{-6}$ per year for the probability of occurrence of Category 2 design basis events, the estimated risk of cancer fatality from these low probability events would be $1 \times 10^{-8}$ per year. Events which result in risks at or below

[4] National Council on Radiation Protection and Measurements, ''Risk Estimates for Radiation Protection,'' NCRP Report No. 115, December 31, 1993.

[5] Recommendations of the International Commission on Radiological Protection. ICRP Publication 26, January 1977.

this level do not contribute significantly to repository risk to an individual and, as such, can be neglected in the overall risk assessment.

Perspective on actual repository risk can be obtained by developing an understanding of the spectrum of potential Category 2 design basis events and estimating the consequences of these sequences, as well as their probabilities of occurrence. In this regard, the Commission recognizes that there is no high-level waste repository operating experience, and that only conceptual designs have been developed for these facilities. Nonetheless, some perspective can be gained from the preliminary risk assessment by DOE[6] of a conceptual design for a repository at Yucca Mountain, Nevada, as well as from consideration of risk assessments of selected U.S. nuclear power plants.[7]

Consistent with risk assessments for nuclear power plants, the spectrum of possible repository design basis events includes both internally and externally initiated events. Internally initiated events would include waste transporter collisions, crane failures or other types of fuel assembly, waste package or cask drop events, building or facility exhaust filter fires, and exhaust filter bypass or failure. Externally initiated events would include those resulting from earthquakes, tornados, and flooding. Regardless of the type or nature of the initiating event, the Commission believes that, for several reasons, both the variety of credible events and the resulting potential consequences to members of the public will be somewhat limited at repository facilities. First, in comparison with a nuclear power plant, an operating repository is a relatively simple facility in which the primary activities are waste receipt, handling, storage, and emplacement. A repository does not require the variety and complexity of active systems necessary to support an operating nuclear power plant. Further, the conditions are not present at a repository to generate a radioactive source term of a magnitude that, however unlikely, is potentially capable at a nuclear power plant (e.g., from a postulated loss of coolant event). As such, the estimated consequences resulting from limited source term generation at a repository would be correspondingly limited. This conclusion is consistent with the results of the aforementioned preliminary risk assessment by DOE of a conceptual repository design at Yucca Mountain, Nevada. In that assessment, DOE considered 149 events for a variety of internally and externally initiated events. Of the 149 events, only 7 resulted in offsite doses in excess of 0.005 Sv (0.5 rem) to the critical organs of a maximally exposed individual and also had associated probabilities of occurrence greater than $1 \times 10^{-9}$ per year. The highest estimated offsite dose from the DOE risk assessment was 0.021 Sv (2.1 rem) with an associated probability of occurrence of $5 \times 10^{-7}$ per year.

The dose estimates of the DOE risk assessment are only reflective of a conceptual design for a repository at Yucca Mountain, Nevada. Nonetheless, the Commission believes they provide perspective on the magnitude of the estimated consequences to members of the public from postulated Category 2 design basis events, and that variations in repository design or site selection would not likely vary these estimates by more than an order of magnitude. The results of the DOE risk assessment also provide some perspective on the estimated probabilities of occurrence of the postulated repository design basis events and, as such, perspective on actual risk from an operating repository.

In general, the Commission would expect the potential higher consequence events to have correspondingly lower probabilities of occurrence. This expectation is consistent with the results of the DOE risk assessment as the estimated probabilities of occurrence for the seven events which resulted in offsite doses in excess of 0.005 Sv (0.5 rem) vary from $1 \times 10^{-9}$ to $5 \times 10^{-6}$ per year. The corollary to this is the expectation that higher frequency events would have correspondingly lower offsite consequences, and perspective on actual risk from an operating repository necessitates consideration of these events, as well as lower frequency events. Review of the DOE risk assessment indicates that some higher frequency, but lower consequence, events are just as important to actual risk as the lower frequency, but higher consequence, events. With respect to actual risk from the broad spectrum of all events considered in the DOE risk assessment, the estimated actual risk of an operating repository is roughly two to three orders of magnitude lower than the range of fatal cancer risks that would likely be acceptable to members of the public (i.e., a fatal cancer risk of $1 \times 10^{-6}$ to $1 \times 10^{-5}$ per year as noted in ICRP Publication 26).

With respect to the appropriateness of the proposed 0.05 Sv (5 rem) dose limit for Part 60 as the design basis for protection of public health and safety from Category 2 design basis events, the DOE risk assessment indicates the potential for events with offsite consequences on the order of several hundredths to several tenths of Sv (several rem to several tens of rem), depending on design and siting factors. The event consequences in this range, coupled with the estimated event probabilities of occurrence, result in estimated risks that would likely be acceptable to members of the public. However, given the lack of repository design, siting and operating experience and the supporting data base for probabilistic risk assessment, the Commission believes there is considerable uncertainty in the estimates of both the consequences and the probabilities of occurrence of postulated Category 2 design basis events. As such, the Commission believes that establishing a dose limit in Part 60 to the 0.05 Sv (5 rem) value would provide an adequate margin of safety and an appropriate design basis for protection of members of the public from unlikely, but credible events. Further, the Commission believes that a single dose limit is appropriate for the broad range of possible event frequencies, given the limited potential for offsite consequences at repository facilities.

Lastly, the amendments of § 60.136 adopted in this final rule differ slightly from the amendments of § 60.136 proposed in the proposed rule (60 FR 15180) in that the phrase ''on or beyond the nearest boundary'' in the proposed rule was changed to ''on or beyond any point on the boundary'' in the final rule and the phrase ''may not exceed'' in the proposed rule was changed to ''shall not exceed'' in the final rule. The rationale for the latter change is to improve clarity and the rationale for the former change was discussed earlier in the ''Response to Public Comments on the Proposed Rule.''

*Section 60.183. Criminal Penalties*

In the proposed rule, a conforming change was made to this section to include § 60.136 (pertaining to the preclosure controlled area) among the regulations that are not issued under sections 161b, 161i, or 161o of the Atomic Energy Act, for purposes of section 223 of the Act. On reconsideration, the Commission has decided not to revise this section (i.e., criminal penalties are authorized for violations of § 60.136).

[6] U.S. Department of Energy, ''Site Characterization Plan, Yucca Mountain Site, Nevada Research and Development Area, Nevada,'' DOE/RW–0199, December 1988.

[7] NUREG–1150, ''Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants,'' December 1990.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described in 10 CFR 51.22(c)(2), pertaining to the promulgation of technical requirements and criteria that the Commission will apply in approving or disapproving applications under part 60. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). Existing requirements were approved by OMB, approval number 3150–0127.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final rule. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Dr. Richard A. Weller, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Division of Waste Management, Washington, DC 20555, Telephone (301) 415–7287.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. The only entity subject to regulation under this rule is DOE.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and, therefore, that a backfit analysis is not required for this final rule, because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 60

Criminal penalties, High-level waste, Nuclear power plants and reactors, Nuclear materials, Reporting and record-keeping requirements, and Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to part 60.

## PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

1. The authority citation for Part 60 is amended to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2228, as amended (42 U.S.C. 10134, 10141), and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

2. Section 60.2 is amended by adding definitions of ''Design bases,'' ''Design basis events,'' and ''Preclosure controlled area,'' revising the definitions of ''Accessible environment,'' ''Disturbed zone,'' ''Important to safety,'' ''Restricted area,'' ''Site,'' and ''Unrestricted area,'' revising the name of the defined term ''Controlled area'' to ''Postclosure controlled area'' and presenting this renamed term without change for the convenience of the user, and alphabetizing the definitions to read as follows:

**§ 60.2 Definitions.**

* * * * *

*Accessible environment* means:

(1) The atmosphere;

(2) The land surface;

(3) Surface water;

(4) Oceans; and

(5) The portion of the lithosphere that is outside the postclosure controlled area.

* * * * *

*Design bases means* that information that identifies the specific functions to be performed by a structure, system, or component of a facility and the specific values or ranges of values chosen for controlling parameters as reference bounds for design. These values may be restraints derived from generally accepted ''state-of-the-art'' practices for achieving functional goals or requirements derived from analysis (based on calculation or experiments) of the effects of a postulated event under which a structure, system, or component must meet its functional goals. The values for controlling parameters for external events include:

(1) Estimates of severe natural events to be used for deriving design bases that will be based on consideration of historical data on the associated parameters, physical data, or analysis of upper limits of the physical processes involved; and

(2) Estimates of severe external man-induced events, to be used for deriving design bases, that will be based on analysis of human activity in the region, taking into account the site characteristics and the risks associated with the event.

*Design basis events means:*

(1)(i) Those natural and human-induced events that are reasonably likely to occur regularly, moderately frequently, or one or more times before permanent closure of the geologic repository operations area; and

(ii) Other natural and man-induced events that are considered unlikely, but sufficiently credible to warrant consideration, taking into account the potential for significant radiological impacts on public health and safety.

(2) The events described in paragraph (1)(i) of this definition are referred to as ''Category 1'' design basis events. The events described in paragraph (1)(ii) of this definition are referred to as ''Category 2'' design basis events.

* * * * *

*Disturbed zone* means that portion of the postclosure controlled area, the physical or chemical properties of which have changed as a result of underground facility construction or as a result of heat generated by the emplaced radioactive wastes, such that the resultant change of properties may have a significant effect on the performance of the geologic repository.

* * * * *

*Important to safety,* with reference to structures, systems, and components, means those engineered features of the repository whose function is:

(1) To provide reasonable assurance that high-level waste can be received,

handled, packaged, stored, emplaced, and retrieved without exceeding the requirements of § 60.111(a) for Category 1 design basis events; or

(2) To prevent or mitigate Category 2 design basis events that could result in doses equal to or greater than the values specified in § 60.136 to any individual located on or beyond any point on the boundary of the preclosure controlled area.

* * * * *

*Postclosure controlled area* means a surface location, to be marked by suitable monuments, extending horizontally no more than 10 kilometers in any direction from the outer boundary of the underground facility, and the underlying subsurface, which area has been committed to use as a geologic repository and from which incompatible activities would be restricted following permanent closure.

*Preclosure controlled area* means that surface area surrounding the geologic repository operations area for which the licensee exercises authority over its use, in accordance with the provisions of this part, until permanent closure has been completed.

* * * * *

*Restricted area* means an area, access to which is limited by the licensee for the purpose of protecting individuals against undue risks from exposure to radiation and radioactive materials. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set aside as a restricted area.

* * * * *

*Site* means the location of the preclosure controlled area, or of the postclosure controlled area, or both.

* * * * *

*Unrestricted area* means an area, access to which is neither limited nor controlled by the licensee.

* * * * *

3. Section 60.8 is revised to read as follows:

**§ 60.8 Information Collection Requirements: Approval.**

(a) The Nuclear Regulatory Commission has submitted the information collection requirements of general applicability contained in this part to the Office of Management and Budget for approval as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). The Office of Management and Budget has approved the information collection requirements contained in this part under control number 3150–0127.

(b) The approved information collection requirements contained in this part appear in §§ 60.62, 60.63, and 60.65.

4. In § 60.21, paragraphs (c)(1)(i), (c)(1)(ii)(B), (c)(3), and (c)(8) are revised to read as follows:

**§ 60.21 Content of application.**

* * * * *

(c) * * *

(1) * * *

(i) The description of the site shall also include the following information regarding subsurface conditions. This description shall, in all cases, include this information with respect to the postclosure controlled area. In addition, where subsurface conditions outside the postclosure controlled area may affect isolation within the postclosure controlled area, the description shall include information with respect to subsurface conditions outside the postclosure controlled area to the extent the information is relevant and material. The detailed information referred to in this paragraph shall include:

(A) The orientation, distribution, aperture in-filling and origin of fractures, discontinuities, and heterogeneities;

(B) The presence and characteristics of other potential pathways such as solution features, breccia pipes, or other potentially permeable features;

(C) The geomechanical properties and conditions, including pore pressure and ambient stress conditions;

(D) The hydrogeologic properties and conditions;

(E) The geochemical properties; and

(F) The anticipated response of the geomechanical, hydrogeologic, and geochemical systems to the maximum design thermal loading, given the pattern of fractures and other discontinuities and the heat transfer properties of the rock mass and groundwater.

(ii) * * *

(B) Analyses to determine the degree to which each of the favorable and potentially adverse conditions, if present, has been characterized, and the extent to which it contributes to or detracts from isolation. For the purpose of determining the presence of the potentially adverse conditions, investigations shall extend from the surface to a depth sufficient to determine critical pathways for radionuclide migration from the underground facility to the accessible environment. Potentially adverse conditions shall be investigated outside of the postclosure controlled area if they affect isolation within the postclosure controlled area.

* * * * *

(3) A description and analysis of the design and performance requirements for structures, systems, and components of the geologic repository that are important to safety. The analysis must include a demonstration that—

(i) The requirements of § 60.111(a) will be met, assuming occurrence of Category 1 design basis events; and

(ii) The requirements of § 60.136 will be met, assuming occurrence of Category 2 design basis events.

* * * * *

(8) A description of the controls that the applicant will apply to restrict access and to regulate land use at the site and adjacent areas, including a conceptual design of monuments which would be used to identify the postclosure controlled area after permanent closure.

* * * * *

**§ 60.43 [Amended]**

5. In § 60.43(b)(5), the term ''controlled area'' is revised to read ''postclosure controlled area.''

**§ 60.46 [Amended]**

6. In § 60.46(a)(3), the term ''controlled area'' is revised to read ''postclosure controlled area.''

**§ 60.51 [Amended]**

7. In § 60.51(a)(2)(i) and (a)(2)(ii), the term ''controlled area'' is revised to read ''postclosure controlled area.''

**§ 60.102 [Amended]**

8. In § 60.102(c), the term ''controlled area'' is revised to read ''postclosure controlled area.''

9. In § 60.111, paragraph (a) is revised to read as follows:

**§ 60.111 Performance of the geologic repository operations area through permanent closure.**

(a) *Protection against radiation exposures and releases of radioactive material.* The geologic repository operations area shall be designed so that until permanent closure has been completed, radiation exposures and radiation levels, and releases of radioactive materials to unrestricted areas, will be maintained within the limits specified in part 20 of this chapter and such generally applicable environmental standards for radioactivity as may have been established by Environmental Protection Agency.

* * * * *

**§ 60.121 [Amended]**

10. In § 60.121(a) and (b), the term ''controlled area'' is revised to read ''postclosure controlled area.''

**§ 60.122 [Amended]**

11. In § 60.122(b)(6) and (c) introductory text, the term ''controlled area'' is revised to read ''postclosure controlled area.''

12. Section 60.130 is revised to read as follows:

**§ 60.130 General considerations.**

Pursuant to the provisions of § 60.21(c)(2)(i), an application to receive, possess, store, and dispose of high-level radioactive waste in the geologic repository operations area must include the principal design criteria for a proposed facility. The principal design criteria establish the necessary design, fabrication, construction, testing, maintenance, and performance requirements for structures, systems, and components important to safety and/or important to waste isolation. Sections 60.131 through 60.134 specify minimum requirements for the principal design criteria for the geologic repository operations area.

These design criteria are not intended to be exhaustive. However, omissions in §§ 60.131 through 60.134 do not relieve DOE from any obligation to provide such features in a specific facility needed to achieve the performance objectives.

13. In § 60.131, paragraph (b) is revised, and paragraphs (c) through (k) are added to read as follows:

**§ 60.131 General design criteria for the geologic repository operations area.**

* * * * *

(b) *Protection against design basis events.* The structures, systems, and components important to safety shall be designed so that they will perform their necessary safety functions, assuming occurrence of design basis events.

(c) *Protection against dynamic effects of equipment failure and similar events.* The structures, systems, and components important to safety shall be designed to withstand dynamic effects such as missile impacts, that could result from equipment failure, and similar events and conditions that could lead to loss of their safety functions.

(d) *Protection against fires and explosions.* (1) The structures, systems, and components important to safety shall be designed to perform their safety functions during and after credible fires or explosions in the geologic repository operations area.

(2) To the extent practicable, the geologic repository operations area shall be designed to incorporate the use of noncombustible and heat resistant materials.

(3) The geologic repository operations area shall be designed to include explosion and fire detection alarm systems and appropriate suppression systems with sufficient capacity and capability to reduce the adverse effects of fires and explosions on structures, systems, and components important to safety.

(4) The geologic repository operations area shall be designed to include means to protect systems, structures, and components important to safety against the adverse effects of either the operation or failure of the fire suppression systems.

(e) *Emergency capability.* (1) The structures, systems, and components important to safety shall be designed to maintain control of radioactive waste and radioactive effluents, and permit prompt termination of operations and evacuation of personnel during an emergency.

(2) The geologic repository operations area shall be designed to include onsite facilities and services that ensure a safe and timely response to emergency conditions and that facilitate the use of available offsite services (such as fire, police, medical, and ambulance service) that may aid in recovery from emergencies.

(f) *Utility services.* (1) Each utility service system that is important to safety shall be designed so that essential safety functions can be performed, assuming occurrence of the design basis events.

(2) The utility services important to safety shall include redundant systems to the extent necessary to maintain, with adequate capacity, the ability to perform their safety functions.

(3) Provisions shall be made so that, if there is a loss of the primary electric power source or circuit, reliable and timely emergency power can be provided to instruments, utility service systems, and operating systems, including alarm systems, important to safety.

(g) *Inspection, testing, and maintenance.* The structures, systems, and components important to safety shall be designed to permit periodic inspection, testing, and maintenance, as necessary, to ensure their continued functioning and readiness.

(h) *Criticality control.* All systems for processing, transporting, handling, storage, retrieval, emplacement, and isolation of radioactive waste shall be designed to ensure that nuclear criticality is not possible unless at least two unlikely, independent, and concurrent or sequential changes have occurred in the conditions essential to nuclear criticality safety. Each system must be designed for criticality safety assuming occurrence of design basis events. The calculated effective multiplication factor ($k_{eff}$) must be sufficiently below unity to show at least a 5 percent margin, after allowance for the bias in the method of calculation and the uncertainty in the experiments used to validate the method of calculation.

(i) *Instrumentation and control systems.* The design shall include provisions for instrumentation and control systems to monitor and control the behavior of systems important to safety, assuming occurrence of design basis events.

(j) *Compliance with mining regulations.* To the extent that DOE is not subject to the Federal Mine Safety and Health Act of 1977, as to the construction and operation of the geologic repository operations area, the design of the geologic repository operations area shall nevertheless include provisions for worker protection necessary to provide reasonable assurance that all structures, systems, and components important to safety can perform their intended functions. Any deviation from relevant design requirements in 30 CFR, chapter I, subchapters D, E, and N will give rise to a rebuttable presumption that this requirement has not been met.

(k) *Shaft conveyances used in radioactive waste handling.* (1) Hoists important to safety shall be designed to preclude cage free fall.

(2) Hoists important to safety shall be designed with a reliable cage location system.

(3) Loading and unloading systems for hoists important to safety shall be designed with a reliable system of interlocks that will fail safely upon malfunction.

(4) Hoists important to safety shall be designed to include two independent indicators to indicate when waste packages are in place and ready for transfer.

14. In § 60.132, paragraph (c)(1) is revised to read as follows:

**§ 60.132 Additional design criteria for surface facilities in the geologic repository operations area.**

* * * * *

(c) *Radiation control and monitoring—(1) Effluent control.* The surface facilities shall be designed to control the release of radioactive materials in effluents during Category 1 design basis events so as to meet the performance objectives of § 60.111(a).

* * * * *

15. In § 60.133, the introductory texts of paragraph (g) and paragraph (g)(2) are revised to read as follows:

**§ 60.133 Additional design criteria for the underground facility.**

* * * * *

(g) *Underground facility ventilation.* The ventilation system shall be designed to:

* * * * *

(2) Assure the ability to perform essential safety functions assuming occurrence of design basis events.

* * * * *

16. A new undesignated center heading and § 60.136 are added to read as follows:

Preclosure Controlled Area

**§ 60.136 Preclosure controlled area.**

(a) A preclosure controlled area must be established for the geologic repository operations area.

(b) The geologic repository operations area shall be designed so that, for Category 2 design basis events, no individual located on or beyond any point on the boundary of the preclosure controlled area will receive the more limiting of a total effective dose equivalent of 0.05 Sv (5 rem), or the sum of the deep-dose equivalent and the committed dose equivalent to any individual organ or tissue (other than the lens of the eye) of 0.5 Sv (50 rem). The eye dose equivalent shall not exceed 0.15 Sv (15 rem), and the shallow dose equivalent to skin shall not exceed 0.5 Sv (50 rem). The minimum distance from the surface facilities in the geologic repository operations area to the boundary of the preclosure controlled area must be at least 100 meters.

(c) The preclosure controlled area may be traversed by a highway, railroad, or waterway, so long as appropriate and effective arrangements are made to control traffic and to protect public health and safety.

Dated in Rockville, Maryland, this 25th day of November, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

*Secretary of the Commission.*

[FR Doc. 96–30710 Filed 12–3–96; 8:45 am]

BILLING CODE 7590–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 96–CE–61–AD; Amendment 39–9843; AD 96–25–02]**

**RIN 2120–AA64**

## Airworthiness Directives; Mitsubishi Heavy Industries, LTD. Models MU–2B–10, –15, –20, –25, –26, –26A, –30, –35, –36, –36A, –40, and –60 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to Mitsubishi Heavy Industries, LTD. Models MU–2B–10, –15, –20, –25, –26, –26A, –30, –35, –36, –36A, –40, and –60 airplanes. This action requires revising the Limitations Section, the Procedures Section, and the Master Minimum Equipment List (MMEL) of the Airplane Flight Manual (AFM). These revisions require establishing a minimum airspeed for sustained level flight in icing conditions, limitations for the use of flaps for flight in icing conditions, cues for recognizing hazardous conditions, exiting procedures in icing conditions that are specific to Mitsubishi MU–2B series airplanes, and ensuring the wing illumination and taxi lights are operable prior to flight at night into known or forecast icing conditions. Several fatal accidents, involving certain Mitsubishi MU–2B series airplanes while flying in icing conditions, prompted this action. The actions specified by this AD are intended to prevent operating in conditions that are beyond the capability of the icing protection system, prevent aerodynamic stall at higher than normal airspeed because of icing conditions, and immediately provide the pilot with cues for recognizing hazardous conditions and exiting these conditions, which if not followed, could result in loss of the airplane.

**DATES:** Effective December 27, 1996.

Comments for inclusion in the Rules Docket must be received on or before January 27, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–61–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Timothy P. Smyth, Aerospace Engineer, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6941, facsimile (816) 426–2169.

**SUPPLEMENTARY INFORMATION:** The FAA has received several fatal accident reports on certain Mitsubishi MU–2B series airplanes. A common factor in these accidents was flying into freezing rain and freezing drizzle without recognizing specific cues and exiting these conditions. Freezing rain and freezing drizzle (also referred to as Supercooled Large Droplets (SLD)) are beyond the capability of the MU–2B series airplane icing protection system. Continued operation in these conditions will cause the airplane to develop unusual ice formations and ice build-up in areas where the airplane does not have ice protection. Ice accretion to this degree can cause increased drag, increased angle of attack, and aerodynamic flow separation resulting in uncontrollable rolling and pitching.

If the airplane is being flown by the autopilot in hazardous icing, the increase in drag will decelerate the airplane into a stall that is well above normal stall speed. There will not be an artificial stall warning by stick shaker. The natural pre-stall buffet will be shorter and stronger, or the airplane may stall with no warning. Stalling on the autopilot can cause a spin or near vertical spiral, neither of which may be recoverable. Using the autopilot while operating in icing conditions could mask the cues of deceleration and the autopilot may cross control the airplane while attempting to maintain altitude and heading. Sideslip at stall can also be induced during the deceleration by improper propeller pitch settings and/or engine fuel control settings that are not in accordance with the manufacturer's specifications.

Since an unsafe condition has been identified that is likely to exist or develop in other Mitsubishi MU–2B series airplanes of the same type design, this AD requires revising the Limitations Section, Procedures Section, and the Master Minimum Equipment List (MMEL) of the Airplane Flight Manual (AFM). These revisions require:

(1) Establishing a minimum airspeed for sustained level flight in icing conditions,

(2) Limited use of flaps while flying in icing conditions,

(3) Recognizing cues for hazardous icing conditions specific to the Mitsubishi Model MU–2B airplane,

(4) Operable wing illumination and taxi lights prior to flight at night into known or forecast icing conditions, and

(5) Exiting procedures for icing conditions.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–CE–61–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

96–25–02 Mitsubishi Heavy Industries, Ltd.: Amendment 39–9843; Docket No. 96–CE–61–AD.

*Applicability:* Models MU–2B–10, –15, –20, –25, –26, –26A, –30, –35, –36, –36A, –40, and –60 airplanes (all serial numbers), 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 request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated in the body of this AD, unless already accomplished.

To prevent operating in conditions that are beyond the capability of the icing protection system, prevent aerodynamic stall at higher than normal airspeed because of icing conditions, and immediately provide the pilot with cues for recognizing hazardous conditions and exiting these conditions, which if not followed, could result in loss of the airplane, accomplish the following:

(a) Within the next 24 hours time-in-service (TIS) after the effective date of this AD, accomplish the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this AD. Inserting a copy of this AD into the AFM accomplishes this action.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM.

LIMITATIONS SECTION

ICING LIMITATIONS

The minimum airspeed for sustained level flight in icing conditions is 180 knots indicated airspeed (IAS).

Sustained flight in icing conditions with flaps extended is prohibited except for approach and landing.

WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is designed. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously damage the performance and controllability of the airplane. In some cases the ice may appear to be of relatively small proportions. Often the appearance of the ice causing the most severe consequences is glaze ice or a combination of glaze ice and rime ice.

During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exist, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Airspeed losses greater than 20 knots that are not regained after a boot de-ice cycle.
—Decrease in rate of climb during a constant airspeed climb to 300 feet per minute.
—Unusually extensive ice accreted on the airframe in areas not normally observed to collect ice.
—Accumulation of ice on the lower surface of the wing aft of the protected area.
—Accumulation of ice on the propeller spinner farther aft than normally observed.
—Accumulation of ice on the upper surface of the wing aft of the de-icing boots visible from the pilot's position that is not removed by de-ice boot operation.

Note: Ice accretion beyond the limit of the boots on the upper surface may be visible from the pilot's position as a solid or partial ridge of ice.

Since the autopilot may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues

specified above exist, or when unusual lateral or lateral/yaw trim requirements are encountered while the airplane is in icing conditions.

(2) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Master Minimum Equipment List (MMEL) of the AFM. Inserting a copy of this AD into the AFM accomplishes this action.

All icing detection lights (tip tank taxi lights and wing illumination light) must be operable prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]

(3) Revise the FAA-approved AFM by incorporating the following into the Procedures Section of the AFM.

ABNORMAL PROCEDURES

SEVERE ICING ENCOUNTER

THE FOLLOWING DESCRIBES SOME OF THE WEATHER CONDITIONS THAT MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING:

—Visible rain at temperatures below 0 degrees Celsius ambient air temperature.
—Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING SEVERE ICING ENVIRONMENT:

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

—Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.
—Avoid abrupt and excessive maneuvering that may contribute to control difficulties.
—Do not engage the autopilot.
—If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.
—If an unusual roll response, an uncommanded roll, or an unusual trim is observed, lower the nose (reduce the angle of attack) and allow the airspeed to increase before any reduction in engine power.
—Do not extend flaps during extended operation in icing conditions. Operation with flaps extended can result in a reduced wing angle-of -attack, with the possibility of ice forming on the upper surface further aft of the wing than normal, possibly aft of the protected area.
—If the flaps are extended, do not retract them until the airframe is clear of ice.
—Report these weather conditions to Air Traffic Control.

Note 2: Operators must initiate action to notify and ensure that flight crewmembers are apprised of this change.

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64105. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(d) Copies may be obtained and inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–9843) becomes effective on December 27, 1996.

Issued in Kansas City, Missouri, on November 26, 1996.

Michael Gallagher,

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 96–30700 Filed 12–3–96; 8:45 am]

**BILLING CODE 4910–13–U**

## DEPARTMENT OF COMMERCE

## Bureau of Export Administration

## 15 CFR Parts 732, 736, 740, 742, 744, 746, 748, 750, 752, 758, and 770

**[Docket No. 961122325–6325–01]**

**RIN 0694–AB51**

## Revisions to the Export Administration Regulations: License Exceptions

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the Export Administration Regulations (EAR) by reorganizing those License Exceptions that are referenced on the Commerce Control List. These License Exceptions had been bundled together in a single section, bearing a group symbol to be used for export clearance purposes. This rule splits the list-based License Exceptions into separate sections, each with its own clearance symbol. This rule makes conforming changes throughout the EAR. Finally, this rule makes corrections and clarifications to certain sections of the EAR affected by the changes to the License Exceptions.

**DATES:** This rule is effective December 4, 1996.

**FOR FURTHER INFORMATION CONTACT:** Hillary Hess, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482–2440.

**SUPPLEMENTARY INFORMATION:**

Background

On March 25, 1996, the Bureau of Export Administration (BXA) published an interim rule that revised the entire EAR (61 FR 12714). Prior to that date, on May 11, 1995, BXA had published a proposed version of this comprehensive revision (60 FR 25267), and public comments on that proposed rule significantly helped shape the interim rule. Public comments on the proposed rule indicated that the number of License Exceptions was too high and generally supported combining similar License Exceptions. In response to these comments, BXA consolidated single License Exceptions into ''groupings.'' Exporters used the grouping symbol as a certification on their shipping documents; each single License Exception also bore a symbol, for optional use in recordkeeping and ease of distinguishing among separate sets of provisions.

Public comments on the interim rule, however, generally contained objections to the consolidation of those License Exceptions found on the Commerce Control List (CCL). These License Exceptions included the following: Limited Value Shipments (LVS), Shipments to Group B Countries (GBS), Civil End-users (CIV), Technology and Software under Restriction (TSR), and Computers (CTP); they were consolidated into the ''list-based'' License Exception section and exporters shipping under any of the five used the grouping symbol ''LST'' for export clearance purposes. Many exporters with automated processes found that using a grouping symbol added an additional step to their programs; others simply found using the grouping more cumbersome. While groupings of the other, more transaction-based License Exceptions did not elicit the same objections, exporters indicated that having additional acronyms for optional recordkeeping use, but not for export clearance, was more confusing than convenient.

Consequently, this rule splits or ''debundles'' the list-based License

Exceptions, putting each in its own section. Each License Exception symbol for export clearance documents matches that on the CCL (i.e., LVS); the grouping symbol ''LST'' disappears. Other groupings remain unchanged, except that this rule removes any acronyms that are not used for clearance purposes. This rule also drops the term ''grouping'' in favor of calling each section a License Exception. Specific sets of terms and conditions, formerly referred to as ''License Exceptions,'' are termed ''provisions.'' Any references throughout the EAR to meeting all terms and conditions of License Exceptions should be understood to mean meeting all *applicable* terms and conditions.

A License Exception may contain one, two, or more sets of terms and conditions; and to use a given License Exception you must meet all the terms and conditions of one such set. For example, if you meet all the terms and conditions of paragraph 740.5(a) of the EAR for One-for-One Replacement of Parts, you may export or reexport under that paragraph even though you do not meet all the terms and conditions of paragraph 740.5(b) of the EAR for Servicing and Replacement. The correct symbol for use on a required SED in this case is RPL. As an additional example, if you meet all the terms and conditions of paragraph 740.8(d) of the EAR for the General Software Note and mass market software, you may export or reexport under that paragraph even though you do not meet all the terms and conditions of paragraph 740.8(a) of the EAR for Operation Technology and Software, paragraph 740.8(b) of the EAR for Sales Technology, or paragraph 740.8(c) of the EAR for Software Updates.

Finally, this rule makes certain corrections and clarifications to sections of the EAR affected by the changes to the License Exceptions part. This rule clarifies certain provisions on the availability of License Exceptions LVS, GBS, CIV, and TSR. This rule removes Laos and Cambodia from Computer Tier 2 and adds them to Computer Tier 3 in License Exception CTP; adds Hong Kong, New Zealand, and Taiwan to the list of countries that are defined as ''cooperating'' for purposes of License Exception GOV; changes Country Group A:4 to A:1, Iceland, or New Zealand in License Exception TMP; adds Iceland to the list of countries eligible to receive operation and sales technology and software even when that technology or software pertains to otherwise restricted nuclear end-uses in § 744.2; and adds CTP to the list of those License Exceptions requiring a Destination Control Statement in § 758.6. This rule also corrects certain cross-references that were incorrect in the March 25 rule.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, as extended by the President's notice of August 15, 1995 (60 FR 42767) and August 14, 1996 (61 FR 42527).

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0023, 0694–0029, and 0694–0088.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. Section 13(b) of the EAA, cite, does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Hillary Hess, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

*15 CFR Parts 732, 740, 748, 750, 752 and 758*

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

*15 CFR Parts 736, 742 and 770*

Exports, Foreign trade.

*15 CFR Part 744*

Exports, Foreign trade, Reporting and recordkeeping requirements.

*15 CFR Part 746*

Embargoes, Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR parts 730–799A) are amended as follows:

1. The authority citation for 15 CFR part 732 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

2. The authority citation for 15 CFR part 736 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of August 15, 1995 (60 FR 42767, August 17, 1995; and Notice of August 14, 1996 (61 FR 42527).

3. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

4. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

5. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*;

42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

6. The authority citation for 15 CFR part 746 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 6004; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

7. The authority citation for 15 CFR part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

8. The authority citation for 15 CFR part 750 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); E.O. 12981, 60 FR 62981; and Notice of August 14, 1996 (61 FR 42527).

9. The authority citation for 15 CFR part 752 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

10. The authority citation for 15 CFR part 758 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

11. The authority citation for 15 CFR part 770 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

## PART 732—[AMENDED]

### § 732.2 [Amended]

12. In § 732.2, paragraph (f)(1)(ii) is amended by revising the reference to ''License Exception TSR at § 740.3(d) of the EAR'' to read ''License Exception TSR in § 740.6 of the EAR''.

### § 732.3 [Amended]

13. In § 732.3, paragraph (f)(1)(ii) is amended by revising the reference to ''License Exception TSR described § 740.19 of the EAR'' to read ''License Exception TSR in § 740.6 of the EAR''.

14. Section 732.4 is amended by revising paragraph (b)(3)(iii) to read as follows:

### § 732.4 Steps regarding License Exceptions.

* * * * *

(b) * * *

(3) * * *

(iii) License Exceptions TMP, RPL, BAG, AVS, GOV, and TSU authorize exports notwithstanding the provisions of the CCL. List-based License Exceptions (LVS, GBS, CIV, TSR, and CTP) are available only to the extent specified on the CCL. Part 740 of the EAR provides authorization for reexports only to the extent each License Exception expressly authorizes reexports. License Exception APR authorizes reexports only.

* * * * *

15. Section 732.5 is amended by revising paragraph (a)(2) to read as follows:

### § 732.5 Steps regarding Shipper's Export Declaration, Destination Control Statements, recordkeeping, license applications, and other requirements.

(a) * * *

(2) *License Exception symbol.* You must enter on any required SED the letter code (e.g., LVS, TMP) of the License Exceptions under which you are exporting. In the case of License Exceptions LVS, GBS, and CIV, the ECCN of the item being exported must also be entered when an SED is required. Please refer to § 758.3 of the EAR for detailed information on use of SEDs.

* * * * *

## PART 736—[AMENDED]

16. Section 736.2 is amended by revising paragraphs (b)(3)(ii)(A)(*1*) and (b)(3)(ii)(B)(*1*) to read as follows:

### § 736.2 General prohibitions and determination of applicability.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(A) * * *

(*1*) They are the direct product of technology or software that requires a written assurance as a supporting document for a license or as a precondition for the use of License Exception TSR in § 740.6 of the EAR, and

* * * * *

(B) * * *

(*1*) Such plant or component is the direct product of technology that requires a written assurance as a supporting document for a license or as a precondition for the use of License Exception TSR in § 740.6 of the EAR, and

* * * * *

## PART 740—[AMENDED]

17. Part 740 is amended:

a. By revising § 740.1, paragraphs (c) and (d) (1)

b. By revising § 740.2, paragraphs (a)(5) and (a)(6);

c. By revising § 740.3;

d. By redesignating §§ 740.4 through 740.11 as §§ 740.8 through 740.15;

e. By adding new §§ 740.4 through 740.7;

f. By revising newly designated §§ 740.8 through 740.12.

### § 740.1 Introduction.

* * * * *

(c) *License Exception symbols.* Each License Exception bears a three letter symbol that will be used for export clearance purposes (see paragraph (d) of this section).

(d) *Shipper's Export Declaration*—(1) *Clearing exports under License Exceptions.* You must enter on any required Shipper's Export Declaration (SED) the letter code (e.g., LVS, TMP) of the License Exception(s) under which you are exporting. In the case of License Exceptions LVS, GBS, and CIV, the ECCN of the item being exported must also be entered. Please refer to § 758.3 of the EAR for the use of SEDs.

* * * * *

### § 740.2 Restrictions on all License Exceptions.

(a) * * *

(5) The item is for surreptitious interception of wire or oral communications controlled under ECCN 5A980, unless you are a U.S. Government agency (see § 740.10(b)(2)(ii) of this part, Governments (License Exception GOV)).

(6) The commodity you are shipping is a specially designed crime control and detection instrument or equipment as described in § 742.7 of the EAR and you are not shipping to Iceland, New Zealand, or countries listed in Country Group A:1 (see Supplement No. 1 to part 740), unless the shipment is authorized under License Exception BAG, § 740.13(e) of this part (shotguns and shotgun shells).

* * * * *

### § 740.3 Shipments of Limited Value (LVS).

(a) *Scope.* License Exception LVS authorizes the export and reexport in a single shipment of eligible commodities as identified by ''LVS - $(value limit)'' on the CCL.

(b) *Eligible Destinations.* This License Exception is available for all destinations in Country Group B (see Supplement No. 1 to part 740), provided that the net value of the commodities included in the same order and controlled under the same ECCN entry on the CCL does not exceed the amount specified in the LVS paragraph for that entry.

(c) *Definitions*—(1) *Order.* The term ''order'' as used in this § 740.3 means a communication from a person in a foreign country, or that person's representative, expressing an intent to import commodities from the exporter. Although all of the details of the order need not be finally determined at the time of export, terms relating to the kinds and quantities of the commodities to be exported, as well as the selling prices of these commodities, must be finalized before the goods can be exported under License Exception LVS.

(2) *Net value: for LVS shipments.* The actual selling price of the commodities that are included in the same order and are controlled under the same entry on the CCL, less shipping charges, or the current market price of the commodities to the same type of purchaser in the United States, whichever is the larger. In determining the actual selling price or the current market price of the commodity, the value of containers in which the commodity is being exported may be excluded. The value for LVS purposes is that of the controlled commodity that is being exported, and may not be reduced by subtracting the value of any content that would not, if shipped separately, be subject to licensing. Where the total value of the containers and their contents must be shown on Shipper's Export Declarations under one Schedule B Number, the exporter, in effecting a shipment under this License Exception, must indicate the ''net value'' of the contained commodity immediately below the description of the commodity.

(3) *Single shipment.* All commodities moving at the same time from one exporter to one consignee or intermediate consignee on the same exporting carrier even though these commodities will be forwarded to one or more ultimate consignees. Commodities being transported in this manner will be treated as a single shipment even if the commodities represent more than one order or are in separate containers.

(d) *Additional eligibility requirements and restrictions*—(1) *Eligible orders.* To be eligible for this License Exception, orders must meet the following criteria:

(i) *Orders must not exceed the applicable ''LVS'' dollar value limits.* An order is eligible for shipment under LVS when the ''net value'' of the commodities controlled under the same entry on the CCL does not exceed the amount specified in the ''LVS'' paragraph for that entry. An LVS shipment may include more than one eligible order.

(ii) *Orders may not be split to meet the applicable LVS dollar limits.* An order that exceeds the applicable LVS dollar value limit may not be misrepresented as two or more orders, or split among two or more shipments, to give the appearance of meeting the applicable LVS dollar value limit. However an order that meets all the LVS eligibility requirements, including the applicable LVS dollar value limit, may be split among two or more shipments.

(iii) *Orders must be legitimate.* Exporters and consignees may not, either collectively or individually, structure or adjust orders to meet the applicable LVS dollar value limits.

(2) *Restriction on annual value of LVS orders.* The total value of exports per calendar year to the same ultimate or intermediate consignee of commodities classified under a single ECCN may not exceed 12 times the LVS value limit for that ECCN; however, there is no restriction on the number of shipments provided that value is not exceeded. This annual value limit applies to shipments to the same ultimate consignee even though the shipments are made through more than one intermediate consignee. There is no restriction on the number of orders that may be included in a shipment, except that the annual value limit per ECCN must not be exceeded.

(3) *Orders where two or more LVS dollar value limits apply.* An order may include commodities that are controlled under more than one entry on the CCL. In this case, the net value of the entire order may exceed the LVS dollar value for any single entry on the CCL. However, the net value of the commodities controlled under each ECCN entry shall not exceed the LVS dollar value limit specified for that entry.

**EXAMPLE TO PARAGRAPH (D)(3):** An order includes commodities valued at $8,000. The order consists of commodities controlled under two ECCN entries, each having an LVS value limit of $5000. Commodities in the order controlled under one ECCN are valued at $3,500 while those controlled under the other ECCN are valued at $4,500. Since the net value of the commodities controlled under each entry falls within the LVS dollar value limits applicable to that entry, the order may be shipped under this License Exception.

(4) *Prohibition against evasion of license requirements.* Any activity involving the use of this License Exception to evade license requirements is prohibited. Such devices include, but are not limited to, the splitting or structuring of orders to meet applicable LVS dollar value limits, as prohibited by paragraphs (d)(1) (ii) and (iii) of this section.

(e) *Reexports.* Commodities may be reexported under this License Exception, provided that they could be exported from the United States to the new country of destination under LVS.

### § 740.4 Shipments to Country Group B countries (GBS).

License Exception GBS authorizes exports and reexports to Country Group B (see Supplement No. 1 to part 740) of those commodities controlled to the ultimate destination for national security reasons only and identified by ''GBS—Yes'' on the CCL.

### § 740.5 Civil end-users (CIV).

License Exception CIV authorizes exports and reexports controlled to the ultimate destination for national security reasons only and identified by ''CIV—Yes'' on the CCL, provided the items are destined to civil end-users for civil end-uses in Country Group D:1. (See Supplement No. 1 to part 740.) CIV may not be used for exports and reexports to military end-users or to known military uses. Such exports and reexports will continue to require a license. In addition to conventional military activities, military uses include any proliferation activities described and prohibited by part 744 of the EAR. A license is also required for transfer to military end-users or end-uses in eligible countries of items exported under CIV.

### § 740.6 Technology and software under restriction (TSR).

(a) *Scope.* License Exception TSR permits exports and reexports of technology and software controlled to the ultimate destination for national security reasons only and identified by ''TSR—Yes'' in entries on the CCL, provided the software or technology is destined to Country Group B. (See Supplement No. 1 to part 740.) A written assurance is required from the consignee before exporting or reexporting under this License Exception.

(1) *Required assurance for export of technology.* You may not export or reexport technology under this License Exception until you have received from the importer a written assurance that, without a BXA license or License Exception, the importer will not:

(i) Reexport or release the technology to a national of a country in Country Groups D:1 or E:2; or

(ii) Export to Country Groups D:1 or E:2 the direct product of the technology, if such foreign produced direct product is subject to national security controls as identified on the CCL (See General Prohibition Three, § 736.2(b)(3) of the EAR); or

(iii) If the direct product of the technology is a complete plant or any major component of a plant, export to Country Groups D:1 or E:2 the direct product of the plant or major component thereof, if such foreign produced direct product is subject to national security controls as identified on the CCL or is subject to State Department controls under the U.S. Munitions List (22 CFR part 121).

(2) *Required assurance for export of software.* You may not export or reexport software under this License Exception until you have received from the importer a written assurance that, without a BXA license or License Exception, the importer will neither:

(i) Reexport or release the software or the source code for the software to a national of a country in Country Groups D:1 or E:2; nor

(ii) Export to Country Groups D:1 or E:2 the direct product of the software, if such foreign produced direct product is subject to national security controls as identified on the CCL. (See General Prohibition Three, § 736.2(b)(3) of the EAR).

(3) *Form of written assurance.* The required assurance may be made in the form of a letter or any other written communication from the importer, or the assurance may be incorporated into a licensing agreement that specifically includes the assurances. An assurance included in a licensing agreement is acceptable only if the agreement specifies that the assurance will be honored even after the expiration date of the licensing agreement. If such a written assurance is not received, License Exception TSR is not applicable and a license is required. The license application must include a statement explaining why assurances could not be obtained.

(4) *Other License Exceptions.* The requirements in this License Exception do not apply to the export of technology or software under other License Exceptions, or to the export of technology or software included in an application for the foreign filing of a patent, provided the filing is in accordance with the regulations of the U.S. Patent Office.

(b) [Reserved]

**§ 740.7 Computers (CTP).**

(a) *Scope.* License Exception CTP authorizes exports and reexports of computers and specially designed components therefor, exported or reexported separately or as part of a system, and related equipment therefor when exported or reexported with these computers as part of a system, for consumption in Computer Tier countries as provided by this section. You may not use this License Exception to export or reexport items that you know will be used to enhance the CTP beyond the eligibility limit allowed to your country of destination. When evaluating your computer to determine License Exception CTP eligibility, use the CTP parameter to the exclusion of other technical parameters for computers classified under ECCN 4A003, except of parameters specified as Missile Technology (MT) concerns, 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5), and graphic accelerators or graphic coprocessors exceeding a ''3–D vector rate'' of 10,000,000. This License Exception does not authorize export or reexport of such graphic accelerators or coprocessors, or of computers controlled for MT reasons.

(b) *Computer Tier 1*—(1) *Eligible countries.* The countries that are eligible to receive exports and reexports under this License Exception are Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, the Holy See, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Mexico, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, and the United Kingdom.

(2) *Eligible Computers.* The computers eligible for License Exception CTP are those with a CTP greater than 2,000 MTOPS.

(c) *Computer Tier 2*—(1) *Eligible countries.* The countries that are eligible to receive exports under this License Exception include Antigua and Barbuda, Argentina, Bahamas, Barbados, Bangladesh, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei, Burkina Faso, Burma, Burundi, Cameroon, Cape Verde, Central Africa, Chad, Chile, Colombia, Congo, Costa Rica, Cote d'Ivoire, Cyprus, Czech Republic, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gabon, Gambia (The), Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hong Kong, Hungary, Indonesia, Jamaica, Kenya, Kiribati, Korea (Republic of), Lesotho, Liberia, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritius, Micronesia (Federated States of), Mozambique, Namibia, Nauru, Nepal, Nicaragua, Niger, Nigeria, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Rwanda, St. Kitts & Nevis, St. Lucia, St. Vincent and Grenadines, Sao Tome & Principe, Senegal, Seychelles, Sierra Leone, Singapore, Slovak Republic, Slovenia, Solomon Islands, Somalia, South Africa, Sri Lanka, Surinam, Swaziland, Taiwan, Tanzania, Togo, Tonga, Thailand, Trinidad and Tobago, Tuvalu, Uganda, Uruguay, Venezuela, Western Sahara, Western Samoa, Zaire, Zambia, and Zimbabwe.

(2) *Eligible computers.* The computers eligible for License Exception CTP are those having a Composite Theoretical Performance (CTP) greater than 2000, but equal to or less than 10,000 Millions of Theoretical Operations Per Second (MTOPS).

(d) *Computer Tier 3*—(1) *Eligible countries.* The countries that are eligible to receive exports and reexports under this License Exception are Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia & Herzegovina, Bulgaria, Cambodia, China (People's Republic of), Comoros, Croatia, Djibouti, Egypt, Estonia, Georgia, India, Israel, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Latvia, Lebanon, Lithuania, Macedonia (The Former Yugoslav Republic of), Mauritania, Moldova, Mongolia, Morocco, Oman, Pakistan, Qatar, Romania, Russia, Saudi Arabia, Serbia & Montenegro, Tajikistan, Tunisia, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Vanuatu, Vietnam, and Yemen.

(2) *Eligible computers.* The computers eligible for License Exception CTP are those having a Composite Theoretical Performance (CTP) greater than 2,000 Millions of Theoretical Operations Per Second (MTOPS), but less than or equal to 7,000 MTOPS.

(3) *Eligible exports.* Only exports and reexports to permitted end-users and end-uses located in countries in Computer Tier 3. License Exception CTP does not authorize exports and reexports to Computer Tier 3 for military end-users and end-uses and nuclear, chemical, biological, or missile end-users and end-uses defined in part 744 of the EAR. Exports and reexports under this License Exception may not be made to known military end-users or to known military end-uses or known proliferation end-uses or end-users defined in part 744 of the EAR. Such exports and reexports will continue to require a license and will be considered on a case-by-case basis. Retransfers to

military end-users or end-uses and defined proliferation end-users and end-uses in eligible countries are strictly prohibited without prior authorization.

(e) *Restrictions.* (1) Computers eligible for License Exception CTP may not be accessed either physically or computationally by nationals of Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria, except that commercial consignees described in § 742.12 of the EAR are prohibited only from giving such nationals user-accessible programmability.

(2) Computers, software and specially designed technology eligible for License Exception CTP may not be reexported/retransferred without prior authorization from BXA i.e., a license, a permissive reexport, another License Exception, or ''No License Required''. This restriction must be conveyed to the consignee, via the Destination Control Statement, see § 758.6 of the EAR.

(f) *Recordkeeping requirements.* In addition to the recordkeeping requirements in part 762 of the EAR, you must keep records of each export under License Exception CTP. These records will be made available to the U.S. Government on request. The records must include the following information:

(1) Date of shipment;

(2) Name and address of the end-user and each intermediate consignee;

(3) CTP of each computer in shipment;

(4) Volume of computers in shipment;

(5) Dollar value of shipment; and

(6) End-use.

**§ 740.8 Temporary imports, exports, and reexports (TMP).**

This License Exception authorizes various temporary exports and reexports; exports and reexports of items temporarily in the United States; and exports and reexports of beta test software.

(a) *Temporary exports and reexports.* (1) *Scope.* You may export and reexport commodities and software for temporary use abroad (including use in international waters) subject to the conditions and exclusions described in paragraph (a)(4) of this section. Commodities and software shipped as temporary exports or reexports under the provisions of this paragraph (a) must be returned to the country from which they were exported as soon as practicable but, except in circumstances described in this section, no later than one year from the date of export. This requirement does not apply if the commodities and software are consumed or destroyed in the normal course of authorized temporary use abroad or an extension or other disposition is permitted by the EAR or in writing by BXA.

(2) *Eligible commodities and software.* The following commodities and software are eligible to be shipped under this paragraph (a):

(i) *Tools of trade.* Usual and reasonable kinds and quantities of commodities and software for use by employees of the exporter in a lawful enterprise or undertaking of the exporter. Eligible commodities and software may include, but are not limited to, such equipment as is necessary to commission or service goods, provided that the equipment is appropriate for this purpose and that all goods to be commissioned or serviced are of foreign origin, or if subject to the EAR, have been legally exported or reexported. The commodities and software must remain under the effective control of the exporter or the exporter's employee. The shipment of commodities and software may accompany the individual departing from the United States or may be shipped unaccompanied within one month before the individual's departure from the United States, or at any time after departure. No tools of the trade may be taken to Country Group E:2, and only equipment necessary to commission or service goods may be taken as tools of trade to Country Group D:1. (See Supplement No. 1 to part 740.)

(ii) *Kits consisting of replacement parts.* Kits consisting of replacement parts may be exported or reexported to all destinations, except Country Group E:2 (see Supplement No. 1 to part 740), provided that:

(A) The parts would qualify for shipment under paragraph (a)(2)(ii)(C) of this section if exported as one-for-one replacements;

(B) The kits remain under effective control of the exporter or an employee of the exporter; and

(C) All parts in the kit are returned, except that one-for-one replacements may be made in accordance with the requirements of License Exception RPL and the defective parts returned (see ''parts'', § 740.9(a) of this part).

(iii) *Exhibition and demonstration in Country Group B.* Commodities and software for exhibition or demonstration in Country Group B (see Supplement No. 1 to part 740) may be exported or reexported under this provision provided that the exporter maintains ownership of the commodities and software while they are abroad and provided that the exporter, an employee of the exporter, or the exporter's designated sales representative retains effective control over the commodities and software while they are abroad. The commodities and software may not be used for their intended purpose while abroad, except to the minimum extent required for effective demonstration. The commodities and software may not be exhibited or demonstrated at any one site more than 120 days after installation and debugging, unless authorized by BXA. However, before or after an exhibition or demonstration, pending movement to another site, return to the United States or the foreign reexporter, or BXA approval for other disposition, the commodities and software may be placed in a bonded warehouse or a storage facility provided that the exporter retains effective control over their disposition. The export documentation for this type of transaction must show the U.S. exporter as ultimate consignee, in care of the person who will have control over the commodities and software abroad.

(iv) *Inspection and calibration.* Commodities to be inspected, tested, calibrated or repaired abroad.

(v) *Containers.* Containers for which another License Exception is not available and that are necessary for export of commodities. However, this ''containers'' provision does not authorize the export of the container's contents, which, if not exempt from licensing, must be separately authorized for export under either a License Exception or a license.

(vi) *Broadcast material.* (A) Video tape containing program material recorded in the country of export to be publicly broadcast in another country.

(B) Blank video tape (raw stock) for use in recording program material abroad.

(vii) *Assembly in Mexico.* Commodities to be exported to Mexico under Customs entries that require return to the United States after processing, assembly, or incorporation into end products by companies, factories, or facilities participating in Mexico's in-bond industrialization program (Maquiladora), provided that all resulting end-products (or the commodities themselves) are returned to the United States.

(viii) *News media.* (A) Commodities necessary for news-gathering purposes (and software necessary to use such commodities) may accompany ''accredited'' news media personnel (i.e., persons with credentials from a news gathering or reporting firm) to Country Groups D:1 or E:2 (see Supplement No. 1 to part 740) if the commodities:

(*1*) Are retained under ''effective control'' of the exporting news gathering firm;

(*2*) Remain in the physical possession of the news media personnel. The term physical possession for purposes of this paragraph (a)(2)(viii), news media, is defined as maintaining effective measures to prevent unauthorized access (e.g., securing equipment in locked facilities or hiring security guards to protect the equipment); and

(*3*) Are removed with the news media personnel at the end of the trip.

(B) When exporting under this paragraph (a)(2)(viii) from the United States, the exporter must send a copy of the packing list or similar identification of the exported commodities, to: U.S. Department of Commerce, Bureau of Export Administration, Office of Enforcement Support, Room H4069, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, or any of its field offices, specifying the destination and estimated dates of departure and return. The Office of Export Enforcement (OEE) may spot check returns to assure that the temporary exports and reexports provisions of this License Exception are being used properly.

(C) Commodities or software necessary for news-gathering purposes that accompany news media personnel to all other destinations shall be exported or reexported under paragraph (a)(2)(i), tools of trade, of this section if owned by the news gathering firm, or if they are personal property of the individual news media personnel. Note that paragraphs (a)(2)(i), tools of trade and (a)(2)(viii), news media, of this section do not preclude independent ''accredited'' contract personnel, who are under control of news gathering firms while on assignment, from utilizing these provisions, provided that the news gathering firm designate an employee of the contract firm to be responsible for the equipment.)

(3) *Special restrictions*—(i) *Destinations.* (A) No commodity or software may be exported to Country Group E:2 (see Supplement No. 1 to part 740) except as permitted by paragraph (a)(2)(viii), news media, of this section;

(B) No commodity or software may be exported to Country Group D:1 (see Supplement No. 1 to part 740) except:

(*1*) Commodities and software exported under paragraph (a)(2)(viii), news media, of this section;

(*2*) Commodities and software exported under paragraph (a)(2)(i), tools of trade, of this section; and

(*3*) Commodities exported as kits of replacement parts, consistent with the requirements of paragraph (a)(2)(ii) of this section.

(C) These destination restrictions apply to temporary exports to and for use on any vessel, aircraft or territory under ownership, control, lease, or charter by any country in Country Group D:1 or E:2, or any national thereof. (See Supplement No. 1 to part 740.)

(ii) *Ineligible commodities or software.* Commodities or software that will be used outside of Country Group A:1 (see Supplement No. 1 to part 740), Iceland, or New Zealand, either directly or indirectly in any sensitive nuclear activity as described in § 744.2 of the EAR may not be exported or reexported to any destination under the temporary exports and reexports provisions of this License Exception.

(iii) *Use or disposition.* No commodity or software may be exported or reexported under this paragraph (a) if:

(A) An order to acquire the commodity or software has been received before shipment;

(B) The exporter has prior knowledge that the commodity or software will stay abroad beyond the terms described in this paragraph (a); or

(C) The commodity or software is for lease or rental abroad.

(4) *Return or disposal of commodities and software.* All commodities and software exported or reexported under these provisions must, if not consumed or destroyed in the normal course of authorized temporary use abroad, be returned as soon as practicable but no later than one year after the date of export, to the United States or other country from which the commodities and software were so exported, or shall be disposed of or retained in one of the following ways:

(i) *Permanent export or reexport.* If the exporter or the reexporter wishes to sell or otherwise dispose of the commodities or software abroad, except as permitted by this or other applicable License Exception, the exporter must request authorization by submitting a license application to BXA at the address listed in part 748 of the EAR. (See part 748 of the EAR for more information on license applications.) The request should comply with all applicable provisions of the EAR covering export directly from the United States to the proposed destination. The request must also be supported by any documents that would be required in support of an application for export license for shipment of the same commodities or software directly from the United States to the proposed destination. BXA will advise the exporter of its decision.

(ii) *Use of a license.* An outstanding license may also be used to dispose of commodities or software covered by the provisions of this paragraph (a), provided that the outstanding license authorizes direct shipment of the same commodity or software to the same new ultimate consignee in the new country of destination.

(iii) *Authorization to retain abroad beyond one year.* If the exporter wishes to retain a commodity or software abroad beyond the 12 months authorized by paragraph (a) of this section, the exporter must request authorization by submitting Form BXA–748P, Multipurpose Application, 90 days prior to the expiration of the 12 month period. The request must be sent to BXA at the address listed in part 748 of the EAR and should include the name and address of the exporter, the date the commodities or software were exported, a brief product description, and the justification for the extension. If BXA approves the extension request, the exporter will receive authorization for a one-time extension not to exceed six months. BXA normally will not allow an extension for commodities or software that have been abroad more than 12 months, nor will a second six month extension be authorized. Any request for retaining the commodities or software abroad for a period exceeding 18 months must be made in accordance with the requirements of paragraph (a)(4)(i) of this section.

(5) *Reexports.* Commodities and software legally exported from the United States may be reexported to a new country(ies) of destination under this paragraph (a) provided its terms and conditions are met and the commodities and software are returned to the country from which the reexport occurred.

(b) *Exports of items temporarily in the United States: Scope.* The provisions of this paragraph (b) describe the conditions for exporting foreign-origin items temporarily in the United States. The provisions include the export of items moving in transit through the United States, imported for display at a U.S. exhibition or trade fair, returned because unwanted, or returned because refused entry.

Note 1 to paragraph (b) of this section: A commodity withdrawn from a bonded warehouse in the United States under a ''withdrawal for export'' customs entry is considered as ''moving in transit''. It is not considered as ''moving in transit'' if it is withdrawn from a bonded warehouse under any other type of customs entry or if its transit has been broken for a processing operation, regardless of the type of customs entry.

Note 2 to paragraph (b) of this section: Items shipped on board a vessel or aircraft and passing through the United States from one foreign country to another may be exported without a license provided that (a)

while passing in transit through the United States, they have not been unladen from the vessel or aircraft on which they entered, and (b) they are not originally manifested to the United States.)

(1) *Items moving in transit through the United States.* Subject to the following conditions, the provisions of paragraph (b)(1) of this section authorize export of items moving in transit through the United States under a Transportation and Exportation (T.& E.) customs entry or an Immediate Exportation (I.E.) customs entry made at a U.S. Customs Office.

(i) Items controlled for national security, nuclear proliferation, missile technology, or chemical and biological weapons reasons may not be exported to Country Group D:1, 2, 3, or 4 (see Supplement No. 1 to part 740), respectively, under this paragraph (b)(1).

(ii) Items may not be exported to Country Group E:2 under this paragraph (b)(1).

(iii) The following may not be exported in transit from the United States under § 740.8(b)(1):

(A) Commodities shipped to the United States under an International Import Certificate, Form BXA–645P;

(B) Chemicals controlled under ECCN 1C350; or

(C) Horses for export by sea (refer to short supply controls in part 754 of the EAR).

(iv) The provisions of paragraph (b)(1) apply to all shipments from Canada moving in transit through the United States to any foreign destination, regardless of the nature of the commodities or software or their origin. For such shipments the customs office at the U.S. port of export will require a copy of Form B–13, Canadian Customs Entry, certified or stamped by Canadian customs authorities, except where the shipment is valued at less than $50.00. (In transit shipments originating in Canada that are exempt from U.S. licensing, or made under a U.S. license or other applicable U.S. License Exception do not require this form.) The commodity or software description, quantity, ultimate consignee, country of ultimate destination, and all other pertinent details of the shipment must be the same on a required Form B–13, as on Commerce Form 7513, or when Form 7513 is not required, must be the same as on Customs Form 7512. When there is a material difference, a corrected Form B–13 authorizing the shipment is required.

(2) *Items imported for display at U.S. exhibitions or trade fairs.* Subject to the following conditions, the provisions of this paragraph (b)(2) authorize the export of items that were imported into the United States for display at an exhibition or trade fair and were either entered under bond or permitted temporary free import under bond providing for their export and are being exported in accordance with the terms of that bond.

(i) Items may be exported to the country from which imported into the United States. However, items originally imported from Cuba or North Korea may not be exported unless the U.S. Government had licensed the import from that country.

(ii) Items may be exported to any destination other than the country from which imported except:

(A) Items imported into the United States under an International Import Certificate;

(B) Exports to Country Group E:2 (see Supplement No. 1 to part 740); or

(C) Exports to Country Group D:1, 2, 3, or 4 (see Supplement No. 1 to part 740) of items controlled for national security, missile technology, chemical and biological weapons reasons, or nuclear proliferation, respectively.

(3) *Return of unwanted shipments.* A foreign-origin item may be returned to the country from which it was imported if its characteristics and capabilities have not been enhanced while in the United States. No foreign-origin items may be returned to Cuba, Libya, or North Korea.

(4) *Return of shipments refused entry.* Shipments of items refused entry by the U.S. Customs Service, the Food and Drug Administration, or other U.S. Government agency may be returned to the country of origin, except to:

(i) A destination in Cuba, Libya, or North Korea; or

(ii) A destination from which the shipment has been refused entry because of the Foreign Assets Control Regulations of the Treasury Department, unless such return is licensed or otherwise authorized by the Treasury Department, Office of Foreign Assets Control (31 CFR part 500).

(c) *Exports of beta test software.* (1) *Scope.* The provisions of paragraph (c) authorize exports and reexports to eligible countries of beta test software intended for distribution to the general public.

(2) *Eligible countries.* The countries that are eligible to receive exports and reexports are all countries except those in Country Group E:2.

(3) *Eligible software.* All software that is controlled by the CCL (part 774 of the EAR), and under Commerce licensing jurisdiction, is eligible for export and reexport, subject to the restrictions in this paragraph (c).

(4) *Conditions for use.* Any beta test software program may be exported or reexported to eligible countries if all of the conditions under this section are met:

(i) The software producer intends to market the software to the general public after completion of the beta testing, as described in the General Software Note found in Supplement No. 2 to part 774 of the EAR;

(ii) The software producer provides the software to the testing consignee free-of-charge or at a price that does not exceed the cost of reproduction and distribution; and

(iii) The software is designed for installation by the end-user without further substantial support from the supplier.

(5) *Importer Statement.* Prior to shipping any eligible software, the exporter or reexporter must obtain the following statement from the testing consignee, which may be included in a contract, non-disclosure agreement, or other document that identifies the importer, the software to be exported, the country of destination, and the testing consignee.

We certify that this beta test software will only be used for beta testing purposes, and will not be rented, leased, sold, sublicensed, assigned, or otherwise transferred. Further, we certify that we will not transfer or export any product, process, or service that is the direct product of the beta test software.

(6) *Use limitations.* Only testing consignees that provide the importer statement required by paragraph (c)(5) of this section may execute any software received.

(7) *Return or disposal of software.* All beta test software exported must be destroyed abroad or returned to the exporter within 30 days of the end of the beta test period as defined by the software producer or, if the software producer does not define a test period, within 30 days of completion of the consignee's role in the test. Among other methods, this requirement may be satisfied by a software module that will destroy the software and all its copies at or before the end of the beta test period.

**§ 740.9 Servicing and replacement of parts and equipment (RPL). This License Exception authorizes exports and reexports associated with one-for-one replacement of parts or servicing and replacement of equipment.**

(a) *Parts*—(1) *Scope.* The provisions of this paragraph (a) authorize the export and reexport of one-for-one replacement parts for previously exported equipment.

(2) *One-for-one replacement of parts.* (i) The term ''replacement parts'' as

used in this section means parts needed for the immediate repair of equipment, including replacement of defective or worn parts. (It includes subassemblies but does not include test instruments or operating supplies). (The term ''subassembly'' means a number of components assembled to perform a specific function or functions within a commodity. One example would be printed circuit boards with components mounted thereon. This definition does not include major subsystems such as those composed of a number of subassemblies.) Items that improve or change the basic design characteristics, e.g., as to accuracy, capability, performance or productivity, of the equipment upon which they are installed, are not deemed to be replacement parts. For kits consisting of replacement parts, consult § 740.8(a)(2)(ii) of this part.

(ii) Parts may be exported only to replace, on a one-for-one basis, parts contained in commodities that were: legally exported from the United States; legally reexported; or made in a foreign country incorporating authorized U.S.-origin parts. The conditions of the original U.S. authorization must not have been violated. Accordingly, the export of replacement parts may be made only by the party who originally exported or reexported the commodity to be repaired, or by a party that has confirmed the appropriate authority for the original transaction.

(iii) The parts to be replaced must either be destroyed abroad or returned promptly to the person who supplied the replacement parts, or to a foreign firm that is under the effective control of that person.

(3) *Exclusions.* (i) No replacement parts may be exported to repair a commodity exported under a license if that license included a condition that any subsequent replacement parts must be exported only under a license.

(ii) No parts may be exported to be held abroad as spare parts or equipment for future use. Replacement parts may be exported to replace spare parts that were authorized to accompany the export of equipment, as those spare parts are utilized in the repair of the equipment. This will allow maintenance of the stock of spares at a consistent level as parts are used.

(iii) No parts may be exported to any destination except Iceland, New Zealand, or the countries listed in Country Group A:1 (see Supplement No. 1 to part 740) if the item is to be incorporated into or used in nuclear weapons, nuclear explosive devices, nuclear testing related to activities described in § 744.2(a) of the EAR, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear materials, or the fabrication of nuclear reactor fuel containing plutonium, as described in § 744.2(a) of the EAR.

(iv) No replacement parts may be exported to Cuba, Iran, Iraq, Sudan, Syria, Libya, or North Korea (countries designated by the Secretary of State as supporting acts of international terrorism) if the commodity to be repaired is an ''aircraft'' (as defined in part 772 of the EAR) or national security controlled commodity.

(v) The conditions described in this paragraph (a)(3) relating to replacement of parts do not apply to reexports to a foreign country of parts as replacements in foreign-origin products, if at the time the replacements are furnished, the foreign-origin product is eligible for export to such country under any of the License Exceptions in this part or the exceptions in § 734.4 of the EAR.

(4) *Reexports.* Parts exported from the United States may be reexported to a new country of destination, provided that the restrictions described in paragraphs (a)(2) and (3) of this section are met. A party reexporting U.S.-origin one-for-one replacement parts shall ensure that the commodities being repaired were shipped to their present location in accordance with U.S. law and continue to be legally used, and that either before or promptly after reexport of the replacement parts, the replaced parts are either destroyed or returned to the United States, or to the foreign firm in Country Group B (see Supplement No. 1 to part 740) that shipped the replacement parts.

(b) *Servicing and replacement*—(1) *Scope.* The provisions of this paragraph (b) authorize the export and reexport of items that were returned to the United States for servicing and the replacement of defective or unacceptable U.S.-origin commodities and software.

(2) Commodities and software sent to a United States or foreign party for servicing.

(i) *Definition.* ''Servicing'' as used in this section means inspection, testing, calibration or repair, including overhaul and reconditioning. The servicing shall not have improved or changed the basic characteristics, e.g., as to accuracy, capability, performance, or productivity of the commodity or software as originally authorized for export or reexport.

(ii) *Return of serviced commodities and software.* When the serviced commodity or software is returned, it may include any replacement or rebuilt parts necessary to its repair and may be accompanied by any spare part, tool, accessory, or other item that was sent with it for servicing.

(iii) *Commodities and software imported from Country Group D:1 except the PRC.* Commodities and software legally exported or reexported to a consignee in Country Group D:1 (except the People's Republic of China (PRC)) (see Supplement No. 1 to part 740) that are sent to the United States or a foreign party for servicing may be returned to the country from which it was sent, provided that both of the following conditions are met:

(A) The exporter making the shipment is the same person or firm to whom the original license was issued; and

(B) The end-use and the end-user of the serviced commodities or software and other particulars of the transaction, as set forth in the application and supporting documentation that formed the basis for issuance of the license have not changed.

(iv) Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria. No repaired commodity or software may be exported or reexported to Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria.

(3) *Replacements for defective or unacceptable U.S.-origin equipment.*

(i) Subject to the following conditions, commodities or software may be exported or reexported to replace defective or otherwise unusable (e.g., erroneously supplied) items.

(A) The commodity or software to be replaced must have been previously exported or reexported in its present form under a license or authorization granted by BXA.

(B) No commodity or software may be exported or reexported to replace equipment that is worn out from normal use, nor may any commodity or software be exported to be held in stock abroad as spare equipment for future use.

(C) The replacement item may not improve the basic characteristic, e.g., as to accuracy, capability, performance, or productivity, of the equipment as originally approved for export or reexport under a license issued by BXA.

(D) No shipment may be made to Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria, or to any other destination to replace defective or otherwise unusable equipment owned or controlled by, or leased or chartered to, a national of any of those countries.

(ii) *Special conditions applicable to exports to Country Group B and Country Group D:1.* (See Supplement No. 1 to part 740.) In addition to the general conditions in paragraph (b)(3)(i) of this section, the following conditions apply

to exports or reexports of replacements for defective or unacceptable U.S.-origin commodities or software to a destination in Country Group B or Country Group D:1:

(A) By making such an export or reexport, the exporter represents that all the requirements of this paragraph (b) have been met and undertakes to destroy or return the replaced parts as provided in paragraph (b)(3)(ii)(C) of this section.

(B) The defective or otherwise unusable equipment must be replaced free of charge, except for transportation and labor charges. If exporting to the countries listed in Country Group D:1 (except the PRC), the exporter shall replace the commodity or software within the warranty period or within 12 months of its shipment to the ultimate consignee in the country of destination, whichever is shorter.

(C) The commodity or software to be replaced must either be destroyed abroad or returned to the United States, or to a foreign firm in Country Group B that is under the effective control of the U.S. exporter, or to the foreign firm that is providing the replacement part or equipment. The destruction or return must be effected before, or promptly after, the replacement item is exported from the United States.

(D) A party reexporting replacements for defective or unacceptable U.S.-origin equipment must ensure that the commodities or software being replaced were shipped to their present location in accordance with U.S. law and continue to be legally used.

**§ 740.10 Governments and international organizations (GOV).**

This Licenses Exception authorizes exports and reexports for international nuclear safeguards; U.S. government agencies or personnel, and agencies of cooperating governments.

(a) *International safeguards*—(1) *Scope.* You may export and reexport commodities or software to the International Atomic Energy Agency (IAEA) and the European Atomic Energy Community (Euratom), and reexports by IAEA and Euratom for official international safeguard use, as follows:

(i) Commodities or software consigned to the IAEA at its headquarters in Vienna, Austria, or field offices in Toronto, Ontario, Canada or Tokyo, Japan for official international safeguards use. The IAEA is an international organization that establishes and administers safeguards designed to ensure that special nuclear materials and other related nuclear facilities, equipment, and material are not diverted from peaceful purposes to non-peaceful purposes.

(ii) Commodities or software consigned to the Euratom Safeguards Directorate in Luxembourg, Luxembourg for official international safeguards use. Euratom is an international organization of European countries with headquarters in Luxembourg. Euratom establishes and administers safeguards designed to ensure that special nuclear materials and other related nuclear facilities, equipment, and material are not diverted from peaceful purposes to non-peaceful purposes.

(iii) Commodities consigned to IAEA or Euratom may be reexported to any country for IAEA or Euratom international safeguards use provided that IAEA or Euratom maintains control of or otherwise safeguards the commodities and returns the commodities to the locations described in paragraphs (a)(1)(i) and (a)(1)(ii) of this section when they become obsolete, are no longer required, or are replaced.

(iv) Commodity or software shipments may be made by commercial companies under direct contract with IAEA or Euratom, or by Department of Energy National Laboratories as directed by the Department of State or the Department of Energy.

(v) The monitoring functions of IAEA and Euratom are not subject to the restrictions on prohibited safeguarded nuclear activities described in § 744.2(a)(3) of the EAR.

(vi) When commodities or software originally consigned to IAEA or Euratom are no longer in IAEA or Euratom official safeguards use, such commodities may only be disposed of in accordance with the regulations in the EAR.

(2) *Exclusions.* No computers with a CTP greater than 10,000 MTOPS may be exported or reexported to countries listed in Computer Tiers 3 or 4. See § 742.12 of the EAR for a complete list of the countries within Computer Tiers 3 and 4.

(b) *Governments*—(1) *Scope.* The provisions of paragraph (b) authorize exports and reexports of the items listed in paragraph (b)(2) of this section to personnel and agencies of the U.S. Government or agencies of cooperating governments.

(2) *Eligibility*—(i) *Items for personal use by personnel and agencies of the U.S. Government.* This provision is available for items in quantities sufficient only for the personal use of members of the U.S. Armed Forces or civilian personnel of the U.S. Government (including U.S. representatives to public international organizations), and their immediate families and servants. Items for personal use include household effects, food, beverages, and other daily necessities.

(ii) *Items for official use by personnel and agencies of the U.S. Government.* This provision is available for items consigned to and for the official use of any agency of the U.S. Government.

(iii) *Items for official use within national territory by agencies of cooperating governments.* This provision is available for all items consigned to and for the official use of any agency of a cooperating government within the territory of any cooperating government, except:

(A) Computers with a CTP greater than 10,000 MTOPS when destined for Argentina, Hong Kong, South Korea, Singapore, or Taiwan;

(B) Items identified on the Commerce Control List as controlled for missile technology (MT), chemical and biological warfare (CB), or nuclear nonproliferation (NP) reasons; or

(C) Regional stability items controlled under Export Control Classification Numbers (ECCNs) 6A002, 6A003, 6D102, 6E001, 6E002, 7D001, 7E001, 7E002, and 7E101, as described in § 742.6(a)(1) of the EAR.

(iv) *Diplomatic and consular missions of a cooperating government.* This provision is available for all items consigned to and for the official use of a diplomatic or consular mission of a cooperating government located in any country in Country Group B (see Supplement No. 1 to part 740), except:

(A) Computers with a CTP greater than 10,000 MTOPS when destined for Argentina, Hong Kong, South Korea, Singapore, or Taiwan;

(B) Items identified on the Commerce Control List as controlled for missile technology (MT), chemical and biological warfare (CB), or nuclear nonproliferation (NP) reasons; or

(C) Regional stability items controlled under Export Control Classification Numbers (ECCNs) 6A002, 6A003, 6D102, 6E001, 6E002, 7D001, 7E001, 7E002, and 7E101, as described in § 742.6 (a)(1) of the EAR.

(3) *Definitions.* (i) ''Agency of the U.S. Government'' includes all civilian and military departments, branches, missions, government-owned corporations, and other agencies of the U.S. Government, but does not include such national agencies as the American Red Cross or international organizations in which the United States participates such as the Organization of American States. Therefore, shipments may not be made to these non-government national or international agencies, except as provided in paragraph (b)(2)(i) of this

section for U.S. representatives to these organizations.

(ii) ''Agency of a cooperating government'' includes all civilian and military departments, branches, missions, and other governmental agencies of a cooperating national government. Cooperating governments are the national governments of countries listed in Country Group A:1 (see Supplement No. 1 to part 740) and the national governments of Argentina, Austria, Finland, Hong Kong, Ireland, Korea (Republic of), New Zealand, Singapore, Sweden, Switzerland, and Taiwan.

**§ 740.11 Gift parcels and humanitarian donations (GFT).**

(a) *Gift parcels.*—(1) *Scope.* The provisions of paragraph (a) authorize exports and reexports of gift parcels by an individual (donor) addressed to an individual, or a religious, charitable or educational organization (donee) located in any destination for the use of the donee or the donee's immediate family (and not for resale). The gift parcel must be provided free of charge to the donee. However, payment by the donee of any handling charges or of any fees levied by the importing country (e.g., import duties, taxes, etc.) is not considered to be a cost to the donee for purposes of this definition of ''gift parcel.''

*Note to paragraph (a) of this section:* A gift parcel, within the context of this paragraph (a), does not include multiple parcels exported in a single shipment for delivery to individuals residing in a foreign country. Such multiple gift parcels, if subject to the General Prohibitions described in § 734.2(b) of the EAR, must be licensed by BXA. (See Supplement No. 2 to part 748 of the EAR for licensing of multiple gift parcels).

(2) *Commodity, value and other limitations.*—(i) *Eligible commodities.* The eligible commodities are as follows:

(A) The commodity must not be controlled for chemical and biological weapons (CB), missile technology (MT), national security (NS), or nuclear proliferation (NP) (see Commerce Control List, part 774 of the EAR); and

(B) The commodity must be of a type and in quantities normally given as gifts between individuals.

(*1*) For Cuba, the only commodities that may be included in a gift parcel are the following items: food, vitamins, seeds, medicines, medical supplies and devices, hospital supplies and equipment, equipment for the handicapped, clothing, personal hygiene items, veterinary medicines and supplies, fishing equipment and supplies, soap-making equipment, and in addition receive-only radio equipment for reception of commercial/civil AM/FM and short wave publicly available frequency bands, and batteries for such equipment.

(*2*) For all other destinations, eligible commodities include all items described in paragraph (a)(2)(i)(B)(*1*) of this section as well as all other items normally sent as gifts. Gold bullion, gold taels, and gold bars are prohibited as are items intended for resale or reexport.

Example to paragraph (a) of this section. A watch or piece of jewelry is normally sent as a gift. However, multiple watches, either in one package or in subsequent shipments, would not quality for such gift parcels because the quantity exceeds that normally given between individuals. Similarly, a sewing machine or bicycle, within the dollar limits of this License Exception, may be an appropriate gift. However, subsequent shipments of the same item to the same donee would not be a gift normally given between individuals.

(*3*) For purposes of paragraph (a)(2)(i)(B) of this section, clothing is appropriate, except that export of military wearing apparel to Country Group D:1 or E:2 under this License Exception is specifically prohibited, regardless of whether all distinctive U.S. military insignia, buttons, and other markings are removed.

(ii) *Import requirements.* The commodities must be acceptable in type and quantity by the recipient country for import as gifts. Commodities exceeding the import limits may not be included in gift parcels.

(iii) *Frequency.* Except for gift parcels of food to Cuba, not more than one gift parcel may be sent from the same donor to the same donee in any one calendar month. Parties seeking authorization to exceed this limit due to compelling humanitarian concerns (e.g., gifts of medicine to relatives) should submit a license application (BXA–748P) with complete justification.

(iv) *Value.* The combined total domestic retail value of all commodities included in a gift parcel may not exceed $400, except for gift parcels to Cuba where the value of non-food items may not exceed $200. There is no dollar value limit on food contained in a gift parcel to Cuba.

(3) *How to export gift parcels.* (i) A gift parcel must be sent directly to the donee by the individual donor, or for such donor by a commercial or other gift-forwarding service or organization. Each gift parcel must show, on the outside wrapper, the name and address of the donor, as well as the name and address of the donee, regardless of whether sent by the donor or by a forwarding service.

(ii) Each parcel must have the notation ''GIFT—Export License Not Required'' written on the addressee side of the package and the symbol ''GFT'' written on any required customs declaration.

(b) *Humanitarian donations.*—(1) *Scope.* The provisions of paragraph (b) authorize exports by groups or organizations of donations to meet basic human needs when those groups or organizations have experience in maintaining a verifiable system of distribution that ensures delivery to the intended beneficiaries.

(2) *Basic human needs.* Basic human needs are defined as those requirements essential to individual well-being: health, food, clothing, shelter, and education. These needs are considered to extend beyond those of an emergency nature and those that meet direct needs for mere subsistence.

(3) *Eligible donors.* Eligible donors are U.S. charitable organizations that have an established record of involvement in donative programs and experience in maintaining and verifying a system of distribution to ensure delivery of commodities and software to the intended beneficiaries. Eligible distribution arrangements may consist of any one or more of the following:

(i) A permanent staff maintained in the recipient country to monitor the receipt and distribution of the donations to the intended beneficiaries;

(ii) Periodic spot-checks in the recipient country by members of the exporter's staff; or

(iii) An agreement to utilize the services of a charitable organization that has a monitoring system in place.

(4) *Donations.* To qualify for export under the provisions of this paragraph (b), the items must be provided free of charge to the beneficiary. The payment by the beneficiary, however, of normal handling charges or fees levied by the importing country (e.g., import duties, taxes, etc.) is not considered to be a cost to the beneficiary for purposes of this paragraph (b).

(5) *Ineligible commodities and software.* The following commodities and software are not eligible:

(i) Commodities and software controlled for national security, chemical or biological weapons, and nuclear nonproliferation, missile technology or crime control reasons (see Supplement No. 1 to part 774 of the EAR);

(ii) Exports for large-scale projects of the kind associated with comprehensive economic growth, such as dams and hydroelectric plants; or

(iii) Exports to Cuba of medical items excluded by § 746.2(a)(3) of the EAR.

(6) *Eligible items.* Eligible commodities and software are those listed in Supplement No. 2 to part 740.

(7) *Additional recordkeeping requirements.* In addition to the recordkeeping requirements in part 762 of the EAR, donors must keep records containing the following information:

(i) The donor organization's identity and past experience as an exporter of goods to meet basic human needs;

(ii) Past and current countries to which the donative programs have been and are being directed, with particular reference to donative programs in embargoed destinations;

(iii) Types of projects and commodities involved in the donative programs;

(iv) Specific class(es) of beneficiaries of particular donated goods intended to be exported under this License Exception; and

(v) Information concerning the source of funding for the donative programs and the projected annual value of exports of humanitarian donations.

**§ 740.12 Technology and software—unrestricted (TSU). This License Exception authorizes exports and reexports of operation technology and software; sales technology and software; software updates (bug fixes); and ''mass market'' software subject to the General Software Note**

(a) *Operation technology and software.*—(1) *Scope.* The provisions of paragraph (a) permit exports and reexports of operation technology and software. ''Operation technology'' is the minimum technology necessary for the installation, operation, maintenance (checking), and repair of those products that are lawfully exported or reexported under a license, a License Exception, or NLR. The ''minimum necessary'' operation technology does not include technology for development or production and includes use technology only to the extent required to ensure safe and efficient use of the product. Individual entries in the software and technology subcategories of the CCL may further restrict the export or reexport of operation technology.

(2) *Provisions and destinations.*—(i) *Provisions.* Operation software may be exported or reexported provided that both of the following conditions are met:

(A) The operation software is the minimum necessary to operate equipment authorized for export or reexport; and

(B) The operation software is in object code.

(ii) *Destinations.* Operation software and technology may be exported or reexported to any destination to which the equipment for which it is required has been or is being legally exported or reexported.

(b) *Sales technology*—(1) *Scope.* The provisions of paragraph (b) authorize exports and reexports of sales technology. ''Sales technology'' is data supporting a prospective or actual quotation, bid, or offer to sell, lease, or otherwise supply any item.

(2) *Provisions and destinations*—(i) *Provisions.* Sales technology may be exported or reexported provided that:

(A) The technology is a type customarily transmitted with a prospective or actual quotation, bid, or offer in accordance with established business practice; and

(B) Neither the export nor the reexport will disclose the detailed design, production, or manufacture technology, or the means of reconstruction, of either the quoted item or its product. The purpose of this limitation is to prevent disclosure of technology so detailed that the consignee could reduce the technology to production.

(ii) *Destinations.* Sales technology may be exported or reexported to any destination.

Note: Neither this section nor its use means that the U.S. Government intends, or is committed, to approve a license application for any commodity, plant, software, or technology that may be the subject of the transaction to which such quotation, bid, or offer relates. Exporters are advised to include in any quotations, bids, or offers, and in any contracts entered into pursuant to such quotations, bids, or offers, a provision relieving themselves of liability in the event that a license (when required) is not approved by the Bureau of Export Administration.

(c) *Software updates.* The provisions of paragraph (c) authorize exports and reexports of software updates that are intended for and are limited to correction of errors (''fixes'' to ''bugs'') in software lawfully exported or reexported (original software). Such software updates may be exported or reexported only to the same consignee to whom the original software was exported or reexported, and such software updates may not enhance the functional capacities of the original software. Such software updates may be exported or reexported to any destination to which the software for which they are required has been legally exported or reexported.

(d) *General Software Note: ''mass market'' software*—(1) *Scope.* The provisions of paragraph (d) authorize exports and reexports of ''mass market'' software subject to the General Software Note (see Supplement No. 2 to part 774 of the EAR; also referenced in this section).

(2) *Provisions and destinations*—(i) *Destinations.* The ''mass market'' provisions of this paragraph (d) for software are available to all destinations except Cuba, Iran, Libya, North Korea, Sudan, and Syria.

(ii) *Provisions.* ''Mass market'' treatment is available for software that is generally available to the public by being:

(A) Sold from stock at retail selling points, without restriction, by means of:

(*1*) Over the counter transactions;

(*2*) Mail order transactions; or

(*3*) Telephone call transactions; and

(B) Designed for installation by the user without further substantial support by the supplier.

17a. The introductory text of newly designated § 740.14 is revised to read as follows:

**§ 740.14 Aircraft and vessels (AVS).**

This License Exception authorizes departure from the United States of foreign registry civil aircraft on temporary sojourn in the United States and of U.S. civil aircraft for temporary sojourn abroad; the export of equipment and spare parts for permanent use on a vessel or aircraft; and exports to vessels or planes of U.S. or Canadian registry and U.S. or Canadian Airlines' installations or agents. Generally, no License Exception symbol is necessary for export clearance purposes; however, when necessary, the symbol ''AVS'' may be used.

* * * * *

## PART 742—[AMENDED]

18. Section 742.4 is amended by revising the last sentence of paragraph (a) to read as follows:

**§ 742.4 National security.**

(a) *License requirements.* * * * License Exception GBS is available for the export and reexport of certain national security controlled items to Country Group B (see § 740.4 and Supplement No. 1 to part 740 of the EAR).

* * * * *

19. In § 742.12(a)(1), the reference in the fourth sentence to ''§ 743.3(e)'' is revised to read ''§ 740.7''.

20. Section 742.12 is amended by revising the last sentence of paragraph (a)(2) to read as follows:

**§ 742.12 High performance computers.**

(a) * * *

(2) * * * Countries included in Computer Tiers 1, 2, and 3 are listed in License Exception CTP in § 740.7 of the EAR. Computer Tier 4 consists of Cuba,

Iran, Iraq, Libya, North Korea, Sudan, and Syria.

* * * * *

## PART 744—[AMENDED]

21. Section 744.2 is amended by revising paragraph (c) to read as follows:

**§ 744.2 Restrictions on certain nuclear end-uses.**

* * * * *

(c) *Exceptions.* Despite the prohibitions described in paragraphs (a) and (b) of this section, you may export technology subject to the EAR under the operation technology and software or sales technology and software provisions of License Exception TSU (see § 740.12 (a) and (b)), but only to and for use in countries listed in Country Group A:1 (see Supplement No. 1 to part 740 of the EAR), Iceland and New Zealand. Notwithstanding the provisions of part 740 of the EAR, the provisions of § 740.12 (a) and (b) will only overcome general prohibition five for countries listed in Country Group A:1, Iceland and New Zealand.

## PART 746—[AMENDED]

21. Section 746.2 is amended by revising paragraph (a)(1) to read as follows:

**§ 746.2 Cuba.**

(a) * * *

(1) *License Exceptions.* You may export without a license if your transaction meets all the applicable terms and conditions of any of the following License Exceptions. To determine the scope and eligibility requirements, you will need to turn to the sections or specific paragraphs of part 740 of the EAR (License Exceptions). Read each License Exception carefully, as the provisions available for embargoed countries are generally narrow.

(i) Temporary exports and reexports (TMP) by the news media (see § 740.8(a)(2)(viii) of the EAR).

(ii) Operation technology and software (TSU) for legally exported commodities (see § 740.12(a) of the EAR).

(iii) Sales technology (TSU) (see § 740.12(b) of the EAR).

(iv) Software updates (TSU) for legally exported software (see § 740.12(c) of the EAR).

(v) Parts (RPL) for one-for-one replacement in certain legally exported commodities (see § 740.9(a) of the EAR).

(vi) Baggage (BAG) (see § 740.13 of the EAR).

(vii) Governments and international organizations (GOV) (see § 740.10 of the EAR).

(viii) Gift parcels and humanitarian donations (GFT) (see § 740.11 of the EAR).

(ix) Items in transit (TMP) from Canada through the U.S. (see § 740.8(b)(1)(iv) of the EAR).

(x) Aircraft and vessels (AVS) for certain aircraft on temporary sojourn (see § 740.14(a) of the EAR).

* * * * *

23. Section 746.3 is amended by revising paragraph (a)(1) to read as follows:

**§ 746.3 Iraq.**

(a) * * *

(1) *License Exceptions.* You may export or reexport without a license if your transaction meets all the applicable terms and conditions of one of the following License Exceptions. Read each License Exception carefully, as the provisions available for embargoed countries are generally narrow.

(i) Baggage (BAG) (See § 740.13 of the EAR).

(ii) Governments and international organizations (GOV) (See § 740.10 of the EAR).

* * * * *

24. Section 746.4 is amended by revising paragraph (b) to read as follows:

**§ 746.4 Libya.**

* * * * *

(b) *License requirements.*

(1) *Exports.* OFAC and BXA both require a license for virtually all exports (including transshipments) to Libya. Except as noted in paragraph (b) of this section or specified in OFAC regulation, you may not use any BXA License Exception or other BXA authorization to export or transship to Libya. You will need a license from OFAC for all direct exports and transshipments to Libya except those eligible for the following BXA License Exceptions:

(i) Baggage (BAG) (see § 740.13 of the EAR).

(ii) Governments and international organizations (GOV) (see § 740.11 of the EAR).

(iii) Gift parcels (GFT) (see § 740.11(a) of the EAR).

(2) *Reexports.* You will need a license from BXA to reexport any U.S.-origin item from a third country to Libya, any foreign-manufactured item containing U.S.-origin parts, components or materials, as defined in § 734.2(b)(2) of the EAR, or any national security-controlled foreign-produced direct product of U.S. technology or software, as defined in § 734.2(b)(3) of the EAR, exported from the U.S. after March 12, 1982. You will need a license from BXA to reexport all items subject to the EAR (see part 734 of the EAR) to Libya, except:

(i) Food, medicines, medical supplies, and agricultural commodities;

(ii) Reexports eligible for the following License Exceptions (read each License Exception carefully, as the provisions available for embargoed countries are generally narrow):

(A) Temporary exports and reexports (TMP): reexports by the news media (see § 740.8(a)(2)(viii) of the EAR).

(B) Operation technology and software (TSU) for legally exported commodities (see § 740.12(a) of the EAR).

(C) Sales technology (TSU) (see § 740.12(b) of the EAR).

(D) Software updates (TSU) for legally exported software (see § 740.12(c) of the EAR).

(E) Parts (RPL) for one-for-one replacement in certain legally exported commodities (§ 740.9(a) of the EAR).

(F) Baggage (BAG) (§ 740.13 of the EAR).

(G) Aircraft and vessels (AVS) for vessels only (see § 740.14(c)(1) of the EAR).

(H) Governments and international organizations (GOV) (see § 740.10 of the EAR).

(I) Gift parcels and humanitarian donations (GFT) (see § 740.11 of the EAR).

* * * * *

25. Section 746.5 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

**§ 746.5 North Korea.**

(a) * * *

(1) *License Exceptions.* You may export without a license if your transaction meets all the applicable terms and conditions of any of the License Exceptions specified in this paragraph. To determine scope and eligibility requirements, you will need to turn to the sections or specific paragraphs of part 740 of the EAR (License Exceptions). Read each License Exception carefully, as the provisions available for embargoed countries are generally narrow.

(i) Temporary exports and reexports (TMP) by the news media (see § 740.8(a)(2)(viii) of the EAR).

(ii) Operation technology and software (TSU) for legally exported commodities (see § 740.12(a) of the EAR).

(iii) Sales technology (TSU) (see § 740.12(b) of the EAR).

(iv) Software updates (TSU) for legally exported software (see § 740.12(c) of the EAR).

(v) Parts (RPL) for one-for-one replacement in certain legally exported commodities (§ 740.9(a) of the EAR).

(vi) Baggage (BAG) (§ 740.13 of the EAR).

(vii) Aircraft and vessels (AVS) for fishing vessels under governing international fishery agreements and foreign-registered aircraft on temporary sojourn in the U.S.[1] (see § 740.14(a) and (c)(1) of the EAR).

(viii) Governments and international organizations (GOV) (see § 740.10 of the EAR).

(ix) Gift parcels and humanitarian donations (GFT) (see § 740.11 of the EAR).

* * * * *

(b) * * *

(1) BXA will review on a case-by-case basis applications for export of donated human-needs items listed in Supplement No. 2 to Part 740 of the EAR that do not qualify for the humanitarian donation provisions of License Exception GFT (see § 740.11(b) of the EAR). Such applications include single transactions involving exports to meet emergency needs.

* * * * *

## PART 748—[AMENDED]

26. Supplement No. 2 to part 748 is amended by revising the introductory text of paragraphs (d), (e), and (p) to read as follows:

Supplement No. 2 to Part 748—Unique License Application Requirements

* * * * *

(d) *Gift parcels; consolidated in a single shipment.* If you are submitting a license application to export multiple gift parcels for delivery to individuals residing in a foreign country, you must include the following information in your license application. NOTE: Each gift parcel must meet the terms and conditions described for gift parcels in License Exception GFT (See § 740.11(a) of the EAR).

* * * * *

(e) *Intransit through the United States.* If you are submitting a license application for items moving intransit through the United States that do not qualify for the intransit provisions of License Exception TMP (see § 740.8(b)(1) of the EAR), you must provide the following information with your license application:

* * * * *

(p) *Temporary exports or reexports.* If you are submitting a license application for the temporary export or reexport of an item (not eligible for the temporary exports and reexports provisions of License Exception TMP (see § 740.9(a) of the EAR)) you must include the following certification in Block 24:

* * * * *

26. Supplement No. 5 to part 748 is amended by revising paragraph (a)(6)(vii) to read as follows:

Supplement No. 5 to Part 748—U.S. Import Certificate and Delivery Verification Procedure

* * * * *

(a) * * *

(6) * * *

(vii) Reexport or transshipment of items after delivery to U.S. Items imported into the U.S. under the provisions of a U.S. International Import Certificate may not be reexported to any destination under the intransit provisions of License Exception TMP (see § 740.8(b)(1) of the EAR). However, all other provisions of the EAR applicable to items of domestic origin shall apply to the reexport of items of foreign origin shipped to the U.S. under a U.S. International Import Certificate.

* * * * *

## PART 750—[AMENDED]

28. Section 750.7 is amended by revising paragraph (h)(2) to read as follows:

### § 750.7 Issuance of licenses.

* * * * *

(h) * * *

(2) *Intransit within the United States.* If you have been issued a license authorizing an intransit shipment (that does not qualify for the intransit provisions of License Exception TMP) through the United States, your license will be valid only for the export of the intransit shipment wholly of foreign origin and for which a Transportation and Exportation customs entry or an Immediate Exportation customs entry is outstanding.

* * * * *

## PART 752—[AMENDED]

29. Section 752.5 is amended by revising the introductory text of paragraph (c)(8)(i) to read as follows:

### § 752.5 Steps you must follow to apply for an SCL.

* * * * *

(c) * * *

(8) * * *

(i) *Temporary exports.* Proposed consignees that plan to exhibit or demonstrate items in countries other than those in which they are located or are authorized under an SCL, an approved Form BXA–752, or a License Exception provision described in § 740.8(a)(2)(iii) of the EAR may obtain permission to do so by including the following additional certification on company letterhead, and attaching it to Form BXA–752.

* * * * *

## PART 758—[AMENDED]

30. Section 758.1 is amended by revising the first sentence of paragraph (d)(2)(vi) to read as follows:

### § 758.1 Export clearance requirements.

* * * * *

(d) * * *

(2) * * *

(vi) *Software and technology.* If you are exporting software or technology, the export of which is authorized under the License Exceptions in § 740.6 or § 740.12 of the EAR, you do not need to make any notation on the package.

* * *

* * * * *

31. Section 758.3 is amended by revising the third and fourth sentences of paragraph (h)(2) introductory text and the introductory text of paragraph (m)(3)(ii)(C) to read as follows:

### § 758.3 Shipper's Export Declaration (SED).

* * * * *

(h) * * *

(2) *Exports not needing a license.* * * * If the item(s) will be exported under the provisions of License Exceptions GBS, CIV, or LVS, or under the ''NLR'' provisions of the EAR (as described in § 758.1(a) of this part) and the item(s) are covered by entries on the Commerce Control List that have the column identifier ''NS Column 2'' controlled for ''NS'' reasons, the ECCN must also be shown in the designated space on the SED or SED continuation sheet. The following apply for notations made on SED:

* * * * *

(m) * * *

(3) * * *

(ii) * * *

(C) For intransit shipments of items of U.S.-origin eligible for the intransit provisions of License Exception TMP (see § 740.8(b) of the EAR), enter the following statement:

* * * * *

32. Section 758.6 is amended by revising paragraph (a)(1)(ii) to read as follows:

### § 758.6 Destination control statement.

(a) * * *

(1) * * *

(ii) The export is made under the authority of the following License

[1] Export of U.S. aircraft on temporary sojourn or vessels is prohibited, 44 CFR Ch. IV, Part 403 ''Shipping restrictions: North Korea (T–2).''

Exceptions: LVS, GBS, CIV, CTP, TMP, or RPL; or

* * * * *

## PART 770—[AMENDED]

33. Section 770.3 is amended by revising paragraphs (d)(1)(i)(B), (d)(1)(ii), and (d)(2)(ii) to read as follows:

**§ 770.3 Interpretations related to exports of technology and software to destinations in Country Group D:1.**

* * * * *

(d) * * *

(1) * * *

(i) * * *

(B) Can we send an engineer (with knowledge and experience) to the customer site to perform the installation or repair, under the provisions of License Exception for operation technology and software described in § 740.12(a) of the EAR, if it is understood that he is restricted by our normal business practices to performing the work without imparting the knowledge or technology to the customer personnel?

(ii) *Answer 1.* Export of technology includes release of U.S.-origin data in a foreign country, and ''release'' includes ''application to situations abroad of personal knowledge or technical experience acquired in the United States.'' As the release of technology in the circumstances described here would exceed that permitted under the License Exception for operation technology and software described in § 740.12(a) of the EAR, a license would be required even though the technician could apply the data without disclosing it to the customer.

* * * * *

(2) * * *

(ii) *Answer 2.* (A) Provided that this is your normal training, and involves technology contained in your manuals and standard instructions for the exported equipment, and meets the other requirements of License Exception for operation technology and software described in § 740.12(a), the training may be provided within the limits of those provisions of License Exception TSU. The location of the training is not significant, as the export occurs at the time and place of the actual transfer or imparting of the technology to the customer's engineers.

(B) Any training beyond that covered under the provisions of License Exception TSU for operation technology and software described in § 740.12(a), but specifically represented in your license application as required for this customer installation, and in fact authorized on the face of the license or a separate technology license, may not be undertaken while the license is suspended or revoked.

Dated: November 25, 1996.

Sue E. Eckert,

*Assistant Secretary for Export Administration.*

[FR Doc. 96–30502 Filed 12–3–96; 8:45 am]

BILLING CODE 3510–33–P

## ARMS CONTROL AND DISARMAMENT AGENCY

## 22 CFR Part 605

## National Security Information Regulations

**AGENCY:** Arms Control and Disarmament Agency.

**ACTION:** Final rule.

**SUMMARY:** The United States Arms Control and Disarmament Agency (ACDA) is updating, revising, and restating in their entirety its National Security Information regulations. In addition to containing internal policies and procedures, these regulations set forth in § 605.8 what members of the public must do to request mandatory declassification review and to appeal denials of requests for declassification.

**EFFECTIVE DATE:** December 4, 1996.

**FOR FURTHER INFORMATION CONTACT:** Frederick Smith, Jr., United States Arms Control and Disarmament Agency, Room 5635, 320 21st Street, NW., Washington, DC 20451, telephone (202) 647–3596.

**SUPPLEMENTARY INFORMATION:** On October 10, 1996, ACDA published a notice of proposed rulemaking (61 FR 53158–53161) with a 36-day comment period. No comments were received during the comment period. Accordingly, the rule is adopted as proposed.

List of Subjects in 22 CFR Part 605

Administrative practice and procedure, Classified information, Freedom of information.

Chapter VI of Title 22 of the Code of Federal Regulations is amended by revising part 605 to read as follows:

## PART 605—NATIONAL SECURITY INFORMATION REGULATIONS

Sec.



Authority: E.O. 12958 (60 FR 19825, April 20, 1995); Information Security Oversight Office Directive No. 1, 32 CFR 2001.

### § 605.1 Basis.

These regulations, taken together with the Information Security Oversight Office Directive No. 1 dated October 13, 1995, provide the basis for the security classification program of the U.S. Arms Control and Disarmament Agency (ACDA) implementing Executive Order 12958, ''Classified National Security Information'' (the Executive Order).

### § 605.2 Objective.

The objective of the ACDA classification program is to ensure that national security information is protected from unauthorized disclosure, but only to the extent and for such a period as is necessary.

### § 605.3 Senior agency official.

The Executive Order requires that each agency that originates or handles classified information designate a senior agency official to direct and administer its information security program. The ACDA senior agency official is the Deputy Director. The Deputy Director is assisted in carrying out the provisions of the Executive Order and the ACDA information security program by the Director of Security and by the Classification Adviser.

### § 605.4 Original classification.

(a) Definition. Original classification is the initial determination that certain information requires protection against unauthorized disclosure in the interest of national security (i.e., national defense or foreign relations of the United States), together with a designation of the level of classification.

(b) Classification designations—(1) *Top Secret* shall be applied only to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security. Examples of ''exceptionally grave damage'' include, but are not limited to, armed hostilities against the United States or its allies; the compromise of vital national defense plans or cryptologic and communications intelligence systems; the revelation of sensitive intelligence operations; and the disclosure of scientific or technological developments vital to national security.

(2) *Secret* shall be applied to information, the unauthorized disclosure of which reasonably could be

expected to cause serious damage to the national security. Examples of ''serious damage'' include, but are not limited to, disruption of foreign relations significantly affecting the national security; significant impairment of a program or policy directly related to the national security; revelation of significant military plans or intelligence operations; and compromise of significant scientific or technological developments relating to national security.

(3) *Confidential* shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security.

(c) Classification restraints. (1) The classification level of any form of information is premised on an evaluation of its contents as a whole, as well as on its relationship to other information.

(2) In classifying information, the public's interest in access to government information must be balanced against the need to protect national security information.

(3) In case of doubt, the lower level of classification is to be used.

(d) Duration of classification. (1) Information shall be classified for as long as is required by national security considerations, subject to the limitations set forth in section 1.6 of the Executive Order. When it can be determined, a specific date or event for declassification shall be set by the original classification authority at the time the information is originally classified. If a specific date or event for declassification cannot be determined, information shall be marked for declassification 10 years from the date of the original decision, except that the original classification authority may classify for a period greater than 10 years specific information that falls within the criteria set forth in section 1.6(d) of the Executive Order.

(2) An original classification authority may extend the duration of classification or reclassify specific information for successive periods not to exceed 10 years at a time except for records that are more than 25 years old.

(3) Information classified for an indefinite duration under predecessor orders, such as ''Originating Agency's Determination Required,'' shall be subject to the declassification provisions of Part 3 of the Executive Order, including the provisions of section 3.4 regarding automatic declassification of records older than 25 years.

**§ 605.5 Classification authority.**

(a) *General.* Classification shall be solely on the basis of national security considerations. In no case shall information be classified in order to conceal violations of law, inefficiency, or administrative error, or to prevent embarrassment to a person, organization, or agency.

(b) *Designations.* The following ACDA officials shall have original classification authority in each of the three designations under which they are shown below. This authority vests only in the officials or positions designated and, except as provided in paragraph (c) of this section, may not be redelegated. In the absence of any of the authorized classifiers (for TDY outside Washington, annual leave, temporary position vacancy, etc.), the officer acting in that person's position may exercise the classifier's authority.

(1) *Top Secret.* (i) Director,

(ii) Deputy Director.

(2) *Secret.* (i) Officials having Top Secret classification authority,

(ii) such other officials who have a frequent need to exercise Secret authority and are specifically delegated this authority in writing by the Director.

(3) *Confidential.* (i) Officials having Top Secret and Secret classification authority,

(ii) Other officials who have a frequent need to exercise Confidential authority and are specifically delegated this authority in writing by the Director.

(c) Delegation of classification authority. (1) The Executive Order restricts delegation of original classification authority to officials who have a demonstrable and continuing need to exercise such authority. Such delegations shall be held to a minimum.

(2) If in the judgment of bureau or office heads an officer has a demonstrable need for classification authority, a written request over the bureau or office head's signature should be forwarded via the Director of Security to the Deputy Director for action. The request should set forth the officer's name and title, the justification for having the authority, and the level of classification authority sought.

(3) The Director of Security shall maintain a complete current list by classification designation of individuals to whom and positions to which original classification authority has been delegated.

(4) Periodic reviews of delegations of classification authority will be made by the Director of Security to ensure that officials so designated have a continuing need to exercise such authority. Recommendations by the Director of Security for discontinuance of delegations will be forwarded to the Deputy Director for action.

(5) Original classification authority shall not be delegated to persons who only reproduce, extract, or summarize classified information, or who only apply classifications markings derived from source material or as directed by a classification guide.

(d) Classification responsibilities. Each ACDA officer who signs, authenticates, or otherwise produces a document is responsible for determining that it is properly classified and marked. This responsibility includes determining whether the document contains any originally classified material (in which case the classification must be authorized by an appropriate ACDA classifying official) or contains information already classified (in which case the proper derivative markings must be applied). Any significant doubt about the level of classification shall be resolved in favor of the lower level.

(e) Classification challenges. Holders of information who believe that its classification status is improper are expected and encouraged to challenge the need for classification, the classification level, the duration of classification, the lack of classification or other aspect believed to be improper. Classification challenges shall be directed to and decided by the Deputy Director. If the information was not originated within or classified by ACDA, it will be referred to the Classification Adviser for coordination with the responsible agency or department if declassification, downgrading, classification or other change in its status appears to be warranted. Individuals making challenges to the classification status of information shall not be subject to retribution for such action, and they shall be advised of their right to appeal the Deputy Director's decision on the challenge to the Interagency Security Classification Appeals Panel established by section 5.4 of the Executive Order.

(f) Contractor classification authority. (1) Each ACDA contract calling for classified work shall be processed under the National Industrial Security Program.

(2) Each contract processed under the National Industrial Security Program requires the preparation of a contract security classification specification (DD 254) which serves as the contractor's guidance and authority to apply classification markings.

(3) Each contract processed under the Department of Energy (DOE) Security Requirements (i.e., involving restricted data or formerly restricted data) shall

include a provision for naming a classification coordinator in the contractor organization. This individual shall coordinate the derived classification of all documents prepared under the contract in accordance with guidance received from ACDA via the ACDA Contracting Officer's Technical Representative for the contract, or by direct consultation on classification problems with the ACDA Classification Adviser or the Director of Security.

(4) Only designated officials of the U.S. Government may originally classify information. Contractor personnel, as potential developers of classified information, must follow the guidelines outlined in paragraph (d) of this section entitled ''Classification Responsibilities.'' When there is a question involving the original classification of information, the contractor is obligated to safeguard it in accordance with the classification designation deemed appropriate and submit recommendations to ACDA for classification determination.

(5) In general, the classification of the information provided by ACDA for use or reference in the completion of the contract will be the source of the classification of documents prepared under the contract.

**§ 605.6 Derivative classification.**

(a) *Definition.* Derivative classification is the incorporating, paraphrasing, restating or generating in new form information that is already classified and the marking of the new material consistent with the classification of the source material. Duplication or reproduction of existing classified information is not derivative classification.

(b) *Responsibility.* Derivative application of classification markings is the responsibility of those who prepare material using information that is already classified and of those who apply markings in accordance with instructions from an authorized classifier or in accordance with an authorized classification guide.

(c) *Classification guides.* (1) Classification guides used to direct derivative classification and issued by ACDA shall specifically identify the information to be protected, using categorization to the extent necessary to ensure that the information involved can be identified readily and uniformly.

(2) Each classification guide issued by ACDA shall be approved by the Senior Agency Official.

(3) Each classification guide issued by ACDA shall be kept current and shall be reviewed as required by directives issued under the Executive Order. The Director of Security shall maintain a list of all classification guides.

**§ 605.7 Declassification and downgrading.**

(a) *Declassification processes.* Declassification of classified information may occur:

(1) after review of material in response to a Freedom of Information Act (FOIA), mandatory declassification review, discovery, subpoena, or other information access or declassification request;

(2) after review as part of ACDA's systematic declassification review program;

(3) as a result of the elapse of the time or the occurrence of the event specified at the time of classification;

(4) by operation of the automatic declassification provisions of section 3.4 of the Executive Order with respect to material more than 25 years old.

(b) *Downgrading.* When material classified at the Top Secret level is reviewed for declassification and it is determined that classification continues to be warranted, a determination shall be made whether downgrading to a lower level of classification is appropriate. If downgrading is determined to be warranted, the classification level of the material shall be changed to the appropriate lower level.

(c) *Authority to downgrade and declassify.* (1) Classified information may be downgraded or declassified by the official who originally classified the information if that official is still serving in the same position, by a successor in that capacity, by a supervisory official of either, by the Classification Adviser, or by any other official specifically designated by the Deputy Director. Contractor personnel do not have authority to downgrade or declassify.

(2) The Director of Security shall maintain a record of ACDA officials specifically designated by the Deputy Director as declassification authorities.

(d) *Declassification after balancing public interest.* It is presumed that information that continues to meet classification requirements requires continued protection. In exceptional cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the ACDA official with Top Secret authority having primary jurisdiction over the information in question. That official, after consultation with the Public Affairs Adviser and the Classification Adviser, will determine whether the public interest in disclosure outweighs the damage to national security that reasonably could be expected from disclosure. If the determination is made that the information should be declassified and disclosed, that official will make such a recommendation to the Director or the Deputy Director who shall make the decision on declassification and disclosure.

(e) *Public dissemination of declassified information.* Declassification of information is not authorization for its public disclosure. Previously classified information that is declassified may be subject to withholding from public disclosure under the FOIA, the Privacy Act, and various statutory confidentiality provisions.

**§ 605.8 Mandatory declassification review.**

(a) *Action on requests.* (1) All requests to ACDA by a member of the public, a government employee, or an agency to declassify and release information shall result in a prompt declassification review of the information, provided the request describes the document or material containing the information with sufficient specificity to enable ACDA to locate it with a reasonable amount of effort.

(2) If a request does not reasonably describe the information sought, the Classification Adviser will notify the requester that unless additional information is provided or the scope of the request is narrowed, no further action will be taken.

(3) Mandatory declassification review requests should be directed to the Classification Adviser, U.S. Arms Control and Disarmament Agency, 320 21st St., NW., Washington, DC 20451.

(4) If the request requires the rendering of services for which reasonable fees should be charged pursuant to the FOIA and ACDA regulations thereunder (22 CFR part 602), such fees shall be imposed at the FOIA schedule rates and the requester shall be so notified.

(5) The Classification Adviser, in consultation with appropriate ACDA bureaus and offices, will determine whether, under the Executive Order, the requested information may be declassified, in whole or in part, and will promptly make any declassified information available to the requester, unless the information is exempt from disclosure under some other provision of law.

(b) *Appeals from denials.* (1) If it is determined that declassification of the information requested is not warranted, in whole or in part, the requester shall be given a brief statement as to the

reasons for the decision, a notice of the right to appeal to the Deputy Director, and a notice that any such appeal must be filed with ACDA within 60 days. Appeals shall be addressed to: Deputy Director, U.S. Arms Control and Disarmament Agency, 320 21st St., NW., Washington, DC 20451.

(2) The Deputy Director shall act within 30 days of receipt on all appeals of denials of requests for declassification. The Deputy Director shall determine whether continued classification is required in whole or in part. If the Deputy Director determines that continued classification is required under the Executive Order, the requester shall be so notified and informed of the reasons therefor. The requester shall also be advised of the right to appeal any denial to the Interagency Security Classification Appeals Panel in accordance with section 5.4 of the Executive Order.

(c) Information classified by another agency. When ACDA receives a request for information in its custody that was classified by another agency, the Classification Adviser shall forward the request together with a copy of the document containing the information requested to the classifying agency for review and direct response to the requester. Unless the agency that classified the information objects on the ground that its association with the information requires protection, the Classification Adviser shall also notify the requester of the referral.

(d) Confirmation of existence or nonexistence of document. In responding to a request for mandatory declassification review, the Classification Adviser may refuse to confirm or deny the existence or nonexistence of a document if the fact of its existence or nonexistence would itself be classifiable under the Executive Order.

**§ 605.9 Systematic declassification review.**

The Classification Adviser shall be responsible for conducting a program for systematic declassification review of historically valuable records that were exempted from the automatic declassification provisions of section 3.4 of the Executive Order. The FOIA officer shall prioritize such review on the basis of the recommendations of the Information Security Policy Advisory Council established under section 5.5 of the Executive Order and on the degree of researcher interest and likelihood of declassification upon review.

**§ 605.10 Safeguarding.**

Specific controls on the use, processing, storage, reproduction and transmittal of classified information within ACDA that provide adequate protection and prevent access by unauthorized persons are contained in Part 1 of the ACDA Security Classification Handbook, an internal guidance manual, and shall be followed by ACDA personnel and, when appropriate, by contractors.

Dated: November 22, 1996.

Mary Elizabeth Hoinkes,

*General Counsel.*

[FR Doc. 96–30884 Filed 12–3–96; 8:45 am]

**BILLING CODE 6820–32–P**

## DEPARTMENT OF THE TREASURY

## Office of Foreign Assets Control

## 31 CFR Chapter V

## Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Specially Designated Narcotics Traffickers, and Blocked Vessels; Removal of Specially Designated Nationals of the Federal Republic of Yugoslavia (Serbia & Montenegro)

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Amendment of final rule.

**SUMMARY:** In light of United Nations Security Council Resolution 1074 of October 1, 1996, lifting sanctions on the Government of the Federal Republic of Yugoslavia (Serbia & Montenegro), this document removes from the list of persons whose assets are blocked the entries for individuals and entities that were determined to be acting for or on behalf of the Government of the Federal Republic of Yugoslavia (Serbia & Montenegro), listed in the appendices to 31 CFR chapter V.

**EFFECTIVE DATE:** December 4, 1996.

**FOR FURTHER INFORMATION:** Contact the Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 22201, tel.: 202/622–2520.

**SUPPLEMENTARY INFORMATION:**

### Electronic Availability

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### Background

Appendices A and B to 31 CFR chapter V contain the names of blocked persons, specially designated nationals, specially designated terrorists, and specially designated narcotics traffickers designated pursuant to the various economic sanctions programs administered by the Office of Foreign Assets Control (''OFAC'') (61 FR 32936, June 26, 1996). In light of United Nations Security Council Resolution 1074 of October 1, 1996, lifting sanctions on the Government of the Federal Republic of Yugoslavia (Serbia & Montenegro) (the ''FRY (S&M)''), this final rule amends appendices A and B to remove the names of individuals and entities determined by the Director of OFAC to be specially designated nationals (''SDNs'') of the FRY (S&M). Assets blocked in which the SDNs had an interest subsequent to their designation and before sanctions were suspended on December 27, 1995, are unblocked effective December 4, 1996, since these assets were blocked on the basis of the SDNs' activities in support of the FRY (S&M) — activities that are no longer prohibited — and not because the Government of the FRY (S&M) or entities located in or controlled from the FRY (S&M) have any interest in or control of those assets.

Since the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective

date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

For the reasons set forth in the preamble, and under the authority of 3 U.S.C. 301; 22 U.S.C. 287c; 49 U.S.C. 40106; 50 U.S.C. 1601–1651; 50 U.S.C. 1701–1706; E.O. 12808, 57 FR 23299, 3 CFR, 1992 Comp., p. 305; E.O. 12810, 57 FR 24347, 3 CFR, 1992 Comp., p. 307; E.O. 12831, 58 FR 5253, 3 CFR, 1993 Comp., p. 576; E.O. 12846, 58 FR 25771, 3 CFR, 1993 Comp., p. 599; and E.O. 12934, 59 FR 54117, 3 CFR, 1994 Comp., p. 930, appendices A and B to chapter V of 31 CFR are amended as set forth below:

1. Appendix A to chapter V of 31 CFR is amended by removing the following entries that are listed in alphabetical order at the end thereof:

ABRAMOVIC, Miroslava
ANDJIC, Slobodan
AVRAMOVIC, Dragoslav
BIGARENA TRADING LTD. of Moscow
BIGARENA TRADING LTD. of Limassol
CHESA, I.
CICALA, Andrea
DRAKULIC, Zoran
EAST POINT HOLDINGS LIMITED
G. L. LEGIN of Limassol
G. L. LEGIN of Moscow
GVOZDENOVIC, Zaga
ING, Dr.
INPEA (OVERSEAS) LTD
INPEA of Moscow
INPEA of Romania
IOANNIDES, Pambos
J&K LTD.
KOSTIC, Bosko
MAADI, N.
MASLAKOVIC, Dusan
MIHIC, Vukasin
PAPADOPOULOS, Tassos
PEROVIC, D.
PETROMED LTD. of London
PIECAS, Stanko
PRELIC, M.
RIVAMED SHIPPING LTD. of Cyprus
SARENAC, Slobodan
SECYCO
SEKULAREC, Mirko
STELJIC, Marko
TASLAW NOMINEES LTD.
TASLAW SECRETARIAL LTD.
TASLAW SERVICES LTD.
TAT TRADING LTD.
TRAFI HOLDINGS LTD. of Nicosia
VASIC, Zoran
VUCIC, Borka
VUJNOVIC, Milorad
YU POINT LTD.
ZECEVIC, Miodrag,

2. Appendix B to chapter V of 31 CFR is amended by removing the following entries under the following headings where they appear:

*Cyprus*
BIGARENA TRADING LTD. of Limassol
DRAKULIC, Zoran
EAST POINT HOLDINGS LIMITED
G. L. LEGIN of Limassol
GVOZDENOVIC, Zaga
INPEA (OVERSEAS) LTD
IOANNIDES, PAMBOS
MASLAKOVIC, Dusan
PAPADOPOULOS, TASSOS
RIVAMED SHIPPING LTD. of Cyprus
SECYCO
TASLAW NOMINEES LTD.
TASLAW SECRETARIAL LTD.
TASLAW SERVICES LTD.
TAT TRADING LTD.
TRAFI HOLDINGS LTD. of Nicosia
VUJNOVIC, Milorad

*England*
J&K LTD.
KOSTIC, Bosko
PETROMED LTD. of London

*Federal Republic of Yugoslavia (Serbia & Montenegro) (the ''FRY (S&M)'')*
ANDJIC, Slobodan
AVRAMOVIC, Dragoslav
MIHIC, Vukasin
SARENAC, Slobodan
STELJIC, Marko
VASIC, Zoran
VUCIC, Borka

*France*
ZECEVIC, Miodrag

*Iran*
MAADI, N.
PIECAS, Stanko

*Italy*
CICALA, Andrea
SEKULAREC, Mirko

*Romania*
CHESA, I.
ING, Dr.
INPEA of Romania

*Russia*
BIGARENA TRADING LTD. of Moscow
G. L. LEGIN of Moscow
INPEA of Moscow
PEROVIC, D.

*Ukraine*
PRELIC, M.

*Multiple or Unknown Locations*
ABRAMOVIC, Miroslava

Dated: November 14, 1996.

R. Richard Newcomb,

*Director, Office of Foreign Assets Control.*

Approved: November 26, 1996.

James E. Johnson,

*Assistant Secretary (Enforcement).*

[FR Doc. 96–30857 Filed 11–29–96; 12:10 pm]

BILLING CODE 4810–25–F

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 39

[FRL–5658–6]

### Loan Guarantees for Construction of Treatment Works; Removal of Legally Obsolete Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is today removing from the Code of Federal Regulations (CFR) 40 CFR Part 39. This outdated rule was intended to implement a provision of law allowing the EPA Administrator to guarantee state and municipal loans for wastewater treatment works. The rule is revoked because it is legally obsolete. Deleting this rule from the CFR will clarify the legal status of this rule for personnel of State and local government agencies. This action is in furtherance of government streamlining and will not adversely impact public health or the environment.

**EFFECTIVE DATE:** This final rule takes effect on December 4, 1996.

**FOR FURTHER INFORMATION CONTACT:** Bruce Feldman, Policy, Information and Training Branch (3903F), United States Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Telephone: (202) 260–5268; or E-mail to: feldman.bruce@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

I. Introduction

On March 4, 1995, the President directed all Federal agencies and departments to conduct a comprehensive review of the regulations they administer and, by June 1, 1995, to identify those rules that are obsolete or unduly burdensome. EPA has conducted a review of its rules, including 40 CFR Part 39 issued under the authority of Section 213 of the Federal Water Pollution Control Act Amendments of 1972, as amended. Part 39 is being revoked because the Loan Guarantee provisions of the Act were never funded by congressional appropriations, the program was never implemented, and there is no plan to implement it since the construction grants program is being phased out.

II. Obsolete Rule

*Part 39 Loan Guarantees for Construction of Treatment Works*

Part 39 established policies and procedures to ensure that inability to borrow necessary funds from other

sources does not prevent the construction of any wastewater treatment works for which a grant has been, or will be, awarded in compliance with the Act. It provides for the guarantee by the Administrator of full and timely payment of principal and interest on any obligation of the State, municipality, or intermunicipal or interstate agency issued directly and exclusively to the Federal Financing Bank to finance the local share of the costs of any such project.

Inasmuch as this revocation action relates to agency management and in view of the subject matter, notice of proposed rule making and public comment were considered unnecessary.

III. Rulemaking Analysis

*Regulatory Flexibility Act*

The Agency has determined that the rule being issued today is not subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, which generally requires an agency to conduct a regulatory flexibility analysis unless it certifies that the rule will not have a significant economic impact on a substantial number of small entities. By its terms, the RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. Today's rule is not subject to notice and comment requirements under the APA or any other statute. Even if the Agency were required to perform a regulatory flexibility analysis, today's rule would not have a significant economic impact on small entities for the reasons stated in this preamble.

*Executive Order 12866*

Under Executive Order 12866, [58 Federal Register 51,735 (October 4, 1993)] the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

*Unfunded Mandates Reform Act*

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector.

*Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 39

Environmental protection, Loan programs-environmental protection, Reporting and recordkeeping requirements, Water pollution control.

Dated: November 27, 1996.

Carol M. Browner,

*Administrator.*

For the reasons set out in the preamble, 40 CFR Chapter I, under the authority of the Federal Water Pollution Control Act Amendments of 1972 as amended, is amended as follows.

## PART 39—[REMOVED]

1. Part 39 is removed.

[FR Doc. 96–30873 Filed 12–3–96; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 52

**[CA 181–0024a; FRL–5649–8]**

## Approval and Promulgation of Implementation Plan for South Coast Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is taking direct final action to approve South Coast Air Quality Management District (District) Rules 212, 1301, 1302, 1303, 1304, 1306, 1309, 1309.1, 1310, and 1313 for the purpose of meeting requirements of the Clean Air Act, as amended in 1990 (CAA or Act) with regard to new source review (NSR) in areas that have not attained the national ambient air quality standards (NAAQS). This approval action will incorporate these rules into the federally approved State Implementation Plan (SIP) for California. The rules were submitted by the State to satisfy certain Federal requirements for an approvable NSR SIP. Thus, EPA is finalizing the approval of these rules into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

**DATES:** This action is effective on February 3, 1997 unless adverse or critical comments are received by January 3, 1997. If the effective date is delayed, a timely notice will be published in the Federal Register.

**ADDRESSES:** Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours at the following address: New Source Section (A–5–1), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

**FOR FURTHER INFORMATION CONTACT:** Gerardo C. Rios, (A–5–1), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1259.

**SUPPLEMENTARY INFORMATION:** The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Clean Air Act. EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment NSR SIP requirements [see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion. EPA has also proposed regulations to implement

the changes under the 1990 Amendments in the NSR provisions in parts C and D of title I of the Act. (See 61 FR 38249 (July 23, 1996)). Upon final promulgation of those regulations, EPA will review those NSR SIP submittals on which it has already taken final action to determine whether additional SIP revisions are necessary.

Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) and section 110(l) of the Act provide that each implementation plan or revision to an implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall meet the applicable provisions of Section 110(a)(2).

The District held a public hearing on December 7, 1995 to accept public comment on Rules 212, 1301, 1302, 1309, 1309.1, 1310, and 1313. On December 7, 1995, the Rules were adopted by the District Board of Directors. The District also held a public hearing on May 10, 1996 to accept public comment on Rule 1303. On May 10, 1996, the rule was adopted by the District Board of Directors. Finally, on June 14, 1996 the District held a public hearing to accept public comment on Rules 1304 and 1306. On June 14, 1996, the rules were adopted by the District Board of Directors. On August 28, 1996, Rules 212, 1301, 1302, 1303, 1304, 1306, 1309, 1309.1, 1310, and 1313 were submitted to EPA as a proposed revision to the California SIP.

EPA deemed the submittal complete on October 10, 1996 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 appendix V [1] and is being finalized for approval into the SIP.

Summary of Rule Contents

The South Coast Air Quality Management District submitted to EPA for adoption into the applicable NSR SIP Rule 212 and Regulation XIII, which is composed of Rules 1301, 1302, 1303, 1304, 1306, 1309, 1309.1, 1310, and 1313. Regulation XIII and Rule 212 constitute the District's new source permitting rules. Rule 212 contains the District's administrative requirements including the public consultation process for permitting.

Rule 1301 is the general purpose and applicability rule. Rule 1302 consists of definitions of all terms relating to new sources and modifications to existing sources of air pollution, and the requirements of Regulation XIII. Rule 1303 contains substantive source permitting requirements including Lowest Achievable Emission Rate requirements, Best Available Control Technology requirements, offset requirements, statewide compliance requirements, Federal Land Manager Notification and Class I Area Visibility Protection requirements, and Alternative Source Siting Analysis requirements. Rule 1304 establishes the exemptions from Regulation XIII. Rule 1306 establishes the emission calculation procedures. Rule 1309 establishes procedures for the creation, banking, and use of emission reduction credits. Rule 1309.1 establishes the Priority Reserve which will provide credits for specific priority sources. Rule 1310, Analysis and Reporting, establishes a thirty day review for the District to issue completeness determinations for permit applications, and the requirement for public notification of proposed Emission Reduction Credits. Rule 1313, Permits to Operate, establishes procedures for issuing permits to operate for sources not required to obtain a permit to construct. Regulation XIII and Rule 212, therefore, contain the permitting requirements for sources located in nonattainment areas.

Rules 212, 1301, 1302, 1303, 1304, 1306, 1309, 1309.1, 1310, and 1313 represent comprehensive revisions to the District's NSR permitting regulations. These rules are intended to replace Rules 212, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1310, and 1313, which were approved into the SIP by EPA on 2/3/89, 1/21/81, 1/21/81, 2/21/81, 3/12/86, 1/20/85, 1/21/81, 5/18/81, 1/21/81, 1/21/81, and 1/21/81, respectively. The District has adopted the current revisions to Regulation XIII and Rule 212 in part to meet the CAA and the November 15, 1992 deadline for submittal.

The District is composed of Los Angeles County, Orange County, Riverside County, and San Bernardino County. The Air Quality Management Area of the District is designated as an extreme ozone nonattainment area, while the rest of the District is designated as a severe ozone nonattainment area. The District is also designated nonattainment for PM10, NO2, and CO. For the detailed area designations that apply to the District, please refer to 40 CFR 81.305. The CAA air quality planning requirements for nonattainment NSR are set out in part D of Title I of the Act, with implementing regulations at 40 CFR 51.160 through 51.165. EPA has determined that the District's submittal satisfies these requirements.

District Rule 201, which prohibits construction of sources or modifications prior to permit issuance and compliance with the requirements of these rules, is integral to Regulation XIII. EPA is approving Regulation XIII based on the understanding that the District will continue to enforce Rule 201 in a manner consistent with the federal regulations prohibiting construction before permit issuance. The District has interpreted Rule 201 to prohibit such pre-permit construction in its interim Rule 201 interpretation dated September 19, 1994.

In addition, this approval is based on the understanding that the District will apply a tracking system which will continuously show in the aggregate that the District: (1) will provide for the necessary offsets required to meet the appropriate statutory offset ratio; and (2) will mitigate emissions from those sources exempted from offsets under Rule 1304 which are not exempt from federal regulation. However, offsets for sources exempt from offsets due to their switch from ozone depleting compounds (ODCs) to volatile organic compounds (VOCs) will be provided by the District through reductions achieved by the District's 1994 attainment plan which EPA has proposed to approve at FR 10920 [Vol.61, No. 53/Monday, March 18, 1996] [CA114–1–7280; FRL–5439–8]. Therefore, the District need not show in the tracking system mitigation in the aggregate for those particular sources. The District, however, has committed to track such reductions to avoid double counting reductions used to meet the offset ratio in the aggregate. If the District modifies the attainment plan so that it no longer provides offsets for sources switching emissions from ODCs to VOCs, then the District will have to show that those VOC emissions increases will be offset by the District through the tracking system as are all other emissions sources exempt under Rule 1304, or modify Rule 1304 to exclude exemptions for such sources.

EPA's approval is also based on the District's interpretation of Regulation XIII to require a net emissions increase calculation consistent with federal requirements for extreme ozone non-attainment areas in the non-SEDAB area, for severe ozone non-attainment areas in the SEDAB area, and for all other pollutants subject to regulation in all parts of the District.

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

Lastly, as part of this approval, interpollutant trades proposed within District will be subject to EPA approval.

For a more detailed description of how the submitted Regulation XIII and Rule 212 meet the Act's applicable requirements, please refer to EPA's technical support document (TSD).

Action

EPA has evaluated Regulation XIII and Rule 212 and has determined that they are consistent with the CAA, EPA regulations and EPA policy. Therefore, District Rules 212, 1301, 1302, 1303, 1304, 1306, 1309, 1309.1, and 1310 are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), and part D of Title I of the Act.

Administrative Review

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the 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.

EPA is publishing this document without prior proposal in part because the District has provided public workshops in the development of the submitted rules, and provided the opportunity for public comment prior to adoption of the submitted rules. At that time, no significant comments were received by the District. The Agency therefore views this as a non-controversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective February 3, 1997, unless, unless by January 3, 1997, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective February 3, 1997.

Regulatory Process

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

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

Unfunded Mandates and SBREFA

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.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing these rules and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: October 29, 1996.

John Wise,

*Acting Regional Administrator.*

Subpart F of part 52, chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

## Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(240) to read as follows:

### § 52.220 Identification of plan.

* * * * *

(c) * * *

(240) New and amended regulations for the following APCD were submitted on August 28, 1996 by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) Rules 212, 1301, 1302, 1309, 1309.1, 1310, and 1313, adopted on December 7, 1995, Rule 1303, adopted

on May 10, 1996, and Rules 1304 and 1306, adopted on June 14, 1996.

* * * * *

[FR Doc. 96–30872 Filed 12–3–96; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 81

**[NE–012–1012a; FRL–5655–6]**

## Designation of Areas for Air Quality Planning Purposes; State of Nebraska

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** This document takes final action to correct a previous action published on November 6, 1991, that designated portions of Omaha, Nebraska, as nonattainment for the lead National Ambient Air Quality Standard (NAAQS) (see 56 FR 56694). Specifically, this action corrects a mistake made in designating the southern boundary of that nonattainment area.

**DATES:** This action is effective February 3, 1997 unless by January 3, 1997 adverse or critical comments are received. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Comments may be mailed to Josh Tapp, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Josh Tapp at (913) 551–7606.

**SUPPLEMENTARY INFORMATION:** On January 24, 1991, the state of Nebraska submitted a letter which contained a recommendation for the EPA to designate a portion of Omaha as nonattainment for the lead NAAQS. In the letter, the state recommended the boundaries based on existing monitoring data. The specific boundaries listed in Nebraska's January 1991 letter are: Fourth Street on the south, Eleventh Street on the west, Avenue H and the Nebraska-Iowa border on the north, and the Missouri River on the east.

On August 27, 1996, the state of Nebraska submitted a letter which notified the EPA that its request in 1991 was not fully accurate. The southern boundary was originally defined based on the fact that data recorded at the monitor located at Fourth Street and Jones Street showed attainment of the lead standard. However, in its 1991 request, Nebraska incorrectly requested that the southern boundary be designated as Fourth Street which actually runs north and south. The August 1996 letter requests that the EPA correct the error by designating the southern boundary as Jones Street which runs east and west. The state supplied a map which clearly delineates the relationship of Fourth Street and Jones Street to the nonattainment area to support its request.

Under section 110(k)(6) of the Clean Air Act (CAA), the EPA may revise a previous designation when it determines that the designation was in error. The EPA has determined that its identification of the southern boundary of the Omaha lead nonattainment area was in error for the reasons stated above.

### I. Final Action

Pursuant to section 110(k)(6) of the Clean Air Act, this is a direct final action which redefines the southern boundary of the Omaha lead nonattainment area as Jones Street.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action is effective February 3, 1997 unless, by January 3, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action is effective February 3, 1997.

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

### II. Administrative Requirements

#### *A. Executive Order 12866*

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

#### *B. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the 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 private sector, of $100 million or more. Under section 205, the 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 the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated 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 preexisting 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.

#### *C. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*D. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 3, 1997. 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 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: November 14, 1996.

Dennis Grams,

*Regional Administrator.*

Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401—7671q.

### Subpart B—Nebraska

2. Section 81.328 is amended by revising the lead table to read as follows:

**§ 81.328 Nebraska.**

* * * * *

NEBRASKA—LEAD

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date | Type | Date | Type |
| Douglas County (part):<br>Portion of city of Omaha bounded by: Jones Street on the south, Eleventh Street on the west, Avenue H and the Nebraska-Iowa border on the north, and the Missouri River on the east.<br>Rest of State Not Designated | 1/6/92 | Nonattainment | | |

* * * * *

[FR Doc. 96–30471 Filed 12–3–96; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**49 CFR Part 367**

**RIN 2125–AD92**

### Single State Insurance Registration; Receipt Rule

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule; continued suspension of effectiveness.

**SUMMARY:** This document continues the suspension of the effectiveness of the final rule concerning a receipt provision of Single State Insurance Registration which was published at 60 FR 30011 on June 7, 1995. The rule had directed the Base States to make copies of their issued receipts which indicate that a motor carrier has filed the required proof of insurance and has paid the required fees. Affected parties then requested the Interstate Commerce Commission (ICC) to suspend the effectiveness of the final rule and to reinstate the earlier rule allowing the motor carriers to make the copies instead of the Base States. This request was granted. This action continues the extension of the current temporary receipt rule which was reinstated at 60 FR 39874 on August 4, 1995, until the DOT adopts a final rule implementing a new motor carrier registration system.

**EFFECTIVE DATE:** Effective December 4, 1996, § 367.5, as revised at 60 FR 30011, June 7, 1995, and suspended at 60 FR 39875, August 4, 1995, is further suspended until January 1, 1998. Section 367.5, which was reinstated at 60 FR 39875, August 4, 1995, continues in effect December 4, 1996, through December 31, 1997.

**FOR FURTHER INFORMATION CONTACT:** Ms. Dixie E. Horton, Office of Motor Carrier Planning and Customer Liaison, (202) 366–4340, or Ms. Grace Reidy, Office of Chief Counsel, (202) 366–0761, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** Since the Motor Carrier Act of 1935, Pub. L. 74-255, 49 Stat. 543, Congress has permitted the States to police unauthorized operations by interstate for-hire motor carriers. In 1965, Congress allowed the States to enforce this activity through a multi-filing system of operating authority registration, the so-called ''bingo stamp'' program. See Pub. L. 89–170, 79 Stat. 648. This program, (formerly 49 U.S.C. 11506, now section 14504), was administered at 49 CFR part 1023. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)( Pub. L. 102–240, 105 Stat. 1914) created the Single State Registration System (SSRS) to replace the ''bingo stamp'' program. Section 4005 of the ISTEA significantly amended 49 U.S.C. 11506 in creating the SSRS. Under the SSRS, a carrier: (a) Files proof of insurance with a single ''registration''(or Base) State; (b) pays the Base State fees that are subject to allocation among all States in which the carrier operates and which participate in the system; and (c) keeps, in each of its commercial vehicles, a copy of the receipt issued by the Base State.

The ISTEA directed the ICC to issue implementing rules under which the SSRS would operate. In a decision in Ex Parte No. MC–100 (Sub-No. 6), *Single State Insurance Registration,* 9 I.C.C.2d 610 (1993), notice published at 58 FR 28932 on May 18, 1993, the ICC adopted final regulations that replaced the ''bingo stamp'' program regulations. These new SSRS regulations were challenged and upheld in court, with one exception concerning who makes the official copies of the Base State-issued receipt. *Nat'l Ass'n of Regulatory Util. Comm'rs* v. *ICC,* 41 F.3d 721 (D.C. Cir. 1994). The court ruled that the States, rather than the motor carriers, should make the copies of the Base State-issued receipt that must be kept in each vehicle. The court remanded this particular rule to the ICC for consideration. In a decision served June 6, 1995, notice published at 60 FR 30011 on June 7, 1995, the ICC adopted a revised final rule requiring the States to issue the official copies of the receipts, effective July 7, 1995.

By a petition filed July 11, 1995, the National Conference of State Transportation Specialists (NCSTS)

requested that the ICC postpone the effectiveness of this revised receipt rule for one year. The American Trucking Associations (ATA) and the American Insurance Association filed letters supporting the petition. The NCSTS indicated that it was working with the motor carrier and insurance industries and the DOT to create a new insurance program. The ICC agreed to maintain the *status quo* while interested parties consider alternatives to the SSRS, suspended the effectiveness of the revised final rule, and reinstated the receipt rule that previously was in effect. Ex Parte No. MC–100 (Sub-No. 6), *Single State Insurance Registration,* served July 31, 1995, and notice published at 60 FR 39874 on August 4, 1995. The reinstated, temporary receipt rule is found at 49 CFR 367.5 and would have remained in effect until December 31, 1996. Carriers continue to make the copies of the Base State-issued receipt to be kept in each vehicle.

Subsequent to this ICC action, Congress passed the ICC Termination Act of 1995 (ICCTA) Pub. L. 104–88, 109 Stat. 803, 888, which eliminated the ICC and transferred the SSRS, in 49 U.S.C. 14504, to the DOT, under standards maintained by the Secretary of Transportation. Congress did not specify in the ICCTA who should make the copies of the receipts; rather, it reiterated that a copy must be retained in each of a carrier's commercial vehicles. Section 204 of the ICCTA preserves the existing ICC SSRS rules at 49 CFR part 367 until the Secretary modifies them, if necessary. In a Federal Register notice (61 FR 14372, April 1, 1996), the FHWA stated, generally, that all of the ICC's existing rules and regulations are to remain in effect until further action is taken. The particular SSRS regulations now in effect in 49 CFR part 367 fall under that notice and will remain in effect until further action is taken. The FHWA anticipates that these rules will govern the operations of the SSRS until further notice.

Section 13908 of title 49, U.S.C., under section 103 of the ICCTA directs the Secretary, in a rulemaking to be completed by December 31, 1997, to replace four existing motor carrier registration/information systems with a single replacement system. One of the four systems to be replaced is the SSRS, provided certain conditions are met. Therefore, it is possible that the current SSRS will be altered or eliminated in that rulemaking. The FHWA issued an advance notice of proposed rulemaking (ANPRM) seeking comments from the States, representatives of the motor carrier and insurance industries, and the public on the single, replacement system (61 FR 43816, August 26, 1996). Interested parties may file comments on alternatives to the SSRS in relation to that ANPRM.

On April 22, 1996, the ATA filed a request with the FHWA that the former ICC order, suspending the effectiveness of its June 6, 1995 decision and reinstating the earlier rule, be extended until the Secretary has issued new regulations in the section 13908 rulemaking, which may potentially replace the SSRS in its entirety. The ATA argues that without the extension motor carriers and States would otherwise have to develop expensive and cumbersome systems that may be in effect for only one year. It asserts that the States will not be harmed by the extension of the suspension which will continue the current, smooth operations of SSRS. On April 26, 1996, the North Dakota Department of Transportation wrote in support of the ATA's request. On May 8, 1996, the NCSTS also wrote in support of the extension of the suspension of the ICC's July 7, 1995, receipt rule. The NCSTS states that it is not worthwhile to make significant changes in the SSRS program that may last only for one or two registration years. These requests seek to continue the reinstated, temporary rule allowing motor carriers to make the copies of the Base State-issued receipts, instead of the States, until the future of the SSRS program is resolved.

Given the likely transitory nature of the SSRS, the support of the major parties affected by the rule, and the lack of specific congressional direction to the contrary, the FHWA has decided to continue the suspension of the effectiveness of the revised final rule and keep in effect the reinstated, temporary receipt rule at 49 CFR 367.5, Registration Receipts. This suspension of effectiveness will continue until the future of SSRS is resolved in the pending rulemaking, which has a December 31, 1997, deadline for completion. The petitioning parties have submitted adequate justification for their requests. Because it is unclear whether the SSRS will continue in existence beyond the next year, preserving the *status quo* will prevent unnecessary disruptions in the day-to-day operations of the SSRS. The interested parties will have ample opportunity to comment on the future of the SSRS in the section 13908 rulemaking. This action will also alert the SSRS States so that they will avoid incurring substantial, unnecessary copying expenses for the next registration year. While there is no evidence of any pattern of abuse, the SSRS rules do provide for penalties if violations of the rules should occur, 49 CFR 367.7.

## Regulatory Analyses and Notices

The FHWA finds that prior notice and opportunity for comment are unnecessary and contrary to the public interest under 5 U.S.C. 553 (b)(3)(B) because the issue of who should make the copies of Base State-issued SSRS receipts has already been the subject of a notice-and-comment rulemaking in a May 11, 1992, advance notice of proposed rulemaking (57 FR 20072), a January 25, 1993, notice of proposed rulemaking (58 FR 5951), a May 18, 1993, notice of final rulemaking (58 FR 28932), and a June 7, 1995, notice of revised final rulemaking (60 FR 30011). In addition, this final rule simply extends the effective date of the existing temporary rule in order to ensure the smooth operation of the SSRS for the next year, after which it may not even be in existence, and prevents SSRS States from incurring substantial, unnecessary copying and transition-related expenses. Finally, the FHWA believes that further notice and opportunity for comment are not required under the regulatory policies and procedures of the DOT. In light of the earlier opportunities to comment on this subject, the FHWA does not anticipate that providing an additional comment period on this action would result in the receipt of useful information.

The FHWA also believes that good cause exists to dispense with the 30-day delayed effective date requirement of 5 U.S.C. 553(d) due to the nature of this rulemaking. This final rule preserves the *status quo* until the 13908 rulemaking is completed and the future of the SSRS is determined. Continuing the effectiveness of the reinstated, temporary rule also relieves the motor carrier industry of the requirement and expense of converting to a new and more burdensome process for copying receipts for only a brief period.

## Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is neither a significant regulatory action under Executive Order 12866 nor significant under the Department of Transportation's regulatory policies and procedures. In this action, the FHWA continues the suspension of the effectiveness of a final rule, and thereby, continues the effectiveness of the reinstated, temporary rule now in place for nearly one year. It is anticipated that the economic impact of this action will not be substantial because the *status*

*quo* is extended until the future of the SSRS is made clearer in the 49 U.S.C. 13908 rulemaking to be completed by December 31, 1997. The FHWA is not altering an existing regulation in such a way as to either impose or eliminate any economic burden.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. As noted above, the FHWA is merely extending the effective date of a reinstated, temporary rule already in effect and is not altering the existing regulation in such a way as to either impose or eliminate any economic burden.

Executive Order 12612 (Federalism Assessment)

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

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulatory Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 367

Commercial motor vehicle, Financial responsibility, Insurance, Motor carriers, Motor vehicle safety, Registration, Reporting and recordkeeping requirements.

Issued on: November 25, 1996.

Rodney E. Slater,

*Federal Highway Administrator.*

[FR Doc. 96–30835 Filed 12–3–96; 8:45 am]

**BILLING CODE 4910–22–P**

## National Highway Traffic Safety Administration

## 49 CFR Part 571

**[Docket No. 74–14; Notice 105]**

**RIN 2127–AG14**

## Federal Motor Vehicle Safety Standards; Occupant Crash Protection

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final Rule, correcting amendment.

**SUMMARY:** On November 27, 1996, NHTSA published a final rule requiring vehicles with air bags to have three new warning labels. Previously, manufacturers of vehicles without passenger-side air bags were permitted to omit language concerning the hazards to children from these bags. Due to an error, the regulatory language of the final rule did not include a similar exclusion from some of the warnings. This notice corrects that error.

**DATES:** *Effective Date:* The amendments made in this rule are effective December 27, 1996.

*Petition Date:* Any petitions for reconsideration must be received by NHTSA no later than January 21, 1997.

**ADDRESSES:** Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Mary Versailles, Office of Safety Performance Standards, NPS–31, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, D.C. 20590; telephone (202) 366–2057; facsimile (202) 366–4329; electronic mail ''mversailles@nhtsa.dot.gov''.

**SUPPLEMENTARY INFORMATION:** On November 27, 1996, NHTSA published a final rule amending 49 CFR 571.208 to require vehicles with air bags to have three new warning labels (61 FR 60206). One of these labels, a sun visor label, includes two warnings concerning the adverse effects of passenger-side air bags for infants and children. The warnings are ''Children 12 and under can be killed by the air bag'' and ''Never put a rear-facing child seat in the front.'' These warnings are not necessary for vehicles that do not have passenger-side air bags. In addition, both sun visor labels include a pictogram that depicts a passenger-side air bag striking a rear-facing child seat. Again, this pictogram would be confusing in a vehicle that does not have a passenger-side air bag.

The regulatory language in place prior to the November 27, 1996 final rule permitted vehicle manufacturers to omit statements concerning the danger to children from passenger-side air bags if a vehicle does not have a passenger-side air bag. This notice adds similar flexibility to the enhanced labeling requirements of the November 27, 1996 rule, so that manufacturers will be permitted to tailor the new warning labels appropriately for vehicles that do not have a passenger-side air bag. The warning labels on the visor of vehicles that do not have a passenger-side air bag will omit the pictogram showing a child being injured by a passenger-side air bag and omit the two warnings of hazards to children from passenger-side air bags.

NHTSA notes that vehicles that do not have passenger-side air bags would only be required to have warning labels on the driver's sun visor, but manufacturers would be permitted to include the label voluntarily on the passenger-side sun visor. Two of the warnings on the label, ''Always use seat belts and child restraints'' and ''The back seat is the safest place for children,'' are equally applicable to the passenger position in vehicles without air bags.

NHTSA finds for good cause that this final rule can be made effective in less than 30 days. The exclusion was inadvertently not included in the regulatory language of the November 27, 1996, final rule. This notice should therefore be effective on the same date as the earlier rule.

Rulemaking Analyses and Notices

*Executive Order 12866 and DOT Regulatory Policies and Procedures*

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning

and Review.'' This document is part of an action that was determined to be ''significant'' under the Department of Transportation's regulatory policies and procedures. However, this notice does not impose any new requirements on manufacturers. It simply corrects an error.

*Regulatory Flexibility Act*

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, this rule will not have an economic impact on any manufacturer.

*Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this final rule.

*National Environmental Policy Act*

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

*Executive Order 12612 (Federalism)*

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

*Civil Justice Reform*

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

## PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 is amended by revising the introductory text of S4.5.1(b)(2) and S4.5.1(c)(2) and by adding new S4.5.1(b)(2)(iv) and S4.5.1(c)(2)(iii) to read as follows:

**§ 571.208 Standard No. 208, Occupant Crash Protection.**

* * * * *

S4.5.1 *Labeling and owner's manual information.*

* * * * *

(b) *Sun visor warning label.*

* * * * *

(2) *Vehicles manufactured on or after February 25, 1996.* Each vehicle shall have a label permanently affixed to either side of the sun visor, at the manufacturer's option, at each front outboard seating position that is equipped with an inflatable restraint. The label shall conform in content to the label shown in either Figure 6a or 6b of this standard, as appropriate, and shall comply with the requirements of S4.5.1(b)(2)(i) through S4.5.1(b)(2)(iv).

* * * * *

(iv) If the vehicle does not have an inflatable restraint at any front seating position other than that for the driver, the label shown in Figure 6a may be modified by omitting the pictogram and changing the message text to read:

DEATH or SERIOUS INJURY can occur.
- Sit as far back as possible from the air bag.
- ALWAYS use SEAT BELTS and CHILD RESTRAINTS.
- The BACK SEAT is the SAFEST place for children.

* * * * *

(c) *Air bag alert label.*

* * * * *

(2) *Vehicles manufactured on or after February 25, 1996.* If the label required by S4.5.1(b)(2) is not visible when the sun visor is in the stowed position, an air bag alert label shall be permanently affixed to that visor so that the label is visible when the visor is in that position. The label shall conform in content to the sun visor label shown in figure 6c of this standard, and shall comply with the requirements of S4.5.1(c)(2)(i) through S4.5.1(c)(2)(iii).

* * * * *

(iii) If the vehicle does not have an inflatable restraint at any front seating position other than that for the driver, the pictogram may be omitted from the label shown in Figure 6c.

* * * * *

L. Robert Shelton,

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 96–30836 Filed 11–29–96; 10:33 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 960502124–6190–02; I.D. 112796B]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Scallop Fishery; Closure in District 16 of Registration Area D

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

**ACTION:** Closure.

**SUMMARY:** NMFS is closing the scallop fishery in District 16 of Scallop Registration Area D (Yakutat). This action is necessary to prevent exceeding the scallop total allowable catch (TAC) in this area.

**EFFECTIVE DATE:** Effective 1200 hrs, Alaska local time (A.l.t.), November 29, 1996, until 2400 hrs, A.l.t., December 31, 1996.

**FOR FURTHER INFORMATION CONTACT:** Andrew Smoker, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The scallop fishery in the exclusive economic zone off Alaska is managed by NMFS according to the Fishery Management Plan for the Scallop Fishery off Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing for scallops is governed by regulations appearing at 50 CFR parts 600 and 679.

In accordance with § 679.62(b), the 1996 scallop TAC for District 16 of Scallop Registration Area D was established by the Final 1996 Harvest Specifications of Scallops (61 FR 38099, July 23, 1996) as 27,000 lb (12,247 kg) shucked meat.

The Administrator, Alaska Region, NMFS, has determined, in accordance with § 679.62(c), that the scallop TAC for District 16 of Scallop Registration Area D has been reached. Therefore,

NMFS is prohibiting the taking and retention of scallops in District 16 of Scallop Registration Area D from 1200 hrs, A.l.t., November 29, 1996, through 2400 hrs, A.l.t., December 31, 1996.

Classification

This action is taken under § 679.62 and is exempt from review under E.O. 12866.

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

Dated: November 27, 1996.

Gary Matlock,

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 96–30886 Filed 11–29–96; 2:52 pm]

**BILLING CODE 3510–22–F**

## 50 CFR Part 679

**[Docket No. 961126333–6333–01; I.D. 110496A]**

**RIN 0648–xx73**

## Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Interim 1997 Harvest Specifications

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

**ACTION:** Interim 1997 harvest specifications for groundfish; associated management measures; and closures.

**SUMMARY:** NMFS issues interim 1997 total allowable catch (TAC) amounts for each category of groundfish and specifications for prohibited species bycatch allowances for the groundfish fishery of the Gulf of Alaska (GOA). NMFS is closing certain fisheries as specified in the interim 1997 groundfish specifications. The intended effect is to conserve and manage the groundfish resources in the GOA.

**EFFECTIVE DATE:** 0001 hrs, Alaska local time (A.l.t.), January 1, 1997, until the effective date of the Final 1997 Harvest Specifications for Groundfish, which will be published in the Federal Register.

**ADDRESSES:** The preliminary Stock Assessment and Fishery Evaluation (SAFE) Report, dated September 1996, is available from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Kaja Brix, 907–586–7228.

**SUPPLEMENTARY INFORMATION:**

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone of the GOA are managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) and approved by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The FMP is implemented by regulations at 50 CFR part 679. General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 600.

The Council met September 18–22, 1996, to review scientific information concerning groundfish stocks. The preliminary specifications are based on the current stock assessments contained in the preliminary GOA Groundfish SAFE Report, dated September 1996, as well as recommendations by the GOA Groundfish Plan Team, Advisory Panel, and Scientific and Statistical Committee. The preliminary SAFE Report was prepared and presented to the Council by the GOA Groundfish Plan Team and summarizes the best available scientific information. Copies of the SAFE Report are available from the Council (see **ADDRESSES**). The Council recommended a preliminary total TAC amount of 267,940 metric tons (mt) and a preliminary total acceptable biological catch (ABC) amount of 546,720 mt for the 1997 fishing year. NMFS adjusted the total TAC amount to 265,692 mt to accommodate a revision to the Central Gulf Regulatory Area (CG) ''other rockfish'' TAC amount. NMFS reduced the CG ''other rockfish'' TAC amount to 960 mt, which is equal to the 1997 ABC, because the Council's recommended TAC of 1,170 mt for this area exceeded the CG 1997 ABC. This reduced the ''other species'' category TAC to 12,652 mt, as well as the overall TAC amount.

Under § 679.20(c)(1)(ii), NMFS is publishing in the Proposed Rules section of this issue of the Federal Register for review and comment proposed initial harvest specifications for groundfish and associated management measures in the GOA for the 1997 fishing year. Those proposed specifications contain detailed information on the 1997 specification process and provide a discussion of the preliminary ABCs, proposed establishment of the 1997 annual TAC amounts and apportionments thereof and reserves for each target species and the ''other species'' category, apportionments of pollock and Pacific cod TAC, apportionments of the sablefish TAC to vessels using hook-and-line and trawl gear, halibut prohibited species catch (PSC) limits, and seasonal allocations of the halibut PSC limits.

Regulations at § 679.20(c)(2) require that one-fourth of the proposed specifications, not including the reserves and the first seasonal allowance of pollock, one-fourth of the inshore and offshore allocations of Pacific cod in each regulatory area, the proposed first seasonal allowance of pollock, and one-fourth of the halibut PSC amounts become effective at 0001 hours, A.l.t., January 1, on an interim basis and remain in effect until superseded by the final harvest specifications, which will be published in the Federal Register. This action provides interim TAC specifications and apportionments thereof for the 1997 fishing year, which will become available on January 1, 1997, on an interim or preliminary basis. Background information concerning the 1997 groundfish harvest specification process upon which this interim action is based is provided in the proposed initial harvest specifications appearing in the Proposed Rules section of this Federal Register issue.

The reserves for the GOA are 20 percent of the TAC amounts for pollock, Pacific cod, flatfish species, and the ''other species'' category. Given that the GOA groundfish TAC amounts have been utilized fully since 1987, and NMFS expects the same to occur in 1997, NMFS proposes reapportioning all the reserves to TAC. The interim TAC amounts contained in Table 1 reflect the reapportionment of reserves back to the TAC.

*1. Interim TAC Amounts and Apportionments Thereof*

Table 1 provides interim TAC amounts, interim TAC allocations of Pacific cod to the inshore and offshore components, the first seasonal allowance of pollock in the combined Western and Central regulatory areas, and interim sablefish TAC apportionments to hook-and-line and trawl gear. These interim TAC amounts and apportionments thereof become effective at 0001 hours, A.l.t., January 1, 1997.

TABLE 1.—INTERIM 1997 TAC AMOUNTS OF GROUNDFISH FOR THE COMBINED WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYAK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA (GOA)[1, 2]. The First Seasonal Allowances of Pollock in the Combined W/C Regulatory Areas. Interim Sablefish TAC Apportionments to Hook-and-line (H/L) and Trawl (TRW) Gear

| Species | Area | Interim TAC (mt) |
|---|---|---|
| Pollock [3 4] | | |
| | W (61) | 9,075 |
| | C (62) | 4,575 |
| | C (63) | 4,875 |
| Subtotal | W/C | 18,525 |
| | E | 1,002 |
| Total | | 19,527 |
| Pacific cod [5] | | |
| Inshore | W | 3,393 |
| Offshore | W | 377 |
| Inshore | C | 7,722 |
| Offshore | C | 858 |
| Inshore | E | 585 |
| Offshore | E | 65 |
| Total | | 13,000 |
| Flatfish, Deep-water [6] | | |
| | W | 115 |
| | C | 1,875 |
| | E | 780 |
| Total | | 2,770 |
| Rex sole | | |
| | W | 270 |
| | C | 1,410 |
| | E | 562 |
| Total | | 2,242 |
| Flathead sole | | |
| | W | 500 |
| | C | 1,250 |
| | E | 685 |
| Total | | 2,435 |
| Flatfish, Shallow-water [7] | | |
| | W | 1,125 |
| | C | 3,238 |
| | E | 295 |
| Total | | 4,658 |
| Arrowtooth flounder | | |
| | W | 1,250 |
| | C | 6,250 |
| | E | 1,250 |
| Total | | 8,750 |
| Sablefish [8 9 10] | | |
| H/L | W | N/A (300) |
| TRW | W | 75 |
| H/L | C | N/A (938) |
| TRW | C | 235 |
| H/L | WYak | N/A (489) |
| TRW | WYak | 25 |
| H/L | SEO | N/A (800) |
| TRW | SEO | 43 |

TABLE 1.—INTERIM 1997 TAC AMOUNTS OF GROUNDFISH FOR THE COMBINED WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYAK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA (GOA)[1, 2]. The First Seasonal Allowances of Pollock in the Combined W/C Regulatory Areas. Interim Sablefish TAC Apportionments to Hook-and-line (H/L) and Trawl (TRW) Gear—Continued

| Species | Area | Interim TAC (mt) |
|---|---|---|
| Total | | 2,905 |
| Pacific ocean perch[11] | | |
| | W | 367 |
| | C | 975 |
| | E | 690 |
| Total | | 2,032 |
| Shortraker/rougheye[12] | | |
| | W | 40 |
| | C | 275 |
| | E | 120 |
| Total | | 435 |
| Rockfish, northern[13] | | |
| | W | 160 |
| | C | 1,153 |
| | E | 5 |
| Total | | 1,318 |
| Rockfish, other[14 15] | | |
| | W | 25 |
| | C | 240 |
| | E | 188 |
| Total | | 453 |
| Rockfish, pelagic shelf[16] | | |
| | W | 228 |
| | C | 800 |
| | E | 270 |
| Total | | 1,298 |
| Rockfish, demersal shelf SEO[17] | | |
| | SEO | 238 |
| Thornyhead rockfish | | |
| | GW | 390 |
| Atka mackerel | | |
| | W | 578 |
| | C | 231 |
| | E | 1 |
| Total | | 810 |
| Other species[18] | | 3,163 |
| GOA Total Interim TAC | | 66,424 |

(Interim TAC amounts have been rounded.)

[1] Reserves have been reapportioned back to each species TAC and are reflected in the interim TAC amounts. (See § 679.20(a)(2))

[2] See § 679.2 for definitions of regulatory area and statistical area. See Figure 3b to part 679 for a description of regulatory district.

[3] Pollock is apportioned to three statistical areas in the combined Western/Central Regulatory Area, and is further divided into three allowances of 25 percent, 25 percent, and 50 percent. The first allowances are in effect on an interim basis as of January 1, 1997. In the Eastern Regulatory Area, pollock is not divided into less than annual allowances, and one-fourth of the TAC is available on an interim basis.

[4] The TAC apportionment for pollock in all regulatory areas and all seasonal allowances is divided into inshore and offshore components. The inshore component is apportioned 100 percent of the pollock TAC in each regulatory area after subtraction of amounts that are determined by the Regional Administrator, NMFS, to be necessary to support the bycatch needs of the offshore component in directed fisheries for other groundfish species. At this time, these bycatch amounts are unknown and will be determined during the fishing year. (See § 679.20(a)(6)(ii))

[5] The TAC apportionment of Pacific cod in all regulatory areas is divided into inshore and offshore components. The inshore and offshore component allocations are 90 percent and 10 percent, respectively, of the Pacific cod TAC in each regulatory area. (See § 679.20(a)(6)(iii))

[6] ''Deep-water flatfish'' means Dover sole and Greenland turbot.

[7] ''Shallow-water flatfish'' means flatfish not including ''deep-water flatfish,'' flathead sole, rex sole, or arrowtooth flounder.

[8] Sablefish TAC amounts for each of the regulatory areas and districts are assigned to hook-and-line and trawl gear. In the Central and Western Regulatory Areas, 80 percent of the TAC is allocated to hook-and-line gear and 20 percent to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is assigned to hook-and-line gear. Five percent is allocated to trawl gear and may only be used as bycatch to support directed fisheries for other target species. (See § 679.20(a)(4))

[9] The sablefish hook-and-line (H/L) gear fishery is managed under the Individual Fishing Quota (IFQ) program and is subject to regulations contained in subpart D of 50 CFR part 679. Annual IFQ amounts are based on the final TAC amount specified for the sablefish H/L gear fishery as contained in the final specifications for groundfish. Under § 679.7(f)(3), retention of sablefish caught with H/L gear is prohibited unless the harvest is authorized under a valid IFQ permit and IFQ card. In 1997, IFQ permits and IFQ cards will not be valid prior to the effective date of the 1997 final specifications. Thus, fishing for sablefish with H/L gear will not be authorized under these interim specifications. Nonetheless, interim amounts are shown in parentheses to reflect assignments of one-fourth of the proposed TAC amounts among gear categories and regulatory areas in accordance with § 679.20(c)(2)(i). See § 679.40 for guidance on the annual allocation of IFQ.

[10] Sablefish caught in the GOA with gear other than hook-and-line or trawl gear must be treated as prohibited species and may not be retained.

[11] ''Pacific ocean perch'' means *Sebastes alutus*.

[12] ''Shortraker/rougheye rockfish'' means *Sebastes borealis* (shortraker) and *S. aleutianus* (rougheye).

[13] ''Northern rockfish'' means *Sebastes polyspinis*.

[14] ''Other rockfish'' in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category ''other rockfish'' in the Southeast Outside District means slope rockfish.

[15] ''Slope rockfish'' means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegateu* (harlequin), *S. wilsoni* (pygmy), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), *S. babcocki* (redbanded), and *S. reedi* (yellowmouth).

[16] ''Pelagic shelf rockfish'' includes *Sebastes melanops* (black), *S. mystinus* (blue), *S. ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).

[17] ''Demersal shelf rockfish'' means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

[18] ''Other species'' includes sculpins, sharks, skates, eulachon, smelts, capelin, squid, and octopus. The TAC for ''other species'' equals 5 percent of the TAC amounts of target species.

*2. Interim Halibut PSC Mortality Limits*

Under § 679.21(d), annual Pacific halibut PSC mortality limits are established for trawl and hook-and-line gear and may be established for pot gear. The Council proposed to reestablish the 1996 halibut mortality limits for 1997 because no new information was available. As in 1996, the Council proposes to exempt pot gear and the sablefish hook-and-line fishery from halibut PSC limits for 1997. The interim PSC limits are effective on January 1, 1997, and remain in effect until superseded by the Final 1997 Harvest Specifications, which will be published in the Federal Register. The interim halibut PSC limits are as follows: (1) 500 mt to trawl gear, (2) 75 mt to hook-and-line gear for fisheries other than demersal shelf rockfish, and (3) 2.5 mt to hook-and-line gear for demersal shelf rockfish fishery in the Southeast Outside District.

Regulations at § 679.21(d)(3)(iii) authorize apportionments of the trawl halibut PSC limit allowance as bycatch allowances to a deep-water species complex, comprised of rex sole, sablefish, rockfish, deep-water flatfish, and arrowtooth flounder, and a shallow-water species complex, comprised of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and other species. The interim 1997 apportionment for the shallow-water species complex is 417 mt and for the deep-water species complex is 83 mt.

*3. Closures to Directed Fishing*

Under § 679.20(d)(1)(iii)(A), if the Regional Administrator, NMFS, determines that the amount of a target species or ''other species'' category apportioned to a fishery or, with respect to Pacific cod, to an allocation to the inshore or offshore component, is likely to be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. In establishing a directed fishing allowance, the Regional Administrator shall consider the amount of that species group or allocation of Pacific cod to the inshore or offshore component that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Regional Administrator establishes a directed fishing allowance and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified regulatory area or district.

The Regional Administrator has determined that interim amounts of groundfish specified in Table 1 of these interim specifications for species or species groups identified in Table 2 will be necessary as incidental catch to support anticipated groundfish fisheries prior to the time that final specifications for groundfish are in effect for the 1997 fishing year. Therefore, NMFS is prohibiting directed fishing for those target species, gears, and components listed in Table 2 to prevent exceeding the interim amounts of groundfish TAC amounts specified. These closures will be in effect during the period that the 1997 interim specifications for groundfish TAC amounts are effective beginning at 0001 hours, A.l.t., January 1, 1997, until superseded by the Final 1997 Harvest Specifications for Groundfish, which will be published in the Federal Register. While the closures are in effect, the maximum retainable bycatch amounts at § 679.20(e) apply at any time during a fishing trip. Additional closures and restrictions may be found in existing regulations at 50 CFR part 679.

TABLE 2.—CLOSURES TO DIRECTED FISHING UNDER THE INTERIM 1997 TOTAL ALLOWABLE CATCH AMOUNTS IMPLEMENTED BY THIS ACTION[1] OFFSHORE = THE OFFSHORE COMPONENT; TRW = TRAWL; ALL = ALL GEARS; WG = WESTERN REGULATORY AREA; CG = CENTRAL REGULATORY AREA; EG = EASTERN REGULATORY AREA; GOA = ENTIRE GULF OF ALASKA

| Fishery | Component | Gear | Closed areas |
|---|---|---|---|
| Atka mackerel | | All | GOA |
| Flatfish, Deep-water | | All | WG |
| Northern rockfish | | All | WG, EG |
| Other rockfish | | All | GOA |
| Pacific cod | Offshore | All | EG |
| Pacific cod | | All | WG, CG |
| Pacific ocean perch | | All | GOA |
| Sablefish | | All | GOA |

TABLE 2.—CLOSURES TO DIRECTED FISHING UNDER THE INTERIM 1997 TOTAL ALLOWABLE CATCH AMOUNTS IMPLEMENTED BY THIS ACTION[1] OFFSHORE = THE OFFSHORE COMPONENT; TRW = TRAWL; ALL = ALL GEARS; WG = WESTERN REGULATORY AREA; CG = CENTRAL REGULATORY AREA; EG = EASTERN REGULATORY AREA; GOA = ENTIRE GULF OF ALASKA—Continued

| Fishery | Component | Gear | Closed areas |
|---|---|---|---|
| Shortraker/rougheye | | All | GOA |
| Thornyhead rockfish | | All | GOA |

[1] These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 679.

After consideration of public comments on the proposed 1997 specifications and additional scientific information presented at its December 1996 meeting, the Council may recommend other closures to directed fishing. Additionally, NMFS may implement other closures at the time the Final 1997 Specifications for Groundfish are implemented, or during the 1997 fishing year as necessary for effective management.

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under E.O. 12866.

The AA finds for good cause under 5 U.S.C. 553(b)(B) that the need to establish interim total allowable catch limitations and other restrictions on fisheries in the GOA, effective on January 1 1997, makes it impracticable and contrary to the public interest to provide prior notice and opportunity for public comment on this rule. Regulations at § 679.20(c)(2) require NMFS to specify interim harvest specifications to be effective on January 1 and remain in effect until superseded by the final specifications in order for the GOA groundfish fishing season to begin on January 1 (see § 679.23). Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open on January 1, which would result in unnecessary closures and disruption within the fishing industry. Because the stock assessment reports and other information concerning the fisheries in the GOA became available only recently, NMFS is not able to provide an opportunity for comment on the interim specifications. It is anticipated that the interim specifications will be in effect for only a short period of time before they are superseded by the final specifications. The proposed specifications are published as a proposed rule in this issue of the Federal Register and provide the opportunity for public comment.

These interim specifications are exempt from the requirements of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because they are not required to be issued with prior notice and opportunity for public comment.

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

Dated: November 27, 1996.

Gary Matlock,

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 96–30887 Filed 11–29–96; 2:52 pm]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 61, No. 234
Wednesday, December 4, 1996

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.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[NE–011–1011; FRL–5655–8]**

### Approval and Promulgation of Implementation Plans; State of Nebraska

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** With this action, the EPA is proposing to approve the Omaha lead emission control plan submitted by the state of Nebraska on August 28, 1996. The plan was submitted by the state to satisfy certain requirements under the Clean Air Act (CAA) (the Act) to reduce lead emissions sufficient to bring the Omaha area into attainment with the lead National Ambient Air Quality Standard (NAAQS).

Due to certain complications and delays related to the development and submission of the state's plan, the EPA is also announcing with this document the availability for review of a draft Federal Implementation Plan (FIP), which reduces lead emissions in the Omaha lead nonattainment area. A Federal plan will be promulgated in the absence of an approvable state plan.

**DATES:** Comments must be received on or before January 3, 1997.

**ADDRESSES:** Comments on the proposed approval of the state plan, and/or requests for additional information on this proposal, or copies of the draft FIP may be mailed to: Josh Tapp, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Josh Tapp at (913) 551–7606 or Royan Teter at (913) 551–7609.

**SUPPLEMENTARY INFORMATION:**

I. Background

Currently, the only significant source of lead contributing to violations of the lead NAAQS is a primary lead refinery owned and operated by the American Smelting and Refining Company (Asarco). The refinery purifies lead bullion from a purity of approximately 97 percent to 99.9 percent lead. The facility's refining capacity is approximately 120,000 short tons of refined lead per year.

The original Omaha lead State Implementation Plan (SIP) was approved by the EPA on August 3, 1987 (52 FR 28694). The required control measures were in place by February 1988. Controls included improved methods for unloading baghouse dust, improved ventilation in the refinery building, pavement of open areas, and limits on production to 90 percent of maximum. Later that same year, several violations of the lead standard were recorded.

Because of continuing violations of the standard, the EPA made a call for a lead SIP revision in August 1990. On January 6, 1992, the EPA designated the area surrounding the facility as nonattainment for lead. (See 56 FR 56694, dated November 6, 1991.) The actual area designated as nonattainment for lead is located in the downtown area of the city of Omaha, Nebraska. The northern boundary of the nonattainment area is defined by Avenue H and the Iowa-Nebraska border. The western boundary of the nonattainment area is defined by Eleventh Street. The eastern boundary of the nonattainment area is defined by the Missouri River. The southern boundary of the nonattainment area is defined by Jones Street. As a result of this designation, the SIP submission date was extended to July 6, 1993, but the state was required to meet the additional requirements in part D of title I of the CAA.

Early in 1991, Asarco undertook a study to develop an emissions inventory based upon field studies and the use of two independently based air quality models (receptor and dispersion). This approach was necessary to more clearly identify which of the facility's processes were contributing to violations of the lead NAAQS so as to focus the control strategy development on the appropriate sources. A similar study was already underway at another facility in East Helena, Montana.

On July 6, 1993, Asarco submitted a control strategy to the EPA and the Nebraska Department of Environmental Quality (NDEQ). The primary control measure in this strategy focused on the control of fugitive emissions from the refinery building by utilizing a total enclosure and installing a sophisticated ventilation system equipped with high efficiency fabric filtration systems (baghouses).

Due to the late control strategy submission by Asarco, the state was unable to make the required SIP submission by July 6, 1993. The EPA sent a letter to the Governor of Nebraska on August 2, 1993, notifying him that the state had failed to make the required submission. This document initiated sanctions clocks in accordance with section 179 of the CAA and the FIP clock in accordance with section 110 of the CAA.

Under section 179 of the CAA, the EPA must impose sanctions on a nonattainment area for which the state has failed to submit a plan which has been determined complete by the EPA. The first of two sanctions must be implemented within 18 months after the date of the finding (or in this case, not later than January 2, 1995), and the second sanction must be implemented within 6 months after the implementation of the first sanction (or in this case, not later than August 2, 1995).

On August 4, 1994, (59 FR 39832), the EPA published a rulemaking which identifies the order of sanctions as follows: the first sanction to be imposed is the 2:1 offset sanction which requires 2:1 offsets for emission increases of the nonattainment pollutant from certain new or modified major sources within the nonattainment area; the second sanction to be imposed is the highway funding sanction. Under this sanction, Federal highway funds are withheld from the nonattainment area, unless the funds are for exempt projects.

Furthermore, section 110(c) of the Act obligates the EPA to promulgate a FIP within two years of a finding that the state has failed to submit the required plan. The EPA must approve a plan submitted by the state in order to stop the FIP clock.

The state transformed Asarco's July 6, 1993, control strategy into an enforceable Compliance Order and submitted it to the EPA with supporting documentation on December 22, 1993. Shortly thereafter, Asarco filed an Administrative Appeal of the Order. The legal effect of the Appeal under

state law was to stay enforcement of the Compliance Order pending resolution of the Administrative Appeal. Because of the stay, the EPA determined that the SIP was incomplete, by letter dated June 24, 1994.

On June 2, 1995, the Director issued a decision on the Appeal and on June 21, 1995, the state submitted a plan which was revised in accordance with the Director's decision.

The EPA reviewed this plan and found it complete on July 13, 1995, stopping the 2:1 offset sanction and stopping the Federal highway funding sanction clock prior to its expiration on August 2, 1995.

On June 30, 1995, Asarco filed a petition for review of the Compliance Order with the District Court of Lancaster County, Nebraska. On November 15, 1995, prior to the Court's decision on Asarco's June 30 appeal, Asarco submitted to the state a revised control strategy which relies on a partial shutdown and reconfiguration of the facility. The state revised Compliance Order 1520 on June 6, 1996, to reflect the revised control strategy and submitted it to the EPA on August 28, 1996. Although Asarco's appeal is still pending, the EPA is proposing action on the August 28, 1996, submittal by the state of Nebraska.

However, due to the fact that the state's submission of an enforceable plan has been delayed significantly beyond the deadlines mandated by the Act, and because the appeal is still pending, the EPA is announcing the availability for public review of a draft FIP which addresses lead emissions in the Omaha lead nonattainment area. Should Nebraska's latest submission become unenforceable or otherwise be rendered unapprovable, the EPA intends to promulgate a FIP to bring the area into attainment as soon as practicable. Prior to promulgation of a FIP, the EPA would issue a notice of proposed rulemaking, and consider any comments submitted as a result of that document, prior to taking final action.

## II. Criteria for Approval

The state's June 6, 1996, submission was reviewed using the criteria established by the CAA. The requirements for all SIPs are contained in section 110(a)(2) of the CAA. Subpart 1 of part D of title I of the CAA, and in particular section 172(c), specifies the provisions necessitated by designation of an area as nonattainment for any of the NAAQS. Further guidance and criteria are set forth in subpart 5 of part D, the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498), and in the ''Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (58 FR 67748).

## III. Review of State Submittal

### *A. Control Strategy*

The control strategy must contain provisions to ensure that Reasonably Available Control Technology (RACT), including Reasonably Available Control Measures (RACM), for area sources are implemented (see section 172(c)(1) of the CAA). See 57 FR 13549 and 58 FR 67748 for the EPA's interpretation of RACM and RACT requirements.

The state's selection of control strategies for the SIP was based on an evaluation of controls provided to the state by Asarco and its contractors. In this study, Asarco evaluated 15 fugitive emission control strategies and 42 process and stack-related control strategies. Asarco selected what it considered to be the most implementable and cost-effective options from this list which would bring the area into attainment with the lead NAAQS. The state concurred with Asarco's assessment that these controls constituted RACT. Detailed information regarding Asarco's control option selection process can be found in the EPA's TSD.

The attainment modeling assisted Asarco and the state in focusing the control strategy by indicating which sources or groups of sources were the greatest contributors to the ambient concentrations. In this case, emission rates were not necessarily correlated with the magnitude of the monitor impact. In other words, some of these sources had relatively low emissions rates, but they had a high propensity for impacting ambient air near the facility. Four of the largest contributors to ambient air concentrations which are the focus of the control strategy are: (1) The refinery building emissions; (2) the residue department fugitive emissions; (3) the bismuth department fugitive emissions; and (4) outdoor roadway and stockpile fugitive emissions.

The refinery building is the primary production site for lead at the affected facility. This building as it is currently constructed contains uncontrolled roof monitors, open air louvers along the east and west side of the building, and is open at the north end. Lead emissions from processes occurring within the building are permitted to escape from these openings. This plan will require the shutdown of the refinery department and the associated doré department, thereby eliminating all emissions from these processes.

The main function of the residue department is to reprocess by-product materials such as softener skims, caustic skims, doré slag and reverb black slag. Residue department emissions orginate mainly from the cupola furnace and residue kettle.

This plan will require the installation of a secondary hood over the top of the cupola furnace to capture fugitive emissions which escape during furnace charging and smelting. Additionally, existing ventilation hoods and ductwork which control emissions during tapping of the cupola furnace are required to be replaced with a ventilation system which provides more effective emissions capture. The residue kettle ventilation system is also required to be replaced with a ventilation system which provides more effective capture of emissions.

The main function of the bismuth department is to facilitate the recovery of bismuth and doré by removing lead oxide otherwise known as ''litharge.'' Two cupel furnaces in the bismuth department facilitate much of this recovery. Emissions originate from furnace process gases which escape capture by local exhaust hoods. Other sources of emissions include: furnace charging, litharge skimming, litharge handling, and metal tapping. This plan requires the replacement of existing local exhaust hoods with a ventilation design which provides more effective emissions capture. Automatic dampers and temperature controls are required to be installed for the cupel furnaces to ensure adequate furnace ventilation and to prevent the overheating and overpressurizing of the furnaces. Water-cooled vibrating tables which allow litharge skimming to be controlled at a slow, steady rate are also required and will result in reduced process emissions.

Finally, the plan requires compliance with state and federally approved work practices to minimize fugitive emissions. The work practice manuals were submitted as part of the plan. Fugitive emissions occur throughout the affected facility and originate from several types of sources. Outdoor stockpiles, lead laden roadways, and baghouse unloading are three major fugitive sources contributing to ambient air lead concentrations. Outdoor stockpiles contribute to high ambient lead concentrations from wind entrainment. Roadways contribute to high ambient lead concentrations from vehicle track-out and from traffic-induced reentrainment of lead dust on roads. Baghouse unloading involves the

handling of fine lead dust which is readily reentrained by wind and mechanical activity.

The Administrative Order and associated work practices require that the use of outdoor stockpiles be minimized, and that tarps or chemical stabilizers and concrete road barriers be used to maintain stockpile integrity and to minimize related fugitive emissions. The plan also requires that in-plant roadways be swept frequently in order to remove lead dust from trafficways. Finally, it requires special procedures to be followed for other critical activities such as baghouse unloading. The work practices for baghouse unloading require the use of vacuum ports prior to opening baghouse cellar doors. They also require baghouses to be unloaded under light wind conditions only, and they require the use of wind screens for the unloading of the smelter baghouse.

*B. Attainment Demonstration*

Section 192(a) of the CAA requires that SIPs must provide for attainment of the lead NAAQS as expeditiously as practicable, but not later than five years from the date of an area's nonattainment designation. The lead nonattainment designation for portions of Omaha was effective on January 6, 1992; therefore, the latest attainment date permissible by statute is January 6, 1997.

The Industrial Source Complex Short-Term Model was used to demonstrate attainment and maintenance of the lead NAAQS. The procedures recommended in the EPA's *Guideline on Air Quality Models (Revised),* EPA 450/2–78–027R, July 1986, and *Supplement A to the Guideline on Air Quality Models (Revised),* EPA 450/2–78–027R, July 1987, were followed with the exception that volume source parameters for Asarco stockpiles were varied according to wind direction. These exceptions were approved by the EPA prior to the completion of the modeling. See the TSD for more information.

*C. Emission Inventory and Air Quality Data*

Section 172(c)(3) of the CAA requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area.

As was mentioned in the section entitled ''Background,'' Asarco, the state, and the EPA undertook a comprehensive study to develop an accurate baseline emission inventory and dispersion model. This inventory was quantified through stack testing, evaluation of equipment and procedures, the EPA emission estimation methods, and engineering judgment. Receptor modeling was used to confirm its accuracy. The attainment emission inventory was derived from the baseline inventory with the control strategy applied.

The state submittal provides a historical summary of the air quality data for the Omaha area collected from 1984 through the most current quarter.

*D. Reasonable Further Progress (RFP)*

The SIP must provide for RFP (see section 172(c)(2) of the Act). Paragraph 11 of the state's Compliance Order specifies an implementation schedule which requires a logical stepwise implementation of emissions control projects. This schedule results in a steady decrease of lead emissions through the implementation of the last projects which are scheduled to be completed by December 31, 1996. The EPA believes that the RFP demonstration meets the requirements of section 172(c)(2) and the relevant guidelines in the ''Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (58 FR 67748).

*E. New Source Review (NSR)*

Section 172(c)(5) requires that nonattainment areas be subject to the NSR permitting requirements of section 173. Nebraska NSR regulations were originally approved pursuant to part D of the Act on July 23, 1984. The 1990 Amendments to the Act added other requirements pursuant to the review and approval of new and modified sources. Nebraska incorporated these requirements into its regulations, and the EPA approved this SIP revision on January 4, 1995 (60 FR 372). Therefore, the state's rules presently meet the requirements of sections 172(c)(5) and 173.

The state also has NSR provisions governing minor sources and ''minor'' modifications at major sources. These provisions were recently updated by the state and approved pursuant to section 110 of the Act, in conjunction with action on the part D NSR rules as noted above.

*F. Contingency Measures*

As provided in section 172(c)(9) of the CAA, all nonattainment area SIPs must include contingency measures. Contingency measures should consist of other specific measures that are not part of the area's control strategy. These measures must take effect without further action by the state or the EPA, upon a determination that the area has failed to meet RFP or attain the lead NAAQS by the applicable attainment date.

The contingency measures established in item 19 of the state's Compliance Order were increased street sweeping and significant production cuts. The state will invoke the measure requiring increased frequency of street sweeping if, at any time after the effectiuve date of the Order, Asarco fails to make reasonable progress on the implementation of control measures designed to attain the standard. The state will invoke both contingency measures if, beginning with the calendar quarter following the attainment date, an exceedance of the lead NAAQS is recorded. NDEQ will notify Asarco if contingency measures must be implemented. Implementation of the specified contingency measures is required to begin within 60 days from Asarco's receipt of such notification.

In paragraph 20 of the Compliance Order, the state established a provision that prohibited Asarco from causing a violation of the lead NAAQS after the attainment date. This provision means that any violation of the NAAQS caused by Asarco after the attainment date would also be a violation of the Order. The reasons stated below, the EPA proposes to take no action on this provision of the Compliance Order.

In the case of ambient violations recorded after the attainment date, the contingency measures required by section 172(c)(9), described above, must take effect ''without further action'' by the state or the EPA. The specific contingency measures described in Paragraph 19 of the Compliance Order are designed to address that requirement. However, Paragraph 20 would require not only that the standard is exceeded, but that Asarco has caused the violation. In addition, Paragraph 20 does not state specific measures which must be taken if that provision is violated. Therefore, it does not meet the requirements of section 172(c)(9).

Because the EPA has determined that the specific measures in Paragraph 19 are adequate to meet the part D contingency measure requirements, the EPA proposes to approve those measures and to take no action on Paragraph 20. The effect of this action would be that the specific contingency measures in Paragraph 19 would be enforceable by the EPA, and Paragraph 20 would not. The EPA also requests comment on whether there is any other basis for approval of Paragraph 20. In particular, the EPA requests comment on the following: (1) Whether Paragraph 20 is needed to meet any applicable provision of section 110 or subpart 1 of part D of the Act; and (2) whether

Paragraph 20 is otherwise appropriate for inclusion in the SIP.

Although the EPA is not proposing to approve the provision in Paragraph 20, we note that the state may adopt and implement the provision to the extent authorized by state law. Section 116 of the Act provides that states may adopt requirements, including additional requirements which are not addressed by the Act, concerning control of air pollution if: (1) The requirement is not preempted or otherwise prohibited by specified provisions of the Act; and (2) the provision is no less stringent than requirements in effect under specified provisions of the Act. The EPA believes that the state's requirement meets the requirements of section 116.

*G. Enforceability*

All measures and other elements in the SIP must be enforceable by the state and the EPA (see sections 172(c)(6), 110(a)(2)(A), and 57 FR 13556). The state submittal includes a Compliance Order which contains all of the control and contingency measures, with enforceable dates for implementation.

As mentioned earlier, a Work Practice Manual was included in the state's submission as an integral part of the enforceable plan which achieves attainment of the standard. These work practices are designed to limit the fugitive emissions at the facility, and are enforced through recordkeeping requirements. Noncompliance with the established work practices is a violation of the state's Compliance Order. The EPA approves the Work Practice Manual with the understanding that any change to the Work Practice Manual requires a revision to the Nebraska SIP.

As noted above, Asarco has challenged one provision of the state's Compliance order in state court. The challenge is limited to the provision regarding future violations of the NAAQS, on which the EPA is proposing no action. Asarco does not challenge any other portion of the Order, and the EPA believes that the Order continues in force under state law. The EPA believes that the legal challenge will not affect the enforceability of the portions of the Order proposed for approval. The EPA requests comments on this issue.

IV. Implications of This Action

This SIP revision will significantly revise the current SIP. The modeling performed in support of the SIP revision indicates that the emissions control strategy will result in attainment of the NAAQS for lead by January 1, 1997.

V. Proposed Action

By this action the EPA proposes to approve Nebraska's August 28, 1996, submittal. This proposed SIP revision meets the requirements of section 110 and Part D of Title I of the Clean Air Act and 40 CFR part 51.

All public comments received will be addressed prior to final rulemaking. Any parties interested in commenting on this action should do so at this time.

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

VI. Administrative Requirements

*A. Executive Order 12866*

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5. U.S.C. 600 *et seq.*, the 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, the 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.

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

*C. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the 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 private sector, of $100 million or more. Under section 205, the 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 the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action proposed 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 preexisting 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 52

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

Authority: 42 U.S.C. 7401–7671q.

Dated: November 14, 1996.

Dennis Grams,

*Regional Administrator.*

[FR Doc. 96–30473 Filed 12–3–96; 8:45 am]

BILLING CODE 6560–50–F

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**40 CFR Part 52**

**[MD037–3008, MD037–3009; FRL–5659–6]**

## Approval and Promulgation of Air Quality Implementation Plans; State of Maryland; Enhanced Motor Vehicle Inspection and Maintenance Program; Extension of Comment Period and Commitment Letter Time Frame

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed Rule; extension of the comment period and commitment letter time frame.

**SUMMARY:** EPA is extending the comment period and commitment letter time frame for a notice published on October 31, 1996 (61 FR 56183). In the October 31, 1996 notice, EPA proposed a conditional approval of an enhanced motor vehicle I/M program submitted by the state of Maryland. On November 25, 1996, EPA received requests for an extension of the public comment period and commitment letter time frame by 30 days until January 2, 1997, as Maryland is in active negotiations regarding issues involving the transfer of its I/M contract. Based on these requests, EPA is extending the comment period and commitment letter time frame from December 2, 1996 until January 2, 1997.

**DATES:** Comments on and the commitment letter for the October 31, 1996 proposed conditional approval of the Maryland I/M program must be received in writing on or before January 2, 1997.

**ADDRESSES:** Comments may be mailed to David L. Arnold, Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey M. Boylan,(215) 566–2094, at the EPA Region III office or via e-mail at boylan.jeffrey@epamail.epa.gov.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: November 26, 1996.

W. Michael McCabe,

*Regional Administrator, Region III.*

[FR Doc. 96–30869 Filed 12–3–96; 8:45 am]

**BILLING CODE 6560–50–P**

## 40 CFR Part 52

**[CA 181–0024b; FRL–5649–9]**

## Approval and Promulgation of Implementation Plan for South Coast Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the South Coast Air Quality Management District (District) Rules 212, 1301, 1302, 1303, 1304, 1306, 1309, 1309.1, 1310, and 1313 for the purpose of meeting requirements of the Clean Air Act, as amended in 1990 (CAA or Act) with regard to new source review (NSR) in areas that have not attained the national ambient air quality standards (NAAQS).

This proposed approval action will incorporate these rules into the federally approved State Implementation Plan (SIP) for California. The rules were submitted by the State to satisfy certain Federal requirements for an approvable NSR SIP. In the Final Rules Section of this Federal Register, the EPA is approving the state's SIP revision as a direct final rule without prior proposal in part because the District has provided public workshops in the development of the submitted rules, and provided the opportunity for public comment prior to adoption of the submitted rules. At that time, no significant comments were received by the District. The Agency therefore views this as a non-controversial amendment and anticipates no adverse comments. If no adverse comments are received in response to this proposed rulemaking, no further activity is contemplated in relation to these rules. If EPA receives adverse comments, the direct final rulemaking will be withdrawn and all public comments received will be addressed in a subsequent final rulemaking based on these proposed rules. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments on these proposed rules must be received in writing by January 3, 1997.

**ADDRESSES:** Written comments on this action should be addressed to: Matt Haber, New Source Section (A–5–1), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours at the following address: New Source Section (A–5–1), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

**FOR FURTHER INFORMATION CONTACT:** Gerardo C. Rios, (A–5–1), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1259.

**SUPPLEMENTARY INFORMATION:** This document concerns South Coast Air Quality Management District Regulation XIII, New Source Review, and Rule 212, Standards for Approving Permits, submitted to EPA on August 28, 1996 by the California Air Resources Board. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 29, 1996.

John Wise,

*Acting Regional Administrator.*

[FR Doc. 96–30871 Filed 12–3–96; 8:45 am]

**BILLING CODE 6560–50–W**

## 40 CFR Part 81

**[NE–012–1012b; FRL–5655–7]**

## Designation of Areas for Air Quality Planning Purposes; State of Nebraska

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to correct a previous action published on November 6, 1991, that designated portions of Omaha, Nebraska, as nonattainment for the lead National Ambient Air Quality Standard (see 56 FR 56694). Specifically, this action corrects a mistake made in designating the southern boundary of that nonattainment area. This correction has no practical effect on the sources which are subject to the nonattainment provisions of the original designation.

In the final rules section of the Federal Register, the EPA is approving the correction as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties

interested in commenting on this document should do so at this time.

**DATES:** Comments must be received on or before January 3, 1997.

**ADDRESSES:** Comments may be mailed to Josh Tapp, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Josh Tapp at (913) 551–7606.

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final rule which is located in the rules section of the Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 14, 1996.

Dennis Grams,

*Regional Administrator.*

[FR Doc. 96–30472 Filed 12–3–96; 8:45 am]

**BILLING CODE 6560–50–F**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 96–235; RM–8909]**

### Radio Broadcasting Services; Forest City, PA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Vixon Valley Broadcasting proposing the allotment of Channel 261A at Forest City, Pennsylvania, as the community's first local aural transmission service. Channel 261A can be allotted to Forest City in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.1 kilometers (6.2 miles) northeast to avoid short-spacings to the licensed sites of Station WODE–FM, Channel 260B, Easton, Pennsylvania, and Station WDST(FM), Channel 261A, Woodstock, New York, at petitioner's requested site. The coordinates for Channel 261A at Forest City are North Latitude 41–42–55 and West Longitude 75–23–06. Since Forest City 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 January 13, 1997, and reply comments on or before January 28, 1997.

**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: Victor A. Michael, Jr., President, Vixon Valley Broadcasting, c/o Magic City Media, 1912 Capitol Avenue, Suite 300, Cheyenne, Wyoming 82001 (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. 96–235, adopted November 15, 1996, and released November 22, 1996. 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, N.W., Washington, D.C. 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, N.W., Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 96–30791 Filed 12–3–96; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[I.D. 112196A]**

### 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 2-day public meeting to consider actions affecting New England fisheries in the exclusive economic zone.

**DATES:** The meeting will be held on Wednesday, December 11, 1996, at 10 a.m., and on Thursday, December 12, 1996, at 8:30 a.m.

**ADDRESSES:** The meeting will be held at the Peabody Marriott, 8A Centennial Drive, Peabody, MA 01960; telephone (508) 977–9700. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone (617) 231–0422.

**FOR FURTHER INFORMATION CONTACT:** Christopher B. Kellogg, Acting Executive Director, New England Fishery Management Council, (617) 231–0422.

**SUPPLEMENTARY INFORMATION:**

December 11, 1996

After introductions, the December 11 session will begin with a discussion of issues related to groundfish management. The Council will review the report of the Multispecies Monitoring Committee (MSMC) on the status of the target total allowable catches (TACs) for stocks specified in the Fishery Management Plan for the Northeast Multispecies Fishery (Multispecies FMP). The MSMC is charged with recommending target TACs for the upcoming fishing year and, if necessary, recommending measures to achieve the catch targets. The Council will discuss effort reduction measures for gillnet vessels and alternatives to the current haddock trip limit. The Council intends to take final action on Framework Adjustment 18 to the Multispecies FMP. The Herring Committee will report at the end of the day on its recommendations for research priorities, joint venture allocation procedures, and discussions on the range of issues to be addressed in a Herring FMP scoping and public hearing document.

Background Information for Abbreviated Rulemaking—Northeast Multispecies

At the recommendation of its Groundfish Committee, the Council will consider taking action on adjustments to the Multispecies FMP under the framework for abbreviated rulemaking procedure contained in 50 CFR 648.90. Initial action may be taken on a framework adjustment to modify the Amendment 7 target TACs for the upcoming fishing year, based on the report of the Council's MSMC. Options

to accomplish this could include changes in the allocation of days-at-sea, possession limits, gear restrictions, closed areas, permitting restrictions, minimum fish sizes, and other management measures currently included in the Multispecies FMP. Initial action may be taken on other framework adjustments to the plan. These would: Establish an exempted fishery for gillnet vessels targeting monkfish with 10–inch (25.40–cm) or larger mesh, institute management measures to minimize fishing mortality on the 1992 year class of winter flounder, exempt mussel dredges from groundfish restrictions in Southern New England, modify the bycatch allowance of whiting in the northern shrimp fishery, and prohibit the possession of monkfish in the northern shrimp fishery. The Council will consider final action on Framework Adjustment 18, which would allow herring and mackerel fishing with pelagic mid-water trawls in areas of Georges Bank now closed to all gear capable of catching groundfish.

December 12, 1996

The December 12 session will begin with reports from the Council Chairman, Vice Chairman, Acting Executive Director, NMFS Regional Administrator, representatives from the Northeast Fisheries Science Center, Atlantic States Marine Fisheries Commission, U.S. Coast Guard, and the Mid-Atlantic Fishery Management Council liaison. The Marine Mammal Committee Chairman will follow with a brief update on the activities of the Large Whale Take Reduction Team. The Scallop Committee will review its recent discussions on effort consolidation in the sea scallop fishery. It will also recommend final action on Framework Adjustment 9 to the Scallop FMP, a measure concerning general category scallop permit holders who fish in Maine waters.

In the afternoon, the Council is expected to approve the draft environmental impact statement for the monkfish amendment to the Multispecies FMP. The day will conclude with a report on the amendments to the Magnuson-Stevens Fishery Conservation and Management Act that will most affect Council operations. Any other outstanding business will be addressed at the end of the day.

Background Information for Abbreviated Rulemaking—Atlantic Sea Scallops

At the recommendation of its Scallop Committee, the Council will consider final action on Framework Adjustment 9 to the Sea Scallop FMP under the framework for abbreviated rulemaking procedure contained in 50 CFR 648.55. The adjustment would extend the state waters exemption to include the 400–lb (181.44– kg) trip limit for general category scallop permit holders. Currently, scallopers holding this type of permit are prohibited from landing more than 400 lb (181.44 kg) of scallops per trip, even when fishing strictly within state waters.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Christopher B. Kellogg (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: November 27, 1996.

Gary C. Matlock,

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 96–30832 Filed 12–3–96; 8:45 am]

**BILLING CODE 3510–22–F**

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**50 CFR Part 679**

**[Docket No. 961126334–6334–01; I.D. 111296A]**

**RIN 0648–xx74**

## Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Proposed 1997 Harvest Specifications

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

**ACTION:** Proposed 1997 initial specifications for groundfish; apportionment of reserves; request for comments.

**SUMMARY:** NMFS proposes initial harvest specifications for groundfish and associated management measures in the Gulf of Alaska (GOA) for the 1997 fishing year. This action is necessary to carry out management objectives contained in the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

**DATES:** Comments must be received by December 30, 1996.

**ADDRESSES:** Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel.

The preliminary Stock Assessment and Fishery Evaluation (SAFE) Report, dated September 1996, is available from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Kaja Brix, 907–586–7228.

**SUPPLEMENTARY INFORMATION:**

Background

The domestic groundfish fisheries in the exclusive economic zone of the GOA are managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The FMP is implemented by regulations at 50 CFR part 679.

This action proposes for the 1997 fishing year: (1) Specifications of total allowable catch (TAC) for each groundfish target species category in the GOA, and reserves; (2) apportionments of reserves; (3) apportionments of the sablefish TAC to vessels using hook-and-line and trawl gear; (4) apportionments of pollock and Pacific cod TAC; (5) ''other species'' TAC; (6) halibut prohibited species catch (PSC) limits; and (7) fishery and seasonal allocations of the halibut PSC limits.

Comments on the proposed 1997 specifications and proposed apportionments of reserves are invited from the public through December 30, 1996. After again consulting with the Council, NMFS will publish final specifications for the 1997 fishing year in the Federal Register.

Regulations at § 679.20(c)(2) require that one-fourth of the preliminary or proposed specifications (not including the reserves and the first seasonal allowance of pollock), one-fourth of the inshore and offshore allocations of Pacific cod in each regulatory area, the proposed first seasonal allowance of pollock, and one-fourth of the halibut PSC amounts become effective at 0001 hours, Alaska local time (A.l.t.), January 1, on an interim basis, and remain in effect until superseded by the final harvest specifications.

NMFS is publishing, in the Rules and Regulations section of this Federal Register issue, interim TAC specifications and apportionments thereof for the 1997 fishing year that will become available 0001 hours, A.l.t., January 1, 1997, and remain in effect until superseded by the final 1997 harvest specifications.

*1. Proposed Establishment of TAC Amounts and Apportionments Thereof*

Under § 679.20(c)(1)(i)(A), NMFS, after consultation with the Council, publishes in the Federal Register proposed specifications of annual TAC amounts. These proposed specifications indicate apportionments of TAC amounts for each target species and the ''other species'' category. The sum of the TAC amounts for all species must fall within the combined optimum yield (OY) range, of 116,000–800,000 metric tons (mt), established for these species.

The reserves for the GOA (under § 679.20(b)(2)) are 20 percent of the TAC amounts for pollock, Pacific cod, flatfish target species categories, and ''other species.'' The GOA groundfish TAC amounts have been fully utilized by the respective domestic target species categories since 1987, and NMFS expects the same to occur in 1997. Therefore, NMFS proposes apportionment of all the reserves to the respective target species categories.

The Council met from September 18 through 22, 1996, to review scientific information concerning groundfish stocks. The preliminary SAFE Report, dated September 1996, prepared and presented to the Council by the GOA Plan Team (Plan Team), summarizes the best available scientific information on the status of stocks.

The September 1996 SAFE Report contains updated stock assessments that mainly include new catch information. The 1996 triennial trawl survey was conducted this year; however, the results were not available for the preliminary stock assessments. Survey information should be available for incorporation into assessments for the final 1996 SAFE Report issued in November. Details of the assessments can be found in the September 1996 SAFE Report.

The Council's proposed 1997 acceptable biological catch (ABC) amounts for Pacific cod, sablefish, rex sole, shortraker/rougheye and other slope rockfish are reduced from the 1996 ABC levels specified for these species; whereas the 1997 ABCs for pollock, deepwater flatfish, flathead sole, shallow water flatfish, arrowtooth, and POP increased from 1996. The proposed 1997 ABC amounts, as recommended by the Council, for all other species or species groups are unchanged from the 1996 amounts.

The September 1996 SAFE report contains a separate stock assessment for arrowtooth flounder, which was previously contained in the comprehensive flatfish assessment. For Pacific cod a new model configuration was used that is identical to the Eastern Bering Sea Pacific cod assessment model and a new age-structured model was used for sablefish. Although Amendment 44 has yet to be approved by NMFS, the Plan Team adopted preliminary ABC's based on the new definitions to (1) compensate for uncertainty in status of stocks by establishing fishing mortality rates more conservatively as biological parameters become more imprecise, (2) relate fishing mortality rates directly to biomass for stocks below target abundance levels, and (3) maintain a buffer between ABC and the overfishing level. The revised definitions result in lower exploitation rates and ABC's for some species.

The ABC for Pacific cod, as recommended by the Plan Team, the SSC and the Council, is 52,000 mt compared to the 1996 ABC of 65,000 mt. The 1997 ABC is consistent with the ABC amounts anticipated to be generated under low recruitment levels. Last year the Plan Team selected an ABC value related to the uncertainty in the current stock level by choosing the lower 95 percent confidence limit. The data required to compute the same this year are not yet available. However, applying the proportional decrease in exploitable biomass between last year and this year to the 1996 ABC gives a 1997 ABC of 52,000 mt.

The preliminary sablefish stock assessment does not yet include data from this year's longline survey. This information will be included for the final assessment in December. However, a new assessment was done this year for sablefish that is based on an age-structured model, compared to previous assessments on the delay-difference equation model. Biomass projections based on the age-structured model are lower than the projections from the delay-difference model; however, this was only one factor that resulted in a lower 1997 ABC (11,620 mt) estimate for sablefish compared to 1996 (17,080 mt). New fishing mortality rates, as derived from the new ABC and overfishing limit (OFL) definitions, also contributed to the lower 1997 ABC for sablefish.

The POP stock assessment produced a 1997 ABC of 11,780 mt. The preliminary 1997 OFL for POP is 17,630 mt. These recommendations were accepted by the SSC and the Council.

No new information exists for Atka mackerel; therefore, the best available estimate of Atka mackerel abundance in the GOA is from the 1993 survey. From this information, the Plan Team proposed an ABC of 6,480 mt. However, the SSC remains concerned about the lack of recruitment for this species. Because the species may be particularly sensitive to fishing pressure and is important as a prey species for Steller sea lions, the SSC recommended that a conservative exploitation rate of M/2 (one half of the natural mortality rate) be used to calculate the ABC, reducing the ABC to 3,240 mt. The Council adopted the SSC's ABC, which was also the 1996 ABC.

The Plan Team continues to recommend a reorganization of the pelagic shelf rockfish complex. The proposed 1997 ABC is derived almost entirely from dusky rockfish catches in the trawl surveys because black rockfish and other assemblage species are not adequately sampled by trawls. The Council remains concerned about localized overexploitation of black rockfish and other nearshore species. As a result, the Council requested an analysis of options for reorganizing the pelagic shelf rockfish complex and managing the resultant groups (Amendment 46 to the FMP). This analysis received initial review by the Council at its September meeting. Final Council review is scheduled for its December 1996 meeting. Appropriate changes to the 1997 GOA groundfish specifications would be made pending Council adoption and NMFS approval of this action.

The total 1997 ABC amount for all species recommended by the SSC and accepted by the Council is 546,720 mt.

The Advisory Panel (AP) recommended a 1997 TAC amount of 269,945 mt. The AP recommended 1997 TAC amounts equal the 1997 ABC amounts, as recommended by the SSC, for all species except deep-water flatfish, shallow-water flatfish, flathead sole, arrowtooth flounder, and POP. For the flatfish groups, the AP recommended a 1997 TAC that equals the 1996 TAC amount.

In addition, the Council recommended TAC amounts for other slope rockfish 'that equal the 1996 TAC levels, which would support bycatch needs in other fisheries. However, the 1996 Central Regulatory Area TAC amount of 1,170 mt exceeds the ABC for that area. Therefore, NMFS proposes to establish a 1997 TAC for other slope rockfish in the Central Regulatory Area equal to the 1997 ABC of 960 mt. As a result of this change to the Council's recommendation, the overall TAC amount and the ''other species'' TAC amount are reduced to 265,692 mt and 12,652 mt, respectively.

The TAC for POP is established by an algorithm in the POP Rebuilding Plan and is calculated for 1997 at 8,130 mt. Amendment 38 to the GOA FMP, which allows flexibility for the Council to

establish the TAC for POP at the algorithm level in the Rebuilding Plan or below that level, was approved by the Secretary of Commerce (61 FR 51374; October 2, 1996). During its December 1996 meeting, the Council may adjust the POP TAC downward for biological or resource conservation concerns not previously considered in the Rebuilding Plan.

The Council considered information in the SAFE Report, recommendations from its SSC and its AP, as well as public testimony. The Council then accepted the ABC amounts as recommended by the SSC. The Council accepted the TAC amounts as recommended by the AP, except for the ''other slope rockfish'' for which the above-mentioned adjustments were made.

The proposed 1997 ABC amounts and TAC amounts, as well as the ABC and TAC apportionments, are shown in Table 1.

TABLE 1—PROPOSED 1997 ABC AMOUNTS AND PROPOSED TAC AMOUNTS OF GROUNDFISH FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYAK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA [1, 2]

| Species | Area | ABC | TAC |
|---|---|---|---|
| | | (mt) | |
| Pollock: [3] | | | |
| | W (61) | 36,300 | 36,300 |
| | C (62) | 18,300 | 18,300 |
| | C (63) | 19,500 | 19,500 |
| Subtotal | W/C | *74,100 | *74,100 |
| | E | *4,010 | *4,010 |
| Total | | 78,110 | 78,110 |
| Pacific cod: [4] | | | |
| Inshore | W | | 13,570 |
| Offshore | W | | 1,510 |
| Inshore | C | | 30,890 |
| Offshore | C | | 3,430 |
| Inshore | E | | 2,340 |
| Offshore | E | | 260 |
| Subtotal | W | 15,080 | *15,080 |
| | C | 34,320 | *34,320 |
| | E | 2,600 | *2,600 |
| Total | | 52,000 | 52,000 |
| Flatfish, Deep-water: [5] | | | |
| | W | 1,020 | 460 |
| | C | 12,380 | 7,500 |
| | E | 8,760 | 3,120 |
| Total | | 22,160 | 11,080 |
| Rex sole: | | | |
| | W | 1,080 | 1,080 |
| | C | 5,640 | 5,640 |
| | E | 2,250 | 2,250 |
| Total | | 8,970 | 8,970 |
| Flathead sole: | | | |
| | W | 9,790 | 2,000 |
| | C | 18,940 | 5,000 |
| | E | 3,020 | 2,740 |
| Total | | 31,750 | 9,740 |
| Flatfish, Shallow-water [6] | | | |
| | W | 31,590 | 4,500 |
| | C | 25,980 | 12,950 |
| | E | 3,160 | 1,180 |
| Total | | 60,730 | 18,630 |
| Arrowtooth flounder: | | | |
| | W | 35,390 | 5,000 |
| | C | 175,250 | 25,000 |
| | E | 35,150 | 5,000 |
| Total | | 245,790 | 35,000 |
| Sablefish: [7] | | | |
| | W | 1,500 | 1,500 |
| | C | 4,690 | 4,690 |
| | WY | 2,060 | 2,060 |
| | SEO | 3,370 | 3,370 |

TABLE 1—PROPOSED 1997 ABC AMOUNTS AND PROPOSED TAC AMOUNTS OF GROUNDFISH FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYAK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA [1, 2]—Continued

| Species | Area | ABC | TAC |
|---|---|---|---|
| Total | ..... | 11,620 | 11,620 |
| Pacific ocean perch: [8] | | | |
| | W ..... | 2,130 | 1,470 |
| | C ..... | 5,640 | 3,900 |
| | E ..... | 4,010 | 2,760 |
| Total | ..... | 11,780 | 8,130 |
| Shortraker/rougheye: [9] | | | |
| | W ..... | 160 | 160 |
| | C ..... | 1,100 | 1,100 |
| | E ..... | 480 | 480 |
| Total | ..... | 1,740 | 1,740 |
| Rockfish, other slope [10, 11] | | | |
| | W ..... | 150 | 100 |
| | C ..... | 960 | 960 |
| | E ..... | 4,750 | 750 |
| Total | ..... | 5,860 | 1,810 |
| Rockfish, northern [12] | | | |
| | W ..... | 640 | 640 |
| | C ..... | 4,610 | 4,610 |
| | E ..... | 20 | 20 |
| Total | ..... | 5,270 | 5,270 |
| Rockfish, pelagic shelf [13] | | | |
| | W ..... | 910 | 910 |
| | C ..... | 3,200 | 3,200 |
| | E ..... | 1,080 | 1,080 |
| Total | ..... | 5,190 | 5,190 |
| Demersal shelf rockfish [14] | SEO ..... | 950 | 950 |
| Thornyhead rockfish | GW ..... | 1,560 | 1,560 |
| Atka mackerel: | | | |
| | W ..... | 2,310 | 2,310 |
| | C ..... | 925 | 925 |
| | E ..... | 5 | 5 |
| Total | ..... | 3,240 | 3,240 |
| Other species [15] | ..... | NA [16] | 12,652 |
| GOA Total | ..... | 546,720 [17] | 265,692 |

* Amounts are subtotals and are not cumulative.

[1] See § 679.2 for definitions of regulatory area and statistical area. See Figure 3b to part 679 for a description of regulatory district.

[2] Reserves are proposed to be apportioned to target species and are reflected in the proposed TAC amounts.

[3] Pollock is apportioned to three statistical areas in the combined Western/Central Regulatory Area (Table 3), each of which is further divided into three seasonal allowances. In the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

[4] Pacific cod is allocated 90 percent to the inshore, and 10 percent to the offshore component. Component allowances are shown in Table 4.

[5] ''Deep-water flatfish'' means Dover sole and Greenland turbot.

[6] ''Shallow water flatfish'' means flatfish not including ''deep-water flatfish,'' flathead sole, rex sole, or arrowtooth flounder.

[7] Sablefish is allocated to trawl and hook-and-line gears (Table 2).

[8] ''Pacific ocean perch'' means *Sebastes alutus.*

[9] ''Shortraker/rougheye rockfish'' means *Sebastes borealis* (shortraker) and S. *aleutianus* (rougheye).

[10] ''Other rockfish'' in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category ''other rockfish'' in the Southeast Outside District means slope rockfish.

[11] ''Slope rockfish'' means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), S. *paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegateu* (harlequin), *S. wilsoni* (pygmy), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), *S. babcocki* (redbanded), and *S. reedi* (yellowmouth).

[12] ''Northern rockfish'' means *Sebastes polyspinis.*

[13] ''Pelagic shelf rockfish'' includes *Sebastes melanops* (black), *S. mystinus* (blue), *S. ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).

[14] ''Demersal shelf rockfish'' means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

[15] ''Other species'' includes sculpins, sharks, skates, eulachon, smelts, capelin, squid, and octopus. The TAC for ''other species'' equals 5 percent of the TAC amounts of target species.

[16] NA=not applicable.

[17] The total ABC reflects the sum of the ABC amounts for target species.

*2. Proposed Apportionment of Reserves*

Regulations implementing the FMP establish initial reserves of 20 percent of each TAC for pollock, Pacific cod, flatfish species, and the ''other species'' category (§ 679.20(b)(2)). Consistent with § 679.20(b)(2), NMFS is proposing to apportion the 1997 reserves to each of the four species categories. Specifications of TAC shown in Table 1 reflect apportioned reserves.

*3. Proposed Apportionment of the Sablefish TAC Amounts to Users of Hook-and-Line and Trawl Gear*

Under § 679.20(a)(4) (i) and (ii), sablefish TAC amounts for each of the regulatory areas and districts are assigned to hook-and-line and trawl gear. In the Central and Western Regulatory Areas, 80 percent of the TAC amounts is allocated to vessels using hook-and-line gear and 20 percent is allocated to vessels using trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is assigned to vessels using hook-and-line gear and 5 percent is assigned to vessels using trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be used as bycatch to support directed fisheries for other trawl target species. Sablefish caught in the GOA with gear other than hook-and-line or trawl must be treated as prohibited species and may not be retained. Table 2 shows the assignments of the proposed 1997 sablefish TAC amounts between vessels using hook-and-line and trawl gears.

TABLE 2.—PROPOSED 1997 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ASSIGNMENTS THEREOF TO HOOK-AND-LINE AND TRAWL GEAR

| Area/District | TAC | Hook-and-line share | Trawl share |
|---|---|---|---|
| | (mt) | | |
| Western | 1,500 | 1,200 | 300 |
| Central | 4,690 | 3,750 | 940 |
| Eastern | ..... | ..... | ..... |
| West Yakutat | 2,060 | 1,960 | 100 |
| Southeast Outside | 3,370 | 3,200 | 170 |
| Total | 11,620 | 10,110 | 1,510 |

*4. Proposed Apportionments of Pollock and Pacific Cod TAC Amounts*

In the GOA, pollock is apportioned by area and season. Regulations at § 679.20(a)(5)(ii)(A) require that the TAC for pollock in the combined Western/Central (W/C) Regulatory Areas be apportioned among statistical areas Shumagin (610), Chirikof (620), and Kodiak (630) in proportion to known distribution of the pollock biomass. This measure was intended to provide spatial distribution of the pollock harvest as a sea lion protection measure. Under regulations at § 679.20(a)(5)(ii)(B) the pollock TAC for the W/C Regulatory Areas is apportioned into three seasonal allowances of 25, 25 and 50 percent, respectively. As established under § 679.23(d)(2), the first, second and third seasonal allowances of the W/C Regulatory Area pollock TAC amounts are available on January 1, June 1, and September 1, respectively. Within any fishing year, any unharvested amount of any seasonal allowance of pollock TAC is added in equal proportions to all subsequent seasonal allowances, resulting in a sum for each allowance not to exceed 150 percent of the initial seasonal allowance. Similarly, harvests in excess of a seasonal allowance of TAC are deducted in equal proportions from the remaining seasonal allowances of that fishing year. The Eastern Regulatory Area proposed TAC of 4,010 mt is not allocated among smaller areas, or seasonally.

Regulations at § 679.20(a)(6)(ii) require the allocation of the pollock apportionment in all regulatory areas and for all seasonal allowances to the inshore and offshore components as defined at § 679.2. Similarly regulations at § 679.20(a)(6)(iii) require allocation of the Pacific cod apportionment in all regulatory areas to the inshore and offshore components. The inshore component would be allocated 100 percent of the pollock TAC in each regulatory area after subtraction of amounts that are determined by the Administrator, Alaska Region, NMFS (Regional Administrator) as necessary to support the bycatch needs of the offshore component in directed fisheries for other groundfish species. At this time, these bycatch amounts are unknown and will be determined during the fishing year. The proposed distribution of pollock within the combined W/C Regulatory Areas is shown in Table 3, except that the allocation to the inshore and offshore components are not shown.

The inshore component for Pacific cod would be allocated 90 percent of the TAC in each regulatory area. Inshore and offshore component allocations of the proposed 52,000 mt TAC for each regulatory area are shown in Table 4.

TABLE 3.—PROPOSED DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA (W/C GOA); BIOMASS DISTRIBUTION, AREA APPORTIONMENTS, AND SEASONAL ALLOWANCES. ABC FOR THE W/C GOA IS PROPOSED TO BE 74,100 METRIC TONS (MT). BIOMASS DISTRIBUTION IS BASED ON 1993 SURVEY DATA. TAC AMOUNTS ARE EQUAL TO ABC. INSHORE AND OFFSHORE ALLOCATIONS OF POLLOCK ARE NOT SHOWN.

| Statistical area | Biomass percent | 1997 ABC=TAC | Seasonal allowances | | |
|---|---|---|---|---|---|
| | | | First | Second | Third |
| | | | (mt) | | |
| Shumagin (61) | 49 | 36,300 | 9,075 | 9,075 | 18,150 |
| Chirikof (62) | 24.7 | 18,300 | 4,575 | 4,575 | 9,150 |
| Kodiak (63) | 26.3 | 19,500 | 4,875 | 4,875 | 9,750 |
| Total | 100 | 74,100 | 18,525 | 18,525 | 37,050 |

TABLE 4.—PROPOSED 1997 ALLOCATION OF PACIFIC COD IN THE GULF OF ALASKA; ALLOCATIONS TO INSHORE AND OFFSHORE COMPONENTS.

| Regulatory area | TAC | Component Allocation | |
|---|---|---|---|
| | | Inshore (90%) | Offshore (10%) |
| | (mt) | | |
| Western | 15,080 | 13,570 | 1,510 |
| Central | 34,320 | 30,890 | 3,430 |
| Eastern | 2,600 | 2,340 | 260 |
| Total | 52,000 | 46,800 | 5,200 |

*5. ''Other Species'' TAC*

The FMP specifies that amounts for the ''other species'' category are calculated as 5 percent of the combined TAC amounts for target species. The GOA-wide ''other species'' TAC is calculated as 12,652 mt, which is 5 percent of the sum of combined TAC amounts for the target species.

*6. Proposed Halibut PSC Mortality Limits*

Under § 679.21(d), annual Pacific halibut PSC mortality limits are established for trawl and hook-and-line gear and may be established for pot gear. At its September meeting, the Council recommended that NMFS reestablish the PSC limits of 2,000 mt for the trawl fisheries and 300 mt for the hook-and-line fisheries, with 10 mt of the hook-and-line limit allocated to the demersal shelf rockfish (DSR) fishery in the Southeast Outside District and the remainder to the other hook-and-line fisheries.

Regulations at § 679.21(d)(4) authorize exemption of specified nontrawl fisheries from the halibut PSC limit. As in 1996, the Council proposes to exempt pot gear and the hook-and-line sablefish fishery from the nontrawl halibut limit for 1997. The Council proposed these exemptions because the halibut bycatch mortality experienced in the pot gear fisheries was low (17 mt in 1996) and because the sablefish and halibut Individual Fishing Quota (IFQ) program, implemented in 1995, allows retention of legal-sized halibut in the sablefish fishery.

NMFS preliminarily concurs in the Council's 1997 recommendations for halibut bycatch limits and seasonal apportionments (Table 5).

TABLE 5—PROPOSED 1997 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS. THE PACIFIC HALIBUT PSC LIMIT FOR HOOK-AND-LINE GEAR IS ALLOCATED TO THE DEMERSAL SHELF ROCKFISH (DSR) FISHERY AND FISHERIES OTHER THAN DSR

| Trawl Gear | | Hook-and-line Gear | | | |
|---|---|---|---|---|---|
| | | Other than DSR | | DSR | |
| Dates | Amount (mt) (%) | Dates | Amount (mt) (%) | Dates | Amount (mt) (%) |
| Jan 1–Mar 31 | 600 (30%) | Jan 1–May 14 | 242 (83%) | Jan 1–Dec 31 | 10 (100%) |
| Apr 1–Jun 30 | 400 (20%) | May 15–Aug 31 | 29 (10%). | | |
| Jul 1–Sep 30 | 600 (30%) | Sep 1–Dec 31 | 19 (6.5%). | | |
| Oct 1–Dec 31 | 400 (20%) | | | | |
| Total | 2,000 (100%) | | 290 (100%) | | 10 (100%) |

Regulations at § 679.21(d)(3)(iii) authorize the apportionment of the trawl halibut PSC limit to a deep-water species fishery (comprised of sablefish, rockfish, deep-water flatfish, rex sole and arrowtooth flounder) and a shallow-water species fishery (comprised of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel,

and ''other species''). The proposed apportionment for these two fishery complexes is presented in Table 6 and is unchanged from 1996.

TABLE 6.—PROPOSED 1997 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE DEEP-WATER SPECIES FISHERY AND THE SHALLOW-WATER SPECIES FISHERY

| Season | Shallow-water | Deep-water | Total |
|---|---|---|---|
| | (mt) | | |
| Jan. 20–Mar. 31 | 500 | 100 | 600 |
| Apr. 1–Jun. 30 | 100 | 300 | 400 |
| Jul. 1–Sep. 30 | 200 | 400 | 600 |
| Oct. 1–Dec. 31 | No apportionment between shallow and deep for the 4th quarter. | | |

Some changes may be made by the Council or NMFS in the seasonal, gear type and fishing-complex apportionments of halibut PSC limits for the final 1997 harvest specifications. NMFS considers the following types of information in setting halibut PSC limits as presented by, and summarized from, the preliminary 1996 SAFE Report, or from public comment and testimony.

(A) Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is available from data collected during 1996 by observers. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gear through September 21, 1996, is 1,611 mt, 164 mt, and 17 mt, respectively, for a total halibut mortality of 1,792 mt.

Halibut bycatch restrictions seasonally constrained trawl gear fisheries during the first, second, and third quarters of the 1996 fishing year and are anticipated to constrain trawl gear fisheries during the fourth quarter. Trawling for the deep-water fishery complex was closed during the first quarter on March 21 (61 FR 13462; March 27, 1996), for the second quarter on April 15 (61 FR 17256; April 19, 1996) and for the third quarter on August 7 (61 FR 41523, August 9, 1996). The shallow-water fishery complex was closed in the second quarter on May 13 (61 FR 24729, May 16, 1996) and in the third quarter on August 5 (61 FR 41363, August 8, 1996). The amount of groundfish that might have been harvested if halibut had not been seasonally limiting in 1996 is unknown. However, lacking market incentives, some amounts of groundfish will not be harvested, regardless of halibut PSC bycatch availability.

(B) Expected Changes in Groundfish Stocks

At its September 1996 meeting, the Council recommended 1997 ABC amounts lower than 1996 ABC amounts for Pacific cod, rex sole, sablefish, shortraker/rougheye and other slope rockfish. The Council proposed a 1997 ABC higher than the 1996 ABC for pollock, deepwater flatfish, flathead sole, shallow water flatfish, arrowtooth flounder, and POP.

The proposed 1997 ABC amounts for the remaining species or species groups are unchanged from 1996 amounts. More information on these proposed changes is included in the preliminary SAFE Report, dated September 1996, and in the AP, SSC, and Council minutes from the September 1996 meeting.

(C) Expected Changes in Groundfish Catch

The total of the proposed 1997 TAC amounts for the GOA is 265,692 mt, which represents 102 percent of the sum of TAC amounts for 1996 (260,227 mt). Significant changes in TAC amounts for pollock, Pacific cod, sablefish and POP are proposed. Increases in TAC are proposed for pollock and POP and decreases in TAC are proposed for Pacific cod and sablefish. The proposed increases in TAC should not directly affect halibut bycatch.

(D) Current Estimates of Halibut Biomass and Stock Condition

No new information exists on halibut biomass and stock condition. New information may be available by the December Council meeting. The most recent stock assessment was conduced in 1995 by the International Pacific Halibut Commission (IPHC). That assessment indicates that the total exploitable biomass of Pacific halibut in the GOA is approximately 166.9 million lb (75,705 mt). This amount represents a decline in biomass of approximately 16 percent from the previous year's stock assessment, a rate that is higher than the 5–15 percent annual decline observed in previous years. The low recruitment of recent years indicates that the stock may continue its decline at a rate of about 10–15 percent per year over the next several years.

(E) Potential Impacts of Expected Fishing for Groundfish on Halibut Stocks and U.S. Halibut Fisheries

The allowable commercial catch of halibut will be adjusted to account for the overall halibut PSC mortality limit established for groundfish fisheries. The 1997 groundfish fisheries are expected to use the entire proposed halibut PSC limit of 2,300 mt. The allowable directed commercial catch is determined by accounting for the recreational catch, waste, and bycatch mortality, and then providing the remainder to the directed fishery. Groundfish fishing is not expected to affect the halibut stocks.

(F) Methods Available for, and Costs of, Reducing Halibut Bycatches in Groundfish Fisheries

Methods available for reducing halibut bycatch include: (1) reducing halibut bycatch rates through the Vessel Incentive Program; (2) modifications to gear; (3) changes in groundfish fishing seasons; (4) individual transferable quota programs; and (5) time/area closures.

Reductions in groundfish TAC amounts provide no incentive for fishermen to reduce bycatch rates. Costs that would be imposed on fishermen as a result of reducing TAC amounts depend on species and amounts of groundfish foregone.

Trawl vessels carrying observers for purposes of complying with the observer coverage requirements (50 CFR 679.50) are subject to the Vessel Incentive Program. The program encourages trawl fishermen to avoid

high halibut bycatch rates while conducting groundfish fisheries by specifying bycatch rate standards for various target fisheries.

Current regulations (§ 679.24(b)(1)(ii)) require groundfish pots to have halibut exclusion devices to reduce halibut bycatch. Resulting low bycatch and mortality rates of halibut in pot fisheries have justified exempting pot gear from PSC limits.

The regulations also define pelagic trawl gear in a manner intended to reduce bycatch of halibut by displacing fishing effort off the bottom of the sea floor when certain halibut bycatch levels are reached during the fishing year. The definition provides standards for physical conformation (§ 679.2, see Authorized gear) and performance of the trawl gear in terms of crab bycatch (§ 679.7(b)(3)). Furthermore, all hook-and-line vessel operators are required to employ careful release measures when handling halibut bycatch (§ 679.7(b)(2)). This measure is intended to reduce handling mortality, increase the amount of groundfish harvested under the available halibut mortality bycatch limits, and possibly lower overall halibut bycatch mortality in groundfish fisheries.

The sablefish/halibut IFQ program (implemented in 1995) was intended, in part, to reduce the halibut discard mortality in the sablefish fishery.

Methods available for reducing halibut bycatch listed above will be reviewed by NMFS and the Council to determine their effectiveness. Changes will be initiated, as necessary, in response to this review or to public testimony and comment.

Consistent with the goals and objectives of the FMP to reduce halibut bycatches while providing an opportunity to harvest the groundfish OY, NMFS proposes the assignments of 2,000 mt and 300 mt of halibut PSC mortality limits to trawl and hook-and-line gear, respectively. While these limits would reduce the harvest quota for commercial halibut fishermen, NMFS has determined that they would not result in unfair allocation to any particular user group. NMFS recognizes that some halibut bycatch will occur in the groundfish fishery, but the Vessel Incentive Program, required modifications to gear, and implementation of the halibut IFQ program are intended to reduce adverse impacts on halibut fishermen while promoting the opportunity to achieve the OY from the groundfish fishery.

*7. Proposed Seasonal Apportionments of the Halibut PSC Limits*

Under § 679.21(d)(5), NMFS proposes to apportion seasonally the halibut PSC limits after consulting the Council. The regulations require that NMFS base any seasonal allocations of halibut PSC on the following types of information: (1) Seasonal distribution of halibut, (2) seasonal distribution of target groundfish species relative to halibut distribution, (3) expected halibut bycatch needs on a seasonal basis relevant to changes in halibut biomass and expected catches of target groundfish species, (4) expected variations in bycatch rates throughout the year, (5) expected changes in directed groundfish fishing seasons, (6) expected actual start of fishing effort, and, (7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

The Council recommended the same seasonal allocation of PSC limits for the 1997 fishing year as those in effect during the 1996 fishing year. The final 1996 initial groundfish and PSC specifications (61 FR 4304, February 5, 1996) summarized the Council's findings with respect to each of the FMP considerations set forth above. At this time, the Council's findings are unchanged from those set forth for 1996.

Pacific halibut PSC limits, and seasonal apportionments thereof, are presented in Table 5. The regulations specify that any overages or shortfalls in PSC catches will be accounted for in the 1997 season. The Council did not recommend changes in the seasonal apportionments for the hook-and-line gear fisheries from those specified in 1996.

The Council proposed that the assumed halibut mortality rates developed by staff of the IPHC for the 1996 GOA groundfish fisheries be rolled over for purposes of monitoring halibut bycatch allowances established for the 1997 groundfish fisheries. The justification for these mortality rates is discussed in the February 5, 1996, publication of the 1996 final specifications (61 FR 4304, February 5, 1996). The proposed mortality rates listed in Table 7 are subject to change after the Council considers an updated analysis on halibut mortality rates in the groundfish fisheries that IPHC staff are scheduled to present to the Council at the Council's December 1996 meeting.

TABLE 7.—1997 ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA. TABLE VALUES ARE PERCENT OF HALIBUT BYCATCH ASSUMED TO BE DEAD

| Gear and Target | |
|---|---|
| Hook-and-Line: | |
| Sablefish | 24 |
| Pacific cod | 13 |
| Rockfish | 19 |
| Trawl: | |
| Midwater pollock | 68 |
| Rockfish | 58 |
| Shallow-water flatfish | 64 |
| Pacific cod | 57 |
| Deep-water flatfish | 56 |
| Bottom pollock | 57 |
| Pot: | |
| Pacific cod | 18 |

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed specification, if issued as proposed, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed specifications would establish total allowable catch (TAC) and acceptable biological catch amounts for the 1997 fishing year. In addition, the proposed specifications would establish overfishing levels, prohibited species catch allowances, and seasonal allowances of the pollock TAC.

The proposed 1997 TAC is 265,692 metric tons or 2.1 percent greater than the 1996 final TAC. The difference reflects increased abundance of several species based on NMFS biological surveys and industry catch reports. The number of fixed gear and trawl catcher vessels expected to be operating as small entities in the Gulf of Alaska groundfish fishery is 1,541, excluding catcher/processor vessels. All these small entities will be affected by the harvest limits established in the 1997 specifications but changes from 1996 are relatively minor and are expected to be shared proportionally among participants. For this reason, the expected effects would not likely cause a reduction in gross revenues of more than 5 percent, increase compliance costs by more than 10 percent, or force small entities out of business.

The Alaska commercial fishing industry is accustomed to shifting effort among alternative species and management areas in response to changes in TAC between years and inseason closures. Such mobility is necessary to survive in the open access fishery. Therefore, the annual specification process for Alaska groundfish for 1997 would not have significant economic impact on a significant number of small entities.

A draft environmental assessment (EA) on the allowable harvest levels set forth in the final 1996 SAFE Report will be available for public review from NMFS, Alaska Region (see **ADDRESSES**), and at the December 1996 Council meeting. After the December meeting, a final EA will be prepared on the final 1996 TAC amounts after consultation with the Council.

Consultation pursuant to section 7 of the Endangered Species Act has been initiated for the 1997 GOA initial specifications.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

Dated: November 27, 1996.

Gary Matlock,

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 96–30888 Filed 11–29–96; 2:52 pm]

**BILLING CODE 3510–22–P**

# Notices

Federal Register
Vol. 61, No. 234
Wednesday, December 4, 1996

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

### Agricultural Marketing Service

**[TM–96–00–201]**

### Notice of Program Continuation

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice Inviting Applications for Fiscal Year 1997 Grant Funds Under the Federal-State Marketing Improvement Program.

**SUMMARY:** Notice is hereby given that the Federal-State Marketing Improvement Program (FSMIP) was allocated $1,200,000 in the Federal budget for fiscal year 1997. Funds remain available for this program. States interested in obtaining funds under the program are invited to submit proposals. While only State Departments of Agriculture or other appropriate State Agencies are eligible to apply for funds, State Agencies are encouraged to involve industry organizations in the development of proposals and the conduct of projects.

**DATES:** Applications will be accepted through June 9, 1997.

**ADDRESSES:** Proposals may be sent to Dr. Larry V. Summers, FSMIP, Staff Officer, Transportation and Marketing Division, Agricultural Marketing Service (AMS), U.S. Department of Agriculture, Room 2949 South Building, P.O. Box 96456, Washington, D.C. 20090–6456.

**FOR FURTHER INFORMATION CONTACT:** Dr. Larry V. Summers, (202) 720–2704.

**SUPPLEMENTARY INFORMATION:** FSMIP is authorized under Section 204(b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). The program is a matching fund program designed to assist State Departments of Agriculture or other appropriate State Agencies in conducting studies or developing innovative approaches related to the marketing of agricultural products. Other organizations interested in the development of proposals on the conduct of projects should contact their State Department of Agriculture's Marketing Division to discuss their proposal.

Mutually acceptable proposals are submitted by the State Agency and must be accompanied by a completed Standard Form (SF)–424 with SF–424A and SF–424B attached. FSMIP funds may not be used for advertising or, with limited exceptions, for the purchase of equipment or facilities. Guidelines may be obtained from your State Department of Agriculture or the above AMS contact.

States are encouraged to submit proposals aimed at:

(1) Identifying and evaluating new or expanded uses and markets, both domestic and foreign, for food and other agricultural products;

(2) Developing or assessing alternative approaches to cope with increased price volatility and related risks in a market-driven, global economy; and,

(3) Reengineering and experimenting with regard to a variety of public marketing service programs, including but not limited to market news and information, grades and standards, and inspection or certification programs, in order to facilitate efficient and fair trading within increasingly complex and concentrated marketing systems.

Proposals addressing other marketing objectives or issues also will receive consideration.

FSMIP is listed in the ''Catalog of Federal Domestic Assistance'' under number 10.156 and subject agencies must adhere to Title VI of the Civil Rights Act of 1964, which bars discrimination in all Federally assisted programs.

Authority: 7 U.S.C. 1621–1627.

Dated: November 27, 1996.

Eileen S. Stommes,

*Director, Transportation and Marketing Division.*

[FR Doc. 96–30862 Filed 12–3–96; 8:45 am]

**BILLING CODE 3410–02–P**

### Forest Service

### Forest Plan Amendment 21; Flathead National Forest, Flathead, Lake, Lewis and Clark, Lincoln, Missoula, and Powell Counties, State of Montana

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare a revised supplement to an environmental impact statement.

**SUMMARY:** Notice of Intent to prepare a Revised Supplement to the December 1985, Environmental Impact Statement (EIS) for the Flathead National Forest Land and Resource Management Plan (LRMP). The revised supplemental environmental impact statement proposes to amend LRMP goals, objectives and standards, as well as LRMP monitoring requirements, for timber and wildlife to ensure maintenance of viable populations of old-growth associated species for the period pending revision of the LRMP, which is anticipated by January 2001. The original Notice of Intent was published June 28, 1990, (55 FR 26475). A revised notice was published April 2, 1992, (57 FR 11283).

This notice revises the scope of the proposed amendment.

**DATES:** The draft supplement to the EIS is scheduled for public distribution in May of 1997 and the final supplement is scheduled for release in September 1997.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and EIS should be directed to Nancy Warren, Interdisciplinary team leader, or Rodd Richardson, Acting Forest Supervisor. Flathead National Forest, 1935 Third Avenue East, Kalispell, MT 59901. Phone: (406) 755–5401.

**SUPPLEMENTARY INFORMATION:** On January 22, 1986, Northern Region, Regional Forester, James C. Overbay issued the Flathead National Forest Land and Resource Management Plan (LRMP), Final Environmental Impact Statement (FEIS), and Record of Decision (ROD). The LRMP contains six types of decisions: (1) Forest-wide multiple use goals and objectives; (2) Forest-wide standards and guidelines; (3) establishment of management areas and managmenet area direction; (4) designation of land suitable for timber production; (5) non wilderness allocations and wilderness recommendations; and (6) monitoring and evaluation requirements. The LRMP does not authorize or approve any ground-disturbing activities.

In accordance with 36 CFR 219.19, the LRMP designates three vertebrate species as Management Indicator Species for those species groups most

likely to be affected by forest management activities. The tree dependent group indicator species is the marten; the old growth dependent group is represented by the pileated woodpecker; and the riparian tree dependent group indicator species is the barred owl. Other indicator species include the threatened or endangered species (grizzly bear, gray wolf, bald eagle and peregrine falcon); commonly hunted species (mule deer, elk, and whitetailed deer); and fish species (bull trout and cutthroat trout). The LRMP includes a forest-wide standard to ''maintain old-growth habitat and snags at elevations below 5,000 feet at a number and distribution that will achieve the desired potential populations of old growth and cavity-dependent species.''

In an August 31, 1988, decision on administrative appeals #1467 and #1513 of the Flathead National Forest LRMP, the Chief of the Forest Service directed that the Regional Forester ''document additional analysis of the habitat requirements, and the distribution of habitat, for pine marten, barred owls, and pileated woodpeckers. This evaluation should lead to the development of additional standards that will ensure that these species will remain well distributed throughout the forest.'' Pending completion of this assignment, the Chief directed the Regional Forester to ''implement an old growth retention standard requiring 10 percent of each 3rd order watershed to be left in old growth habitat in blocks large enough to provide habitat for management indicator species and spaced to allow interaction between individuals.''

The Flathead National Forest has taken several steps to implement the direction contained in this administrative appeal decision. These steps include: memoranda, issued in December 1988 and updated in March 1991, to Flathead National Forest District Rangers and other resource managers providing procedures for implementing the old growth retention standard and a June 1992 Supplemental Monitoring Report that was sent to members of the public on the Flathead National Forest's mailing list. The 1992 Supplemental Monitoring Report displays historical and existing old growth habitat conditions; provides definitions of old-growth habitat based on the best scientific data available at the time; documents additional analysis of the habitat requirements of pine marten, barred owl, and pileated woodpeckers; documents the distribution of these habitats; and provides lists of other wildlife species associated with old-growth habitat. In addition, the Flathead National Forest prepares NEPA documents on all project proposals that may affect old growth related species. These NEPA documents, which are typically subject to public review and comment, disclose the potential impacts of the proposed action on old growth habitat and old growth related species.

On June 28, 1990, the Forest Service published in the Federal Register a Notice of Intent to prepare an environmental impact statement on a proposal to amend the Flathead National Forest LRMP to adopt standards for management of habitat for pileated woodpecker, marten, and barred owl (55 FR 26475). The Forest Service published a notice on April 2, 1992, to clarify that the proposal was to prepare a supplement to the1985 LRMP EIS (57 FR 11283).

The Forest Service issued a Draft Supplemental EIS for Proposed LRMP Amendment #16 in June 1992 (57 FR 29490). The DSEIS considers five alternatives, including one (Alternative 5) that continues the current implementation of the Chief's interim old-growth direction. The interdisciplinary team concluded that all action alternatives, including continuation of current management direction, would result in population sizes and distributions that are adequate to maintain a stable population trend over a 150-year period. The interdisciplinary team also concluded that both Alternative 3 (the most restrictive alternative) and Alternative 5 (continuation of existing LRMP plus the Chief's direction) would ''* * * maintain habitat and Management Indicator Species' populations that were well distributed across the forest. The risk of creating isolated subpopulations and fragmenting habitat areas under these two alternatives is low.''

The notice of availability of the draft supplemental EIS on proposed Amendment 16 was published in the Federal Register on July 2, 1992. The Forest Supervisor granted the request of some respondents for an extension of the comment period beyond the required 45 days. The extended comment period closed on October 15, 1992. The Flathead National Forest received 271 written comments and 11 documented telephone calls and office visits.

Public comments on the draft supplement included requests that the Forest Service expand the scope of the proposed action, that the Forest Service delay completion of the SEIS until LRMP revision, ad that the scope of the analysis be expanded to include several national forests. In response to these comments, the Forest issued on May 5, 1993, a letter to the public stating that it may blend the work on Amendment #16 into its efforts to prepare for Forest Plan revision. The letter stated that the Forest will continue to implement the Chief's interim direction pending completion of revision. The Forest Supervisor stated:

> In your letters concerning Amendment 16, many of you asked for more analysis of interrelationships and for a decision that is broader in scope. We are now deciding how best to proceed. Options range from writing a Final EIS without changing the scope of the decision, to instead blending our work on Amendment 16 into our efforts to prepare for the ten-year Forest Plan revision.
>
> In the meantime, we will continue to implement the Forest Plan. We will continue to apply the Chief's interim direction (maintain 10 percent of each third-order drainage as old growth habitat). We will try to incorporate your comments and ideas into the process for monitoring and evaluation of the Forest Plan. And we will use some information from the Draft EIS in our project planning.

The Forest Service is continuing its efforts to develop and adopt a coordinated ecosystem management strategy for national forests. On January 21, 1994, the Chief of the Forest Service and the Director of the U.S. Department of Interior Bureau of Land Management initiated the Interior Columbia River Basin Ecosystem Management Project. The Project is expected to produce two major products: (1) a Basin-wide assessment of ecosystem processes and functions, species, social systems, and economic systems; and (2) environmental impact statements addressing, among other topics, wildlife habitat conservation, threatened and endangered species conservation, and biological diversity on lands administered by the Forest Service and Bureau of Land Management within the Interior Columbia River Basin. A Notice of Intent to prepare an environmental impact statement for the Upper Columbia River Basin (UCRB) was published in the Federal Register on December 7, 1994 (59 FR 63071). The geographic scope of the UCRB EIS includes national forest and public lands in Idaho, western Montana, and small portions of Nevada, Wyoming, and Utah. The Flathead National Forest is within the area addressed in the UCRB EIS. The selected alternative may result in amendment or revision of applicable national forest land management plans. The scientific assessment documents are expected to be released by January 1, 1997. The UCRB draft environmental impact

statement is expected to be released in the Fall of 1996. The UCRB final environmental impact statement is scheduled for release in the fall of 1997 (61 FR 47859). The scientific assessment documents and the UCRB EIS are anticipated to include information relevant to the management issues on the Flathead National Forest regarding old growth habitat and associated species.

The purpose of preparing a revised supplemental EIS for the Flathead National Forest LRMP is to amend LRMP goals, objectives and standards, as well as LRMP monitoring requirements, for timber and wildlife pending completion of the UCRB process and revision of the Flathead National Forest LRMP. To avoid confusion with the previous proposed action, the current proposal is labeled as Amendment 21.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: November 18, 1996.

Rodd E. Richardson,

*Acting Forest Supervisor.*

[FR Doc. 96–30815 Filed 12–3–96; 8:45 am]

**BILLING CODE 2200–00–M**

## Comprehensive Management Plans for the Wild and Scenic Rivers on the Ozark National Forest

**AGENCY:** Forest service, USDA.

**ACTION:** Notice of the availability of comprehensive management plans for Wild and Scenic Rivers.

**SUMMARY:** The Forest Service, USDA has prepared comprehensive management plans for the following designated Wild and Scenic Rivers located on the Ozark National Forest in Arkansas: Big Piney Creek, Buffalo, Hurricane Creek, Mulberry, North Sylamore Creek, and Richland Creek. These plans may be reviewed at the USDA Forest Service, Southern Regional Office, 1720 Peachtree Road, NW, Atlanta, Georgia and the Ozark-St. Francis National Forests, 605 West Main, Russellville, Arkansas. Information may be obtained by contacting Richard Bowie, Ozark-St. Francis National Forests, 605 West Main, Box 1008, Russellville, AR 72811–1008, (501) 968–2354.

Dated: November 26, 1996.

R. Gary Pierson,

*Acting Deputy Regional Forester for Natural Resources.*

[FR Doc. 96–30841 Filed 12–3–96; 8:45 am]

**BILLING CODE 3410–11–M**

## Rural Telephone Bank, USDA

## Staff Briefing for the Board of Directors

*Time and Date:* 2 p.m., Tuesday, December 10, 1996.

*Place:* Room 5066, South Building, Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

*Status:* Open.

*Matters to be Discussed:* General discussion involving privatization planning; update on legislative issues affecting the Bank and RUS telecommunications loan programs; interest rates for Bank funds advanced during FY 1996; proposed changes to loan policies; and status of State Telecommunications Modernization Plans.

*Action:* Regular Meeting of the Board of Directors.

*Time and Date:* 9 a.m., Wednesday, December 11, 1996.

*Place:* Williamsburg Room, Jamie L. Whitten Building, Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

*Status:* Open.

*Matters to be Considered:* The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to Order.
2. Report on election results.
3. Swearing in newly elected Board members.
4. Election of Board Officers: Chairperson, Vice Chairperson, Secretary, and Treasurer.
5. Action on Minutes of August 22, 1996, Board Meeting.
6. Report on loans approved fourth quarter of FY 1996.
7. Report on requests for waiver of prepayment premium.
8. Summary of financial activity for fourth quarter FY 1996.
9. Report of ad hoc committee on privatization of the Bank.
10. General discussion regarding proposed changes to loan policies.
11. Consideration of resolutions to replace lost stock certificates.
12. Establish date and location of next regular Board meeting.
13. Adjournment.

*Contact Person for More Information:* Barbara L. Eddy, Deputy Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: November 27, 1996.

Wally Beyer,

*Governor, Rural Telephone Bank.*

[FR Doc. 96–30863 Filed 12–3–96; 8:45 am]

**BILLING CODE 3410–15–M**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[Docket No. 960828234–6331–03]**

**RIN 0690–AA25**

## Guidelines for Empowerment Contracting

**AGENCY:** Department of Commerce.

**ACTION:** Notice; extension of comment period.

**SUMMARY:** On September 13, 1996, the Department of Commerce issued proposed Guidelines for Empowerment Contracting and requested public comments to be submitted on or before October 15, 1996, (61 FR 48463). On October 28, 1996, the Department reopened the comment period and extended the deadline for receiving comments to December 1, 1996, (61 FR 55616). Pursuant to public request, this notice serves to extend the deadline for receipt of comments through January 6, 1997.

The guidelines set forth proposed policies and procedures intended to promote economy and efficiency in Federal procurement by granting

qualified large businesses and qualified small businesses appropriate incentives to encourage business activity in areas of general economic distress. The guidelines are proposed in accordance with the President's Executive Order 13005 entitle, ''Empowerment Contracting.'' The standards set forth in the proposed guidelines will serve as the basis for a proposed revision to the Federal Acquisition Regulation (FAR). Information obtained from public comment on the guidelines will be used to help draft the proposed FAR revision.

**DATES:** Comments must be submitted on or before January 6, 1997.

**ADDRESSES:** Comments may be mailed to the Department of Commerce, Office of the Assistance General Counsel for Finance and Litigation, Room 5896, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Joe Levine, 202–482–1071.

Dated: November 27, 1996.

Lawrence Parks,

*Director, Office of Regional Growth.*

[FR Doc. 96–30839 Filed 12–3–96; 8:45 am]

**BILLING CODE 3510–17–M**

## International Trade Administration

**[A–351–820]**

## Ferrosilicon From Brazil: Extension of Time Limits of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limits of antidumping duty administrative review.

**SUMMARY:** The Department of Commerce (the Department) is extending the time limit for the preliminary results in the administrative review of the antidumping duty order on ferrosilicon from Brazil, covering the period March 1, 1995 through February 29, 1996.

**EFFECTIVE DATE:** December 4, 1996.

**FOR FURTHER INFORMATION CONTACT:** Sal Tauhidi or Wendy Frankel, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue, N.W., Washington, DC. 20230; telephone: (202) 482–4851 or (202) 482–5849.

**SUPPLEMENTARY INFORMATION:** On April 25, 1996, the Department initiated this administrative review of the antidumping duty order on ferrosilicon from Brazil. The current time limits are December 2, 1996 for the preliminary results and March 31, 1997 for the final results. Because it is not practicable to complete this review within the original time limits as mandated by section 751(a)(3)(A) of the Tariff Act of 1930 (as amended by the Uruguay Round Agreements Act), the Department is extending the time limits for the preliminary results to April 1, 1997. Accordingly, we will issue the final results by 120 days from the date of publication of the preliminary results.

These extensions are in accordance with section 751(a)(3)(A) of the Act.

Dated: November 26, 1996.

Jeffrey P. Bialos,

*Principal Deputy Assistant Secretary for Import Administrative.*

[FR Doc. 96–30874 Filed 12–3–96; 8:45 am]

**BILLING CODE 3510–DS–M**

**[A–588–028]**

## Roller Chain, Other Than Bicycle, From Japan: Final Results of Antidumping Duty Administrative Review, and Determination Not To Revoke in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review, and determination not to revoke in part.

**SUMMARY:** On June 4, 1996, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping finding on roller chain, other than bicycle, from Japan (61 FR 28171). The review covers seven manufacturers/exporters of the subject merchandise to the United States and the period April 1, 1994 through March 31, 1995. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

**EFFECTIVE DATE:** December 4, 1996.

**FOR FURTHER INFORMATION CONTACT:** Jack Dulberger, Matthew Blaskovich, Ron Trentham or Zev Primor, AD/CVD Enforcement, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–5253.

**SUPPLEMENTARY INFORMATION:**

### Background

On June 4, 1996, the Department published in the Federal Register (61 FR 28168) the preliminary results and intent to revoke the order in part of the administrative review (Preliminary Results) of the antidumping finding on roller chain, other than bicycle, from Japan (38 FR 9226, April 12, 1973).

This review covers seven manufacturers/exporters: Daido Kogyo Co., Ltd. (Daido), Izumi Chain Manufacturing Co., Ltd. (Izumi), Enuma Chain Mfg. Co., Ltd. (Enuma), Hitachi Metals Techno Ltd. (Hitachi), Pulton Chain Co., Ltd. (Pulton), Peer Chain Company (Peer), and R.K. Excel. Hitachi, Pulton, and Peer made no shipments of the subject merchandise during the period of review and the review has been rescinded with respect to these companies. See Preliminary Results, 61 FR at 28171.

Although we preliminarily determined to revoke the finding in part with respect to Enuma and Daido, we have determined not to revoke the finding in regard to these companies because they have not sold the subject merchandise at not less than normal value (NV) in this review and for at least three consecutive review periods.

The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

### The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

### Scope of the Review

Imports covered by the reviews are shipments of roller chain, other than bicycle, from Japan. The term ''roller chain, other than bicycle,'' as used in these reviews includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside from the bushings and the rollers are free to turn on the bushings. Pins and bushings

are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyer chain.

These reviews also cover leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. These reviews further cover chain model numbers 25 and 35. Roller chain is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7315.11.00 through 7619.90.00. HTSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers seven manufacturers/exporters and the period April 1, 1994 through March 31, 1995 (POR).

Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and the Statement of Administrative Action (SAA) accompanying the URAA, (see H.R. Doc. No. 316, Vol. 1, Uruguay Round Trade Agreements, Texts of Agreements, Implementing Bill, Statement of Administrative Action, and Required Supporting Statements, 103rd Cong., 2nd Sess. (Sept 27, 1994), at 829–31), the Department will, to the extent practicable, calculate NV based on sales at the same level of trade as the EP or CEP. When the Department is unable to find sales of the foreign like product in the comparison market at the same level of trade as the EP or CEP, the Department may compare the EP or CEP to sales at a different level of trade in the comparison market.

In accordance with section 773(a)(7)(A) of the Act, if sales at allegedly different levels of trade are compared, the Department will adjust the NV to account for the difference in level of trade if two conditions are met. First, there must be differences between the actual selling functions performed by the exporter at the level of trade of the U.S. sale and the level of trade of the comparison market sales used to determine NV. Second, the differences must affect price comparability as evidenced by a pattern of consistent price differences between sales at the different levels of trade in the country in which NV is determined.

Section 773(a)(7)(B) of the Act establishes that a CEP ''offset'' may be made when two conditions exist: (1) NV is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the CEP; and (2) the data available do not provide an appropriate basis for a level-of-trade adjustment.

In order to determine that there is a difference in level of trade, the Department must find that two sales have been made at different phases of marketing, or the equivalent. Different phases of marketing necessarily involve differences in selling functions, but differences in selling functions are not alone sufficient to establish a difference in the level of trade. Similarly, seller and customer descriptions (such as ''distributor'' and ''wholesaler'') are useful in identifying what a party considers different levels of trade, but these titles are not sufficient by themselves to establish that there are these differences.

Pursuant to section 773(a)(7)(B)(i) of the Act and the SAA at 827, in identifying levels of trade for EP and home market sales, we considered the selling functions reflected in the starting price of these transactions before any adjustments. For CEP sales, we considered only the selling activities reflected in the constructed price, *i.e.*, after expenses and profit were deducted under section 772(d) of the Act. Whenever sales were made by or through an affiliated company or agent, we considered all selling activities by affiliated parties, except for those selling activities associated with the expenses deducted under section 772(d) of the Act in CEP situations.

In implementing these principles in this review, we obtained information about the selling activities of the producers/exporters associated with each phase of marketing or the equivalent. We then asked respondents to identify the specific differences and similarities that existed in selling functions and/or support services between marketing phases in the home market and marketing phases in the United States.

We considered all selling functions and activities reported in respondents' questionnaire response but found no single selling function sufficient to warrant distinguishing separate levels of trade in the home market (see Antidumping Duties; Countervailing Duties; Proposed Rule, 61 FR 7308, 7348).

Only two respondents, Daido and Enuma, claimed that there were different levels of trade between home market and U.S. CEP sales, and that either a level of trade adjustment for CEP sales, or a CEP offset, was warranted.

To test the claimed levels of trade, we analyzed, *inter alia,* the selling activities associated with the claimed marketing phases respondents reported. We determined that there were no substantive differences in the selling activities that were performed by Daido and Enuma with respect to either the home market sales or CEP. We concluded, therefore, that no difference in level of trade existed during the period of review. Accordingly, no adjustment to NV is warranted. An additional description of our level of trade analysis for Daido and Enuma is presented in the Department's position on Comment 9 below.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received timely comments and rebuttal comments from petitioner (the American Chain Association (ACA)), Izumi, Daido, Enuma, and R.K. Excel. Moreover, at the request of these parties, we held a hearing on July 22, 1996.

*Comment 1:* Petitioner strongly contests the Department's use of constructed value (CV) as a basis for facts available (FA) in the Department's margin calculations. Petitioner claims that use of CV only serves to reward Izumi's inability to provide the information requested by the Department. Petitioner argues that the refusal of Izumi's affiliated party to provide downstream sales information should be considered as a refusal by Izumi itself. Moreover, petitioner is concerned that should CV be utilized in regard to Izumi's affiliated party sales, an unavoidable policy problem would result for the Department in which foreign manufacturers would be permitted to ''screen out'' high-price transactions from the calculation of NV. Petitioner contends that ''* * * [a]ll a foreign manufacturer need do is channel high-price transactions through an affiliated reseller with the (tacit) understanding that the reseller will refuse to supply data on the resale transactions to unaffiliated customers.'' See Petitioner's letter of July 8, 1996 at 6.

Finally, petitioner concedes that although it cannot be established with certainty whether the downstream data would have produced a significantly higher margin for Izumi, it contends that an adverse inference in this regard is justifiable given the relationship between Izumi and its affiliated party. Petitioner therefore requests that the Department rely on the highest

transaction margin previously assigned to Izumi to make price-to-price comparisons for Izumi's margin calculations. See Department's May 28, 1996 Status Report.

Izumi contends that the Department's decision to use FA was neither reasonable nor necessary. However, Izumi concedes that, if FA is warranted, the Department should continue to use CV data as non-adverse FA. Izumi states that since Izumi has no ownership interest in or control over this party, it cannot assume responsibility for its affiliated party's actions, even though the affiliated party owns a certain percentage of Izumi's stock. Insofar as the Department has concurred with the fact that Izumi has been cooperative in this instant review, Izumi contends that the Department's decision to use CV cannot be considered to reward Izumi's inability to provide downstream sales information. Further, Izumi argues that petitioner's claim of the possibility of Izumi colluding with its affiliated party to screen out high price transactions is mere speculation. Izumi contends that it would not profit from such a scheme since it has no ownership interest in the affiliated party.

*Department's Position:* We agree with petitioner in part. We disagree with Izumi's contention that our decision to apply FA to its downstream sales was neither reasonable nor necessary.

Section 773(a)(5) of the Act provides that ''[i]f the foreign like product is sold or, in the absence of sales, offered for sale through an affiliated party, the prices at which the foreign like product is sold (or offered for sale) by such affiliated party may be used in determining normal value.'' See also 19 CFR § 353.45(b). Therefore, both the statute and our regulations authorize us to use downstream sales. Because Izumi failed to provide us with the requested downstream sales information, section 776(a) of the Act requires us to use the facts otherwise available in reaching a determination regarding downstream sales.

In reaching our determination we did not use an adverse inference because Izumi acted to the best of its ability to provide us with the downstream sales information. See Section 776(b) of the Act. The SAA outlines the options the Department has in determining what information it may use in applying FA. In situations requiring that we use non-adverse FA, the SAA states that ''* * * Commerce and the Commission must make their determination based on all evidence of record, weighing the record evidence to determine that which is most probative of the issue under consideration.'' See *SAA* at 869.

As FA, we have decided not to continue to base NV entirely on CV as we did in the preliminary results. Instead, we determined use of FA based on the following steps. First, we determined the weighted-average margin that resulted from price-to-price comparisons using sales to unrelated parties in the home market. Then, we identified those remaining U.S. sales that would be matched to Izumi's home market affiliated-party transactions. Based on this, we determined that these U.S. sales would have been matched to the downstream sales, had those transactions been provided, and as partial FA, we applied to those transactions the weighted-average margin representing price-to-price comparisons to unaffiliated parties. We continued to use CV for those U.S. transactions which would not have had matches in the home market had downstream sales been supplied.

*Comment 2:* Izumi requests that certain models of specialty chain sold in the United States should not be matched to models sold in the home market because a comparison is precluded by significant physical differences and different uses. Izumi claims that the Department's application of a 20 percent differences in merchandise (difmer) cap does not prevent skewed results. Izumi requests that the Department continue its practice in past reviews and match U.S. models in question to constructed value.

Petitioner contends that there is no evidence on the record which substantiates Izumi's claim that differences in scope and use exist between certain models sold in the United States and in Japan. Petitioner cites to the model match methodology used in the proceedings concerning antifriction bearings (AFBs) from the Federal Republic of Germany (FRG), in which all parties were able to submit detailed comments in regard to reported differences in physical characteristics in order to distinguish between various bearing models. Petitioner claims that since no such briefing process occurred for this review, the Department was justified in utilizing Izumi's model-match concordance for price-to-price comparison purposes.

*Department's Position:* We agree with petitioner. Our questionnaire specifically requested this information and Izumi had the opportunity in its questionnaire response to submit comments on the physical characteristics which differentiate between various models for matching purposes. Izumi chose to wait until after the publication of our preliminary results to submit this information. In the most recently completed results covering the POR 1992–1993, Izumi submitted its comments on the physical characteristics prior to the publication of our preliminary results and requested that certain models sold in the United States be matched to CV. Given the late stage of this proceeding, we cannot accept this data for CV matching purposes. Furthermore, there is no evidence on the record which would support Izumi's post-preliminary comments. See Section 353.31 of the Department's regulations. Therefore, we have determined to continue to use certain models sold in the home market in making price-to-price comparisons.

*Comment 3:* Petitioner states that the Department should determine whether Izumi's affiliated party resold the subject merchandise it purchased from Izumi to the United States. Petitioner states that any U.S. sales made by Izumi's affiliated party should be treated as either export price (EP) or constructed exporter price (CEP) transactions. Petitioner insists that Izumi and its affiliated party should be required by the Department to certify whether or not the affiliated party resold this merchandise to the United States.

Izumi contends that petitioner's allegations in this regard are mere speculation since there is no evidence on the record to indicate that Izumi had knowledge that merchandise sold in the home market was destined for export to the United States. Izumi further argues that as the Department rejected the same argument raised by petitioner in the 1991–1992 review, there is no need to revisit this issue. Izumi states that petitioner's insistence that it provide a certification regarding whether its affiliated party resold merchandise purchased from Izumi to the United States has no basis in statute or regulation.

*Department's Position:* We agree with Izumi. In a previous segment of this proceeding, petitioner raised this identical argument which we rejected as lacking merit since there was no indication on the record to support its allegations.

Izumi certified for this review that its U.S. and home market sales and distribution systems were reported in a complete and accurate manner. Further, there is no information on the record from which to conclude that merchandise Izumi sold to its affiliated party was subsequently resold to the United States. Therefore, we have determined that Izumi need not submit any additional certifications regarding possible U.S. sales its affiliated party may have made.

*Comment 4:* R.K. Excel claims that the Department incorrectly subtracted all yen-denominated adjustments to U.S. price from U.S. price without converting the reported amounts from yen into U.S. dollars.

*Department's Position:* We agree and have made the appropriate corrections.

*Comment 5:* R.K. Excel and petitioner maintain that the Department incorrectly calculated R.K. Excel's preliminary dumping margin based on gross U.S. price rather than net U.S. price.

*Department's Position:* We agree with R.K. Excel and petitioner and have made appropriate changes to the computer program.

*Comment 6:* R.K. Excel contends that the Department erred in treating advertising expenses for both home market and U.S. sales as indirect rather than direct selling expenses.

*Department's Position:* We agree and have made the appropriate adjustments.

*Comment 7:* R.K. Excel argues that when the Department did not find a matching home market sale in the same month as a U.S. sale, the Department's program did not accurately match to contemporaneous home market sales. As a result, R.K. Excel alleges that the Department ignored and did not calculate margins for U.S. sales with no matching home market sales in the same month but which did have matching home market sales in contemporaneous months.

Petitioner asserts that in calculating R.K. Excel's preliminary margin, the Department inappropriately ignored certain U.S. sales that did not have corresponding home market comparisons in the same month. In such instances, the petitioner contends that the Department should apply a ''facts available'' margin to these sales.

*Department's Position:* We agree with R.K. Excel and in accordance with the Department's established practice, have made the appropriate program corrections.

*Comment 8:* Enuma argues that the Department erroneously disregarded its further manufacturing (FM) cost information for the purpose of calculating CEP sales for Enuma. Enuma contends that the Department should not have rejected its FM cost allocation methodology because it is based directly on Enuma's material costs. Enuma requests that the Department recalculate the margin using its cost information instead of FA.

Enuma asserts that the inventory values for the attachment-equipped roller chain which it submitted as further manufacturing material costs represented transfer prices for the FM sales. In order to test these transfer prices, the Department obtained values for six attachment models representing the majority of FM sales, and compared these to Enuma's cost of production (COP) plus movement expenses. However, the Department later found that COP plus movement expenses for one of the six attachments exceeded the transfer price. Enuma argues that this below-COP transfer price was merely an ''aberrational value'' which did not represent the entire set of attachments. Enuma argues that the Department's general policy favors using affiliated party transfer prices where possible, and cites to: Certain Carbon and Alloy Steel Wire Rod from Canada; Preliminary Results of Antidumping Duty Administrative Review, 59 FR 18791 (April 20, 1994); and AFBs (Other than Tapered Roller Bearings (TRBs)) from the FRG, Final Results of Antidumping Duty Administrative Review, 54 FR 18992 (May 3, 1989).

Enuma further argues that the Department also wrongly rejected its methodology for allocating non-material FM costs, which it based on attachment material costs. DC claims that under the factual circumstances, which it claims are supported by one of the Department's verification reports, its allocation methodology for non-material FM costs is justified. Further, DC asserts that this method is ''more precise'' than the one the Department ''ordinarily requires.''

Petitioner responds that the Department's position is correct and asserts that the one-sixth finding ''represents a significant proportion of the total [attachments] test group.'' The Department could infer from this that other sales were probably also below COP. Petitioner argues that the Department was justified in concluding that the submitted transfer prices did not consistently reflect actual material costs of the attachments. The Department could justifiably find that DC's cost allocation methodology was likewise unreliable because it is based on unreliable material costs. The Department was correct in applying FA to these sales.

*Department's Position:* We agree with petitioner. We specifically requested, in both the original and supplemental questionnaires, that DC report its actual further manufacturing costs. DC chose not to follow our instructions. DC claims that it lacked actual costs for its FM merchandise and would be unable to provide COP for these attachments within the time provided for answering. DC instead used affiliated party transfer prices from Daido Tsusho (DT) to DC to value the attachments. DC provided the Department with sampling data with which to test arm's-length pricing of its attachments, claiming that this data represented a substantial portion of FM sales.

Based on our analysis of verification findings, however, we found a significant proportion of this sample to be below COP (one out of six attachments), which compromised the reliability of the transfer price information. We therefore determined that Enuma's transfer prices did not reflect true market value and were thus not reliable.

In addition, Enuma used these transfer prices as the basis for allocating total production costs of the FM merchandise (*i.e.,* direct labor, factory overhead, G&A, and interest expense). Because we found the transfer prices unreliable, we determined this costing methodology is unreliable as well. We concluded that Enuma's further manufacturing costs and calculation methodology were unreliable.

*Comment 9:* Petitioner argues that Daido and Enuma are not entitled to a CEP offset because the Department erred in its analysis of LOT and overlooked Daido and Enuma's failure to make the required factual showings. Petitioner requests that the Department disallow Daido and Enuma's CEP offsets.

Petitioner asserts that in order to qualify for the LOT adjustment, Daido and Enuma must establish that price differences exist between sales at different levels of trade in the country in which NV is determined (*i.e.,* the home market). Petitioner argues that the CEP transactions, after ''deduction of expenses and profits,'' are ''at the same level of trade as resales by a trading company,'' rather than at the ex-factory sale's level. In support of its argument, petitioner points out that Daido and Enuma reported sales to home market customers, including trading companies, and described all such customers as occupying the same LOT in the home market.

Petitioner asserts that Daido and Enuma failed to establish that their home market sales were exclusively to end users, and that they submitted evidence on the record of sales to trading companies (as well as to OEMs and local distributors) which, petitioner asserts, were sales the Department incorrectly characterized as made exclusively to end users. Petitioner concludes that Daido and Enuma sold to Japanese trading companies, including DT (a trading company that sold to the United States), and that therefore the CEP transactions (after adjustment) were at the same LOT as DT's EP sales.

Further, petitioner argues that Daido and Enuma failed to establish that they performed different selling functions for sales to home market trading companies than they performed for sales to DT. Finally, petitioner analyzes the home market LOTs in comparison with that of CEP sales, concluding that the CEP sales, not home market sales, category is at a more advanced distribution stage (*i.e.*, more remote from the factory). Petitioner thus concludes that Daido and Enuma are not eligible for the CEP offset.

Daido and Enuma contest each of petitioner's points regarding a LOT adjustment and the CEP offset and argue that the Department's position in the preliminary results is correct. They claim that sales in the two markets took place at different levels of trade and that a CEP offset is justified. Daido and Enuma contest the petitioner's contention that the CEP transactions (after adjustment) in question were at the same LOT as DT's EP sales. Instead, they assert that their adjusted CEP sales were made at the ex-factory level of trade, not at the level of a trading company. Daido and Enuma argue that the Department's Proposed Rules (Antidumping Duties; Countervailing Administrative Reviews; Time Limits, 60 FR 56141 (November 7, 1995)), and the Department's decision in AFBs (Other than TRBs) from France et al; Preliminary Results of Antidumping Duty Administrative Review, 61 FR 35718 (July 8, 1996) support this position.

Daido and Enuma counter that the petitioner's discussion of their affiliated party, DT, is irrelevant for the purpose of identifying the level of trade of CEP sales, according to the definition of the term ''CEP'' sales pursuant to 19 U.S.C. 1677a(b) as well as *Refined Antimony Trioxide from the PRC.* Additionally, Daido and Enuma argue that although they sold to various trading companies (DT and others), their particular sales to the affiliated party, DT, cannot be classified as home market sales. They conclude from this analysis that petitioner's labeling of DT's sales as home market sales is erroneous. They assert that the law considers Daido, Enuma, DC, and DT (which are all affiliated to one another) ''as one entity,'' and that it is their associated U.S. sales which are to be adjusted by ''deducting expenses and profits.'' Therefore, according to Daido and Enuma, the LOT of their CEP transactions is ex-factory. They conclude that the CEP transaction is at a different LOT than DT's EP sales.

Finally, Daido and Enuma argue that they performed selling activities for their home market sales which differed in quantity and type from activities performed for CEP sales, and that these differences establish their eligibility for a CEP offset.

*Department's Position:* We agree with the petitioner that Daido and Enuma have not demonstrated their eligibility for a CEP offset. As we described in the ''Level of Trade'' section of this notice, in order to determine whether different levels of trade exist within or between the U.S. and home markets, the Department examines the selling functions performed by Daido, Enuma, and other affiliates, if appropriate, as well as other factors that establish whether different phases of marketing exist in or between those markets.

Based on our analysis of Daido and Enuma's questionnaire responses, we identified the phase of marketing in the home market to be that of a distributor. Daido and Enuma stated that all three of its home market customer groups—trading companies, distributors, and original equipment manufacturers (OEMs)—made up ''only one channel of distribution in the home market'' (see Daido and Enuma Chain Questionnaire Response (March 20, 1995) at A–8, A–9), and that they performed the same selling services for all such customers. See Daido and Enuma Comments (July 15, 1996) at 2–3. As discussed below, however, Daido and Enuma provided no details as to the exact selling functions performed for each of these customer categories.

We found that Daido and Enuma sell to the U.S. market only through an affiliated, multi-party chain made up of DT, their affiliated trading company, and DC, their affiliated U.S. master distributor. For all CEP sales, Daido and Enuma sell to DT, which in turn resells to DC.

In addition, in calculating CEP for our preliminary results, we erroneously deducted indirect selling expenses (DINDIRSU) and inventory carrying costs (DINVCARU) incurred by DT and did not consider the selling activities of DT in determining the LOT of the CEP. However, these DT expenses are not ''associated with economic activities occurring in the United States'' (SAA at 823). Therefore, for these final results, we did not deduct these expenses in calculating CEP. Accordingly, we considered the selling activities of DT, as well as those of Daido and Enuma, in determining the LOT of the CEP.

Based on this analysis, we determined that CEP sales to DC constituted one phase of marketing (*i.e.*, that of sales to a distributor) and one level of trade. In comparing the home and U.S. markets, our analysis also indicated that Daido and Enuma's sales were at the same phase of marketing (*i.e.*, that of a distributor).

We proceeded to analyze the selling functions performed at the identified level of trade in each market. First, Daido and Enuma stated that they performed the same selling functions for all home market sales which ''include maintaining an inventory, technical consultations, arranging delivery to the customer,'' as well as preparing chain for shipment, processing sales orders, and billing.

In the U.S. market, we considered all selling activities of all affiliated parties for CEP sales, after disregarding selling activities associated with the selling expenses deducted under section 772(d) of the Act. For CEP sales, in addition to selling functions provided by Daido Corporation, we found that Daido/DT and Enuma/DT performed the additional selling functions of preparing chain for shipment, arranging its transportation from their plants to a Japanese port, carrying or maintaining inventory, administering sales, and billing.

We concluded that Daido and Enuma have not demonstrated that selling functions performed with respect to sales to the home market distributors were significantly different from those performed with respect to sales to distributor DC (*i.e.*, those associated with the CEP). Taken in conjunction with other indications of similar phases of marketing, we do not consider the CEP to be at a different level of trade than that of home market sales.

Further, even if different levels of trade were to be found, we agree with petitioner that, based on the facts on the record, home market sales have not been established to be at a LOT which constitutes a more advanced stage of distribution than the LOT of the CEP.

*Comment 10:* Enuma argues that the Department improperly applied its affiliated party sales test (sales test), and in so doing, improperly deleted home market sales to a certain affiliated home market customer. Enuma agrees that the sales test, which measures the ratio of prices charged to unaffiliated parties to prices charged to unaffiliated parties, results in a ratio below, albeit ''not much below'', the 99.5% level. Enuma argues that the Department is required to either formally promulgate the sales test as a rule pursuant to the Administrative Procedures Act (APA), or more fully explain its basis for disregarding affiliated party sales. Enuma asserts that this test is an official action taken by the Department similar to the *de minimis* rule at issue in *Carlisle Tire and Rubber Company* v.

*United States,* 872 F. Supp. 1000, 1003–1004 (CIT 1994) (*Carlisle*). Enuma contends that *Carlisle* held that prior to applying the *de minimis* rule, the Department was required to either conform to the APA or explain, in each instance, the rule's use. (Enuma contends that the Department subsequently complied by taking the former action). Enuma argues that since the Department failed to take the required actions, we should include affiliated sales in calculating NV.

Petitioner contends that the Department's position is correct. First, petitioner points to *Usinor Sacilor, Sollac and GTS* v. *United States,* 872 F. Supp. 1000, 1003–1004 (CIT 1994) (*Usinor*), where the CIT upheld the affiliated sales test. Secondly, petitioner asserts that the Department may rely on longstanding practice as it has in this review in making antidumping calculations.

*Department's Position:* Regarding the use of the 99.5 percent test, our regulations state that ''[i]f a producer or reseller sold such or similar merchandise to a person related as described in the Act, the Secretary ordinarily will calculate foreign market value based on that sale only if satisfied that the price is comparable to the price at which the producer or reseller sold such or similar merchandise to a person not related to the seller.'' 19 CFR § 353.45(a). Accordingly, our 99.5 percent test is a means of determining whether or not the price charged to affiliated customers is ''comparable'' to the price charged to unaffiliated customers. Implicit in both our regulations and the 99.5 percent test is a concern that prices charged to affiliated customers may not be based on market considerations. Thus, as we have stated elsewhere, ''if the customer-specific (affiliated/unaffiliated) price ratio was less than 99.5 percent, we determined that all sales to that (affiliated) customer were not arm's length transactions because, on average, that customer was paying less than [unaffiliated] customers for the same merchandise.'' See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, 58 FR 7066, 7069 (Feb. 4, 1993). We further note that this test has been upheld by the CIT, see *Usinor Sacilor* v. *United States,* 872 F. Supp. 1000, 1003 (CIT 1994), and we have continued to apply this test for these final results of review.

*Comment 11:* Petitioner, Daido, and Enuma assert that the Department made clerical errors in the margin programs for Daido and Enuma by comparing gross unit prices, instead of net sales prices, to the foreign unit prices in U.S. dollars (FUPDOL). These three parties request that the Department correct these errors in the final results of review.

*Department's Position:* We agree with petitioner, Daido, and Enuma. For these final results, we have made the corrections to the relevant portions of the margin programs for Daido and Enuma.

*Comment 12:* Petitioner requests that the Department revisit the rates assigned to Daido and Enuma as partial FA for certain U.S. sales, including those which were unreported, lacked model match and difference in merchandise information, as well as all further-manufactured sales.

*Department's Position:* We have revisited the rates assigned to Daido and Enuma as partial FA for certain U.S. sales, including those which were unreported, lacked model match and difference in merchandise information, as well as all further-manufactured sales. We have concluded that it is appropriate to continue to use as FA for these final results the highest rate calculated in this review for another company (11.18 percent).

*Comment 13:* Daido and Enuma argue that the Department erred in assigning FA to certain EP sales which the Department determined did not have contemporaneous matches in the home market. According to Daido and Enuma, ''matches for these sales almost certainly exist'' within their respective sales data submissions for the prior POR. Daido and Enuma argue that, in place of FA, we should match these EP sales with home market sales from the previous POR or delete them from the 1994–95 POR sales data base entirely.

*Department's Position:* We disagree with Daido and Enuma. First, Daido and Enuma had the opportunity to submit the sales data in question on the record of this proceeding. However, they failed to do so in a timely manner.

Second, the courts have long recognized that antidumping administrative reviews are separate and distinct proceedings and the results of the current review must be based on substantial evidence in the record of that review. See *e.g., NSK Ltd.* v. *United States,* 788 F. Supp. 1228, 1229 (CIT 1992). We decline to examine sales data from Daido and Enuma's submissions for the previous POR and continue to find that Daido and Enuma failed to report home market matches for the EP sales in question.

Additional Clerical Errors

In addition to the changes we made in response to the parties' comments above, we have corrected two inadvertent clerical errors as follows:

(a) We erroneously calculated the weighted-average indirect selling expense factor for Izumi's preliminary margin program, due to a decimal placement error; we made the appropriate correction.

(b) In analyzing Izumi's similar merchandise in the model match section of the program, we inadvertently failed to use the absolute values for the differences in merchandise percentage valuations. We have made the necessary correction.

Final Results of Review; Determination Not To Revoke the Antidumping Finding in Part

As a result of this review, we have determined that the following margins exist for the period April 1, 1994 through March 31, 1995:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Izumi | 11.18 |
| R.K. Excel | 0.16 |
| Daido | 1.14 |
| Enuma | 1.35 |

Based upon the fact that Daido and Enuma have not demonstrated three consecutive years of sales at not less than NV, we further determine that these companies have not met the requirements for revocation set forth in 19 CFR 353.25(a)(2)(i). Therefore, the Department is not revoking the finding with respect to these companies.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements shall be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise from Japan that are entered or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3)

if the exporter is not a firm covered in this review, a prior review or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 15.92 percent, the all others rate based on the first review conducted by the Department in which a ''new shipper'' rate was established in the final results of antidumping finding administrative review (48 FR 51801, November 14, 1983).

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 25, 1996.

Robert S. LaRussa,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 96–30875 Filed 12–3–96; 8:45 am]

**BILLING CODE 3510–DS–P**

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**[A–588–028]**

## Roller Chain, Other Than Bicycle, From Japan; Final Results of Antidumping Duty Administrative Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative reviews.

**SUMMARY:** On June 4, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative reviews of the antidumping finding on roller chain, other than bicycle, from Japan. The reviews cover two manufacturers/exporters, Daido Kogyo, Ltd. (Daido), and Enuma Chain Mfg. Co., Ltd. (Enuma), of the subject merchandise to the United States during the period April 1, 1992 through March 31, 1993, and six manufacturers/exporters, Daido, Enuma, Hitachi Metals Techno Ltd. (Hitachi), Izumi Chain Manufacturing Co., Ltd. (Izumi), Pulton Chain Co., Ltd. (Pulton) and R.K. Excel, of this merchandise to the United States during the period April 1, 1993 through March 31, 1994.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and the correction of certain clerical errors, we have made certain changes to the final results of each review period. We will instruct U.S. Customs to assess antidumping duties on all appropriate entries.

**EFFECTIVE DATE:** December 4, 1996.

**FOR FURTHER INFORMATION CONTACT:** Matthew Blaskovich, Jack Dulberger, Ron Trentham or Zev Primor, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5253.

**SUPPLEMENTARY INFORMATION:**

### Background

On June 4, 1996, the Department published in the Federal Register (61 FR 28171) the preliminary results of the above mentioned administrative reviews of the antidumping finding on roller chain, other than bicycle, from Japan. At the request of petitioner and five respondents, we held a hearing on July 22, 1996.

### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

### Scope of the Review

Imports covered by the reviews are shipments of roller chain, other than bicycle, from Japan. The term ''roller chain, other than bicycle,'' as used in these reviews includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside from the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyer chain.

These reviews also cover leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. These reviews further cover chain model numbers 25 and 35. Roller chain is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7315.11.00 through 7619.90.00. HTSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover the periods April 1, 1992 through March 31, 1993, and April 1, 1993 through March 31, 1994. The Department has now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

### Analysis of Comments Received

We invited interested parties to comment on the preliminary results of these administrative reviews. We received timely comments from the petitioner and all respondents except Hitachi.

*Comment 1:* Izumi claims that sales made to its related party were made at arm's-length. Izumi asserts that there is no statutory or regulatory requirement which mandates a certain threshold percentage of unrelated party sales in order to conduct an appropriate arm's-length test. Izumi therefore requests that the Department conduct an arm's-length test on its related party sales. If the Department cannot determine whether sales to its related party were made at arm's-length, Izumi argues that those sales should be disregarded for the purpose of calculating foreign market value and constructed value in the Department's margin calculations.

*Department's Position:* We disagree with Izumi. An arm's-length test in this proceeding would not produce reliable results because there was an insufficient number of unrelated party sales available for comparison to related party sales. While nothing in the statute

requires a specified percentage of unrelated home market sales in order to conduct an appropriate arm's-length test, our regulations state that we ''will calculate foreign market value based on that sale [transactions between related persons] only if [the Department is] satisfied that the price is comparable to the price at which the producer or reseller sold such or similar merchandise to a person not related to the seller.'' 19 CFR 353.45(a)(1994). We therefore have the discretion to decide whether we could rely on the results of an arm's-length test. The facts in this proceeding indicate that an arm's-length test would not produce reliable results. While the sales to unrelated parties may be bona fide, because of their limited number, it cannot be established that Izumi's related party sales were made at arm's-length. Consequently, we removed such sales from the home market sales database.

We disagree with Izumi's assertion that we should use CV for those sales made to its related party if it cannot be determined that such sales were made at arm's-length. In accordance with 19 CFR 353.45(b), where related party transactions were made, we decided to base FMV on downstream sales made by such related parties.

*Comment 2:* Izumi states that the Department erred in assigning partial best information available (BIA) as a result of Izumi's inability to supply downstream sales on related party transactions. Izumi argues that given the nature of its relationship with its related party, Izumi does not have the economic leverage or legal basis to persuade this party to submit downstream sales information. Further, Izumi argues that since it has no control or input regarding downstream sales, it is inequitable for the Department to require information that is unreasonably difficult to obtain, or to base margins on sales in which Izumi was not involved. Izumi further contends that reliance on downstream sales information would be contrary to the intent of the statute, and the Department's regulations do not provide for margin calculations based on sales in which a respondent does not have the ability to control, or at least influence, the price.

Petitioner argues that the Department was justified in applying partial BIA. Petitioner asserts that Izumi fails to realize that the affiliation it has with its related reseller necessitates that they be considered as one entity for this proceeding. Petitioner cites to the Department's questionnaire, where it states ''[w]here a sale is made through an affiliated company, the price actually charged to the unrelated buyer must be reported.'' *See* Department's Questionnaire of May 26, 1994, at 10. Petitioner therefore contends that the refusal of Izumi's related reseller to provide downstream sales information should be considered as a refusal by Izumi itself. Further, petitioner states that an argument similar to Izumi's claim of not having a legal basis upon which to compel its related reseller to submit information was rejected by the Department in a previous segment of this proceeding. *See Roller Chain, Other Than Bicycle, From Japan,* 55 FR 42602, 42608 (1990).

*Department's Position:* We agree with petitioner. Izumi failed to respond to our requests for information regarding downstream sales. Although Izumi claims that it could not compel its related party to supply this information, given their affiliation, we consider the related party's non-compliance as an omission imputable to Izumi. Moreover, we assigned Izumi BIA in a previous segment of this proceeding, where circumstances similar to these in this review were found to exist. In that review, the Department's position stated in relevant part:

> 19 CFR 353.45(b) provides that the Department may calculate foreign market value based on sales made through a related party. Pursuant to 19 CFR 353.45(a), it is the Department's practice to calculate foreign market value based on prices to related parties, if the respondent can show that those sales are as between two unrelated companies (*i.e.*, that the sales were arm's-length transactions). If the respondent cannot show that the sales were at arm's-length, and the sales made through the related party are a significant percentage of all sales in the home market, the Department calculates foreign market value on the basis of the sale price to the first unrelated party * * * Izumi's refusal or inability to provide information on the sales to the first unrelated purchasers left the Department no basis with which to calculate foreign market value. *Final Results of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan,* 55 FR 42608, (October 22, 1990).

Additionally, the U.S. Court of Appeals for the Federal Circuit recently noted, ''[t]he burden of production is appropriately placed on the party deemed to control the information.'' *Koyo Seiko Co., Ltd.* v. *United States,* No. 96–1116, Slip Op. (Fed. Cir. Aug. 12, 1996). There, the Court upheld our decision to apply BIA where the respondent was related to a party within the meaning of section 771(13)(D) of the Tariff Act and where the respondent failed to provide requested cost data of the related party. Similarly, in this proceeding, Izumi is related to its customer within the meaning of section 771(13)(C) and failed to provide the downstream sales information of its related party.

Section 776(c) of the Act requires us to use the best information otherwise available whenever a party refuses or is unable to provide information requested in a timely manner and in the form required. Therefore, since Izumi did not supply us with requested information, we are required to use BIA in reaching our determination.

*Comment 3:* Izumi states, *arguendo,* that had there been justification for the Department's use of BIA, the use of an adverse inference was not warranted. Citing *Holmes Products Corp.* v. *United States,* 16 CIT 628, 631 (1992) (*Holmes*), Izumi contends that there is no statutory requirement that an adverse inference be made in determining BIA, when a party substantially complies in a review proceeding. Further, Izumi claims that an adverse inference is based on the presumption that a party would have supplied accurate information if that information would have resulted in lower margins. In light of this, Izumi claims that since it has no influence on, or knowledge of, pricing of downstream sales, it could not be charged with having constructive knowledge that the downstream sales would be made at a rate higher than the BIA rate of 43.29 percent. Izumi also cites the Court of International Trade's (CIT) decision in *Usinor Sacilor, Sollac, and GTS* v. *United States,* 872 F. Supp. 1000, (CIT 1994) (*Usinor*) in which Izumi claims that the CIT directed the Department to select the weighted-average calculated margin as BIA because the respondent was unable to submit data of a related reseller over which it had no operational control. Izumi contends that, as the facts in this review model those of *Usinor,* the Department should use Izumi's constructed value data or the weighted average calculated margin as non-adverse BIA.

Petitioner claims that it cannot be determined whether or not the downstream sales information would have produced a higher margin for Izumi. Nevertheless, petitioner states that an adverse inference in this regard is highly likely, given the extent of the sales at issue and the affiliation between Izumi and the reseller. Further, petitioner challenges Izumi's claim that this instant review is similar to *Usinor.* Petitioner states that in *Usinor,* voluminous downstream sales data was submitted. The Department, however, rejected the submission because the resellers were not able to conduct a material trace within the time limits of the investigation. The Department did not request downstream sales

information for steel centers in which the manufacturer had no operational control, as these sales constituted a small percentage of total sales. Those sales were subject to the same cash deposit as the company's other sales.

*Department's Position:* We agree with petitioner. In *Holmes* as well as in *Usinor,* due to the minuscule nature of the amount of sales at issue, non-adverse BIA margins were recommended. In *Holmes,* the manufacturer ''Hoogovens did not omit data, but only provided inaccurate information, which in most instances was due to a computer conversion error, nor were the errors systematic in nature.'' *See Holmes* at 1137. In *Usinor,* the court rejected the Department's argument ''that Usinor's submissions were deficient due to Usinor's failure to report downstream sales from its minority-owned secondary steel centers.'' *See Usinor* at 1006. The court held that Usinor:

> substantially met the requirements of the original and modified questionnaire requests. Usinor supplied more data than was required under the limited reporting arrangement and provided well over 99% of the data demanded by the original questionnaire * * * The question, therefore, is whether Commerce may use adverse BIA on the sole basis of Usinor's inability to trace the source of the steel processed by its secondary steel centers.

*Id.* at 1001–07. However, as the downstream sales in this review would comprise most of Izumi's home market sales, Izumi's failure to report those sales could not be construed as similar in scope to the aforementioned cases. Because the omission in this case was substantial, we followed our normal practice in determining BIA.

*Comment 4:* Izumi states *arguendo,* that had an adverse inference been warranted, the Department should have taken the ''second-tier'' BIA rate from the most recent review in which BIA was applied, and not from a review more than ten years old. In regard to the methodology the Department should follow in assigning a BIA rate, Izumi cites a number of court decisions. In *National Steel Corporation* v. *United States,* 870 F. Supp. 1130, 1136 (CIT) 1994), the Court stated that the Department ''must be reasonable in its application of its chosen methodology.'' Further in *Atlantic Sugar, Ltd.* v. *United States,* 744 F.2d 1556, 1560 (Fed. Cir. 1984), the use of BIA was compared to an ''investigative tool'' which may be wielded as an ''informal club'' over recalcitrant parties. Izumi also cites *Rhone Poulenc, Inc.* v. *United States,* 899 F.2d 1185, 1190 (Fed. Cir. 1990) (*Rhone Poulenc*) to support its view that it is the Department's requirement that it ''consider the most recent information in its determination of what is best information.'' *Allied-Signal Aerospace Co.* v. *United States,* 996 F.2d 1185 (Fed. Cir. 1993) (*Allied-Signal*) is further cited for the proposition that the Department was required to obtain and consider the most recent information in its determination of what constitutes BIA. Izumi contends that the Department should have used as partial BIA the 17.57 percent rate assigned to Izumi in the 1989–1990 review instead of the 43.29 percent rate assigned to Izumi in the 1983–1985 review periods. Izumi claims that the 17.57 percent rate is more probative of current conditions, while the 43.29 percent rate is outdated.

Petitioner contends that the Department adhered to its standard ''two-tier'' BIA methodology in selecting the second-tier partial BIA rate. Petitioner stresses that the Department's ''two-tier'' BIA methodology is well-established and has been upheld by the courts. Further, petitioner states that the 43.29 percent BIA rate is more current than the 17.57 percent rate, since the final results of the 1983–1985 review periods (where the 43.29 percent rate applies) were published subsequent to the final results of the 1989–1990 review (where the 17.57 percent margin applies).

*Department's Position:* We agree with petitioner. Our ''two-tier'' BIA methodology has been upheld in numerous court decisions. *Allied-Signal* states that ''[t]he two-tier BIA methodology employed by the ITA in selecting the best information available for nonresponsive parties is a permissible and reasonable exercise of its statutory authority.'' *Allied-Signal* at 1193. The fact that the 43.29 percent rate was a ''first-tier'' rate assigned to Izumi in a previous review is of no relevance to our analysis. Our BIA methodology does not require that we determine why a particular margin was assigned in a previous review.

Further, our ''two-tier'' BIA methodology, ''like its predecessor, merely establishes a presumption that the highest prior margins are the best information available. That presumption can be rebutted by the respondent with evidence showing the actual margin to be less.'' *Rhone Poulenc* at 1190. As partial BIA, we simply adhered to our well established ''two-tier'' BIA methodology by using the highest margin ever assigned to Izumi in a previous segment of this proceeding. Izumi has not shown that the preliminary margins were demonstrably less probative of current market conditions.

*Comment 5:* Izumi states that the 43.29 percent rate was unjustifiably assigned as a second-tier rate since this rate was also assigned as a ''first-tier'' BIA rate to Pulton for this review. Izumi argues that the Department failed to consider the intent of 19 CFR 353.37(a) by not considering the degree to which a respondent cooperated before assigning the BIA rate. Izumi therefore states that the Department acted contrary to the purpose of the ''two-tier'' BIA system.

Further, Izumi cites to the CIT's remanded decision in a previous segment of this proceeding. Although Pulton was characterized as uncooperative in that case, the CIT ruled that the Department's ''attempt to assert a 43.54 percent rate is arbitrary and capricious and has no basis in law or fact.'' *Pulton Chain Co., Inc.* v. *United States,* 17 CIT 1136, 1144 (1993) (*Pulton*). Izumi asserts that since it has cooperated to the best of its ability in this review and since it does not have the ability to respond to the Department's request for information regarding downstream sales, the assignment of an adverse BIA rate of 43.29 percent is therefore punitive. Moreover, Izumi claims that the Department unlawfully assigned this adverse BIA, citing the following Court decisions as justification. In *Allied-Signal,* 996 F.2d 1193 (Fed. Cir. 1993), the Court stated that ''[n]either is the goal of encouraging future compliance furthered by the application of the first tier to SNFA, because it apparently has no ability to respond more completely than it already had done.'' The CIT notes in *Usinor,* 872 F. Supp. at 1007, that ''Commerce's selection of a severely adverse BIA is 'improper'* * * when the missing data is beyond the control of the respondent.''

Petitioner argues that unless an adverse partial BIA rate is imposed, Izumi would be rewarded for its inability to provide downstream sales information. Petitioner is concerned that should CV be utilized in regard to Izumi's related party sales, an unavoidable policy problem would result for the Department. Petitioner contends that ''it will open a gaping hole in the antidumping law that will permit foreign manufacturers to 'screen out' high-price transactions from the calculation of FMV. All a foreign manufacturer need do is channel high-price transactions through an affiliated reseller with the (tacit) understanding that the reseller will refuse to supply data on the resale transactions to unaffiliated customers.'' Petitioner's letter of July 15, 1996, at 7. Petitioner further argues that there will be no

incentive for Izumi to provide downstream sales information in future reviews if CV would be substituted for those sales.

*Department's Position:* We disagree with Izumi. As mentioned earlier, our use of a ''second-tier'' BIA rate for the sales in question follows our ''two-tier'' BIA methodology. The fact that the ''second tier'' BIA rate for a particular segment of a proceeding also equals the ''first tier'' BIA rate is a consequence of the two-tier methodology, one which has been upheld by the U.S. Court of Appeals for the Federal Circuit. *See Allied-Signal Aerospace Co.* v. *United States,* 996 F.2d 1185 (Fed. Cir. 1993).

We also disagree that *Pulton Chain Co., Ltd.* v. *United States,* 17 CIT 1136 (1993) precludes our use of the 43.29 rate as a BIA rate. As the CIT has recognized in a case subsequent to *Pulton,* the holding in *Pulton* was limited to the ''particular facts of the case.'' *Sugiyama Chain Co., Ltd.* v. *United States,* 852 F. Supp. 1103, 1114 (CIT 1994). Moreover, the *Sugiyama* Court upheld our use of the 43.29 percent rate as a BIA rate. *Id.* Therefore, we will continue to use that rate here.

Concerning Izumi's argument that an adverse BIA rate is inappropriate because the data was purportedly not within the company's control, we refer to our reply to comment two.

*Comment 6:* Izumi requests that certain models of specialty chain sold in the United States should not be matched to models sold in the home market because a comparison is precluded by significant physical differences and different uses. Izumi claims that the Department's 20 percent difference in merchandise (difmer) cap does not prevent skewed results. Izumi requests that the Department compare certain U.S. models to constructed value, as performed in past reviews.

Petitioner contends that there is no evidence on the record which substantiates Izumi's claim that differences in physical characteristics and use exist between certain models sold in the United States and in Japan. Petitioner cites to the model match methodology used in the AFB proceedings, in which all parties were able to submit detailed comments in regard to reported differences in physical characteristics in order to distinguish between various bearing models. Petitioner claims that since no such briefing process occurred for this review, the Department was justified in utilizing Izumi's model-match concordance for price-to-price comparison purposes.

*Department's Position:* Izumi's comment is moot. Due to the Department's correction of a programming error for these final results (*see* ''Additional Programming Error,'' p. 34), certain U.S. models, including those models of concern to Izumi, are now compared to CV instead of to models sold in the home market.

*Comment 7:* Petitioner states that the Department should determine whether Izumi's related party resold the subject merchandise to the United States. Petitioner states that any U.S. sales made by Izumi's related party should be treated as either purchase price (PP) or exporter's sales price (ESP) transactions. Petitioner argues that Izumi and its related party should be required to certify whether or not the related party resold to the United States.

Izumi contends that petitioner's allegations in this regard are mere speculation since there is no evidence on the record to indicate that Izumi had knowledge that merchandise sold in the home market was destined for export to the United States Izumi further argues that as the Department rejected the same argument raised by petitioner in the 1990–1991 review, there is then no need to revisit this issue. Izumi states that petitioner's requirement that it provide certification whether or not the related party resold to the United States has no basis in statute or regulation.

*Department's Position:* We agree with Izumi. In a previous segment of this proceeding, petitioner raised this identical argument which we rejected as lacking merit since there was no indication on the record to support its allegations.

Izumi certified for this review that its U.S. and home market sales and distribution systems were reported in a complete and accurate manner. Further, as there is no information on the record on which to conclude that merchandise Izumi sold to its related party was subsequently resold to the United States, we have determined that Izumi need not submit any additional certifications regarding possible U.S. sales that its related party may have made.

*Comment 8:* Pulton maintains that if the Department declines to permit it to submit a response concerning its unreported U.S. sale, it should use ''second-tier'' BIA because first-tier is reserved for uncooperative respondents. According to Pulton, as soon as the error was brought to its attention, it sought permission to submit a response and continues to be willing to submit this information. Pulton alleges that under these circumstances, it is unduly harsh to apply ''first-tier'' BIA. Further, Pulton asserts that the application of ''second-tier'' BIA would be more consistent with the way in which the Department treats other respondents which have inadvertently, or even deliberately, failed to report sales.

Petitioner argues that Pulton, by failing to file an accurate questionnaire response, has totally frustrated the Department's goal of calculating an accurate dumping margin. According to petitioner, because Pulton's failure is total, it is easily distinguished from the decisions cited in Pulton's brief involving respondents who provided partial information to the Department. Moreover, petitioner asserts that where a party totally frustrates the goal of calculating accurate margins, it is reasonable to conclude that the party has '' 'significantly impede[d] the Department's review,' and accordingly, to assign it a 'first-tier' BIA margin.''

*Department's Position:* We disagree with Pulton that it should be permitted to submit a questionnaire response. Section 353.31(a)(ii) of our regulations allows parties to submit factual information no later than ''the earlier of the date of publication of notice of preliminary results of review or 180 days after the date of publication of notice of initiation of the review.'' Here, the 180-day deadline had passed. Moreover, to accept a questionnaire response from Pulton would delay our completion of these reviews.

We disagree with Pulton's allegation that the imposition of ''first-tier'' BIA is unduly harsh. The Department generally assigns a respondent ''first-tier'' BIA when that respondent is considered to be uncooperative because it fails to provide requested information in a timely manner or otherwise significantly impedes the review. It was the responsibility of Pulton to submit accurate and complete information in response to the Department's questionnaire. By certifying that it had no sales and no exports to U.S. customers of merchandise subject to the finding, when in fact it did have at least one such sale, Pulton significantly impeded the Department's review.

*Comment 9:* Pulton claims that if the Department agrees to apply ''second-tier'' BIA, the appropriate rate would be 5.45% from the 1982–1983 review period. Pulton claims that although Izumi has a higher preliminary rate in the current review, this rate is itself largely based on BIA, and is in that sense not a calculated rate.

Petitioner states that if the Department were to apply ''second-tier'' BIA, the minimum applicable margin would be 15.92%—the margin assigned to Pulton in the final determination in the 1989–1990 administrative review. However, petitioner contends that if the

final calculated margin for Izumi or any other respondent exceeds 15.92%, that high margin should be used.

*Department's Position:* Since we have assigned Pulton ''first-tier'' BIA, the arguments of Pulton and petitioner are moot.

*Comment 10:* Pulton argues that even if the Department decides that ''first-tier'' BIA is appropriate, the 43.29% rate is inappropriate because it is based on a margin that was not finalized and because it is unduly punitive. According to Pulton, although the rate was used in a final results notice—1979–1980 administrative review—the Department recognized that it could not be used for duty assessment purposes. Moreover, Pulton claims that the CIT has recognized that 43.29% was not a valid rate for BIA (*Pulton Chain Co., Ltd.*, 17 CIT at 1144). Furthermore, Pulton asserts that if the Department continues to apply ''first-tier'' BIA, the appropriate margin would be 17.57%—the highest calculated rate in any prior review of the antidumping finding not based on the 43.29% aberrational number.

Petitioner alleges that the CIT has sustained the application of the 43.29% first-tier margin in the roller chain reviews. Further, petitioner maintains that contrary to Pulton's claims, the CIT did not hold the 43.29% rate unlawful. Moreover, petitioner argues that the 43.29% margin has been imposed as ''first-tier'' BIA on a number of occasions. Finally, petitioner states that since there is no information on the record concerning Pulton's actual margin, it is appropriate to impose the 43.29% rate.

*Department's Position:* We disagree with Pulton. Our use of a ''first-tier'' BIA rate for Pulton follows our ''two-tier'' BIA methodology. This methodology has been upheld by the U.S. Court of Appeals for the Federal Circuit. *See Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d 1185 (Fed. Cir. 1993).

We also disagree that *Pulton Chain Co., Ltd.* v. *United States*, 17 CIT 1136 (1993) precludes our use of the 43.29 rate as a BIA rate for *Pulton.* As the CIT has recognized in a case subsequent to *Pulton*, the holding in *Pulton* was limited to the ''particular facts of the case.'' *Sugiyama Chain Co., Ltd.* v. *United States*, 852 F. Supp. 1103, 1114 (CIT 1994). Moreover, the *Sugiyama* Court upheld our use of the 43.29 percent rate as a BIA rate. *Id.* Therefore, we will continue to use that rate here.

*Comment 11:* R.K. Excel claims that although foreign brokerage and handling expenses (BROKHP) were reported in yen, the Department incorrectly treated BROKHP as a dollar-denominated expense in the calculation of net U.S. price for direct sales to U.S. customers.

Petitioner states that R.K. Excel's case brief contains new factual information concerning the denomination for BROKHP.

*Department's Position:* We agree with R.K. Excel's claim and have made the appropriate adjustments.

It is evident from R.K. Excel's questionnaire response that BROKHP is a yen-denominated expense and the Department had no need to refer to the documentation presented in R.K. Excel's case brief to confirm its claim.

*Comment 12:* R.K. Excel maintains that the Department's program failed to try to match the U.S. model 50D sales and the most similar model in the home market, model 50.

The petitioner argues that given the significant number of unmatched sales, and given the likelihood that material margins would have been produced if the relevant data had been supplied, this is clearly a case in which it is appropriate to apply adverse BIA.

*Department's Position:* We agree with R.K. Excel. Due to a computer error, our program failed to match U.S. model 50D and the most similar model in the home market, model 50. There was missing data; this was merely a programming error. The error has been corrected for these final results. Thus, the use of BIA is not warranted.

*Comment 13:* Enuma's U.S. sales subsidiary, Daido Corporation (DC), contends that the Department erroneously disregarded its further manufacturing (FM) cost information for the purpose of calculating exporter's sales price (ESP), and wrongly assigned BIA to the sales in question. It requests that we recalculate the margin using the information submitted in its response instead of BIA.

Specifically, DC objects to the Department's disregarding its FM material cost information and rejecting its cost allocation methodology. DC claims that its non-material costs were allocated on a transaction-specific basis, not on a broad-based allocation formula and, therefore, were isolated to individual FM products distinct from all other FM chain.

Petitioner responds that ''under the circumstances, the Department had no choice but to apply BIA to these sales.'' It contends that DC's ''allocation ratio may be convenient, but it does *not* produce accurate further manufacturing data.'' (Emphasis in original.) According to the petitioner, the Department was justified in concluding that both the material cost information and DC's cost allocation methodology are unreliable.

*Department's Position:* We agree with petitioner. We specifically and clearly requested, in both the original and supplemental questionnaires, that DC ''furnish the cost of production data [and] * * * [i]f the item was transferred at 'market price,' the price should be supported by documentation of actual sales * * * to unrelated third parties.'' (Questionnaire, August 9, 1993 at 45–46; Supplemental Questionnaire, October 19, 1995 at 25 and Section E, ''Cost of Further Manufacture or Assembly Performed in the United States'' (Section E).) In addition, we stated in Section E that ''[t]he further manufacturing costs that you report in response to this section of the questionnaire should be calculated based on the actual costs incurred by your U.S. affiliate,'' and that FM costs ''include direct materials and fabrication costs actually incurred by the company.'' Section E at E–1, E–8. We find that DC did not follow our questionnaire instructions as to FM costs.

In computing FM costs, DC based its material costs on the related party transfer price (instead of actual cost of production (COP)) to value the roller chain attachments, stating only that it was ''not possible to provide production costs for the value of these attachments * * * within the time provided.'' Rather than reporting COP, DC suggested in its supplemental response that the Department use sampling to test arm's-length pricing of its attachments. However, DC failed to provide supporting detail for its sampling idea and did so at a point late in the review process. In view of this, we rejected DC's sampling concept.

In *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.*, 58 FR 39729, 39754 (July 26, 1993), we determined that where a party failed to provide either purchase prices from unrelated parties from which the Department could determine whether transfer prices paid to related parties were at arm's-length, or COP data to demonstrate that the transfer prices were not less than COP, then such data did not provide a reliable basis for FMV. Here, DC's methodology was an unacceptable response to our question because it lacked COP information, sample or otherwise, and did not permit a test of transfer pricing information.

In addition, DC stated that it lacked records for the labor element of FM, preventing it from calculating the FM costs in the manner suggested by the questionnaire. Further, DC stated that it also lacked records for factory overhead and SG&A expenses attributable to FM.

DC therefore submitted a factor representing gross profit (revenue minus cost of goods sold), which it multiplied by the transfer price of the attachments used in the FM process, to estimate the missing labor, overhead, and SG&A components of the FM process. However, this methodology was unacceptable because it was unsupported by information on the record demonstrating that use of a gross profit factor accurately reflects DC's non-material FM costs.

In summary, DC provided no COP information, sample or otherwise. Accordingly, no test of transfer pricing information was possible. In addition, it provided no information on the record to support its contention that the use of a gross profit factor accurately reflects its non-material FM costs. Therefore, we determine that DC's reported FM costs do not provide a reliable basis on which to adjust USP and, as a result, we have continued to use ''second-tier'' BIA margins for the U.S. sales in question.

*Comment 14:* The petitioner argues that the Department should have disallowed a portion of Daido's reported home market indirect selling expenses because its data was not submitted on a transaction-specific basis. Specifically, the petitioner claims that Daido failed to report its commissions, discounts, and rebates in the home market on a transaction-specific basis. Instead, Daido included these expenses with indirect selling expenses in a category called ''Other Expenses'' and allocated them across total home market sales. Petitioner argues that commissions, discounts and rebates must be tied to individual sales transactions. It requests that, because Daido failed to provide this data, we remove these ''Other Expenses'' from this adjustment. The petitioner requests that the Department disallow Daido's ESP offset in the Department's final margin calculations.

Daido responds that the Department's position is correct and that the petitioner failed to show any legal prohibition against calculating this deduction on an allocated basis. Daido further argues that the Department's practice is to treat commissions, discounts, and rebates as indirect expenses when they cannot be tied directly to specific sales or customers. Daido further points out that the allocation here works against its favor by subjecting commissions, discounts and rebates expenses to the ESP offset cap.

*Department's Position:* We agree with petitioner. We requested, in both the original and supplemental questionnaires, that Daido report these expenses ''on a transaction-specific basis.'' Instead, Daido included its commissions, rebates, and discounts in its indirect sales expenses. Daido then allocated indirect sales expenses as follows: Daido's total corporate SG&A (*i.e.,* worldwide, scope and non-scope) expenses were divided by its total sales (*i.e.,* worldwide, scope and non-scope) to arrive at a percentage figure, which was then multiplied by yen per meter price to arrive at a yen per meter SG&A expense figure.

We consider rebates and discounts to be direct adjustments to price and will make adjustments for these expenses pursuant to sections 772 and 773 of the Act (which require us to determine what price was actually charged for subject merchandise). *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al.; Final Results of Antidumping Duty Administrative Reviews,* 57 Fed. Reg. 28360, 28400 (June 24, 1992); *SKF USA Inc.* v. *United States,* 874 F. Supp. 1395, 1402 (CIT 1995). Because Daido failed to report its discounts and rebates on a transaction-specific basis, as we requested, we are denying the adjustment.

Our regulations define commissions as an expense which may receive an adjustment as a difference in circumstances of sale. *See* 19 CFR 353.56(a)(2) (1994). However, Daido has requested that we treat its commissions as an indirect selling expense and grant it an adjustment pursuant to 19 CFR 353.56(b)(2) (1994) (the ESP offset provision). The U.S. Court of Appeals for the Federal Circuit has recently held that we may not include direct selling expenses as part of the ESP offset because our regulations do not allow such an adjustment. *See Torrington Co.* v. *United States,* 82 F.3d 1039, 1051 (Fed. Cir. 1996). The Court noted that the method by which an expense is allocated does not change its nature from being a direct expense to an indirect expense. Since commissions are a direct expense, we must therefore deny Daido an adjustment for this expense pursuant to the ESP offset provision.

*Comment 15:* Petitioner claims that the Department failed to deduct foreign inland freight incurred by DT (on behalf of Daido and Enuma) from Daido and Enuma's PP sales. Daido and Enuma contend that the Department had in fact made the deductions to PP sales for both PORs.

*Department's Position:* We agree with Daido and Enuma. Daido and Enuma computed foreign inland freight charges for sales to the United States in the same manner as for home market freight charges. Consequently, values for inland freight charges are identical to those for home market freight charges. Both of these adjustments appeared in the PP margin programs as INLFRTH, which was also deducted from U.S price to arrive at net adjusted U.S price.

Additional Clerical Errors

In addition to the changes we made in response to the parties' comments above, we have corrected three inadvertent clerical errors as follows:

(a) We erroneously calculated the weighted-average indirect selling expense factor used for Izumi's preliminary margin program, due to a decimal placement error; we made the appropriate correction.

(b) In analyzing Izumi's similar merchandise in the model match section of the program, we inadvertently failed to use the absolute values for the differences in merchandise percentage valuations; we made the necessary correction.

(c) The Department's second-tier BIA policy states that we will take as the BIA rate the higher of: (1) The highest rate (including the ''all others'' rate) ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review or, if the firm has never before been investigated or reviewed, the all others rate from the LTFV investigation; or (2) the highest calculated rate in this review for the same class or kind of merchandise for any firm. However, we incorrectly identified Daido and Enuma's second-tier BIA rate. We made the necessary correction in these final results.

Additional Programming Error

We detected a minor programming error in Izumi's margin program, when merging the CV database to the U.S. sales database. We made the necessary correction.

Final Results of Review

As a result of our analysis of the comments received, we determine that the following margins exist for the periods indicated:

| Manufacturer/exporter | Period | Margin (percent) |
|---|---|---|
| Daido | 92–93 | 0.14 |
| Daido | 93–94 | 0.10 |
| Enuma | 92–93 | 0.04 |
| Enuma | 93–94 | 0.18 |
| Hitachi | 93–94 | *12.68 |
| Izumi | 93–94 | 10.01 |
| Pulton | 93–94 | 43.29 |
| R.K. Excel | 93–94 | 0.37 |

*No sales during the period. Rate is from the last period in which there were sales.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service. Individual differences between U.S. price and NV may vary from the percentages listed above.

Furthermore, the following deposit requirements will be effective, upon publication of these final results of administrative reviews for all shipments of the subject merchandise from Japan that are entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those rates listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacture of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 15.92 percent, the all others rate based on the first review conducted by the Department in which a ''new shipper'' rate was established in the final results of antidumping finding administrative review (48 FR 51801, November 14, 1983).

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 25, 1996.

Robert S. LaRussa,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 96–30876 Filed 12–3–96; 8:45 am]

BILLING CODE 3510–DS–P

## Notice of Scope Rulings

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of scope rulings and anticircumvention inquiries.

**SUMMARY:** The Department of Commerce (the Department) hereby publishes a list of scope rulings and anticircumvention inquiries completed by Import Administration, between July 1, 1996, and September 30, 1996. In conjunction with this list, the Department is also publishing a list of pending requests for scope clarifications and anticircumvention inquiries. The Department intends to publish future lists within 30 days of the end of each quarter.

**EFFECTIVE DATE:** December 4, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ronald M. Trentham, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–4793.

Background

The Department's regulations (19 CFR 353.29(d)(8) and 355.29(d)(8)) provide that on a quarterly basis the Secretary will publish in the Federal Register a list of scope rulings completed within the last three months.

This notice lists scope rulings and anticircumvention inquiries completed by Import Administration, between July 1, 1996, and September 30, 1996, and pending scope clarification and anticircumvention inquiry requests. The Department intends to publish in January 1997 a notice of scope rulings and anticircumvention inquiries completed between October 1, 1996, and December 31, 1996, as well as pending scope clarification and anticircumvention inquiry requests.

The following lists provide the country, case reference number, requester(s), and a brief description of either the ruling or product subject to the request.

I. Scope Rulings Completed Between July 1, 1996 and September 30, 1996

Country: Germany

A–428–821 *Large Newspaper Printing Presses and Components Thereof (LNPPs), Whether Assembled or Unassembled*

R.R. Donnelley & Sons Company—A stitcher for use with a folder that is attached to a commercial printing press is outside the scope of the order. 9/24/96.

Country: People's Republic of China

A–570–820 *Certain Compact Ductile Iron Waterworks (CDIW) Fittings and Glands*

Star Pipe Products, Inc.—''Retainer Glands''—are not within the scope of the order. 9/18/96.

Country: Japan

A–588–809 *Small Business Telephone Systems and Subassemblies and Parts Thereof*

Iwatsu America, Inc. and Iwatsu Electric Co.—Certain dual use subassemblies (central processing units and read-only-memory units) are outside the scope of the order. 9/26/96.

II. Anticircumvention Rulings Completed Between July 1, 1996 and September 30, 1996

None.

III. Scope Inquiries Terminated Between July 1, 1996 and September 30, 1996

Country: People's Republic of China

A–570–504—*Petroleum Wax Candles*

Kendal King Graphics—Clarification to determine whether certain Christmas ''candle tins'' are within the scope of the order. Scope inquiry terminated on 8/29/96.

IV. Anticircumvention Inquiries Terminated Between July 1, 1996 and September 30, 1996

None.

V. Pending Scope Clarification Requests as of September 30, 1996

Country: Brazil

A–351–817 *Certain Cut-to-Length Carbon Steel Plate*

C–351–818 Wirth Limited—Clarification to determine whether profile slabs produced by Companhia Siderurgica de Tubarao and imported by Wirth Limited are within the scope of the order.

Country: Germany

A–428–801 *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof*

Enkotec Company, Inc.—Clarification to determine whether the ''main bearings'' imported for incorporation into Enkotec Rotary Nail Machines are slewing rings and, therefore, outside the scope of

the order.

Country: Singapore

A–559–801 *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof*

Rockwell International Corporation—Clarification to determine whether an automotive component known as a cushion suspension unit (or cushion assembly unit or bearing assembly) is within the scope of the order.

Country: People's Republic of China

A–570–501 *Natural Bristle Paint Brushes and Brush Heads*

Kwick Clean and Green Ltd.—Clarification to determine whether a group of bristles held together at the base with glue, which are to be used as replacable parts within the cavity of the paintbrush body, is within the scope of the order.

A–570–504 *Petroleum Wax Candles*

Mervyn's—Clarification to determine whether a candle, article no. 20172, in the shape of a cube is within the scope of the order.

Enesco Corporation—Clarification to determine whether 10 styles of candles imported from the PRC are within the scope of the order.

Midwest of Cannon Falls—Clarification to determine whether 7 styles of candles imported from the PRC are within the scope of the order.

Cost Plus, Inc.—Clarification to determine whether taper and pillar candles imported as beeswax candles are within the scope of the order.

Institutional Financing Services—Clarification to determine whether one model of candle is a holiday novelty candle and, thus, outside the scope of the order.

Sun-It Corporation—Clarification to determine whether taper candles containing oil of citronella are within the scope of the order.

Ocean State Jobbers—Clarification to determine whether taper candles consisting of a blend of petroleum wax and beeswax are within the scope of the order.

A–570–808 *Chrome-Plated Lug Nuts*

Consolidated International Automotive, Inc.—Clarification to determine whether certain nickel-plated lug nuts are within the scope of the order.

Wheel Plus, Inc.—Clarification to determine whether imported zinc-plated lug nuts which are chrome-plated in the United States are within the scope of the order.

A–570–822 *Helical Spring Lock Washers (HSLWs)*

Shakeproof Industrial Products Division of Illinois Tool Works (SIP)—Clarification to determine whether HSLWs which are imported to the U.S. in an uncut, coil form are within the scope of the order.

Country: Taiwan

A–583–508 *Porcelain-on-Steel Cooking Ware*

Cost Plus, Inc.—Clarification to determine whether 10 piece porcelain-on-steel fondue sets are within the scope of the order.

A–583–810 *Chrome-Plated Lug Nuts*

Consolidated International Automotive, Inc.—Clarification to determine whether certain nickel-plated lug nuts are within the scope of the order.

A–583–820 *Helical Spring Lock Washers (HSLWs)*

Shakeproof Industrial Products Division of Illinois Tool Works (SIP)—Clarification to determine whether HSLWs imported into the U.S. in an uncut, coil form are within the scope of the order.

A–583–824 *Polyvinyl Alcohol*

E.I. du Pont de Nemours & Co.—Clarification to determine whether polyvinyl alcohol produced with U.S. origin vinyl acetate monomer is within the scope of the order.

Country: Japan

A–588–055 *Acrylic Sheet from Japan*

Sumitomo Chemical Co., Ltd.—Clarification to determine whether Sumielec, an acrylic based antistatic material, is within the scope of the order.

A–588–056 *Melamine*

Taiyo America, Inc.—Clarification to determine whether melamine with special physical characteristics (100% of the particles are smaller than 10 microns) are within the scope of the order.

A–588–802 *3½″ Microdisks*

TDK Inc., TDK Electronics Co.—Clarification to determine whether certain web roll media are within the scope of the order.

A–588–804 *Antifriction Bearings (Other Than Tapered Roller Bearings), and Parts Thereof*

Rockwell International Corporation—Clarification to determine whether an automotive component known as a cushion suspension unit (or cushion assembly unit or center bearing assembly) is within the scope of the order.

A–588–807 *Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured*

Honda Power Equipment Manufacturing Inc. (HPE)—Clarification to determine whether certain belts HPE imports from Japan for use in manufacturing lawn tractors and riding lawn mowers are within the scope of the order.

American Honda Motor Co., Inc. (AHM)—clarification to determine whether certain v-belts imported from Japan by AHM are within the scope of the order.

A–588–810 *Mechanical Transfer Presses*

Komatsu Ltd.—Clarification to determine whether certain mechanical transfer press parts exported from Japan are within the scope of the order.

A–588–813 *Light-Scattering Instruments and Parts Thereof from Japan*

Thermo Capillary Electrophoresis, Inc.—Clarification to determine whether diode array detectors and cell flow units are within the scope of the order.

A–588–815 *Gray Portland Cement and Clinker*

Surecrete, Inc.—Clarification to determine whether New Super Fine Cement manufactured by Nittetsu Cement Co., Ltd., is within the scope of the order.

A–588–824 *Corrosion Resistant Carbon Steel Flat Products*

Drive Automotive Industries—Clarification to determine whether 2000 millimeter wide, made to order, corrosion resistant carbon steel coils are within the scope of the order.

A–588–837 *Large Newspaper Printing Presses and Components Thereof (LNPPs), Whether Assembled or Unassembled*

Miyakoshi America Co., Ltd.—Clarification to determine whether certain printing press components are within the scope of the order.

Country: Russia

A–821–803 *Titanium Sponge*

Waldron Pacific, Inc.—Clarification to determine whether titanium tablets produced by electrolytic reduction are within the scope of the order.

VI. Pending Anticircumvention Inquiries as of September 30, 1996

Country: Korea

A–580–008 *Color Television Receivers from Korea*

International Brotherhood of Electrical Workers, the International Union of Electronic Electrical, Salaried, Machine & Furniture Workers, and the Industrial Union Department (the Unions)—Anticircumvention inquiry to determine whether Samsung Electronics Co., L.G. Electronics Inc., and Daewoo Electronics Co.,

are circumventing the order by shipping Korean-origin color picture tubes, printed circuit boards, color television kits, chassis, and other materials, parts and components to plants operated by related parties in Mexico where the parts are then assembled in CTVs and shipped to the U.S. Additionally, an anticircumvention inquiry to determine whether Samsung by shipping Korean-origin color picture tubes and other CTV parts to a related party in Thailand for assembly into complete CTVs prior to exportation to the U.S.

Interested parties are invited to comment on the accuracy of the list of pending scope clarification requests. Any comments should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: November 27, 1996.

Joseph A. Spetrini,

*Deputy Assistant Secretary Enforcement Group III.*

[FR Doc. 96–30877 Filed 12–3–96; 8:45 am]

**BILLING CODE 3510–DS–P**

## National Institute of Standards and Technology

**[Docket No. 961121324–6324–01]**

## Announcement of Availability of Funding for General Competition—Advanced Technology Program (ATP)

**AGENCY:** National Institute of Standards and Technology, Technology Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Technology Administration's National Institute of Standards and Technology (NIST) announces the availability of funding for General Competition 97–01 under the Advanced Technology Program (ATP) for fiscal year 1997. General Competition 97–01 is open to all areas of technology meeting the ATP selection criteria. This notice provides general information for this competition planned for fiscal year 1997.

**DATES:** The proposal due date and other specific instructions will be published in the *Commerce Business Daily* (CBD) at the time the competition is announced. Dates, times, and locations of Proposers' Conferences held for interested parties considering applying for funding will also be announced in the CBD.

**ADDRESSES:** Information on the ATP may be obtained from the following address: National Institute of Standards and Technology, Advanced Technology Program, Administration Building (Bldg. 101), Room A407, Quince Orchard & Clopper Roads, Gaithersburg, MD 20899–0001.

Additionally, information on the ATP is available on the Internet through the World Wide Web (WWW) at http://www.atp.nist.gov.

**FOR FURTHER INFORMATION CONTACT:** Requests for ATP information, application materials, and/or to have your name added to the ATP mailing list for future mailings may also be made by:

(a) Calling the ATP toll-free ''hotline'' number at 1–800–ATP–FUND or 1–800–287–3863. You will have the option of hearing recorded messages regarding the status of the ATP or speaking to one of our customer representatives who will take your name and address. If our representatives are all busy when you call, leave a message after the tone. To ensure that the information is entered correctly, please speak distinctly and slowly and spell the words that might cause confusion. Leave your phone number as well as your name and address;

(b) Sending a facsimile (fax) to 301–926–9524 or 301–590–3053; or

(c) Sending electronic mail to atp@nist.gov. Include your name, full mailing address, and phone number.

**SUPPLEMENTARY INFORMATION:**

### Background

The statutory authority for the ATP is Section 5131 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 15 U.S.C. 278n), as modified by Pub. L. 102–245. The ATP implementing regulations are published at 15 CFR Part 295. The Catalog of Federal Domestic Assistance (CFDA) number and program title for the ATP are 11.612, Advanced Technology Program (ATP).

The ATP is a rigorously competitive cost-sharing program designed to assist United States industry/businesses pursue high-risk, enabling technologies with significant commercial/economic potential. The ATP provides multi-year funding to single companies and to industry-led joint ventures to pursue research and development (R&D) projects with high-payoff potential for the nation. The ATP accelerates enabling technologies that, because they are risky, are unlikely to be developed in time to compete in rapidly changing world markets without such a partnership between industry and the Federal government. The ATP challenges industry to take on projects characterized by high technical risk but commensurately high potential payoff to the nation. Proposers must provide credible arguments as to the project feasibility.

The funding instrument used in ATP awards is a ''cooperative agreement.'' Through the cooperative agreement, the ATP fosters a government-industry partnership to accomplish a public purpose of support or stimulation. NIST plays a substantial role in these awards by providing technical assistance and monitoring the technical work and business progress.

### Funding Availability

An estimated $20 million to $25 million in first year funding will be available for General Competition 97–01. The ATP reserves the right to utilize for this competition more or less funding than the amounts stated above. The actual number of proposals funded will depend on the quality of the proposals received and the amount of funding requested in the highest ranked proposals. Outyear funding beyond the first year is contingent on the approval of future Congressional appropriations and satisfactory project performance.

### Eligibility Requirements, Selection Criteria, and Proposal Review Process

The eligibility requirements, selection criteria, and the proposal review process are discussed in detail in the ATP implementing regulations published at 15 CFR Part 295.

### Funding Amounts, Award Period and Cost Sharing (Matching) Requirements

(a) Single companies can receive up to $2 million of ATP funds for up to 3 years. Since companies do not have to provide matching funds, but they are reimbursed for direct costs only. Single companies are responsible for securing funding for all overhead/indirect costs.

(b) Joint ventures can receive a minority share of the total project costs for up to 5 years. Joint ventures must cost-share (matching funds) more than 50 percent of the total project costs (direct plus indirect costs) for each quarter that the ATP funds the project. Subcontractors funded under an ATP cooperative agreement may not contribute towards the matching-fund requirement.

### Application Forms and proposal Preparation Kit

A new November 1996 version of the ATP Proposal Preparation Kit is available upon request from the ATP at the address and phone numbers noted

in this notice. Note that the ATP will be mailing the kit to all those individuals whose names are currently on the ATP mailing list. Those individuals need not contact the ATP to request the new Kit. The Kit contains proposal cover sheets, other required forms, background material and instructions for submission of proposals. All proposals must be prepared in accordance with the instructions in the Kit.

Submission of Revised Proposals

An applicant may submit a full proposal that is a revised version of a full proposal submitted to a previous ATP competition. NIST will examine such proposals to determine whether substantial revisions have been made. Where the revisions are determined not to be substantial, NIST reserves the right to score and rank, or where appropriate, to reject, such proposals based on reviews of the previously submitted proposal.

Other Requirements

(a) Federal Policies and Procedures. Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to federal financial assistance awards as identified in the cooperative agreement award.

(b) Past Performance. Unsatisfactory performance under prior Federal awards may result in proposal not being considered for funding.

(c) Pre-award Activities. If applicants incur any costs prior to an award being made, they do solely at their own risk of not being reimbursed by the Government. Only written authorization from the NIST Grants Officer will obligate NIST to cover pre-award costs.

(d) No Obligation for Future Funding. If a proposal is selected for funding, NIST has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST.

(e) Delinquent Federal Debts. No award of Federal funds shall be made to an applicant or recipient who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to NIST are made.

(f) Name Check Review. All for-profit and 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 (including all joint venture participants) must submit a completed Form CD–411, ''Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanation is hereby provided:

(1) *Nonprocurement Debarment and Suspension.* Prospective participants, as defined at 15 CFR part 26, section 105 are subject to 15 CFR part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

(2) *Drug-Free Workplace.* Grantees (as defined at 15 CFR part 605) are subject to 15 CFR 26, subpart F, ''Governmentwide 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, ''Limitations 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 Certification. 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 Form SF–LLL, ''Disclosure of Lobbying Activities.'' Although the CD–512 is intended for the use of primary recipients and should not be transmitted to NIST, the SF–LLL submitted by any tier recipient or subrecipient should be forwarded in accordance with the instructions contained in the award document.

(i) False Statements. A false statement on any application for funding under ATP may be 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) Intergovernmental Review. The ATP does not involve the mandatory payment of any matching funds from state or local government and does not affect directly any state or local government. Accordingly, the Department of Commerce has determined that Executive Order 12372, ''Intergovernmental Review of Federal Programs'' is not applicable to this program.

(k) 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.

(l) Paperwork Reduction Act. This notice contains collection of information requirements subject to the Paperwork Reduction Act (PRA) which have been approved by the Office of Management and Budget (OMB Control No. 0693–0009). Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Dated: November 27, 1996.

Samuel Kramer,

*Associate Director.*

[FR Doc. 96–30858 Filed 12–3–96; 8:45 am]

**BILLING CODE 3510–13–M**

## National Oceanic and Atmospheric Administration

**[I.D. 022296A]**

## Small Takes of Marine Mammals Incidental to Specified Activities; Titan II and IV Launch Vehicles at Vandenberg Air Force Base, CA

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

**ACTION:** Notice of issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with provisions of the Marine Mammal Protection Act

(MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of seals and sea lions by harassment incidental to launches of Titan II and Titan IV launch vehicles at Space Launch Complex 4 (SLC–4), Vandenberg Air Force Base, CA (Vandenberg), has been issued to the U.S. Air Force.

**EFFECTIVE DATE:** This authorization is effective from November 27, 1996, through November 26, 1997.

**ADDRESSES:** The application and authorization are available for review in the following offices: Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and the Southwest Region, NMFS, 501 West Ocean Blvd. Long Beach, CA 90802.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Hollingshead, Marine Mammal Division, Office of Protected Resources at 301–713–2055, or Irma Lagomarsino, Southwest Regional Office at 301–980–4016.

**SUPPLEMENTARY INFORMATION:**

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq*.) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s); will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses; and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

The MMPA Amendments of 1994 added a new subsection 101(a)(5)(D) to the MMPA to establish an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment for a period of up to 1 year. The MMPA defines ''harassment'' as:

> * * *any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

New subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On January 24, 1996, NMFS received an application from the U.S. Air Force requesting an authorization for the harassment of small numbers of harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), northern elephant seals (*Mirounga angustirostris*), northern fur seals (*Callorhinus ursinus*) and possibly Guadalupe fur seals (*Arctocephalus townsendi*) in the vicinity of Vandenberg and on the Northern Channel Islands (NCI). These harassment takes would result from launchings of Titan II and Titan IV rockets. This authorization would continue an authorization issued, for a 5-year period under regulations, on August 22, 1991 (56 FR 41628) for Titan IV launches, that expired on September 23, 1996. NMFS anticipates that this 1-year authorization, along with others issued previously for Lockheed launch vehicles (61 FR 38437, July 24, 1996) and McDonnell Douglas Delta II launch vehicles (60 FR 52653, October 10, 1995), will be replaced by a new set of regulations, under section 101(a)(5)(A) of the MMPA, governing incidental takes of marine mammals by launches of all rocket types from Vandenberg. An application for a small take authorization under section 101(a)(5)(A) of the MMPA is under development by the Air Force.

A notice of receipt of the Titan IV application and the proposed authorization was published on March 15, 1996 (61 FR 10727) and a 30-day public comment period was provided on the application and proposed authorization.

Comments and Responses

During the 30-day comment period, two letters were received. The comments contained in those letters are addressed below, however the comment order has been modified for clarity. Other than information necessary to respond to the comments, additional background information on the activity and request can be found in the proposed authorization notice and needs not be repeated here.

*Comment 1*: What are the standards regarding ''small numbers'' under section 101(a)(5)(D) of the MMPA? A sonic boom of any kind that impacts San Miguel Island (SMI) will harass between a couple of thousand to tens of thousands of pinnipeds of several species. Every launch at Vandenberg will harass between several dozen to several hundred harbor seals along the Vandenberg coastline.

*Response*: In 50 CFR 216.103 (previously 50 CFR 228.3), NMFS defined ''small numbers'' to mean a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock. Negligible impact is the impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. At this time, there is no scientific evidence to indicate that either launch noises or sonic booms are adversely affecting the species or stocks of marine mammals in southern California waters.

*Comment 2*: The statement of policy on page 10730 appears to suggest that a rule has been issued to distinguish between harassment on land and harassment in the water. Is this correct, or is this a statement of a rule being made by the present notice?

*Response*: NMFS is presently reviewing the issue of noise in marine waters and its effect on marine mammals. Based upon that review, NMFS expects to propose policy and guidance on what does and what does not constitute a take by harassment and thereby subject to authorization under the MMPA. Until new policy is implemented, NMFS' working definition is that incidental harassment has not taken place (sufficient to warrant an incidental small take authorization) if the marine mammal indicates simple alert, startle, or dive reaction in response to a single noise event. For airborne events, only if marine mammals move away from the noise or other harassment source, either towards the water if on land, or an obvious directional change seaward if already in the surf zone, does NMFS consider a harassment event to have taken place.

*Comment 3*: To my knowledge there were only 4 launches of Titan IV from Vandenberg from 1990 through July 1995, not eight as stated in the notice. A fifth occurred in December 1995.

*Response*: The statement should have read that the total number of Titan II and Titan IV launches from 1990 through July 1995 was eight.

*Comment 4*: The statement on page 10728 does not correctly report the information reported by Stewart *et al*.

(1993a, 1993b). Those reports found that the 70 dBA (re: 20 micropascals) threshold of the acoustic monitoring instruments positioned at Rocky Point were exceeded about 49–60 seconds after launch initiation. The launch noise impacting Rocky Point remained above 70 dBA for 94 seconds in 1992 and 81 seconds in 1993. One hour average sound levels prior to launch varied (in 1993) between 52 and 59 dBA.

Although no sonic boom was recorded at Pt. Bennett during the launch on March 8, 1991, rocket noise was recorded at Pt. Bennett beginning about 3.5 minutes after launch. The noise lasted 40 seconds; the wide-band sound pressure level (SPL) was 78.2 dB in the frequency range 1.2 to 100 Hz with greatest amplitude above ambient noise level (+5 to 20 dB) at between 5 and 20 Hz. So the statement presented in the notice was not entirely correct.

*Response*: Based upon the references cited, the noise event at Vandenberg is expected to last between 1 1/2 minutes (Stewart *et al.* 1993a, 1993b) and 2 minutes, 11 seconds (Stewart *et al.* 1992) and not the shorter time cited in the proposed authorization. Also, launch event noise will reach SMI approximately 3.5 minutes following the launch and may be detectable to pinnipeds on SMI for less than 1 minute. It should be noted, however, that launch noise reaching, and being recorded on, SMI either did not result in recordable effects on observed pinnipeds on the island (Stewart *et al.* 1991, 1993b) or resulted in simple alert behavior (Eidson *et al.* 1996).

*Comment 5*: There is more than a potential for harassment, it is a virtual certainty. Any harbor seals hauled out along the Vandenberg coast during launch will startle and most, if not all, will likely flee into the water.

*Response*: While harbor seals may be found at several locations along the 35 mile Vandenberg coastline, the potential for a startle response and water entry will depend upon the location of the harbor seal haulout in relation to SLC–4 and whether the launch is for the Titan II or Titan IV. It is presumed that all harbor seals at Rocky Point and Purisima Point, the main haulouts closest to SLC–4, will enter the water in response to launch noises from either launch vehicle. In addition, it is presumed that harbor seals and other pinniped species onshore between Purisima Point and Jalama Creek will also enter the water.

*Comment 6*: The potential for harassment of pinnipeds on the NCI appears to be understated. It appears that all but one launch trajectory will result in sonic booms impacting one or several of the NCIs.

*Response*: Based upon the four previously monitored launches (those expected to produce a focused sonic boom over SMI), two of the launches (March 8, 1991 (night launch), and November 28, 1992 (day launch), apparently did not cause sonic booms over SMI, and there was no response by pinniped species on the island to either launch (Stewart *et al.* 1991, 1993a). The November 7, 1991, night launch produced a relatively mild sonic boom (111.7 dBA) but no movement to water by any pinnipeds. The August 2, 1993 launch (which exploded during flight) produced an alert response due to a sonic boom-like noise event, but no movement to the water until additional rumbling and popping noises were received due to the explosion (Air Force 1996).

The May 12, 1996, Titan IV launch sonic boom was predicted to intersect the eastern end of SMI with overpressures also impacting the other NCI. Monitoring was conducted at strategic locations on SMI and other islands. Cardwell Point beach was the predicted location of greatest impact. Additional information on the impact assessment from that launch is provided below.

As a result of this comment, the U.S. Air Force provided NMFS with predicted sonic boom footprints for the two planned launches during the time this authorization is to be in effect. These indicate that no sonic boom would occur on SMI from either launch, and only an outside chance of the sonic boom contacting the southern coast of Santa Rosa Island if the planned July 1997 launch were delayed until September.

*Comment 7*: The discussion of haulout behavior of harbor seals is largely speculative and parts are logically inconsistent; e.g., it is stated that seals need to leave the water to avoid aquatic predators, yet later that when disturbed by humans that seals will move into the safety of the water. It is not clear what this narrative is intended to accomplish. It could argue that any single disturbance either could or could not have an effect on them.

*Response*: The statement in the proposed authorization contains the best scientific evidence on why pinnipeds haul out of the water and why they return to the sea when disturbed. The referenced statements were provided to illustrate that flight is a natural reaction to limit predation both onshore and in the water and are not necessarily limited to anthropogenic noise and human intrusions. For example, Eidson *et al.* (1996) reported that groups of 50–100 California sea lions on SMI alerted and entered the water about 2–4 times daily due to disturbances, including those caused by gull alarm calls.

*Comment 8*: The scope of studies cited was not sufficient to determine conclusively whether mortality may have resulted from physical or physiological impacts with delayed effects (i.e., auditory trauma).

*Response*: NMFS agrees. The cited studies monitor for short-term effects, such as pup mortality, caused by launch noise and sonic booms. It must be recognized also that long-term effects of noise on marine mammals will be difficult to study or to prove that the mortality was caused in whole or part by launch noises or sonic booms from launches of Titan IIs or Titan IVs from Vandenberg. However, as a result of concerns, the U.S. Air Force is planning to conduct these long-term effect studies (Air Force 1996b, Eidson *et al.* 1996).

*Comment 9*: The statements referenced to Bowles and Stewart (1980) are wrong as stated. They were apparently taken out of context. The reference ''tendency to flee'' referred to California sea lions, not harbor seals. The reference to maternal-pup separations in crowded rookeries referred only to northern elephant seals. The final speculative statement is unfounded.

*Response*: The commenter is correct. There is no evidence that harbor seals are less reactive during pupping season than at other times (Bowles and Stewart 1980). However, while Bowles and Stewart (1980, p. 132) were discussing harbor seals, they cited Johnson (1977) and Le Beouf *et al.* (1972) as sources for their statements. While Johnson (1977) does discuss harbor seals, Le Beouf *et al.* (1972) references elephant seals. This was not made clear by Bowles and Stewart.

*Comment 10*: The summary of the data from Heath *et al.* (1991) about female foraging patterns is incorrect. After an 8-day post-partum period of shore attendance, the attendance patterns are approximately 2 days at sea and 1–2 days ashore.

*Response*: Thank you for the clarification.

*Comment 11*: The statement about ''negligible short-term impact'' (under ''Potential Effects * * *on Marine Mammals'') evidently is in reference only to considerations of behavior responses of seals to launch noise. Depending on a seal's predisposure to auditory trauma, the noise impacting Rocky Point could cause auditory damage, temporary at least. The

potential for, and consequences of, such impact on individuals and populations are as yet unstudied.

*Response*: While empirical data is still unavailable as the commenter noted, theoretical calculations indicate that temporary threshold shift (TTS) injury is unlikely at Rocky Point. The A-weighted SPL at this pinniped haulout from a Titan IV launch was measured, on May 12, 1996, at 96.2 db (re 20 µPa @ 1 m). This is approximately equivalent to a freight train passing at 50 ft. This SPL measurement is lower than previous launches (98.7–101.8 dBA). At this time, based upon the best scientific information available, launch noise at the measured SPL is considered below the level that would cause long-term injury to pinnipeds.

*Comment 12*: Preliminary results of studies on the impacts of large overpressures at (focused or superbooms) and near the leading edge of the boom's impact on the auditory function of pinnipeds, indicate short-term TTS in harbor seals exposed to simulated Titan IV booms of 2 to 7 psf and in California sea lions exposed to booms of 4 to 7 psf (lasting about 2.5 hours). Studies on northern elephant seals are underway and tests with a few animals should be completed by September. The potential impacts of larger overpressures (7–30 psf) on pinniped auditory function are still unknown. One possible means of determining them would be to conduct hearing tests on animals at field sites during launches when zones of impact can be predicted to include haulouts and rookeries.

*Response*: NMFS agrees that hearing tests on marine mammals ashore during launches would provide important empirical information on both short-term and potential long-term impacts from launch noise and sonic booms. Research, currently under development by the U.S. Air Force, proposes to study auditory brainstem response on free-ranging pinnipeds exposed to Vandenberg sonic booms. However, as such studies would likely require capture and holding pinnipeds for testing, a scientific research permit under section 104 of the MMPA will be necessary prior to beginning these studies.

*Comment 13*: The potential consequences of subsurface propagation of loud sonic booms on hearing abilities of marine mammals in general has not been studied. Theoretical studies (e.g., Sparrow 1995) have shown however, that substantial sonic boom energy can propagate to depths of 100 m or more. The potential for auditory damage to animals will depend on the characteristics of that noise v. depth matched with the hearing abilities of animals, their predisposition to trauma, and their increased sensitivity to noise in water relative to in air.

This issue is one of continuing discussion among an ad hoc group of physicists, acousticians and biologists. Therefore, some vigilance and moderate documentation of behavioral, auditory, and population responses to these sonic boom events will be able to resolve concerns about their immediate and long-term population impacts.

*Response*: While theoretical studies (Sparrow 1995, Cook 1972) indicate that sonic boom noise will penetrate ocean waters, these studies and others have also confirmed that the sonic boom plane wave must be less than 13.2° in order to have a portion of the energy propagate into the water. This generally limits duration of sound underwater, at least when compared to airborne noise. Furthermore, it is unclear from the references, which refer to supersonic aircraft and not to rocket launches, whether any sound energy will be propagated into the ocean along the shockwave propagation path of an ascending rocket. Since a sonic boom from a Titan is not expected to intersect with the ocean surface until the vehicle changes its launch trajectory, the area potentially vulnerable to the shockwave, if sound energy is propagated through the seasurface interface, would be relatively small. This location will always be well offshore, where marine mammal density is significantly less than in nearshore waters. The issue of subsurface propagation of airborne sonic booms is proposed for investigation by the U.S. Air Force.

*Comment 14*: The effects of launch noise on auditory function remains unstudied and unknown, although these levels do have the potential for causing auditory threshold shift. Also, no studies of auditory effects were done by Stewart (1981, 1982). Why not measure launch noises to resolve any question of concern.

*Response*: NMFS agrees that effects on auditory function remains unstudied. Such research is now in the early planning and funding stage (Air Force 1996b). However, as reported above, launch noise was measured during the May 12, 1996, and will be measured at future launches when necessary to conduct planned pinniped research.

*Comment 15*: The frequency of disturbances reported were for 1978–1979, more than 16 years ago and are of questionable relevance to discussions today.

*Response*: While true, NMFS emphasizes that no comparable studies are known by NMFS to have been conducted since that time. As NMFS has used the best scientific information, and as no data is available to show the magnitude of any increase in events that might cause harassment, no changes are necessary to the statement.

*Comment 16*: It is impossible to consider the potential for impact or non-impact of the theoretical calculation of ''147 dB'' without more information on the standards of reference of pressure and weighting for this metric. The level of worst case Titan IV boom was stated to be 147 dBA in the EA in 1990. That translates to an unweighted boom of 177 dB (296 psf: SIC–29.6 psf). Which value is correct and why?

*Response*: As noted by Richardson et al. (1995), apparently acoustical researchers are not uniformly conscientious about citing their reference units. When this occurs, it can lead to a problem in interpretation of results, as apparently happened in writing the EA in 1990. However, while theoretical calculations suggested that Titan IV focused sonic booms may reach 10–18 psf (147–154 dB A-weighted) (Air Force 1988, 1990), measured peak overpressures for the May 12, 1996, Titan IV launch at Crook's Point, SMI was 8.4 psf (corrected value). The maximum focused peak pressure of 9.5 psf was predicted to occur over water 5 km east of SMI and 5 km north of SRI (Keegan 1996).

In 1990, the Air Force considered a ''worst case'' sonic boom overpressure to be about 147 dBA and cited Chappell (1980) as indicating that a sonic boom would need to have a peak overpressure in the range of 138 to 169 dB to cause TTS in marine mammals, with TTS lasting at most a few minutes. Because Chappell (1980), did not always provide standards of reference, NMFS believes them to be A-weighted. This assumption is supported by Richardson *et al.*'s (1995) wherein for airborne noise, whenever references for low frequency noises are not provided, it should be assumed that the levels are A-weighted.

*Comment 17*: The zone of focused or super-boom, although relatively small compared to the entire zone of boom impact, it is nevertheless large enough to encompass substantial haulouts and rookeries on the NCI inhabited by thousands to tens of thousands of pinnipeds (both behavioral and auditory responses are of concern; dose-response relationships available today are not adequate to rule out substantial impacts). Further the overpressures outside of this focusing area are still large over a broad area.

*Response*: NMFS recognizes that, depending upon the launch trajectory,

some haulouts and rookeries, containing substantial numbers of pinnipeds, may be affected by a focused sonic boom. NMFS reiterates that there is no scientific evidence to indicate that sonic booms from Titan IV rockets are resulting in more than a TTS injury. However, as mentioned previously, research is being designed that will provide evidence to support (or refute) the hypothesis that pinnipeds can incur serious injury from a focused sonic boom.

The area outside the zone of focused pressure was measured at 2 psf to 0.9 psf during the May 1996 Titan IV launch. While loud, this is not a substantial noise event that should result in injury to marine mammals. It would be equivalent to the Space Shuttle landing at Edwards Air Force Base.

*Comment 18*: What is the source and support for the belief that marine mammals are less sensitive than humans to low-frequency sonic booms. If any, it must be qualified by the characteristics of the sonic boom other than frequency content (i.e., rise time, peak overpressure, duration). The subsequent statements about humans are irrelevant without qualification of the parameters of sonic booms produced by various aircraft. The narrative suggests that humans have been adopted as a standard for comparison to pinnipeds.

*Response*: References for these statements were provided in the proposed authorization notice. However, until more empirical work on the effects of sonic boom noise on pinnipeds becomes available, information on the effects on surrogate species, such as humans, becomes the best scientific information available. When the results from research on impacts from sonic booms are published, NMFS presumes that such research will provide the characteristics of the sonic boom (i.e., frequency content, rise time, peak overpressure, duration). This will then allow more accurate comparisons between different sonic boom characteristics and a better assessment of impacts on pinnipeds and other marine mammals.

*Comment 19*: The report by Chappel (1980) was a summary of literature available until 1977. It has little relevance to considerations of potential impacts now, particularly several studies have demonstrated temporary and permanent auditory damage in mammals at substantially lower amplitudes. Further, the metrics restated are of limited use for evaluating impacts without reference to appropriate standards (and without additional parameters). The statement needs some documentation, particularly with respect to rapid rise time, peak amplitude and duration; impulse noises created by large supersonic rockets (and their large plumes) are characterized by combinations of these metrics that create greater risk to auditory function than do other kinds of impulse noise. Therefore, the conclusion that effects will be temporary at most and the individual survival will not be affected lacks scientific support.

*Response*: The paper by Chappell (1980), although dated, appears to be the latest summarization of information that is available. A more recent discussion can be found in Richardson *et al.* (1995). While studies on pinniped TTS and permanent threshold shift injuries may have been conducted, literature searches have failed to reveal them. In addition, the commenter did not provide references for this data. As a result, the information provided in the proposed authorization is considered to be the best science available at this time.

*Comment 20*: The mild boom that impacted Pt. Bennett (during the 1991 Titan IV launches), where the behavioral observations were made had a sound exposure level of 86.2 dB (MXFA). The peak values indicated in the Notice were recorded over 5 miles away at the east end of SMI. Pre-launch predictions had indicated that no sonic boom should impact Pt. Bennett during the launch. The two impulse noises (sonic boom on Nov. 7, 1991; explosion on Aug. 2, 1993) that were recorded at Pt. Bennett during Titan IV launches were quite mild relative to the booms that are expected to impact pinnipeds on the NCI in and near zones of focusing. The behavioral observations reported in the Notice should be considered in context of those differences.

*Response*: Comment noted.

*Comment 21*: The discussion (on cumulative effects from noise) appears to be confused in its treatment of sonic boom propagation and impact compared to non-impulse characteristics. Attention should be paid to the potential impact of sonic booms on animals at and below the sea-surface, as highlighted by recent theoretical predictions of subsurface propagation of impulse noise energy.

*Response*: The statements contained in the proposed authorization notice appear supportable by the references. Marine mammals, at or near the surface of the water, would be subject to potential harassment by incurring a short-term TTS-injury, if they were within the relatively small area of a focused sonic boom. New information (Dave Eidson, pers. comm, November 6, 1996) however, appears to support a hypothesis that, unlike aircraft sonic booms, which are the subject of most previous research on subsurface propagation, sonic booms from launch vehicles have, at most, a very small area of potential subsurface penetration. If true, it would further limit the potential for injury or harassment to subsurface marine mammals than was indicted in the previous Federal Register notice.

*Comment 22*: Statements on sonic boom effects rely on literature surveys and best guesses made in the late 1970s. Subsequent studies on other mammals have shown cause for greater concern for exposure to impulse noises of 2 psf and above depending on their characteristics, particularly those typical of loud and focused sonic booms generated by large supersonic space launch vehicles.

*Response*: NMFS is unaware of any recent studies on the effects of low-intensity sonic booms on any mammals relevant to the concern here, and the commenter did not provide references to support these statements. As mentioned above, new research has been identified to answer this concern.

*Comment 23*: My understanding was that the EA mentioned here was for launching Titan IV/NUS or Titan IV/Centaur from a new launch complex but that those plans were later cancelled. Although the issues for a launch program from SLC–4 are similar to those addressed in that EA, I believe the scope of the earlier EA does not match the scope of the current program. The earlier EAs considered that only SMI might be impacted by a sonic boom and that the odds of that happening were slight and so the concerns centered on the impacts of a focused boom should it occur. The current program appears to involve sonic boom impacts to one or more of the islands during most of the launches. If that is true then the previous EA would not seem applicable to the Titan IV and Titan II programs being considered now.

*Response*: In 1988, the Air Force released a final environmental impact statement for the Titan IV launch vehicle modifications and launch operations program (Air Force 1988). Impacts to marine mammals as a result of Titan II launches were evaluated in an EA published by the Air Force in 1989 (Air Force 1989). On December 21, 1990, NMFS published an EA (NMFS 1990) on an authorization to the Air Force to incidentally take marine mammals during launches of the Titan IV space vehicle from Vandenberg. The finding of that EA was that the issuance of the authorization would not

significantly affect the quality of the human environment and therefore an environmental impact statement on the issuance of regulations authorizing an incidental take was not necessary. The incidental harassment of marine mammals by the launch of the Titan IV on May 12, 1996, was authorized under NMFS regulations issued after the 1990 EA.

Because the scope of the applicant's activity has not been modified significantly from that addressed in the earlier EA, and because the Titan IV launches during this proposed 1-year authorization is not expected to result in a sonic boom impacting NCI, a new EA is unnecessary.

*Comment 24*: What consultation has been conducted regarding the northern fur seal?

*Response*: Although the northern fur seal is listed as depleted under the MMPA, the species is not listed as either threatened or endangered under the ESA. As a result, consultation under section 7 of the ESA is not necessary for this species. Consultation has been completed for the Guadalupe fur seal, the only pinniped listed under the ESA and inhabiting the NCI. Other listed species are either not believed to be affected by launching Titan II and Titan IV rockets from Vandenberg, or are not species under the jurisdiction of NMFS.

Conclusion

Based upon the information provided in the proposed authorization and these comments, NMFS has determined that the short-term impact of the launching of Titan II and Titan IV rockets is expected to result at worst, in a temporary reduction in utilization of the haulout as seals, sea lions or fur seals leave the beach for the safety of the water. These launchings are not expected to result in any reduction in the number of pinnipeds, and they are expected to continue to occupy the same area. In addition, there will not be any impact on the habitat itself. Based upon studies conducted for previous space vehicle launches at Vandenberg, significant long-term impacts on pinnipeds at Vandenberg and NCI are unlikely.

Therefore, since NMFS is assured that the taking will not result in more than the harassment (as defined by the MMPA Amendments of 1994) of a small number of harbor seals, northern elephant seals, California sea lions, northern fur seals and possibly Guadalupe fur seals; would have only a negligible impact on the species, and would result in the least practicable impact on the stock, NMFS determined that the requirements of section 101(a)(5)(D) had been met and the incidental harassment authorization was issued.

Dated: November 27, 1996.

Patricia A. Montanio,

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 96–30834 Filed 12–03–96; 8:45 am]

BILLING CODE 3510–22–F

**[I.D. 112696B]**

## Permits; Foreign Fishing

In accordance with a Memorandum of Understanding with the Secretary of State, the National Marine Fisheries Service publishes for public review and comment summaries of applications received by the Secretary of State requesting permits for foreign fishing vessels to operate in the exclusive economic zone under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). This notice concerns the receipt of an application from the Government of Lithuania requesting authorization to conduct joint venture operations in 1997 in the Northwest Atlantic Ocean for Atlantic mackerel. The large stern trawler/processors BANGA and KIRAS are identified as the vessels that will receive Atlantic mackerel from U.S. vessels. Send comments on this application to:

National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910; and/or to the Regional Fishery Management Councils listed below:

Chris Kellogg, Acting Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906, (617) 231–0422;

David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19901–6790, (302) 674–2331.

For further information contact Robert A. Dickinson, Office of Sustainable Fisheries, (301) 713–2337.

Dated: November 27, 1996

Gary Matlock,

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 96–30833 Filed 12–3–96; 8:45 am]

BILLING CODE 3510–22–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Cancellation of a Limit on Certain Wool Textile Products Produced or Manufactured in India

November 27, 1996.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs cancelling a limit.

**EFFECTIVE DATE:** December 4, 1996.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

**SUPPLEMENTARY INFORMATION:**

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The United States Government has decided to rescind the restraint on imports of woven wool shirts and blouses in Category 440 from India established on April 18, 1996, pursuant to Article 6.10 of the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to cancel the limit established for Category 440 for the period April 18, 1996 through April 17, 1997.

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 60 FR 65299, published on December 20, 1995). Also see 61 FR 16760, published on April 17, 1996.

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

Committee for the Implementation of Textile Agreements

November 27, 1996.

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 April 11, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in India and exported during the period which began

on April 18, 1996 and extends through April 17, 1997.

Effective on December 4, 1996, you are directed to cancel the limit established for Category 440 for the period April 18, 1996 through April 17, 1997.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc.96–30840 Filed 12–3–96; 8:45 am]

**BILLING CODE 3510–DR–F**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Acting Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before February 3, 1997.

**ADDRESSES:** Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 USC Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 27, 1996.

Linda C. Tague,

*Acting Director, Information Resources Group.*

Office of Educational Research and Improvement

*Type of Review:* New.
*Title:* Combined Application for the Office of Educational Research and Improvement (OERI) Visiting Scholars Fellowship Program.
*Frequency:* Biennially.
*Affected Public:* Individuals or households.
*Reporting Burden and Recordkeeping:*
Responses: 45.
Burden Hours: 630.
*Abstract:* The OERI Visiting Scholars Fellowship provides support to senior scholars, researchers, education practitioners, and statisticians to engage in the use, collection, and dissemination of information about education and education research to work at OERI in Washington, D.C. The information collected in the application will be used to determine who is selected for these fellowships.

Office of Bilingual Education and Minority Languages and Affairs

*Type of Review:* Reinstatement.
*Title:* Biennial Report Form for the Emergency Immigrant Education Program.
*Frequency:* Biennially
*Affected Public:* State, Local or Tribal Gov't, SEAs or LEAs.
*Reporting and Recordkeeping Burden:*
Responses: 944.
Burden Hours: 5,620.
*Abstract:* This form is used by State educational agencies to submit a biennial report to the Secretary concerning expenditures of EIEP funds by their local educational agencies as well as national origin of immigrant children served under the Emergency Immigrant Education Act (Title VI of Public Law 98–511, 20 U.S.C. 4101–4108, as amended by Pub. L. 103–382, 20 U.S.C. 7541–7549).

[FR Doc. 96–30789 Filed 12–3–96; 8:45 am]

**BILLING CODE 4000–01–P**

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The Acting Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before January 3, 1997.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202-4651.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Sherrill (202) 708-8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public

consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: November 27, 1996.

Linda C. Tague,

*Acting Director, Information Resources Group.*

Office of Postsecondary Education

*Type of Review:* Revision.

*Title:* Recordkeeping Requirements for Institutions Participating in Student Financial Assistance Programs Authorized by Title IV, HEA.

*Frequency:* Recordkeeping.

*Affected Public:* Business or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

*Annual Reporting and Recordkeeping Hour Burden:*

Responses: 93,969.

Burden Hours: 753,003.

*Abstract:* The proposed rules require institutions to maintain records documenting their participation in student financial assistance programs authorized by Title IV of the Higher Education Act of 1965 (Title IV, HEA Program). Regulations also include requirements for audits and repayments.

*Type of Review:* Revision.

*Title:* Due Diligence by Guaranty Agencies and Lenders.

*Frequency:* Monthly.

*Affected Public:* Business or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

*Annual Reporting and Recordkeeping Hour Burden:*

Responses: 5,829.

Burden Hours: 3,398.31.

*Abstract:* The due diligence regulations assure that guaranty agencies and lenders pursue collection activities vigorously on delinquent and defaulted loans in the Federal Family Education Loan Program (FFELP).

*Type of Review:* Revision.

*Title:* Student Assistance General Provisions—Subpart K— Cash Management/Easy Access for Students and Institutions (EASI) Package.

*Frequency:* Monthly.

*Affected Public:* Business or other for-profit; Not-for-profit institutions.

*Annual Reporting and Recordkeeping Hour Burden:*

Responses: 14,529,654.

Burden Hours: 1,218,717.8.

*Abstract:* These regulations revise the existing provisions of the Student Assistance General Provisions regulations regarding cash management. Information collection under these regulations relates to cash management requirements and practices for institutions participating in the Title IV, Higher Education Act programs.

*Type of Review:* New.

*Title:* Guaranty Agency Cost Allocation Plan.

*Frequency:* On Occasion.

*Affected Public:* Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

*Annual Reporting and Recordkeeping Hour Burden:*

Responses: 25.

Burden Hours: 2,500.

*Abstract:* A guaranty agency is a state or private non-profit entity that performs certain administrative role in the Federal Family Education Loan (FFEL) Program. Their reserve funds contain federal money. Some agencies are involved in separately funded non-FFEL guaranty activities. If such an agency uses personnel and resources to perform both its FFEL and other activities, it must develop and comply with a plan for allocating costs to ensure that federal funds are not used to subsidize the agency's non-FFEL guaranty activities. The agency will be required to submit its cost allocation to the Secretary upon request.

[FR Doc. 96–30790 Filed 12–3–96; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER97–144–000]**

## American Hunter Energy Inc.; Notice of Issuance of Order

November 27, 1996.

American Hunter Energy Inc. (American Hunter) submitted for filing a rate schedule under which American Hunter will engage in wholesale electric power and energy transactions as a marketer. American Hunter also requested waiver of various Commission regulations. In particular, American Hunter requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by American Hunter.

On November 13, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by American Hunter should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First 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 385.214).

Absent a request for hearing within this period, American Hunter is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves that right to require a further showing that neither public nor private interests will be adversely affected by continued approval of American Hunter's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 13, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–30829 Filed 12–3–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. ER96–3112–000]**

## Burlington Resources Trading Inc; Notice of Issuance of Order

November 29, 1996.

Burlington Resources Trading Inc. (Burlington Resources) submitted for

filing a rate schedule under which Burlington Resources will engage in wholesale electric power and energy transactions as a marketer. Burlington Resources also requested waiver of various Commission regulations. In particular, Burlington Resources requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Burlington Resources.

On November 14, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Burlington Resources should file a motion to intervene or protests with the Federal Energy Regulatory Commission, 888 First 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 385.214).

Absent a request for hearing within this period, Burlington Resources is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Burlington Resources' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 16, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–30853 Filed 12–3–96; 8:45 am]

**BILLING CODE 6717–01–M**

**[Docket No. CP97–119–000]**

## Dauphin Island Gathering System; Notice of Petition for Declaratory Order

November 27, 1996.

Take notice that on November 22, 1996, Dauphin Island Gathering System (DIGS), 1400 Woodloch Forest Drive, Suite 200, The Woodlands, Texas 77380, filed a petition for declaratory order in Docket No. CP97–119–000, requesting that the Commission declare that certain existing and proposed facilities located in state and federal waters in the Gulf of Mexico would have the primary function of gathering natural gas and would thereby be exempt from the Commission's jurisdiction pursuant to Section 1(b) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

DIGS states that its system is located in offshore Alabama and serves to gather natural gas in federal waters from the Mobile and Viosca Knoll areas and in Alabama waters. It is indicated that its facilities include no compression and consists of approximately 90 miles of pipe ranging in diameter from 8 to 20 inches in diameter and configured in an inverted Y. The facilities consist of 36.3 miles of 20-inch pipe; 42.7 miles of 12-inch pipe; and 6.8 miles of 8-inch pipe. DIGS indicates that gas gathered into DIGS can enter the interstate transportation grid into the facilities of Transcontinental Gas Pipe Line Corporation (Transco), Florida Gas Transmission Company (FGT) and Koch Gateway Pipeline Company. DIGS states that the capacity of its system is 355 MMcf per day and that its maximum allowable operating pressure is 1440 psig and its maximum contract pressure is 1250 psig. It is indicated that DIGS has operated as a gathering facility since its inception.

DIGS indicates that it is now proposing to expand its system to connect with the new production facilities at Main Pass (MP) Block 261 and with the facilities of Main Pass Gathering System (MPS) at MP225 to compete for the new production in the Mobile, Viosca Knoll and Main Pass Areas, Offshore Louisiana and Alabama. DIGS states that it will expand its system in two phases. It is stated that Phase I will include approximately 65 miles of 24-inch pipeline with a capacity of 150 to 200 MMcf per day, and will extend from the existing facilities in Alabama State Block 73 to the new production facilities of DelMar at MP 261 and with the facilities of MPS in Main Pass Block 225. DIGS also proposes to install several side valves to provide for the construction of a spine to production currently committed in various blocks. It is stated that Phase I will parallel the western leg of the existing facilities for about 30 miles, and include several short stub lines connecting it to the existing lines to manage system pressures and attach production along its entire length.

DIGS states that Phase II of the proposed facilities consist of 13 miles of 24-inch pipe and will extend from the northern terminus of Phase I onto shore, looping DIGS's existing 20-inch line.

DIGS indicates that no gas processing will occur on the system, and there are no interstate pipelines in the immediate vicinity of Phases I and II or the existing facilities. It is also stated that the proposed facilities are located in waters shallower than 200 meters but that the integrated system is designed to receive gas produced in both shallow waters and in waters deeper than 200 meters.

DIGS states that the existing facilities are currently owned by DIGS. It is indicated that DIGS is comprised of Dauphin Island Gathering Company, L.P. (DIPC), (one percent), a non-jurisdictional limited partnership, the general partner of which is OEDC; MCNIC Mobile Bay Gathering Company (MCNIC), (59 percent), a non-jurisdictional subsidiary of MCN Corporation, and PanEnergy Dauphin Island Company (PDI), (40 percent), a non-jurisdictional affiliate of several interstate pipeline companies including Panhandle Eastern Pipe Line Company, Texas Eastern Transmission Corporation, Algonquin Gas Transmission Company and Trunkline Gas Company.

DIGS states that the proposed facilities meet the criteria. In support of its claim that the facilities are gathering as set forth in a February 28, 1996, Statement of Policy with respect to OCS facilities, 74 FERC ¶ 61,222 as well as the gathering criteria set forth in *Farmland Industries, Inc.*, 23 FERC ¶ 61,063, as modified in later orders. DIGS states that the Commission in its OCS Policy Statement added a new element to its analysis, granting a presumption of gathering to facilities designed to collect gas produced from water depths of 200 meters or greater, with the presumption extending to facilities up to the point or points of potential connection with the interstate pipeline grid.

DIGS states that, as a second element of the gathering policy, the Commission indicated that where proposed OCS facilities are in proximity to existing interstate pipelines, the Commission will determine jurisdictional status on

the basis on the existing primary function test.

With respect to the length and diameter of the line, DIGS points out that lines no greater than 24 inches in diameter continue to be consistent with a determination that the lines are gathering facilities. DIGS also notes that the 65-mile length of the Phase I spine is only as long as necessary to reach the interstate pipeline capacity sufficient to move the total estimated production. DIGS points out that the Commission found the 95-mile 20-inch Viosca Knoll pipeline to be gathering using the same rationale. With respect to the configuration of facilities, DIGS indicates that the Phase I facilities when completed will form a spine and laterals configuration, consistent with a finding of gathering. DIGS states that the Phase II facilities are a loop of existing facilities, but that this would not rule out a finding of gathering if the entire system is evaluated.

DIGS states that the lack of compression on DIGS is consistent with gathering. Likewise, DIGS submits that the location of will along the entire system is indicative of gathering. In addition, DIGS states that the maximum available operating pressure (MAOP) of the existing system of 1440 psig and the anticipated MAOP for the Phase I facilities of 1750 to 1770 is driven by the pressure of the gas production expected to flow through both portions of the system, consistent with a finding of gathering.

DIGS notes that in the Policy Statement the Commission stated that it saw little difference in function between an interstate transportation line that takes gas to shore and a newly built line, that, for all practical purposes runs parallel to and serves the same purpose as moving gas to shore. DIGS points out that neither DIGS nor Phase I and II facilities parallel any existing interstate transmission lines. DIGS also states that the point at which the system could potentially interconnect with the existing interstate grid is located at the system's onshore terminus. In addition, DIGS notes, because Phase I of the system will be located upstream of the existing DIGS's gathering system and downstream of the MPS gathering system, it would be illogical for the Commission to find that Phase I performs a transmission. Likewise, it is noted that Phase II will merely loop the existing gathering facilities. Finally, it further submitted that the business purpose of the system is to provide gathering infrastructure to producers for potential and existing offshore production, including deepwater production, in the eastern Gulf of Mexico area.

Any person desiring to be heard or to make any protest with reference to said petition should on or before December 9, 1996, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–30830 Filed 12–3–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. CP85–221–073]**

## Frontier Gas Storage Company; Notice of Sale Pursuant to Settlement Agreement

November 27, 1996.

Take notice that on November 20, 1996, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Ave., N.W., Suite 800, Washington, D.C. 20004, in compliance with provisions of the Commission's February 13, 1985, Order in Docket No. CP82–487–000, *et al.*, submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of 1,000,000 MMBtu of Frontier's gas storage inventory on an ''in place'' basis to Conoco, Inc.

Under Subpart (b) of Ordering Paragraph (G) of the Commission's February 13, 1985, Order, Frontier is ''authorized to consummate the proposed sale in place unless the Commission issues an order within 20 days after expiration of such notice period either directing that the sale not take place and setting it for hearing or permitting the sale to go forward and establishing other procedures for resolving the matter. Deliveries of gas sold in place shall be made pursuant to a schedule to be set forth in an exhibit to the executed service agreement.''

Any person desiring to be heard or to make a protest with reference to said filing should, within 10 days of the publication of such notice in the Federal Register, file with the Federal Energy Regulatory Commission (888 1st Street, N.E., Washington, D.C. 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. 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. 96–30826 Filed 12–3–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. ER97–181–000]**

## Oceanside Energy, Inc.; Notice of Issuance of Order

November 29, 1996.

Oceanside Energy, Inc. (Oceanside) submitted for filing a rate schedule under which Oceanside will engage in wholesale electric power and energy transactions as a marketer. Oceanside also requested waiver of various Commission regulations. In particular, Oceanside requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Oceanside.

On November 21, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Oceanside should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First 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 385.214).

Absent a request for hearing within this period, Oceanside is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither

public nor private interests will be adversely affected by continued approval of Oceanside's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 23, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–30852 Filed 12–3–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. ER96–3107–000]**

## Strategic Energy Ltd.; Notice of Issuance of Order

November 27, 1996.

Strategic Energy Ltd. (Strategic Energy) submitted for filing a rate schedule under which Strategic Energy will engage in wholesale electric power and energy transactions as a marketer. Strategic Energy also requested waiver of various Commission regulations. In particular, Strategic Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Strategic Energy.

On November 13, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Strategic Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First 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 385.214).

Absent a request for hearing within this period, Strategic Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Strategic Energy's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 13, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–30828 Filed 12–3–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. ER96–2914–000]**

## Working Assets Green Power, Inc.; Notice of Issuance of Order

November 27, 1996.

Working Assets Green Power, Inc. (Working Assets) submitted for filing a rate schedule under which Working Assets will engage in wholesale electric power and energy transactions as a marketer. Working Assets also requested waiver of various Commission regulations. In particular, Working Assets requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Working Assets.

On November 13, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Working Assets should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First 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 385.214).

Absent a request for hearing within this period, Working Assets is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Working Assets' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 13, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–30827 Filed 12–3–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. ER96–3102–000, et al.]**

## MidAmerican Energy Company, et al.; Electric Rate and Corporate Regulation Filings

November 27, 1996.

Take notice that the following filings have been made with the Commission:

1. MidAmerican Energy Company

[Docket No. ER96–3102–000]

Take notice that on November 22, 1996, MidAmerican Energy Company (MidAmerican) filed a withdrawal of the Firm Transmission Service Agreement dated as of September 18, 1996 and entered into by MidAmerican and Coral Power, L.L.C., which was included in the September 27, 1996, filing in this docket.

*Comment date:* December 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. MidAmerican Energy Company

[Docket No. ER97–123–000]

Take notice that on November 22, 1996, MidAmerican Energy Company filed a withdrawal of the Firm Transmission Service Agreement dated as of October 2, 1996 entered into by MidAmerican and PSI Energy, Inc. and the Firm Transmission Service Agreement dated as of October 2, 1996 entered into by MidAmerican and Cincinnati Gas & Electric Company, which Agreements were included in the October 11, 1996, filing in this docket.

*Comment date:* December 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Company, Mass Electric Company

[Docket No. ER97–219–000]

Take notice that on November 19, 1996, New England Power Company and Mass Electric Company tendered for filing an amendment to their original filing in this docket.

*Comment date:* December 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Central Illinois Public Service Company

[Docket No. ER97–507–000]

Take notice that on November 19, 1996, Central Illinois Public Service Company (CIPS), submitted a service agreement, dated November 6, 1996, establishing Electric Clearinghouse, Inc. (ECI) as a customer under the terms of CIPS' Open Access Transmission Tariff.

CIPS requests an effective date of November 6, 1996 for the service agreements. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon ECI and the Illinois Commerce Commission.

*Comment date:* December 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER97–509–000]

Take notice that on November 19, 1996, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 7 to add NorAm Energy Services, Inc. to the Allegheny Power Open Access Transmission Service Tariff which has been submitted for filing to the Federal Energy Regulatory Commission in Docket No. OA96–18–000. The proposed effective date under the Service Agreements is September 10, 1996.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

*Comment date:* December 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Williams Energy Services Company, TransCanada Power Corp., Energy Transfer Group, L.L.C., Energy West Power Co., LLC, Utility Management Corporation, American National Power, Inc., Indeck-Pepperell Power Association, Inc.

Docket Nos. ER95–305–008, ER95–692–006, ER96–280–003, ER96–392–004, ER96–1144–002, ER96–1195–002, ER96–1635–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On October 30, 1996, Williams Energy Services Company filed certain information as required by the Commission's March 10, 1995, order in Docket No. ER95–305–000.

On October 18, 1996, TransCanada Power Corp. filed certain information as required by the Commission's June 9, 1995, order in Docket No. ER95–692–000.

On November 12, 1996, Energy Transfer Group, L.L.C. filed certain information as required by the Commission's January 29, 1996, order in Docket No. ER96–280–000.

On October 30, 1996, Energy West Power Co., LLC filed certain information as required by the Commission's December 28, 1995, order in Docket No. ER96–392–000.

On October 30, 1996, Utility Management Corporation filed certain information as required by the Commission's April 5, 1996, order in Docket No. ER96–1144–000.

On November 14, 1996, American National Power Inc. filed certain information as required by the Commission's May 1, 1996, order in Docket No. ER96–1195–000.

On October 30, 1996, Indeck Pepperell Power Association, Inc. filed certain information as required by the Commission's July 15, 1996,order in Docket No. ER96–1635–000.

7. Northern Indiana Public Service Company, NIPSCO Energy Services, Inc.

[Docket Nos. ER96–1426–002, ER96–1431–002 (not consolidated)]

Take notice that on November 6, 1996, Northern Indiana Public Service Company and NIPSCO Energy Services, Inc. tendered for filing revised Standards of Conduct and Statement of Procedures to Determine Compliance with the Standards of Conduct.

The revised Standards of Conduct were filed in compliance with the Commission's letter of November 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor and all Parties on the service list in this proceeding.

*Comment date:* December 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Kentucky Utilities Company

[Docket Nos. ER96–2628–000 and ER96–2766–000]

Take notice that on November 12, 1996, Kentucky Utilities Company tendered for filing an amendment in the above-referenced dockets.

*Comment date:* December 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Arizona Public Service

[Docket Nos. ER96–2999–000 and ER97–31–000]

Take notice that on November 12, 1996, Arizona Public Service Company (APS) tendered for filing an amendment to APS FERC Electric Coordination Tariff, Original Volume No. 1 (Tariff) which unbundles generation, transmission and ancillary services for coordination types of transactions taken under this Tariff. This filing also amends two previously filed Service Agreements to this Tariff in Docket Nos. ER96–2999–000 and ER97–31–000.

A copy of this filing has been served on all parties on the Service list.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. South Carolina Electric & Gas Company

[Docket Nos. ER96–3073–000 and ER97–281–000]

Take notice that on November 20, 1996, South Carolina Electric & Gas Company amended its filing in the above-referenced dockets.

*Comment date:* December 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Deseret Generation and Transmission Cooperative

[Docket No. ER97–137–000]

Take notice that on November 18, 1996, tendered for filing an amendment in the above-referenced docket.

*Comment date:* December 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. New England Power Company

[Docket No. ER97–71–000]

Take notice that on November 18, 1996, New England Power Company

tendered for filing an amendment to its original filing in this docket.

*Comment date:* December 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Kentucky Utilities Company

[Docket No. ER97–237–000]

Take notice that on November 12, 1996, Kentucky Utilities Company tendered for filing an amendment in the above-referenced docket.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Company of Colorado

[Docket No. ER97–508–000]

Take notice that on November 19, 1996, Public Service Company of Colorado (Public Service), tendered for filing Revision No. 1 to Exhibit Q to its interconnection, Entitlements, and Operation and Maintenance of Facilities Contract No. 93–SLC–0229 designated as Public Service Rate Schedule FERC No. 84. Revision No. 1 to Exhibit Q, Waterflow Substation, provides for Public Services' acquisition of a 25% interest in the use and benefits of the Waterflow phase shifting transformer and the associated operation and maintenance costs. Public Service requests that Revision No. 1 to Exhibit Q be made effective on December 15, 1995.

*Comment date:* December 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER97–510–000]

Take notice that on November 19, 1996, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., has filed the Fifth Amendment (Amendment) to the Power Coordination, Interchange and Transmission Agreement (PCITA) between Entergy Arkansas, Inc. and the City of Conway, Arkansas. Entergy Services states that the Amendment changes one of the delivery points between Entergy Arkansas, Inc. and the City of Conway, Arkansas.

*Comment date:* December 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Company of Oklahoma, Southwestern Electric Power Company

[Docket No. ER97–511–000]

Take notice that on November 19, 1996, Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, the companies), tendered for filing service agreements under which they will provide transmission service to VTEC Energy, Inc. (VTEC) and Florida Power Corporation (Florida Power) under the PSO/SWEPCO open access point-to-point transmission service tariff.

The Companies state that a copy of the filing has been served on VTEC and Florida Power.

*Comment date:* December 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. A'Lones Group, Inc.

[Docket No. ER97–512–000]

Take notice that on November 19, 1996, A'Lones Group, Inc. tendered for filing an Application for Blanket Authorization, Certain Waivers, and Order Approving Rate Schedule.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Central Power and Light Company, West Texas Utilities Company

[Docket No. ER97–513–000]

Take notice that on November 19, 1996, Central Power and Light Company (CPL) and West Texas Utilities Company (WTU) (collectively, the companies), tendered for filing service agreements under which they will provide transmission service to VTEC Energy, Inc. (VTEC) and Florida Power Corporation (Florida Power) under the CPL/WTU open access point-to-point transmission service tariff.

The Companies state that a copy of the filing has been served on VTEC and Florida Power.

*Comment date:* December 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Northeast Utilities Service Company

[Docket No. ER97–514–000]

Take notice that on November 19, 1996, Northeast Utilities Service Company (NUSCO) tendered for filing a Service Agreement between NUSCO and Freeport Electric.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Florida Power Corporation

[Docket No. ER97–515–000]

Take notice that on November 19, 1996, Florida Power Corporation (Florida Power), filed amendments to its tariff for all requirements service which will enable the Company to retain the City of Quincy, Florida (Quincy) as an all requirements customer through at least December 31, 2002 in exchange for a negotiated competitive discount in the price that Quincy pays for all requirements service. The filing is the outcome of negotiations between the Company and Quincy. The Company agreed to this arrangement in order to meet competition from other potential suppliers of the Quincy load.

The Company requests waiver of the notice requirement so that this filing may be allowed to become effective on January 1, 1997.

*Comment date:* December 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Florida Power Corporation

[Docket No. ER97–516–000]

Take notice that on November 19, 1996, Florida Power Corporation (Florida Power), filed amendments to its contract for all requirements service to the City of Chattahoochee, Florida (Chattahoochee), which will enable the Company to retain Chattahoochee as an all requirements customer through at least December 31, 2002 in exchange for a negotiated competitive discount in the price that Chattahoochee pays for all requirements service. The filing is the outcome of negotiations between the Company and Chattahoochee. The Company agreed to this arrangement in order to meet competition from other potential suppliers of the Chattahoochee load.

The Company requests waiver of the notice requirement so that this filing may be allowed to become effective on January 1, 1997.

*Comment date:* December 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Union Electric Company

[Docket No. ER97–517–000]

Take notice that on November 19, 1996, Union Electric Company (UE), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service dated November 18, 1996 between Illinova Power Marketing, Inc. (IPM) and UE. UE asserts that the purpose of the Agreement is to permit UE to provide transmission service to IPM pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

*Comment date:* December 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Cleveland Electric Illuminating Company and Toledo Edison Company

[Docket No. ER97–529–000]

Take notice that on November 15, 1996, Cleveland Electric Illuminating Company and Toledo Edison Company (the Companies) tendered for filing the

following revised schedules that have been modified to reflect changes in charges for certain ancillary services available under their open access transmission service tariff on file with the FERC:

Service Schedule 3—Regulation and Frequency Response Service
Service Schedule 5—Operating Reserve—Spinning Reserve Service
Service Schedule 6—Operating Reserve—Supplemental Reserve Service
Attachment H—Annual Requirements for Network Integration Transmission Service

The Companies have proposed to make these revised schedules effective as of January 15, 1997. The Companies have also requested that consideration of these revised schedules be consolidated with proceedings pending before the Commission in *Cleveland Electric Illuminating Company and Toledo Edison Company*, Docket No. OA96–204–000.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. Old Dominion Electric Cooperative

[Docket No. ES97–12–000]

Take notice that on November 22, 1996, Old Dominion Electric Cooperative filed an application, under § 204 of the Federal Power Act, seeking authorization to issue short-term debt, from time to time, in an aggregate principal amount of not more than $140 million outstanding at any one time, on or before November 30, 1998 with a final maturity date no later than November 30, 1999.

*Comment date:* December 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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, 888 First 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. 96–30854 Filed 12–3–96; 8:45 am]

BILLING CODE 6717–01–P

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**[Docket No. ER97–481–000, et al.]**

## Northern Indiana Public Service Company, et al.; Electric Rate and Corporate Regulation Filings

November 26, 1996.

Take notice that the following filings have been made with the Commission:

1. Northern Indiana Public Service Company

[Docket No. ER97–481–000]

Take notice that on November 14, 1996, Northern Indiana Public Service Company, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and WPS Energy Services, Inc.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to WPS Energy Services, Inc. under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000. Northern Indiana Public Service Company and WPS Energy Services, Inc. request a waiver of the Commission's sixty-day notice requirement to permit an effective date of November 15, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Northern Indiana Public Service Company

[Docket No. ER97–482–000]

Take notice that on November 14, 1996, Northern Indiana Public Service Company, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and InterCoast Power Marketing Company.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to InterCoast Power Marketing Company under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000. Northern Indiana Public Service Company and InterCoast Power Marketing Company request a waiver of the Commission's sixty-day notice requirement to permit an effective date of November 15, 1996. Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Idaho Power Company

[Docket No. ER97–483–000]

Take notice that on November 15, 1996, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company FERC Electric Tariff No. 5, Open Access Transmission Tariff, between Sierra Pacific Power Company and Idaho Power Company.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Duke Power Company

[Docket No. ER97–485–000]

Take notice that on November 15, 1996, Duke Power Company (Duke), tendered for filing a Market Rate Service Agreement between Duke and Associated Electric Cooperative, Inc. Duke requests that the Agreement be made effective as of October 16, 1996.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. PECO Energy Company

[Docket No. ER97–486–000]

Take notice that on November 15, 1996, PECO Energy Company (PECO), filed a Service Agreement dated November 5, 1996 with New York Power Authority (NYPA) under PECO's FERC Electric tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds NYPA as a customer under the Tariff.

PECO requests an effective date of November 5, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to NYPA and to the Pennsylvania Public Utility Commission.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Virginia Electric and Power Company

[Docket No. ER97–487–000]

Take notice that on November 15, 1996, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between Electric Clearinghouse, Inc. and Virginia Power under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide non-firm point-to-point service to Electric Clearinghouse, Inc. as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. The Dayton Power and Light Company

[Docket No. ER97–488–000]

Take notice that on November 15, 1996, The Dayton Power and Light Company (Dayton), tendered for filing an executed Master Electric Interchange Agreement between Dayton and City of Hamilton Ohio (Hamilton).

Pursuant to the rate schedules attached as Exhibit B to the Agreement, the parties provide to each other power and/or energy for resale.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. UtiliCorp United Inc.

[Docket No. ER97–489–000]

Take notice that on November 15, 1996, UtiliCorp United Inc. (UtiliCorp), filed service agreements with The Power Company of America for service under its non-firm point-to-point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. UtiliCorp United Inc.

[Docket No. ER97–490–000]

Take notice that on November 15, 1996, UtiliCorp United Inc. (UtiliCorp), filed service agreements with InterCoast Power Marketing for service under its non-firm point-to-point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. UtiliCorp United Inc.

[Docket No. ER97–491–000]

Take notice that on November 15, 1996, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Aquila Power Corporation for service under its non-firm point-to-point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Northern Indiana Public Service Company

[Docket No. ER97–492–000]

Take notice that on November 18, 1996, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement between Northern Indiana Public Service Company and Virginia Power.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Virginia Power pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96–1426–000 and allowed to become effective by the Commission. *Northern Indiana Public Service Company*, 75 FERC ¶ 61,213 (1996). Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of December 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Public Service Corporation

[Docket No. ER97–493–000]

Take notice that on November 18, 1996, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and Manitowoc Public Utilities. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. PECO Energy Company

[Docket No. ER97–495–000]

Take notice that on November 18, 1996, PECO Energy Company (PECO), filed a Service Agreement dated November 12, 1996 with Engelhard Power Marketing, Inc. (ENGELHARD) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds ENGELHARD as a customer under the Tariff.

PECO requests an effective date of November 12, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to ENGELHARD and to the Pennsylvania Public Utility Commission.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Electric Power Company

[Docket No. ER97–496–000]

Take notice that on November 18, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement and a Non-Firm Transmission Service Agreement between itself and Sonat Power Marketing L.P. (Sonat). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff. The Transmission Service Agreement allows Sonat to receive non-firm transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume No. 7.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on Sonat, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Pool

[Docket No. ER97–497–000]

Take notice that on November 18, 1996, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by Vermont Energy Ventures, LLC (Vermont Energy). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit Vermont Energy to join the over 100 Participants that already participate in the Pool. NEPOOL further states that

the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Vermont Energy a Participant in the Pool. NEPOOL requests an effective date on or before January 1, 1997, or as soon as possible thereafter for commencement of participation in the Pool by Vermont Energy.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Company of New Mexico

[Docket No. ER97–498–000]

Take notice that on November 18, 1996, Public Service Company of New Mexico (PNM), tendered for filing the 1997 Wholesale Power Agreement between PNM and Texas-New Mexico Power Company (TNP), dated October 18, 1996. Under the 1997 Wholesale Power Agreement, PNM agrees to provide and TNP agrees to purchase 16 MW of Firm Capacity and up to 16 MW per hour of Firm Energy through calendar year 1997.

PNM requests waiver of the Commission's applicable notice requirements to permit the agreement to become effective for service on January 1, 1997. Copies of this filing have been mailed to TNP and the New Mexico Public Utility Commission.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Arizona Public Service Company

[Docket No. ER97–500–000]

Take notice that on November 15, 1996, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide Firm Point-to-Point Transmission Service to APS' Merchant Group under APS' Open Access Transmission Tariff filed in Compliance with FERC Order No. 888.

A copy of this filing has been served on the Arizona Corporation Commission. APS requests that the Service Agreement become effective September 1, 1996.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Allegheny Power Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER97–501–000]

Take notice that on November 15, 1996, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 6 to add AYP Energy, Inc., Florida Power Corporation, the Power Company of America, Vastar Power Marketing, Inc., Virginia Electric and Power Company, and Williams Energy Systems Company to the Allegheny Power Open Access Transmission Service Tariff which has been submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–18–000. The proposed effective date under the Service Agreements is November 14, 1996.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Kentucky Utilities Company

[Docket No. ER97–502–000]

Take notice that on November 15, 1996, Kentucky Utilities company (KU), tendered for filing a service agreements with Virginia Electric and Power Company, Wisconsin Electric Power Company, Federal Energy Sales, Inc., Indiana Municipal Power Agency, Williams Energy Services Company, Coastal Electric Services Company, and Coral Power, L.L.C. under its Power Services (PS) Tariff.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Edison Source

[Docket No. ER97–503–000]

Take notice that on November 18, 1996, Edison Source, tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that Edison Source had completed all the steps for pool membership. Edison Source requests that the commission amend the WSPP Agreement to include it as a member.

Edison Source requests an effective date of November 11, 1996 for the proposed amendment. Accordingly, Edison Source requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Allegheny Power Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER97–505–000]

Take notice that on November 19, 1996, Allegheny Power Service corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 16 to add two (2) new Customers to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available as of November 18, 1996, to CPS utilities and The Power Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Vermont Electric Power Company, Inc.

[Docket No. OA96–23–000]

Take notice that on October 16, 1996, Vermont Electric Power Company, Inc. tendered for filing a letter withdrawing its October 11, 1996 filing in the above-referenced docket.

*Comment date:* December 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Company

[Docket No. OA97–24–000]

Take notice that on November 1, 1996, as corrected on November 19, 1996 Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO), and Southwestern Electric Power Company (SWEPCO) (collectively the ''CSW Operating Companies'') tendered for filing an open access transmission service tariff to comply with Order No. 888 issued in Docket No. RM95–8–000, ''Promoting Wholesale Competition through Open Access Non-Discriminatory Transmission Service by Public

Utilities'' and section 35.28(c)(3)(ii) of the Commission's regulations.

The tariff filed on November 1, 1996 supersedes the transmission service tariffs filed by the CSW Operating Companies on July 9, 1996 in Docket No. OA96–185–000. The CSW Operating Companies request that the tariff be accepted to become effective on January 1, 1997.

The CSW Operating Companies have asked for a waiver of the Commission's regulations to the extent necessary to permit CPL and WTU to participate in the implementation of the transmission access and pricing rule recently adopted by the Pubic Utility Commission of Texas for the use of the Electric Reliability Council of Texas transmission network.

The CSW Operating Companies state that they have served a copy of their compliance filing on each person that is required to be served by Order No. 888 and the Commission's ''Order Clarifying Order Nos. 888 and 889 Compliance Matters,'' issued on July 2, 1996 in Docket No. RM95–8–000, *et al.*

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. Illinois Power Company

[Docket No. OA97–26–000]

Take notice that on November 6, 1996, Illinois Power Company tendered for filing an informational filing pursuant to Order No. 888 concerning an existing wholesale requirements contract with Union Electric.

*Comment date:* December 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Long Sault, Inc.

[Docket No. OA97–27–000]

Take notice that on November 7, 1996, Long Sault, Inc. filed in the above docket a request pursuant to section 35.28(e) of the Commission's Regulations for a waiver of the requirements of Order No. 889 that it establish or participate in an OASIS and implement Standards of Conduct.

*Comment date:* December 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. Tapoco, Inc.

[Docket No. OA97–28–000]

Take notice that on November 7, 1996, Tapoco, Inc. filed in the above docket a request pursuant to section 35.28(e) of the Commission's Regulations for a waiver of the requirements of Order No. 889 that it establish or participate in an OASIS and implement Standards of Conduct.

*Comment date:* December 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. Lockhart Power Company

[Docket No. OA97–29–000]

Take notice that on November 7, 1996, Lockhart Power Company filed in the above docket a request pursuant to section 35.28(e) of the Commission's Regulations for a waiver of the requirements of Order No. 889 that it establish or participate in an OASIS and implement Standards of Conduct.

*Comment date:* December 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

28. Yadkin, Inc.

[Docket No. OA97–30–000]

Take notice that on November 7, 1996, Yadkin, Inc. filed in the above docket a request pursuant to section 35.28(e) of the Commission's Regulations for a waiver of the requirements of Order No. 889 that it establish or participate in an OASIS and implement Standards of Conduct.

*Comment date:* December 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

29. Ajo Improvement Company

[Docket No. OA97–31–000]

Take notice that on November 8, 1996, Ajo Improvement Company filed an application for waiver of requirements of Order 888 and 889.

*Comment date:* December 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

30. Electric Energy, Inc.

[Docket No. OA97–33–000]

Take notice that on November 15, 1996, Electric Energy, Inc. tendered for filing its Open-Access Transmission Tariff filing and cost support.

Electric Energy, Inc. states that its Open-Access Transmission Tariff is filed pursuant to the Commission's Order No. 888, and the Commission's September 11, 1996 Order in this proceeding.

*Comment date:* December 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

31. Pennsylvania Power & Light Company

[Docket No. ER97–484–000]

Take notice that on November 15, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement, dated October 18, 1996, with PP&L Energy Marketing Center (PP&L EMC) for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff. The Service Agreement adds PP&L EMC as an eligible customer under the Tariff.

PP&L requests an effective date of July 9, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to PP&L EMC and to the Pennsylvania Public Utility Commission.

*Comment date:* December 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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, 888 First 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. 96–30824 Filed 12–3–96; 8:45 am]

BILLING CODE 6717–01–P

## Federal Energy Regulatory Commission

### Notice of Transfer of License

November 27, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Transfer of License.

b. Project No: 3472–016.

c. Date Filed: November 14, 1996.

d. Applicant: Southwire Company, Summit Hydropower, Inc.

e. Name of Project: Wyre-Wynd.

f. Location: On the Quinebaug River, in Jewett City, New London and Windham Counties, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact:

Robert J. Middleton, Jr., Alston & Bird, One Atlantic Center, 1201 West Peachtree Street, Atlanta, GA 30309–3424, (404) 881–7000

Duncan S. Broatch, President, Summit Hydropower, Inc., 92 Rocky Hill

Road, Woodstock, CT 06281, (860) 974–1620.

i. FERC Contact: David W. Cagnon, (202) 219–2693.

j. Comment Date: December 20, 1996.

k. Description of Application: The Transfer of License is being sought in connection with the acquisition of the project by Summit Hydropower, Inc. from Southwire Company.

l. This notice also consists of the following standard paragraphs: B, C2, and D2.

B. Comments, Projects, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

*Secretary.*

[FR Doc. 30831 Filed 12–3–96; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5658–8]**

### Proposed Settlement Agreement; Title I SIPs for the State of Colorado

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed settlement agreement; request for public comment.

**SUMMARY:** In accordance with Section 113(g) of the Clean Air Act (''Act''), as amended, 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement concerning litigation instituted against the Environmental Protection Agency (''EPA'') by Citizens for Balanced Transportation (''CBT''). The lawsuit concerns EPA's alleged failure to perform a nondiscretionary duty with respect to taking action on state implementation plans (''SIPs'') regulating carbon monoxide (''CO'') and particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers (''PM–10'') emissions, and/or promulgating a federal implementation plan (''FIP'') as to these control requirements for the Denver Metropolitan Area in the State of Colorado. The proposed settlement agreement generally provides for EPA to sign, within specified timeframes, Notices of Proposed and Final Rulemaking regarding each of the above-mentioned SIPs.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement agreement. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement agreement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate or inconsistent with the requirements of the Act.

Copies of the settlement agreement are available from Phyllis Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 260–7606. Written comments should be sent to Michael A. Prosper at the above address and must be submitted on or before January 3, 1997.

Dated: November 27, 1996.

Scott C. Fulton,

*Acting General Counsel.*

[FR Doc. 96–30868 Filed 12–3–96; 8:45 am]

BILLING CODE 6560–50–M

**[FRL–5658–9]**

### Grants: Expanded Availability of Financial Assistance Program; Wetlands Protection—State/Tribal Development Grants; Local Entity Eligibility

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of expanded grant eligibility.

**SUMMARY:** The Environmental Protection Agency (EPA) announces the availability of a revised financial assistance program (66.461, ''Wetlands Protection—State/Tribal Development Grants'') to support development of wetlands protection programs and refinement/enhancement of existing wetlands protection programs. This grant program was established in fiscal year 1990 to support state and tribal wetlands protection programs. In fiscal year 1997, the grant program was expanded to include direct eligibility of local entities to receive grant funds to support local wetlands protection efforts.

Grants will continue to be awarded under section 104(b)(3) of the Clean Water Act for research, investigation, experiments, training, demonstrations, surveys, and studies related to development of wetlands protection programs. Under existing statutory language, grant funds cannot be used for operational support of wetlands protection programs.

National guidance for the State/Tribal Wetlands Grant Program is available from the contacts listed below or from the EPA Wetlands Hotline (1–800–832–7828).

**FOR FURTHER INFORMATION CONTACT:**

*Region I:* Cathy Manwaring, US EPA Region I, John F. Kennedy Building, Boston, MA 02203, 617–565–4429.

*Region II:* John Cantilli, Wetlands Protection Section, US EPA Region II, 290 Broadway, New York, NY 10007, 212–637–3810.

*Region III:* Alva Brunner, Wetlands Program, US EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107, 215–566–2715.

*Region IV:* Pete Kalla, Wetlands Protection Section, US EPA Region IV, 100 Alabama Street, SW, Atlanta, GA 30303, 404–562–9414.

*Region V:* Sue Elston, Watersheds Team, US EPA Region V, 77 West Jackson Boulevard, Chicago, IL 60604, 312–886–6115.

*Region VI:* Pam Mintz, US EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202, 214–665–8334.

*Region VII:* Kathy Mulder, Water Resources Protection Branch, US EPA Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, 913–551–7542.

*Region VIII:* Dave Rathke, US EPA Region VIII, 999 18th Street—Suite 500, Denver, CO 80202, 303–312–6223.

*Region IX:* Mary Butterwick, Wetlands and Sediments Management Section, US EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, 415–744–1985.

*Region X:* Steve Roy, Aquatic Resources Unit, US EPA Region IX, 1200 Sixth Avenue, Seattle, WA 98101, 206–553–6221.

*Headquarters:* Lori Williams, Wetlands Division (4502F), Office of Wetlands, Oceans, and Watersheds, US EPA, 401 M Street, SW, Washington, DC 20460, 202–260–5084.

**SUPPLEMENTARY INFORMATION:** Under the new, expanded eligibility provision, EPA will award grants directly to local entities for meritorious projects that support local efforts to better protect wetland resources. Entities eligible to receive grants under this provision include local government agencies (city, county, regional), regional planning boards, local conservation districts and other nonprofit organizations.

All grants are awarded on a competitive basis. EPA's Regional Offices will receive all grant proposals and will review and select state/tribal grants for funding. Grants for the local wetland efforts will be forwarded to Headquarters for funding decisions. In future years, we anticipate that grants for local entities will be selected and awarded by EPA's Regional Offices. In FY97, EPA established a $500,000 set aside to support this expanded eligibility for local wetland grants.

All grants applications must conform with the requirements of the grant program including the 25% match, meet applicable deadlines for submitting proposals to EPA's Regional Offices, and be for development/refinement of wetland programs and not for operation of a wetlands program.

States, tribes and other eligible entities, including local entities, are encouraged to work closely with their appropriate Regional Office to develop a formal grant application that effectively addresses the objectives of this grant program.

Dated: November 27, 1996.

Robert H. Wayland, III,

*Director, Office of Wetlands, Oceans and Watersheds.*

[FR Doc. 96–30864 Filed 12–3–96; 8:45 am]

**BILLING CODE 6560–50–P**

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**[OPP–00462; FRL–5577–3]**

## Food Safety Advisory Committee; Open Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** As required by section 9(c) of the Federal Advisory Committee Act (Public Law 92–463), EPA's Office of Pesticide Programs (OPP) is giving notice of the fourth, and final, meeting of the Food Safety Advisory Committee (FSAC).

**DATES:** This meeting will take place Thursday, December 5, 1996 from 8:30 a.m. to 4:00 p.m.

**ADDRESSES:** The meeting will be held at: The Sheraton Premiere at Tysons Corner, 9661 Leesburg Pike, Vienna, VA, 22182. From I–495 or Route 66, take Route 7 West to Tysons Corner (exit 10 from 495 or exit 66–B from Route 66). After 2 miles, make a left on Westwood Center Drive and a quick right to the service road which will take you to the Hotel. From Washington National Airport, take 395 to 495 and then follow above directions. From Dulles International Airport, take the Express Way toward Washington, D.C., proceed for about 13 miles then take exit for Route 7 East. At first traffic light, make a U-turn to the right on the service road which will take you to the Hotel.

**FOR FURTHER INFORMATION CONTACT:** By mail: Margie Fehrenbach, Designated Federal Officer or Carol Peterson, Office of Pesticide Programs (7501C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, 22202; (703) 305–7090; e-mail: fehrenbach.margie@epamail.epa.gov or peterson.carol@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

I. Background

The Food Quality Protection Act (FQPA), signed into law on August 3, 1996, (Public Law 104–170) amends the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA) to provide greater protection for U.S. consumers, particularly infants and children.

EPA formed the FSAC as a subcommittee under the auspices of the National Advisory Council for Environmental Policy and Technology (NACEPT) to provide a structured environment for exchange of information and ideas on regulatory, policy, and implementation issues. These discussions will assist EPA in the implementation of the new food safety statute and are essential if EPA is to be responsive to the needs of the public and the affected industry.

II. Participation

The FSAC is composed of a balanced group of participants from the following sectors: pesticide user and commodity groups; environmental/public interest groups, including the general public; federal and state governments; academia; industry; the public health community; and congressional offices. FSAC meetings are open to the public. Outside statements by observers are welcome. Oral statements will be limited to five minutes, and it is preferred that only one person per organization present the statement. Any person who wishes to file a written statement can do so before or after an FSAC meeting. These statements will become part of the permanent file and will be provided to FSAC members for their information. Materials related to the Food Safety Advisory Committee are maintained in a public record. These materials are available for inspection from 8 a.m. to 4 p.m. Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

III. Meeting Schedule

The agenda for this meeting will include: a review of previous FSAC meeting agenda topics, and discussion of EPA's draft implementation plan outline (with a focus on approaches to scientific assessment, interim decision logic for screening risks, the tolerance reassessment program, and minor uses).

List of Subjects

Environmental protection.

Dated: November 27, 1996.

Daniel M. Barolo,

*Director, Office of Pesticide Programs.*

[FR Doc. 96–30989 Filed 12–2–96; 2:05 pm]

**BILLING CODE 6560–50–F**

**[OPP–00459; FRL–5574–5]**

## Pesticide Partnership Meeting Introducing New Audio Technologies; Open Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is announcing an open meeting, which the public is invited to attend, to explore ideas about new technology that could allow recorded, audio messages to be activated to re-enforce directions for safe and proper use, storage and disposal of pesticides and pesticide-related products. Attendees will be given an opportunity to discuss the potential usefulness of this approach and its practicality in reducing pesticide misuse.

**DATES**: The meeting will take place on December 17, 1996, from 8:00 a.m. to 5:30 p.m.

**ADDRESSES:** The meeting will be held at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Jim Downing, (703) 308–8641, Downing.jim@epamail.epa.gov; Amy Breedlove, (703) 308–8362, breedlove.amy@epamail.epa.gov; or Laura Dye, (703) 305–6451, dye.laura@epamail.epa.gov; Environmental Fate and Effects Division, Office of Pesticide Programs (7507C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

To receive an invitational letter, an agenda of the day's events, and a registration form, please contact one of the above individuals. Fax your completed registration form to Laura Dye at (703) 308–3259. You will receive confirmation of your registration by the Internet, fax or telephone. Please register early to ensure participation, because space is limited to 300 participants.

**SUPPLEMENTARY INFORMATION:** EPA has three primary meeting objectives. The first is to provide an occasion for an initial airing of ideas, issues and/or concerns about the use of this technology with pesticides and pesticide-related products. The second objective is to discuss regulatory policy, compliance and enforcement issues associated with the possible use of the technology. Third, the meeting is an opportunity to foster partnerships among EPA, State Agencies, industry and other potential stakeholders.

At the meeting, participants will be introduced to new micro-computer chip, battery and product housing technologies. EPA staff will provide additional background on the audio message concept and discuss how it may relate to other efforts to improve product labeling. EPA's Office of Enforcement and Compliance Assurance will also provide preliminary perspectives on the use of audio message technology with pesticides. In addition, a representative of the Association of American Pesticide Control Officials will provide state perspectives. A representative of the Agricultural Container Research Council will summarize current programs in agricultural container recycling and how new audio message technology may ''fit in'' with present programs.

Meeting registration is free; however, personal travel arrangements, overnight accommodations and meals will be the responsibility of the participant.

List of Subjects

Environmental protection.

Dated: November 26, 1996.

Joseph J. Merenda, Jr.

*Director, Environmental Fate and Effects Division, Office of Pesticide Programs.*

[FR Doc. 96–30745 Filed 12–3–96; 8:45 am]

**BILLING CODE 6560–50–F**

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the Federal Register.

*Agreement No.:* 202–010979–026

*Title:* Caribbean Shipowners Association

*Parties:*

Bernuth Lines, Ltd.
Cari Freight Shipping Co. Ltd.
Interline Connection, NV
Seaboard Marine, Ltd.
Tecmarine Lines, Inc.
Crowley American Transport, Inc.
Compagnie Generale Maritime
Seafreight Line, Ltd.
Tropical Shipping & Construction Co., Ltd.
Blue Caribe Line, Ltd.
Puerto Rico Maritime Shipping Authority

*Synopsis:* The proposed amendment would permit the parties to charter space among themselves and to rationalize their vessel services in the Agreement trade, it would also reconfigure the geographic voting sections of the Agreement, and delete two carriers as parties to the Agreement. The parties have requested a shortened review period.

*Agreement No.:* 224–201008

*Title:* South Carolina State Ports Authority/P&O Service Agreement

*Parties:*

South Carolina State Ports Authority (''Ports Authority'')
P&O Containers Ltd. (''P&O'')

*Synposis:* The proposed agreement permits the Ports Authority to provide P&O, in its service between the Far East and the U.S. Atlantic via the Suez Canal, with terminal services at the Port of Charleston through May 12, 1998.

By Order of the Federal Maritime Commission.

Dated: November 27, 1996.

Joseph C. Polking,

*Secretary.*

[FR Doc. 96–30781 Filed 12–3–96; 8:45 am]

**BILLING CODE 6730–01–M**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have 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 the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 17, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. Henry McCaslin, Jr.*, Cleveland, Mississippi; to acquire an additional 8.73 percent, for a total of 24.93 percent, of the voting shares of Rosedale First National Corporation, Rosedale,

Mississippi, and thereby indirectly acquire First National Bank, Rosedale, Mississippi.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Michael J. Klaassen*, Trustee of the Theodore K. Klaassen Revocable Living Trust and the Talma B. Klaassen Revocable Living Trust, all of Wichita, Kansas; to acquire an additional 65.19 percent, for a total of 66.58 percent, of the voting shares of Chisholm Trail Financial Corporation, Wichita, Kansas, and thereby indirectly acquire First National Bank, Derby, Kansas, and Chisholm Trail State Bank, Wichita, Kansas.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. Wilma McKnight*, Throckmorton, Texas; to acquire an additional 14.59 percent, for a total of 32.99 percent, and Nan McKinney Daws, Wichita Falls, Texas, to acquire an additional 5.99 percent, for a total of 27.79 percent of the voting shares of Throckmorton Bancshares, Inc., Throckmorton, Texas, and thereby indirectly acquire First National Bank, Throckmorton, Texas.

Board of Governors of the Federal Reserve System, November 27, 1997.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 96–30783 Filed 12–3–96; 8:45 am]

BILLING CODE 6210–01–F

## Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 27, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Bando McGlocklin Capital Corporation*, Pewaukee, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Investors Bank, Pewaukee, Wisconsin, a *de novo* bank.

In connection with this application, Applicant also has applied to continue to engage through Bando McGlocklin Small Business Lending Company, Pewaukee, Wisconsin, and Bando McGlocklin Investment Corporation, Pewaukee, Wisconsin, in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

*2. CH and JD Byrum, LLC*, Indianapolis, Indiana; to acquire 52.4 percent of the voting shares of American State Corporation, Lawrenceburg, Indiana, and thereby indirectly acquire American State Bank, Lawrenceburg, Indiana.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. International Bancorporation*, Golden Valley, Minnesota; to merge with Carlton County Bancorporation, Inc., Cloquet, Minnesota, and thereby indirectly acquire City National Bank of Cloquet, Cloquet, Minnesota.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. First Team Resources Corporation*, Derby, Kansas; to become a bank holding company by acquiring 97.12 percent of the voting shares of First National Bank, Derby, Kansas.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. Rotan Bancshares, Inc.*, Rotan, Texas, and Rotan Delaware Bancshares, Inc., Dover, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of First National Bank, Rotan, Texas.

Board of Governors of the Federal Reserve System, November 27, 1996.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 96–30784 Filed 12–3–96; 8:45 am]

BILLING CODE 6210–01–F

## Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for 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 on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of

interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 17, 1996.

A. Federal Reserve Bank of Cleveland (R. Chris Moore, Senior Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

*1. CoBancorp, Inc.*, Elyria, Ohio; to acquire Jefferson Savings Bank, West Jefferson, Ohio, and thereby engage in permissible savings association activities, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 27, 1996.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 96–30785 Filed 12–3–96; 8:45 am]

BILLING CODE 6210–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Meeting: AIDS Research Advisory Committee, NIAID

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, on January 24, 1997 in Conference Rooms E1/E2, Natcher Building on the campus of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland.

The entire meeting will be open to the public from 8 a.m. until adjournment. The AIDS Research Advisory Committee (ARAC) advises and makes recommendations to the Director, National Institute of Allergy and Infectious Diseases, on all aspects of research on HIV and AIDS related to the mission of the Division of AIDS (DAIDS).

The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps/obstacles to progress. Attendance by the public will be limited to space available.

Ms. Jean S. Noe, Acting Executive Secretary, AIDS Research Advisory Committee, DAIDS, NIAID, NIH, Solar Building, Room 2A20, telephone 301–496–0545, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Noe in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: November 25, 1996.

Paula N. Hayes,

*Acting Committee Management Officer, NIH.*

[FR Doc. 96–30786 Filed 12–3–96; 8:45 am]

BILLING CODE 4140–01–M

### National Institute of Allergy and Infectious Diseases; Notice of Meetings: National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee; Allergy and Immunology Subcommittee; Microbiology and Infectious Diseases Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on January 23–24, 1997. Meetings of the Council, NAAIDC Allergy and Immunology Subcommittee, NAAIDC Microbiology and Infectious Diseases Subcommittee and the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee will be held at the National Institutes of Health, Building 31C, Bethesda, Maryland.

The meeting of the full Council will be open to the public on January 23 in Conference Room 10 from approximately 1 p.m. until 3:30 p.m. for opening remarks of the Institute Director, discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program will include a discussion of the On-Line Review Pilot Program, an overview of reinvention and review issues being undertaken within the Division of Research Grants, and a presentation on emerging infectious diseases.

On January 24 the meetings of the NAAIDC Allergy and Immunology Subcommittee and NAAIDC Microbiology and Infectious Diseases Subcommittee will be open to the public from 8:30 a.m. until adjournment. The subcommittees will meet in Building 31C, conference rooms 9 and 10 respectively.

The meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee will be open to the public from 8 until adjournment, on January 24. The subcommittee will meet in Conference Rooms E1/E2 at the Natcher Building.

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, the meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately four hours for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 8:30 a.m. until approximately 1 p.m. on January 23, in conference rooms 8, 9 and 10 respectively. The meeting of the full Council will be closed from 4 p.m. until recess on January 23 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. Lawrence Deyton, Acting Director, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 3C20, 6003 Executive Boulevard, Rockville, Maryland 20892, telephone 301–496–7291, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855 Immunology, Allergic and Immunologic Diseases Research, 93.856,

Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: November 25, 1996.

Paula N. Hayes,

*Acting Committee Management Officer, NIH.*

[FR Doc. 96–30787 Filed 12–3–96; 8:45 am]

**BILLING CODE 4140–01–M**

## National Institute of General Medical Sciences; Notice of 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 advisory meeting of the National Institute of General Medical Sciences:

*Committee Name:* National Institute of General Medical Sciences Special Emphasis Panel.

*Date:* December 20, 1996.

*Time:* 10:00 a.m. (Teleconference).

*Place:* Telephone Conference, 45 Center Drive, Bethesda, MD 20892–6200.

*Contact Person:* Bruce K. Wetzel, Ph.D., Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–19K, Bethesda, MD 20892–6200, 301–594–3907.

*Purpose:* To review a research center application.

This 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. The discussions of these applications 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.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS])

Dated: November 25, 1996.

Paula N. Hayes,

*Acting Committee Management Officer, NIH.*

[FR Doc. 96–30788 Filed 12–3–96; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4011 N–04]**

## Notice of No Awards Under the FY 1996 NOFA for Technical Assistance for the John Heinz Neighborhood Development Program

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice of No Awards under the FY 1996 Notice of Funding Availability (NOFA) for Technical Assistance for the John Heinz Neighborhood Development Program.

**SUMMARY:** For reasons set forth in the Supplementary Information section of this document, this Notice advises the public that HUD did not award funds under the Fiscal Year 1996 NOFA for Technical Assistance for the John Heinz Neighborhood Development Program.

**EFFECTIVE DATE:** December 4, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ophelia H. Wilson, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 7220, Washington, D.C. 20410; telephone: (202) 708–2186 ext. 4390. (This is not a toll-free number). For hearing and speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** On August 12, 1996 (61 FR 41936), HUD published in the Federal Register a Notice of Funding Availability (NOFA) for Technical Assistance for the John Heinz Neighborhood Development Program. The NOFA announced the availability of $132,978 for Fiscal Year 1996 under the John Heinz Neighborhood Development Program, to eligible technical assistance providers to provide technical assistance to eligible neighborhood development organizations.

HUD was unable to select a technical assistance provider from the 14 applications received due to the fact that the applicants were either: (1) ineligible applicants; (2) applicants that did not propose to provide technical assistance to eligible neighborhood-based organizations; (3) applicants that proposed to serve only a single geographic area; or (4) applicants that did not respond to the Factors for Award.

Therefore, no award/awards were made under the August 12, 1996 NOFA.

Dated: November 27, 1996.

Andrew Cuomo,

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 96–30802 Filed 12–03–96; 8:45 am]

**BILLING CODE 4210–29–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

## Notice of Receipt of Application for Permit

The following applicant has 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–822525

*Applicant:* Joe McGlincy, Southern Forestry Consultants, Bainbridge, Georgia

The applicant requests a permit to take (capture, band, monitor nests and populations) the endangered Red-cockaded Woodpecker, *Picoides borealis*, throughout the species' range in North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, Tennessee, and Kentucky for the purpose of enhancement of survival of the species.

Written data or comments on 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: David Dell, Permit Biologist). Telephone: 404/679–7313; Fax: 404/679–7081.

Dated: November 22, 1996.

Jerome M. Butler,

*Acting Regional Director.*

[FR Doc. 96–30801 Filed 12–03–96; 8:45 am]

**BILLING CODE 4310–55–P**

## Bureau of Land Management

**[MT–924–5420–00–E026; MTM 85101]**

## Application for Recordable Disclaimer of Interest; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Brian K. Randall and Garlyn A. Randall have applied for a recordable disclaimer of interest from the United States under the provisions of Section 315 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1745 (1994), for the following described land: That portion of Lot 1 of sec. 9, T. 11 N., R. 16 W., Montana Principal Meridian, described as follows: Beginning at a point on the East line of said Section 9 a distance of 516 feet South of the Quarter Section Corner on said East line; thence Northwesterly along the center line of the original main track of the Northern Pacific Railway, which center line makes an angle of 78°56′ with said East line, 495 feet; thence Northeasterly at right angles, 100 feet to the true point of beginning; thence continuing Northeasterly 100 feet; thence Northwesterly parallel with said center line 200 feet; thence Southwesterly at right angles 90 feet; thence Southeasterly parallel with said center line 50 feet; thence Southwesterly at right angles 10 feet; thence Southeasterly parallel with said center line, 150 feet to the true point of beginning. The land described contains .44 acre.

**DATES:** Comments or objections should be received by March 4, 1997.

**ADDRESSES:** Comments or objections should be sent to the State Director, Montana State Office, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107.

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

**SUPPLEMENTARY INFORMATION:** The above-described land was granted by the United States to the Northern Pacific Railroad Company by patent No. 110, dated May 7, 1904. The Bureau of Land Management (BLM) has determined that the United States has no claim to or interest in the land described and issuance of the proposed recordable disclaimer of interest would remove a cloud on the title to the land.

All persons who wish to submit comments or objections in connection with the proposed disclaimer may do so in writing on or before March 4, 1997. If no objections are received, the disclaimer will be issued.

Dated: November 22, 1996.

Thomas P. Lonnie,

*Deputy State Director, Division of Resources.*

[FR Doc. 96–30885 Filed 12–3–96; 8:45 am]

**BILLING CODE 4310–DN–P**

**[NM–030–1430–00; NMNM96508]**

## Notice of Reality Action; Recreation and Public Purposes (R&PP) Act Classification; Sierra County, New Mexico

**AGENCY:** Bureau of Land Management (BLM) Interior.

**ACTION:** Notice of Realty Action; R&PP Act Classification.

**SUMMARY:** The following public land in Sierra County, New Mexico has been examined and found suitable for classification for lease or conveyance to Sierra County under the provision of the R&PP Act, as amended (43 U.S.C. 869 et seq.). Sierra County/Las Palomas Volunteer Fire Department Station proposes to use the land for a fire department.

T. 14 S.,R. 5W., NMPM
Section 22, NE¼SE¼NE¼.
Containing 2.5 acres, more or less.

**DATES:** Comments regarding the proposed lease/conveyance or classification must be submitted on or before January 21, 1997.

**ADDRESSES:** Comments should be sent to the Bureau of Land Management, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

**FOR FURTHER INFORMATION CONTACT:** Lorraine J. Salas at the address above or at (505) 525–4388.

**SUPPLEMENTARY INFORMATION:** Lease or conveyance will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

4. Subject to right-of-way NMNM57037 for the purpose of a powerline granted to Sierra Electric Cooperative, Inc.

5. Subject to right-of-way NMNM57095 for the purpose of a road granted to the Sierra County.

6. Subject to right-of-way NMNM44852 for the purpose of a buried communications cable granted to Contel of the West.

7. Upon determination by the authorized officer that the project has successfully been completed in accordance with the approved plan of development and management, the subject parcel will be conveyed. The mineral estate will be conveyed simultaneously pursuant to Section 209 of the Act of October 21, 1976 (43 U.S.C. 1719).

8. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Cruces District, 1800 Marquess, Las Cruces, New Mexico.

Upon publication of this notice in the Federal Register, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. On or before January 21, 1997, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico, 88005. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

*Classification Comments:* Interested parties may submit comments involving the suitability of the land for Las Palomas Fire Department Station. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

*Application Comments:* Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proposed administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for Las Palomas Fire Department Station.

Dated: November 26, 1996.

Timothy M. Murphy,

*Acting District Manager.*

[FR Doc. 96–30800 Filed 12–3–96; 8:45 am]

**BILLING CODE 4310–VC–M**

## National Park Service

### Draft Addendum Valley Housing Plan for the 1992 Supplement to Final Environmental Impact Statement General Management Plan, Yosemite National Park; Notice of Availability

**SUMMARY:** Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190 as amended), the National Park Service (NPS), Department of the Interior, has prepared this addendum to the draft supplement to the final environmental impact statement for the general management plan (plan) for Yosemite National Park, California. These documents focus on identifying and assessing the potential impacts of proposed Yosemite housing initiatives.

In 1992 the NPS issued the Draft Supplement to the Final Environmental Impact Statement for the General Management Plan, Yosemite Valley Housing Plan (DES 92–29). This 1992 Draft Supplement presented a number of ideas that were open to comment and revision, including a proposed action and four alternatives (A, B, C, and D). In response to extensive comment, this addendum identifies and analyzes two additional alternatives (including a new proposed action) which further address the challenges inherent in housing the requisite number of NPS and concession employees in Yosemite National Park. For purposes of clarification the new alternatives are designated Alternative E (the new proposed action) and Alternative F. The original proposed action is now designated as Alternative G. As with the original document, all potential impacts are analyzed and mitigating actions are described.

Once approved, the plan will guide management of employee housing for Yosemite National Park over the next 15 to 20 years. This process will be culminated with the filing of a Final Supplement to the Final Environmental Impact Statement for the General Management Plan, Yosemite Valley Housing Plan, and timely notice of an approved Record of Decision will be published in the Federal Register.

Alternative E, the new proposed action, would add 689 new employee beds at El Portal. A total of 1,014 employees would remain in housing in the valley, and 345 would move out of the valley. All tent cabins and other substandard housing would be removed. Headquarters for both the national park and the concession would be moved to El Portal.

Alternative F would also relocate 345 employee beds from the valley. Most of the new housing would be in El Portal (528 employees). The headquarters for the park and the concession would be moved to Wawona, and housing for the related employees (161) would also be constructed there.

**COMMENTS:** Written comments on the draft addendum should be directed to the attention of Superintendent, Yosemite National Park, P.O. Box 577, Yosemite National Park, California, 95389. All comments must be received not later than 90 days after notice of the filing of document is published by the Environmental Protection Agency in the Federal Register.

**SUPPLEMENTARY INFORMATION:** Copies of the draft addendum Yosemite Valley Housing Plan and the 1992 Draft Supplement will be available for public inspection at the park and at area libraries. Requests for copies of either document should be directed to the Superintendent (at the above address), or by telephone at (209) 372–0202. The draft addendum is also available for review on the Internet via the NPS Planning Home Page http://www.nps.gov/planning/.

Dated: November 26, 1996.

Bruce Kilgore,

*Acting Field Director, Pacific West Area.*

[FR Doc. 96–30856 Filed 12–03–96; 8:45 am]

**BILLING CODE 4310–70–P**

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects From the Island of Maui in the Possession of the Bernice Pauahi Bishop Museum, Honolulu, HI

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects from the Island of Maui in the possession of the Bernice Pauahi Bishop Museum, Honolulu, HI.

A detailed assessment and inventory of the human remains and associated funerary objects from the Island of Maui has been made by Bishop Museum's professional staff, in consultation with representatives of Hui Alanui o Makena, the Maui / Lāna'i Island Burial Council, Nā Kūpuna o Maui, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, and the Office of Hawaiian Affairs.

The human remains and associated funerary objects were found at various times and locations on the island of Maui. In 1916, Museum Anthropologist John F.G. Stokes and his wife collected the remains of four individuals, each with animals parts assumed to be associated funerary objects, from Pihana Heiau, Wailuku. In 1925, Annie M. Alexander donated partial remains of nine individuals from Pā'ia Beach. In 1928, Winslow M. Walker, Museum Assistant Ethnologist, recovered human remains and associated funerary objects during archaeological excavations and surveys in the Hononana Gulch caves (four partial remains and one broken gourd) and from an unnamed cave on Maui (three skulls, one set of crania fragments and one pipe). In 1957, Kenneth P. Emory, Museum Ethnologist, collected seven partial human remains, one animal mandible and one wood fragment from a cave in Pā'ia. In 1962, Robert J. Holt donated one skull from Waiehu. In 1965, Mr. and Mrs. Wescott donated one fragmentary mandible from Kū'au Beach, Pā'ia. In 1966 and 1968, Museum excavations recovered twenty-six remains, three shell fragments, one rock, and one piece of charcoal at Waiehu, and Sprecklesville. In 1967, William McElwaine donated one fragmentary adult cranium from Pa'uwela. In 1968, a joint Bishop Museum, Mauna'olu College, and Maui Community College project excavated one incomplete infant skeleton with one anklet near Kū'au. In 1969, James H. Jackson, donated one cranium from Ho'okipa Park. In 1981, excavations at the site of Mākena Surf Hotel, resulted in the recovery of two incomplete sets of remains. In 1982, Museum excavations recovered partial remains of two individuals and one unrelated tooth from Waiehu Heights. In 1982, Audrey Reed donated one skull from Kahului. At an unknown date, the Museum received one humerus from Wailuku.

No known individuals were identified. No attempt was made to determine the age of these human remains at the request of the above mentioned Native Hawaiian organizations. Geographic location of the remains, types of associated funerary objects, and method of burial preparation are typical of Native Hawaiians ancestral to contemporary Native Hawaiians.

Based on the above mentioned information, officials of the Bernice Pauahi Bishop Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of

66 individuals of Native American ancestry. Museum officials have also determined that, pursuant to 25 U.S.C. 3001 (3)(A) and (B) the 14 items listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, Bishop Museum officials have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the human remains and associated funerary objects and Hui Alanui o Makena, the Maui / Lāna'i Island Burial Council, Nā Kūpuna o Maui, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, and the Office of Hawaiian Affairs.

This notice has been sent to officials of Hui Alanui o Makena, Maui / Lāna'i Island Burial Council, Nā Kūpuna o Maui, the Office of Hawaiian Affairs, and Hui Mālama I Nā Kūpuna 'O Hawai'i Nei. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Janet Ness, Registrar, Bernice Pauahi Bishop Museum, 1525 Bernice St., Honolulu, HI 96817–0916 telephone: (808) 848–4105, before January 3, 1997. Repatriation of the human remains and associated funerary objects to Hui Alanui o Makena, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, Maui / Lāna'i Island Burial Council, Nā Kūpuna o Maui, and the Office of Hawaiian Affairs will begin after that date if no additional claimants come forward.

Dated: November 22, 1996.

Richard C. Waldbauer,

*Acting, Departmental Consulting Archeologist,*

*Acting Manager, Archeology and Ethnography Program.*

[FR Doc. 96–30816 Filed 12–3–96; 8:45 am]

**BILLING CODE 4310–70–F**

## Notice of Inventory Completion of Native American Human Remains and Associated Funerary Objects From the Island of Hawaii in the Possession of the Bernice Pauahi Bishop Museum, Honolulu, HI

**AGENCY:** National Park Service, Interior,

**ACTION:** Notice,

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003 (d), of the completion of the inventory of human remains and associated funerary objects from the Island of Hawaii in the possession of the Bernice Pauahi Bishop Museum Honolulu, HI.

A detailed inventory and assessment of these human remains has been made by Bishop Museum's professional staff and representatives of Hawaii Island Burial Council, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, Department of Hawaiian Homelands, and the Office of Hawaiian Affairs.

The human remains were found at various times and locations on the island of Hawaii. Human remains representing a minimum of sixteen individuals, along with one funerary object, were recovered at various times from a lava tube complex in Kawaihae, Kohala. In 1905, William Wagner and Friedrich A. Haenisch removed two wooden bowls, one wooden image, and one wig, objects which incorporated Native Hawaiian teeth and hair. These objects were transferred to the museum in 1907. In 1935, J. Everett Brumaghim removed three partial human remains and one coffin part that were transferred to the museum in 1939. In 1939, Museum Ethnologist Kenneth P. Emory and Keith K. Jones removed nine skulls. In 1919, John F.G. Stokes donated the remains of 32 individuals and five funerary objects that he had found in the sand, south of the pu'uhonua wall outside the current boundary of Honaunau National Park. In 1924, E.A. Lister donated the remains of one individual and one funerary object that he had found during clearing activities at Mahukona. In 1932, Kenneth P. Emory and Edwin H. Bryan recovered the remains of one individual during a survey at Kapua. In 1933, Kenneth P. Emory donated the remains of 33 individuals and six funerary objects from Honomolino. In 1939, John M. Warinner sold the museum the remains of two individuals from Kawaihae. In 1939, Kenneth P. Emory recovered the remains of eight individuals and six funerary objects at Kalala. In 1951, Charles E. Snow donated the remains of nine individuals and eight funerary objects originally uncovered in 1946 by tidal wave action in Waipio Valley. In 1951, an unknown person donated the remains of one individual from Kaloko. In 1959, an unknown person donated the remains of one individual from Hokukano. In 1960, an unknown person donated the remains of one individual from Kumukahi. In 1964, Ronald Fellows donated the remains of three individuals and one funerary object from Kealakekua. In 1967, Ronald Lin donated the remains of one individual originally acquired in 1963 on the beach in Waipio Valley. In 1967, an unknown person donated the remains of four individuals from Kailua-Kona. In 1970, Yosihiko Sinoto collected the remains of one individual at Waiahukini. In 1975, Beth Cutting donated the remains of one individual from the island of Hawaii. Ms. Cutting originally acquired these remains from an antique store. At an unknown date, an unknown person donated the remains of five individuals from Keauhou. At an unknown date, an unknown person donated the remains of one individual from Kiilae.

No known individuals were identified. No attempt was made to determine the age of these human remains at the request of the Hawaii Island Burial Council, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, and the Office of Hawaiian Affairs. The various geographic locations mentioned above, and the style and type of the identified burials are all consistent with documented Hawaiian occupation of the island of Hawaii. Officials of the Bishop Museum feel that the undocumented human remains are more than likely Native Hawaiian.

Based on the above information, officials of Bishop Museum have determined, pursuant to 43 CFR 10.2 (d)(1), that the human remains listed above represent the physical remains of 121 individuals of Native American ancestry. Officials of Bishop Museum have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 28 objects listed above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Officials of Bishop Museum have determined pursuant to 25 U.S.C. 3001 (2) that there is a relationship of shared group identity which can be reasonably traced between these remains and present-day members of Hawaii Island Burial Council, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, Department of Hawaiian Homelands, and the Office of Hawaiian Affairs.

This notice has been sent to the Hawaii Island Burial Council, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, and the Office of Hawaiian Affairs. Representatives of any Native Hawaiian organization which believes itself to be culturally affiliated with these human remains should contact Janet Ness, Registrar, Bernice Pauahi Bishop Museum, 1525 Bernice Street, Honolulu, Hawaii, 96817-0916, 808-848-4105, before January 3, 1997. Repatriation of the human remains to the Hawaii Island Burial Council, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, Department of Hawaiian Homelands and the Office of Hawaiian Affairs may

begin after that date if no additional claimants come forward.

Dated: November 22, 1996.

Richard C. Waldbauer,

*Acting, Departmental Consulting Archeologist,*

*Acting Manager, Archeology and Ethnography Program.*

[FR Doc. 96–30818 Filed 12–3–96; 8:45 am]

**BILLING CODE 4310–70–F**

## Notice of Inventory Completion of Native American Human Remains From the Island of Lāna'i in the Possession of the Bernice Pauahi Bishop Museum, Honolulu, HI

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003 (d), of the completion of the inventory of human remains from the Island of Lāna'i in the possession of the Bernice Pauahi Bishop Museum Honolulu, HI.

A detailed inventory and assessment of these human remains has been made by Bishop Museum's professional staff and representatives of Hui Mālama I Nā Kūpuna 'O Hawai'i Nei and the Office of Hawaiian Affairs Hui Mālama Pono O Lāna'i, Native Hawaiian organizations under 25 U.S.C. 3001 (11).

The human remains were found at various times and locations on the island of Lāna'i. About 1954, a small clipping of hair was recovered from a non-burial site in Maunalei Gulch by Bishop Museum anthropologist Kenneth P. Emory. In 1957, George V. Whisenand donated a cloth bundle from Lāna'i one human tooth to the Bishop Museum. At an unknown date, an anonymous source donated one human tooth from an unknown location on Lāna'i.

No known individuals were identified. No attempt was made to determine the age of these human remains at the request of Hui Mālama Pono O Lāna'i. The geographic location of the human remains from Maunalei Gulch is consistent with documented Hawaiian occupation of the area. Inclusion of Native Hawaiian remains in bundles is historically and ethnographically documented. Officials of the Bishop Museum feel that the single tooth from the unknown location on Lāna'i is more than likely Native Hawaiian.

Based on the above information, officials of Bishop Museum have determined, pursuant to 43 CFR 10.2 (d)(1), that the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of Bishop Museum have determined pursuant to 25 U.S.C. 3001 (2) that there is a relationship of shared group identity which can be reasonably traced between these remains and present-day members of Hui Mālama Pono O Lāna'i, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei and the Office of Hawaiian Affairs.

This notice has been sent to Hui Mlama Pono O Lna'i, Hawaiian Civic Club of Lāna'i, the Maui / Lāna'i Island Burial Council, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, and the Office of Hawaiian Affairs. Representatives of any Native Hawaiian organization which believes itself to be culturally affiliated with these human remains should contact Janet Ness, Registrar, Bernice Pauahi Bishop Museum, 1525 Bernice Street, Honolulu, Hawai'i, 96817-0916, 808-848-4105, before January 3, 1997. Repatriation of the human remains to representatives of Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, the Office of Hawaiian Affairs and Hui Mālama Pono O Lāna'i may begin after that date if no additional claimants come forward.

Dated: November 22, 1996.

Richard C. Waldbauer,

*Acting, Departmental Consulting Archeologist,*

*Acting Manager, Archeology and Ethnography Program*

[FR Doc. 96–30820 Filed 12–3–96; 8:45 am]

**BILLING CODE 4310–70–F**

## Notice of Inventory Completion of Native American Human Remains From the Islands of O'ahu and Hawaii in the Collections of the Hawai'i Maritime Center, Honolulu, HI

**AGENCY:** National Park Service.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003 (d), of the completion of the inventory of human remains from the Islands of O'ahu and Hawai'i in the Collections of the Hawai'i Maritime Center, Honolulu, HI.

A detailed inventory and assessment of these human remains has been made by Bishop Museum and Hawai'i Maritime Center professional staff, and representatives of Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, Office of Hawaiian Affairs, O'ahu Burial Council, Hawaii Island Burial Council, and Ka Lahui Hawai'i.

The human remains consist of two teeth donated to the Hawai'i Maritime Center by Robert A. Myhre in 1987. One tooth is from Mākaha on the island of O'ahu. The second tooth was found near South Ho'okena on the island of Hawai'i. Both teeth were collected from the surface between 1960 and 1987.

No known individuals were identified. No attempt was made to determine the age of these teeth upon the request of the above mentioned Native Hawaiian organizations. The geographic locations of Mkaha, O'ahu, and South Ho'okena, Hawai'i, are consistent with documented Hawaiian occupation of the area.

Based on the above information, officials of the Hawai'i Maritime Center have determined, pursuant to 43 CAR 10.2 (d)(1), that the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Hawai'i Maritime Center have also determined, pursuant to 25 U.S.C. 3001 (2), that there is a relationship of shared group identity which can be reasonably traced between these remains and present-day members of Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, Office of Hawaiian Affairs, O'ahu Burial Council, Hawaii Island Burial Council, and Ka Lahui Hawai'i.

This notice has been sent to the Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, Office of Hawaiian Affairs, O'ahu Burial Committee, Hawaii Island Burial Council, and Ka Lahui Hawai'i. Representatives of any Native Hawaiian organization which believes itself to be culturally affiliated with these human remains should contact Janet Ness, Registrar, Bernice Pauahi Bishop Museum, 1525 Bernice St., Honolulu, Hawai'i, 96817-0916, 808-848-4105, before January 3, 1997. Repatriation of the human remains to Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, Office of Hawaiian Affairs, O'ahu Burial Council and Hawaii Island Burial Council may begin after that date if no additional claimants come forward.

Dated: November 22, 1996.

Richard C. Waldbauer,

*Acting, Departmental Consulting Archeologist,*

*Acting Manager, Archeology and Ethnography Program.*

[FR Doc. 96–30817 Filed 12–3–96; 8:45 am]

**BILLING CODE 4310–70–F**

## Notice of Inventory Completion of Native American Human Remains and Associated Funerary Objects From the Island of Kaua'i in the Possession of the Bernice Pauahi Bishop Museum, Honolulu, HI

**AGENCY:** National Park Service, Interior,

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003 (d), of the completion of the inventory of human remains and associated funerary objects from the Island of Kaua'i by the Bernice Pauahi Bishop Museum Honolulu, HI.

A detailed inventory and assessment of these human remains and associated funerary objects has been made by Bishop Museum's professional staff and representatives of Kaua'i / Ni'ihau Island Burial Council, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, and the Office of Hawaiian Affairs. Mr. Edward Ka'iwi and Ms. Aletha Kaohi, of Kaua'i were also consulted.

In 1967, Captain Robert W. Rynd, U.S. Navy, donated the incomplete remains of two adults and one sub-adult, along with one burial kapa, to the museum. All of the human remains and associated funerary objects are believed to have come from Kauhao Valley, Waimea, on the Island of Kaua'i. No known individuals were identified. No attempt was made to determine age of these human remains upon the request of the above mentioned Native Hawaiian organizations. The geographic location of the human remains, type of associated funerary object, and method of burial preparation are typical of Native Hawaiian burials.

Based on the above information, officials of the Bishop Museum have determined, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of Bishop Museum have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the object listed above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bishop Museum have determined, pursuant to 25 U.S.C. 3001 (2), that there is a relationship of shared group identity which can be reasonably traced between these remains and present-day members of Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, Office of Hawaiian Affairs, and Kaua'i/Ni'ihau Island Burial Council.

This notice has been sent to the Kaua'i / Ni'ihau Island Burial Council, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, the Office of Hawaiian Affairs, Edward Ka'iwi and Aletha Kaohi. Representatives of any Native Hawaiian organizations which believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Janet Ness, Registrar, Bernice Pauahi Bishop Museum, 1525 Bernice Street, Honolulu, Hawai'i, 96817-0916, telephone (808) 848-4105, before January 3, 1997. Repatriation of the human remains to Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, Office of Hawaiian Affiars and Kaua'i / Ni'ihau Island Burial Council may begin after that date if no additional claimants come forward.

Dated: November 22, 1996.

Richard C. Waldbauer

*Acting, Departmental Consulting Archeologist,*

*Acting Manager, Archeology and Ethnography Program.*

[FR Doc. 96–30819 Filed 12-3-96; 8:45 am]

**BILLING CODE 4310–70–F**

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### December 10, 1996 Board of Directors Meeting; Sunshine Act

**TIME AND DATE:** Tuesday, December 10, 1996, 1:00 PM (Open Portion), 1:30 PM (Closed Portion).

**PLACE:** Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

**STATUS:** Meeting Open to the Public from 1:00 PM to 1:30 PM, Closed Portion will commence at 1:30 PM (approx.).

**MATTERS TO BE CONSIDERED:**

1. President's Report.
2. Approval of September 17, 1996 Minutes (Open Portion).
3. Meeting schedule through September, 1997.

**FURTHER MATTERS TO BE CONSIDERED:** (Closed to the Public 1:30 PM).

1. Insurance Project in Peru.
2. Insurance Project in Russia.
3. Insurance Project in Indonesia.
4. Pending Major Projects.
5. Environmental Report.
6. Approval of September 17, 1996 Minutes (Closed Portion).

**CONTACT PERSON FOR INFORMATION:** Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: December 1, 1996.

Connie M. Downs,

*OPIC Corporate Secretary.*

[FR Doc. 96–31008 Filed 12–2–96; 3:19 pm]

**BILLING CODE 3210–01–M**

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731–TA–757–759 (Preliminary)]**

### Collated Roofing Nails From China, Korea, and Taiwan

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of antidumping investigations and scheduling of preliminary phase investigations.

**SUMMARY:** The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping Investigations Nos. 731–TA–757–759 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China, Korea, and Taiwan of collated roofing nails, provided for in subheading 7317.00.55 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. § 1673a(c)(1)(B)), the Commission must reach preliminary determinations in antidumping investigations in 45 days, or in this case by January 10, 1997. The Commission's views are due at the Department of Commerce within five business days thereafter, or by January 17.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207), as amended in 61 FR 37818 (July 22, 1996).

**EFFECTIVE DATE:** November 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the

Commission may also be obtained by accessing its internet server (*http://www.usitc.gov or ftp://ftp.usitc.gov*).

**SUPPLEMENTARY INFORMATION:**

*Background.*—These investigations are being instituted in response to a petition filed on November 26, 1996, by the Paslode Division of Illinois Tool Works Inc., Vernon Hills, Illinois.

*Participation in the investigations and public service list.*—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the Federal Register. Industrial users and representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to these investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Conference.*—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on December 17, 1996, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202–205–3185) not later than noon, December 16, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

*Written submissions.*—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before December 20, 1996, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: November 27, 1996.

Donna R. Koehnke,

*Secretary.*

[FR Doc. 96–30823 Filed 12–03–96; 8:45 am]

**BILLING CODE 7020–02–P**

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**[Investigation 332–372]**

## The Economic Implications of Liberalizing APEC Tariff and Nontariff Barriers to Trade

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of investigation, scheduling of public symposium, and call for papers.

**EFFECTIVE DATE:** November 25, 1996.

**SUMMARY:** Following receipt on November 1, 1996 of a request from the U.S. Trade Representative, the Commission instituted Investigation No. 332–372, The Economic Implications of Liberalizing APEC Tariff and Nontariff Barriers To Trade, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). As requested, the investigation will seek to provide an objective, critical report, based on a symposium to be held by the Commission, on the identification and assessment of the impact of nontariff barriers (NTBs) to trade and investment in APEC and on the general equilibrium modeling of APEC trade liberalization. The Commission will confine the investigation to studies that are already underway or have been recently completed. The Commission will offer the opportunity for all economic researchers selected for participation in the symposium to present their findings on the evaluation of NTBs to trade and investment in the APEC region and the general equilibrium modeling of APEC trade liberalization at the symposium. To promote an objective, critical assessment of this body of inquiry, economic researchers recognized as experts in their fields will also be designated to provide a critical assessment of the merits and limitations of the methods and data employed in the research. The final report will be submitted to USTR approximately six months after the symposium. The final report will consist of four parts: (1) an assessment of the principal results presented at the symposium, both with respect to identified trade barriers and distortions in the APEC area and with respect to modeling of APEC liberalization, (2) a compilation of the technical papers submitted in the symposium, together with any revisions or comments the authors may make in response to the critiques received in the symposium, (3) a compilation of the written critiques of those papers, and (4) an objective summary and critical evaluation by the Commission of the analytical frameworks and of the main findings of these papers.

**FOR FURTHER INFORMATION CONTACT:** Nancy Benjamin, Office of Economics, at (202–205–3125). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Call for Papers

The Commission encourages all parties currently engaged in the evaluation of NTBs to trade and investment among APEC members or the general equilibrium modeling of APEC trade liberalization to present their work at the symposium. The purpose of the symposium is to examine critically, through peer review by recognized experts, studies recently completed or currently being developed that meet recognized academic standards. Research within the scope of this investigation include the following:

- Papers identifying and assessing the impact of barriers to trade and investment in the APEC region other than tariff barriers and quantitative

restrictions. This category includes any other non-tariff barriers as well as policies and practices with respect to regulation, intellectual property rights, standards and conformance, customs procedures, investment, oligopolistic behavior, services, and/or government procurement which materially limit trade and investment but for which there has hitherto been relatively little quantitative assessment.

- Papers emphasizing modeling of APEC trade liberalization with economy-wide perspectives.
- Papers which bridge and synthesize the above two areas of interest would be particularly welcome.

Papers presented at the symposium must meet the following criteria:

(1) All papers must describe any technical assumptions and methods employed to obtain the results presented and provide full details about the data and scenarios evaluated. This requirement is critical because the purpose of the symposium is to provide an objective critical assessment of this research.

(2) The research described in papers emphasizing modeling of APEC trade liberalization must be economy-wide in scope, whether they are multi-country models or single-country models. Economy-wide models include all sectors of the economies represented, though with varying degrees of disaggregation, and allow for explicit analysis of the complex interactions inherent in comprehensive economic policy changes, such as free trade agreements, even when the focus of such analysis is on a particular sector. Research within the scope of this investigation include both (i) computable general equilibrium (CGE) trade policy modeling: and (ii) economy-wide, multi-sector macroeconomic models. The research should take into account the effects of APEC trade liberalization on production, income, trade, employment, and prices. Because scheduling will be tight, persons interested in presenting papers or participating as discussants should submit a curriculum vitae and description of the relevant research to Nancy Benjamin (202–205–3125) or William Donnelly (202–205–3223), Research Division, Office of Economics, U.S. International Trade Commission, by May 30, 1997.

Discussants will be designated to provide detailed written critiques of the papers reviewed. All papers to be presented must meet recognized academic standards. It is also required that all papers be technically transparent and provide technical details about the methods and data employed to obtain results. The final scheduling of papers and discussants will be made by Commission staff and will be published in a subsequent Federal Register notice by July 15, 1997. All papers must be provided to the Commission in a form ready for distribution 30 days prior to the symposium, and must meet the criteria outlined above.

**SYMPOSIUM:** The symposium will be held on September 11 and 12, 1997 at the U.S. International Trade Commission, 500 E Street, SW., Washington DC. Members of the public may attend the symposium and there will be an opportunity for brief technical comments on the papers from the audience. Those who would like to attend the symposium are requested to indicate their intention by sending a letter or fax to the Office of Economics, U.S. International Trade Commission (fax no. 202–205–2340) by September 2, 1997.

By order of the Commission.

Issued: November 27, 1996.

Donna R. Koehnke,

*Secretary.*

[FR Doc. 96–30896 Filed 12–03–96; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 as Amended

In accordance with Department of Justice policy, 28 CFR 50.7 notice is hereby given that a proposed consent decree in *United States* v. *Farber, et al.*, Civil No. 86–3736, was lodged on November 19, 1996, with the United States District Court for the District of New Jersey. The decree resolves claims against Benjamin Farber in the above-referenced action under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'') for contamination at the Syncon Resins Site in South Kearny, New Jersey (the ''Site''). In the proposed consent decree, Mr. Farber agrees to a judgment against him in the amount of $19 million, agrees to reimburse the Environmental Protection Agency (''EPA'') for $750,000 in past response costs incurred by EPA at the Site, pay the net proceeds of the sale of the Site and pay a percentage of any insurance recovery relating to the Site. This settlement was reached based on an assessment of Mr. Farber's ability to pay.

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. *Farber, et al.*, DOJ Ref. Number 90–11–3–116.

The proposed consent decree may be examined at the Office of the United States Attorney, 970 Broad St., Room 502, Newark, New Jersey, 07102; the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, NY 10278; and the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $8.00 for the Consent Decree (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

*Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 96–30891 Filed 12–3–96; 8:45 am]

**BILLING CODE 4410–15–M**

### Notice of Lodging of Settlement Agreements Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that proposed Settlement Agreements in *United States* v. *H. K. Porter Company, Inc., et al.*, Civil Action No. 96C–579 and *In Re H. K. Porter Company, Inc.*, Bankruptcy No. 91–00468WWB were lodged with the United States District Court for the Western District of Pennsylvania on November 4, 1996 and filed with the United States Bankruptcy Court for the Western District of Pennsylvania on November 6, 1996. The proposed Settlement Agreements resolve the claims of the plaintiff, the United States of America, filed against defendant, H. K. Porter, Inc. (''Porter'') in district court and bankruptcy court pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.*

The Settlement Agreements pertain to the Bollinger Steel Superfund Site (''Site''), located in the Borough of Ambridge, Beaver County, Pennsylvania. They require Porter, a

prior owner and operator of the Site, to stipulate to the United States' contested claim in bankruptcy as a general allowed unsecured claim of $1,550,000 and to relinquish any claims it may have against the United States. The Settlement Agreements also include covenants not to sue by the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. 9601 *et seq.*, and Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973, and provide Porter with contribution protection.

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 Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *H. K. Porter Company, Inc., et al.*, DOJ Ref. # *90–11–2–738C*. Commentors may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed Settlement Agreements may be examined at the Office of the United States Attorney, Western District of Pennsylvania, 633 United States Post Office & Court House, 7th Avenue & Grant Street, Pittsburgh, Pennsylvania 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, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Settlement Agreements 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 of the body of the proposed Settlement Agreements, please refer to the referenced case and enclose a check in the amount of $4.00 (25 cents per page reproduction costs), for each copy. The check should be made payable to the Consent Decree Library.

Joel M. Gross,

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 96–30806 Filed 12–3–96; 8:45 am]

**BILLING CODE 4410–15–M**

## Notice of Lodging of Consent Decree Pursuant to the Comprehensive, Environmental Response, Compensation and Liability Act (''CERCLA'')

In accordance with Departmental policy, 28 CFR 50.7, and Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *Harris Corporation,* Civil Action No. 96–1237–CIV–ORL–19 was lodged on November 20, 1996, with the United States District Court for the Middle District of Florida. This agreement resolves a judicial enforcement action brought by the United States against Harris Corporation (''Harris'') pursuant to Sections 106(a) and 107 of CERCLA, 42 U.S.C. 9606(a) and 9607. The United States seeks recovery of response costs and injunctive relief in order to remedy conditions in connection with the release or threatened release of hazardous substances into the environment at and from Operable Unit Two (''OU2'') of the Harris Corporation/ Palm Bay facility Superfund Site (''Site''). The Site is located in Palm Bay, Brevard County, Florida.

The Site facility is divided into two major operating business units: The Semiconductor Sector to the north and Electronics Systems Sector to the south. For purposes of investigation, EPA divided the contamination at the Site into two operable units, with the first operable unit (''OU1'') to address contamination in the groundwater underlying the Electronic Systems Sector. The second operable unit (''OU2'') addresses the soils, sediment, and surface water throughout the Site, and the groundwater underlying the Semiconductor Sector. The Court entered a Consent Decree on October 25, 1991, and an Amendment to Consent Decree on June 1, 1993, in Civil Action No. 91–624–CIV–ORL–19, with respect to OU1.

EPA selected a remedy for OU2 which it set forth in a Record of Decision (''ROD'') executed on February 15, 1995, and modified by an Explanation of Significant Differences (''ESD'') executed on December 8, 1995. In the ROD, EPA selected a groundwater remedy which includes continued operation of the existing groundwater recovery and treatment system, conversion of existing recovery well SC–TS4 to a monitoring well, the addition of a new 40-foot monitoring well on the southwestern portion of OU2, and continued groundwater monitoring until all performance standards are met. EPA selected a No-Action remedy for the soils, sediment, and surface water throughout the entire site, as no hazardous substances were detected in any of these media above the appropriate action level.

The consent decree requires Harris to perform this remedy as set forth in the ROD for OU2. Harris also agreed to pay $112,000 in past response costs incurred by the United States at OU2, and to pay future response costs which the United States will incur at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Harris Corporation,* DOJ Ref #90–11–2–1137.

The proposed consent decree may be examined at the office of the United States Attorney, 201 Federal Building, 80 North Houghey Avenue, Orlando, Florida 32801; the Region 4 office of the Environmental Protection Agency, 100 Alabama Street, S.W., Atlanta, Georgia 30303; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check for the reproduction costs. If you request a copy of the Consent Decree without attachments, which attachments include the ROD, Statement of Work, and ESD, then the amount of the check should be $19.75 (79 pages at 25 cents per page). If you request a copy of the Consent Decree with the above stated attachments, then the amount of the check should be $39.75 (159 pages at 25 cents per page). The check should be made payable to the Consent Decree Library.

Joel M. Gross,

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 96–30894 Filed 12–3–96; 8:45 am]

**BILLING CODE 4410–15–M**

## Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, Section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9622(d)(2), and Section 7003(d) of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973(d), notice is hereby given that a proposed consent decree in *United States* v. *Johnson Controls, Inc.* v. *City of Dover, Delaware,*

*et al.*, Civil Action No. 93–335 LON, was lodged on November 15, 1996, with the U.S. District Court for the District of Delaware. The proposed consent decree would settle an action that the United States brought on behalf of the U.S. Environmental Protection Agency under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9607(a), against Johnson Controls, Inc. (''JCI''), for recovery of response costs incurred by the United States in connection with the Wildcat Landfill Superfund Site, located in Kent County, Delaware, near the City of Dover (''the Site''). The consent decree would also resolve the claims that JCI brought in this action under Section 113(f)(1) of CERCLA, 42 U.S.C. 9613(f)(1), against third-party defendants the City of Dover, Delaware, the U.S. Department of Defense, ILC Dover, Inc., ILC Industries, Inc., J.C. Penney Co., Inc., General Foods Corp., and Sherwin-Williams Co., alleging that those parties were liable to reimburse JCI for an equitable share of any response costs for which JCI was found liable to reimburse the United States relating to the Site. Under the terms of the consent decree, the $550,000 in funds that the Settling Defendants (JCI and each of the third-party defendants) collectively have paid into an escrow account pending finalization of this proposed settlement, plus interest, will be paid to the United States to reimburse the EPA Hazardous Substance Superfund.

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 of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Johnson Controls, Inc.* v. *City of Dover, Delaware, et al.*, D.J. No. 90–11–3–595. In addition, pursuant to Section 7003(d) of RCRA, 42 U.S.C. 6973(d), any member of the public who desires a public meeting in the area affected by the proposed consent decree in order to discuss the proposed consent decree prior to its final entry by the court may request that such a meeting be held. Any such request for a public meeting should be sent to the same address and bear the same reference as indicated above for submission of comments.

The proposed consent decree may be examined at the office of the U.S. Attorney for the District of Delaware, 1201 Market Street, Suite 1100, Wilmington, DE 19899–2046; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107; and at the Consent Decree Library, 1120 G Street NW., 4th floor, Washington, DC 20005. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $7.75 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Walker Smith,

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 96–30807 Filed 12–3–96; 8:45 am]

**BILLING CODE 4410–15–Ms**

## Notice of Lodging; Second Modification of the Partial Consent Decree on Remediation Between United States, State of New York and Occidental Chemical Corporation Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR § 50.7, 38 Fed. Reg. 19029, and Section 122(d) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 U.S.C. § 9622(d), notice is hereby given that on November 15, 1996, a proposed Second Modification of the Partial Consent Decree on Remediation between United States, State of New York and Occidental Chemical Corp. was lodged with the United States District Court for the Western District of New York in *United States* v. *Occidental Chemical Corporation, et al.* (*Love Canal*), Civil Action No. 79–990(JTC).

The Love Canal litigation was commenced in 1979 seeking injunctive relief and cost recovery in connection with the disposal by Occidental of hazardous substances at the Love Canal Landfill Site near Niagara Falls, New York. On March 19, 1996, the Court entered a Consent Decree pursuant to which the United States will recover a total of $137 million (plus interest) in response costs incurred in connection with the Site. On July 1, 1994, the Court approved a Consent Judgment between New York State and Occidental under which Occidental agreed, *inter alia*, to perform operation and maintenance (O&M) of the remedy at the Site and to pay $98 million in settlement of the State's claim. The instant Decree will not affect either of these prior settlements.

The Second Modification modifies the Partial Consent Decree on Remediation (PCD), which was previously entered on September 20, 1989. Under the original PCD, all wastes from the Love Canal site were to be incinerated. Subsequent regulations provide that certain wastes with low levels of toxicity can be landfilled at licensed facilities. The Second Modification to the PCD would, upon entry by the Court, authorize Occidental to landfill some Love Canal wastes in accordance with applicable regulations and incinerate remaining wastes. The Second Modification will retain the standards for thermal destruction contained in the original Decree. These standards are more stringent than are otherwise required under current regulations. These changes are described in greater detail in the Explanation of Significant Differences (ESD), which was prepared by the United States Environmental Protection Agency (EPA), and which accompanies, and is a part of, the Second Modification. The instant Decree, if approved by the Court, will resolve all outstanding remedial issues in the Love Canal litigation.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Decree Modification. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Occidental Chemical Corporation,* D.J. Ref. 90–5–1–1–1229.

The proposed Decree Modification may be examined at the Office of the United States Attorney, Western District of New York at Federal Centre, 138 Delaware Avenue, Buffalo, New York 14202; the offices of EPA—Region II at 290 Broadway, New York, New York 10007–1866; and at the Consent Decree Library at 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Decree Modification 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 enclosed a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce S. Gelber,

*Principal Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 96–30893 Filed 12–3–96; 8:45 am]

**BILLING CODE 4410–15–M**

## Notice of Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act and the Clean Air Act

Notice is hereby given that a consent decree with Quaker State Corporation in *United States and State of West Virginia* v. *Quaker State Corporation*, Civil Action No. 93–0196W (N.D. W. Va.), was lodged on November 12, 1996. The consent decree resolves the claims of the United States and the State of West Virginia under the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.* (''RCRA'') and the Clean Air Act (''CAA''), as amended, 42 U.S.C. 7401 *et seq.* (1990), to obtain injunctive relief and penalties for violations of RCRA and the CAA, including the West Virginia State Implementation Plan (''SIP'') and the Asbestos National Emission Standards for Hazardous Air Pollutants (''NESHAP''), and their implementing regulations, at the Quaker State refinery located in Congo, West Virginia. The proposed consent decree, among other things, obligates the Defendant to:

(1) pay a total cash penalty of $1.752 million, of which $1,226,400 will be paid to the United States and $525,600 to the State of West Virginia;

(2) perform a number of Supplemental Environmental Projects (''SEPs'');

(3) construct replacement units for four basins in the waste water treatment plant (''WWTP''), and rebuild a concrete pad and walls where refinery heat exchange bundles were cleaned (''heat exchanger bundle cleaning pad'');

(4) perform full RCRA closure of the refinery's stormwater basin, and sampling and equivalent closure measures for the former aeration basin to investigate and, if necessary, remediate threats to public health and the environment in the vicinity of that basin;

(5) perform soil sampling and related corrective action measure, if necessary, to address soil and/or groundwater contamination in the vicinity of the two other basins at issue in the waste water treatment plant;

(6) retain contractors to perform a detailed study of the refinery's existing air desulferization technology to optimize its performance;

(7) install and operate a caustic scrubber as back-up air desulferization technology in the event the existing technology fails to operate or to achieve compliance with emission limits;

(8) install continuous emission monitoring devices;

(9) provide specified training programs for the waste water treatment plant operators and supervisors;

(10) provide training and certification for asbestos abatement workers and renovate an asbestos decontamination room.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed partial 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. *Quaker State Corporation*, Civ. Action No. 93–0196W (N.D. W. Va.).

The proposed consent decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed partial 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 $50.00 (25 cents per page reproduction costs), payable to the Consent Decree Library. Attachments to the proposed partial consent decree can be obtained for additional amount.

Joel M. Gross,

*Chief, Environmental Enforcement Section.*

[FR Doc. 96–30808 Filed 12–3–96; 8:45 am]

**BILLING CODE 4410–15–M**

## Correction to Previously Published Notice of Consent Decree in Comprehensive Environmental Response, Compensation and Liability Action

In accordance with the Departmental Policy, 28 CFR 50.7, on November 7, 1996, a notice was published in the Federal Register that two Consent Decrees in *United States* v. *Ralph Riehl, et al.*, Civil Action No. 89–226(E), were lodged with the United States District Court for the Western District of Pennsylvania on October 21, 1996. The notice incorrectly stated the amount of response costs to be paid by Bethlehem Steel Corp. pursuant to one of the Consent Decrees. Therefore, the following corrected notice is being published.

On October 16, 1989, the United States filed a complaint against the owners and operator of, and certain transporters to, the Millcreek Dump Superfund Site (the ''Site''), pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9607(a). In September 1991, the United States added additional defendants to the action. The two proposed Consent Decrees resolve the liability of Bethlehem Steel Corp. and United Brass Works, Keystone Foundry Division. These Consent Decrees resolve the liability of the above-named defendants for the response costs incurred and to be incurred by the United States at the Site. Bethlehem Steel will pay $75,000 in response costs and United Brass Works will pay $197,500 in response costs.

The Department of Justice will accept written comments relating to these proposed Consent Decrees for fifteen (15) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States* v. *Ralph Riehl, et al.*, DOJ No. 90–11–3–519.

Copies of the proposed Consent Decrees may be examined at the Office of the United States Attorney, Western District of Pennsylvania, Federal Building and Courthouse, Room 137, 6th and States Streets, Erie, Pennsylvania, 15219; Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202) 624–0892. A copy of each proposed 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. When requesting copies of the proposed Consent Decrees, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the ''Consent Decree Library'' in the following amounts:

$6.00 for the Bethlehem Steel Consent Decree.

$5.75 for the United Brass Works, Keystone Foundry Division Consent Decree.

Joel M. Gross,

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.*

[FR Doc. 96–30809 Filed 12–3–96; 8:45 am]

**BILLING CODE 4410–15–M**

## Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that on November 14, 1996, a consent decree in *United States* v. *City of Watertown et al.*, Civil Action No. 95–1018 was lodged with the United States District Court for the District of South Dakota.

This consent decree settles claims for civil penalties brought pursuant to

section 309(b) and (d) of the Clean Water Act (the ''Act''), 33 U.S.C. § 1319 (b) and (d). Under the terms of the consent decree, the City of Watertown will pay a civil penalty of $550,000. The United States' claims for injunctive relief were resolved pursuant to a prior consent decree, entered by the Court on December 1, 1995.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *City of Watertown et al.*, Civil Action No. 95–1018, Ref. No. 90–5–1–1–5087. The proposed consent decree may be examined at the office of the United States Attorney, District of South Dakota, Shriver Square, 230 South Phillips Avenue, Sioux Falls, South Dakota 57102. Copies of the consent decree may also be examined and obtained by mail at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202–624–0892) and the offices of the Environmental Protection Agency, Region VIII 999 18th Street, Suite 500, Denver, Colorado 80202–2466. When requesting a copy by mail, please enclose a check in the amount of $3.75 (twenty-five cents per page reproduction costs) payable to the ''Consent Decree Library.''

Joel M. Gross,

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 96–30892 Filed 12–3–96; 8:45 am]

BILLING CODE 4410–15–M

## Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993; Dry Machining of Aluminum Joint Venture

Notice is hereby given that, on November 12, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), written notifications were filed simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the formation of a technology-specific joint venture (2) the identities of the parties to the venture, and (3) the nature and objective of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting recovery of plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities to the parties are Chrysler Corporation, Auburn Hills, MI; Extrude Hone, Irwin, PA; Ford Motor Company, Dearborn, MI; General Motors Corporation, Warren, MI; Giddings & Lewis, Fraser, MI; Greenfield Industries, Augusta, GA; Kennametal, Inc., Latrobe, PA; and Tetrabond, Division of Multi Arc, Rockaway, NJ.

Technologies Research Corporation, Ann Arbor, MI, has been engaged to administer the joint venture on behalf of the participants. The nature and objective of the venture is to undertake development activities focusing on dry machining of aluminum.

Constance K. Robinson,

*Director of Operations, Antitrust Division.*

[FR Doc. 96–30851 Filed 12–3–96; 8:45 am]

BILLING CODE 4410–11–M

### Notice Pursuant to the National Cooperative Research and Production Act of 1993; High Throughput Hole Making Joint Venture

Notice is hereby given that, on November 12, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), written notifications were filed simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the formation of a technology-specific joint venture (2) the identifies of the parties to the venture, and (3) the nature and objective of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting recovery of plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities to the parties are Briney Tooling System, Bad Axe, MI; Chrysler Corporation, Auburn Hills, MI; CJT/Koolcarb, Addision, IL; Command Tooling System, Ramsey, MN; Ford Motor Company, Dearborn, MI; General Motors Corporation, Warren, MI; Greenfield Industries, Evans, GA; Ingersoll Cutting Tools, Rockford, IL; Kennametal, Inc., Latrobe, PA; Lyndex Corporation, Northbrook, IL; Multi Arc, Rockaway, NJ; Parlec, Inc., Fairport, NY; and Unison Corporation, Ferndale, MI.

Technologies Research Corporation, Ann Arbor, MI, has been engaged to administer the joint venture on behalf of the participants. The nature and objective of the venture is to undertake development activities focusing on high throughput hole making.

Constance K. Robinson,

*Director of Operations Antitrust Division.*

[FR Doc. 96–30804 Filed 12–3–96; 8:45 am]

BILLING CODE 4410–11–M

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc. (NCMS)

Notice is hereby given that, on November 4, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the National Center for Manufacturing Sciences, Inc. (''NCMS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership and providing information on the status of its research projects. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies were accepted as active members of NCMS: QM Technologies, Crystal Lake, IL and UES, Inc., Dayton, OH. Independent Lubricant Manufacturers Association, Alexandria, VA, was approved for affiliate membership. The following companies have canceled their active membership in NCMS: Advanced Cybernetics Group, Inc., Sunnyvale, CA; Digital Equipment Corporation, Maynard, MA; Eitel Presses, Inc., Orwigsburg, PA; Enterprise Integration Technologies Corporation, Palo Alto, CA; Grow Speciality Polymers, Inc. (formerly Emerson & Cuming, Inc.), Woburn, MA; Light Machines Corporation, Manchester, NH; Mattison Machine Works, Rockford, IL; Munro & Associates, Inc., Troy, MI; Northern Telecom, Ltd., Mississauga, Ontario, Canada and Scientific Systems, Inc., State College Park, PA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on August 1, 1996. This notice was published in the Federal Register on August 29, 1996 (61 FR 45458).

Constance K. Robinson,

*Director of Operations, Antitrust Division.*

[FR Doc. 96–30805 Filed 12–3–96; 8:45 am]

BILLING CODE 4410–11–M

## Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project No. 95–10

Notice is hereby given that, on November 1, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* (''the Act''), the participants in the Petroleum Environmental Research Forum (''PERF'') Project No. 95–10, titled ''Advanced NDE for Heat Exchanger Tubular Inspection,'' have filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the current participants in PERF Project No. 95–10 are: Exxon Research & Engineering Company, Florham Park, NJ; Arco Products Company, Anaheim, CA; BP International, PLC, Sunbury-on-Thames, Middlesex, UNITED KINGDOM; Chevron Research & Technology Company, Richmond, CA; and Mobil Technology Company, Paulsboro, NJ.

The nature and objective of the research program performed in accordance with PERF Project No. 95–10 is to provide identification and field testing of commercially available inspection techniques for heat exchanger tubes.

Participation in this Project will remain open to interested persons and organizations until the final Project Completion Date, which is presently anticipated to occur approximately twenty-eight (28) months after the Project commences. The parties intend to file additional written notifications disclosing all changes in membership in this Project.

Information regarding participation in Petroleum Environmental Research Forum (''PERF'') Project No. 95–10 may be obtained from Mr. Emery B. Lendvai-Lintner, Exxon Research & Engineering Company, P.O. Box 181, Florham Park, NJ 07932–0101.

Constance K. Robinson,

*Director of Operations, Antitrust Division.*

[FR Doc. 96–30889 Filed 12–3–96; 8:45 am]

BILLING CODE 4410–11–M

## Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Research Corporation

Notice is hereby given that, on October 16, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Semiconductor Research Corporation (''SRC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, E.I. Dupont de Nemours, Wilmington, DE and Techware Systems Corporation, Richmond, British Columbia, Canada, are no longer members of the joint venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SRC intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, SRC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on January 30, 1985, (50 FR 4281).

The last notification was filed with the Department on June 11, 1996. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on June 25, 1996 (61 FR 32858).

Constance K. Robinson,

*Director of Operations, Antitrust Division.*

[FR Doc. 96–30803 Filed 12–3–96; 8:45 am]

BILLING CODE 4410–11–M

## Notice Pursuant to the National Cooperative Research and Production Act of 1993; Precision Balancing for Enhanced Engine Integrity Program

Notice is hereby given that, on November 7, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute (''SwRI'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SwRI advised that N.V. Nederlandse Gasunie, Groningen, The Netherlands and Transcontinental Pipe Line Corporation, Houston, TX have become parties to the group research project.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SwRI intends to file additional written notification disclosing all changes in membership.

On April 4, 1996, SwRI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the act on April 30, 1996, 61 FR 19089 and 19090.

Constance K. Robinson,

*Director of Operations, Antitrust Division.*

[FR Doc. 96–30850 Filed 12–3–96; 8:45 am]

BILLING CODE 4410–11–M

## Notice Pursuant to the National Cooperative Research and Production Act of 1993—Durability and Life Assessment of GTD–111 Buckets

Notice is hereby given that, on March 26, 1996 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute (''SwRI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. This change adds one party to the group research project being conducted by SwRI. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Enron Power Corporation, La Porte, Texas, became a party to the group research project effective September 1, 1995.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SwRI intends to file additional written notifications disclosing all changes in membership.

On October 31, 1995 SwRI filed its original notification pursuant to Section

6(a) of the Act. The Department of Justice (''The Department'') published a notice in the Federal Register pursuant to Section 6(b) of the Act on October 17, 1996 (61 FR 54222).

Constance K. Robinson,

*Director of Operations, Antitrust Division.*

[FR Doc. 96–30890 Filed 12–3–96; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Mountain Coal Company

[Docket No. M–96–104–C]

Mountain Coal Company, P.O. Box 591, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR to its West Elk Mine (I.D. No. 05–03672) located in Gunnison County, Colorado. The petitioner proposes to use 1,100 feet of 2/0, type SHD-GC cable on continuous miners, 1,000 feet of #2, type GC cable on roof bolters, and 1,000 feet of #2, type SHD-GC cable on auxiliary face fans. The petitioner states that the maximum circuit breaker instantaneous settings for the cables would be 1,500 amperes, 800 amperes and 800 amperes respectively. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Consol Pennsylvania Coal Company

[Docket No. M–96–124–C]

Consol Pennsylvania Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.313(c)(1) (main mine fan stoppage with persons underground) to its Enlow Fork Mine (I.D. No. 36–07416) located in Greene County, Pennsylvania. The petitioner proposes to evacuate miners if ventilation is not restored within 15 minutes after a main mine fan stops; to have certified mine examiners remain in the mine or enter the mine to conduct an examination after the fan has operated for at least 15 minutes when the fan is restarted and ventilation is restored; and to have the miners involved in the examination evacuate to the surface until the examination is complete. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Cannelton Industries, Inc.

[Docket No. M–96–125–C]

Cannelton Industries, Inc., 101 Washington Street, E, Charleston, West Virginia 25301 has filed a petition to modify the application of 30 CFR 75.362(d)(2) (on-shift examination) to its Mine No. 140 (I.D. No. 46–08502) located in Kanawha County, West Virginia. The petitioner proposes to use an extendable 20-foot probe to take methane tests. The petitioner has outlined in this petition specific procedures to be followed when using its alternative method. The petitioner states that application of the standard would result in a diminution of safety to the miners. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would be the mandatory standard.

4. Cannelton Industries, Inc.

[Docket No. M–96–126–C]

Cannelton Industries, Inc., 101 Washington Street, E, Charleston, West Virginia 25301 has filed petition to modify the application of 30 CFR 75.362(d)(2) (on-shift examination) to its Stockton Mine (Portal No. 1 and No. 130) (I.D. No. 46–06051) located in Kanawha County, West Virginia. The petitioner proposes to use an extendable 20-foot probe to take methane tests. The petitioner has outlined in this petition specific procedures to be followed when using its alternative method. The petitioner states that application of the standard would result in a diminution of safety to the miners. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Martin County Coal Corporation

[Docket No. M–96–127–C]

Martin County Coal Corporation, P.O. Box 5002, Inez, Kentucky 41224 has filed a petition to modify the application of 30 CFR 75.310(a)(2) (installation of main mine fans) to its Pegasus Mine (I.D. No. 15–17330), 1–C Mine (I.D. No. 15–03752), White Cabin Number One Mine (I.D. No. 15–17531), White Cabin Number Two Mine (I.D. No. 15–17787), Pilgrim Mine Number Three (I.D. No. 15–17359), and its Voyager Mine Number Two (I.D. No. 15–17639) all located in Martin County, Kentucky. The petitioner proposes to implement an audible or visual warning system using technological redundancies to assure that a main mine fan signal attracts the attention of a responsible person on mining property instead of having a person stationed near the main mine fan; and to have a system that would immediately warn persons underground of a fan stoppage or slow down. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Harman Mining Corporation

[Docket No. M–96–128–C]

Harman Mining Corporation, P.O. Box 260, Maxie, Virginia 24628 has filed a petition to modify the application of 30 CFR 75.364(a)(1) (weekly examination) to its 1–A Mine (I.D. No. 44–06500) located in Buchanan County, Virginia. Due to deterioration of roof and ribs conditions, traveling certain areas of the intake air course would be unsafe. The petitioner proposes to establish and maintain two ventilation check points that would be examined each shift by a certified person to be sure that the air is traveling in its proper direction; to record the quantity of air, methane, and oxygen readings; to have adequately supported roof in the area where traveling to the check points; to have the examiner record the date, time, and their initials on a date board and made available to interested parties. The petitioner states that application of the standard would result in a diminution of safety to the miners. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Straight Creek Mining, Inc.

[Docket No. M–96–129–C]

Straight Creek Mining, Inc., Box 191, Clairfield, Tennessee 37715 has filed a petition to modify the application of 30 CFR 75.360(a)(1) (preshift examination) to its Mine No. 1 (I.D. No. 40–02353) located in Clairborne County, Tennessee. The petitioner proposes to make a preshift examination within 2½ hours prior to the shift starting and continue the working shift for 8½ hours without an additional preshift examination. The petitioner asserts that the proposed alternative method would enhance the safety of the miners.

8. Yellow Creek Corporation

[Docket No. M–96–130–C]

Yellow Creek Corporation, P.O. Box 198, Corbin, Kentucky 40702 has filed a petition to modify the application of 30 CFR 75.380(f)(4)(i) (escapeways; bituminous and lignite mines) to its No.

2 Mine (I.D. No. 15–16510) located in Whitley County, Kentucky. The petitioner proposes to install two five pound or one ten pound portable chemical fire extinguisher in the operator deck of each Mescher Tractor operated at the mine; to have the fire extinguisher readily accessible to the operator; to have the equipment operator inspect each fire extinguisher daily and keep records of the inspections; and to replace the fire extinguisher if found to be defective. The petitioner asserts that the proposed alternative method is based on the safety of the miners involved at the mine.

9. Hut Coal Company, Inc.

[Docket No. M–96–131–C]

Hut Coal Company, Inc., P.O. Box 194, Siler, Kentucky 40763 has filed a petition to modify the application of 30 CFR 75.380(f)(4)(i) (escapeways; bituminous and lignite mines) to its No. 1 Mine (I.D. No. 15–17126) located in Whitley County, Kentucky. The petitioner proposes to install two five pound or one ten pound portable chemical fire extinguisher in the operator deck of each Mescher Tractor operated at the mine; to have the fire extinguisher readily accessible to the operator; to have the equipment operator inspect each fire extinguisher daily and keep records of the inspections; and to replace the fire extinguisher if found to be defective. The petitioner asserts that the proposed alternative method is based on the safety of the miners involved at the mine.

10. Canfield Energy, Inc.

[Docket No. M–96–132–C]

Canfield Energy, Inc., P.O. Box 1021, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.380(f)(4)(i) (escapeways; bituminous and lignite mines) to its No. 3 Mine (I.D. No. 15–14730) located in Knox County, Kentucky. The petitioner proposes to install two five pound or one ten pound portable chemical fire extinguisher in the operator deck of each Mescher Tractor operated at the mine; to have the fire extinguisher readily accessible to the operator; to have the equipment operator inspect each fire extinguisher daily and keep records of the inspections; and to maintain a sufficient number of fire extinguishers at the mine in case a defective fire extinguisher needs to be replaced. The petitioner asserts that the proposed alternative method is based on the safety of the miners involved at the mine.

11. Summit Anthracite, Inc.

[Docket No. M–96–133–C]

Summit Anthracite, Inc., RD #1, Box 12–A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.340 (underground electrical installations) to its Tracey Vein Slope (I.D. No. 36–07328) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standards to permit battery charging of the mine's locomotive during idle periods when all miners are out of the mine; and to permit the intake air used to ventilate the charging station located at the No. 1 Chute of the active gangway level to continue through its normal route to the last open crosscut and into the monkey airway (return). The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

12. Canfield Energy, Inc.

[Docket No. M–96–134–C]

Canfield Energy, Inc., P.O. Box 1021, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.380(f)(4)(i) (escapeway; bituminous and lignite mines) to its No. 4 Mine (I.D. No. 15–17716) located in Knox County, Kentucky. The petitioner proposes to install two five pound or one ten pound portable chemical fire extinguisher in the operator deck of each Mescher Tractor operated in the primary escapeway at the mine; to have the fire extinguisher readily accessible to the operator; to have the equipment operator inspect each fire extinguisher daily and keep records of the inspections; and to maintain a sufficient number of fire extinguishers at the mine in case a defective fire extinguisher needs to be replaced. The petitioner asserts that the proposed alternative method is based on the safety of the miners involved at the mine.

13. D.J.T. Coal Company

[Docket No. M–96–135–C]

D.J.T. Coal Company, R.D. #4, Box 358-d, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its D.J.T. Slope (I.D. No. 36–08454) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months, as required, and to update maps daily by hand notations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

14. D.J.T. Coal Company

[Docket No. M–96–136–C]

D.J.T. Coal Company, R.D. #4, Box 358-d, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1200 (d) and (i) (mine maps) to its D.J.T. Slope (I.D. No. 36–08454) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope; and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

15. D.J.T. Coal Company

[Docket No. M–96–137–C]

D.J.T. Coal Company, R.D. #4, Box 358-d, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.364(b)(1) (weekly examination) to its D.J.T. Slope (I.D. No. 36–08454) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake haulage slope and primary escapeway cannot be traveled safely. The petitioner proposes to examine the areas from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and travel and throughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

16. D.J.T. Coal Company

[Docket No. M–96–138–C]

D.J.T. Coal Company, R.D. #4, Box 358-d, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1100–2 (quantity and location of firefighting equipment) to its D.J.T. Slope (I.D. No. 36–08454) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars and other water storage are not practical. The petitioner asserts that the proposed alternative

method would provide at least the same measure of protection as would the mandatory standard.

17. D.J.T. Coal Company

[Docket No. M–96–139–C]

D.J.T. Coal Company, R.D. #4, Box 358-d, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its D.J.T. Slope (I.D. No. 36–08454) located in Schuylkill County, Pennsylvania. The petitioner proposes to visually examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working sections. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

18. Drummond Company, Inc.

[Docket No. M–96–140–C]

Drummond Company, Inc., P.O. Box 10246, Birmingham, Alabama 35202 has filed a petition to modify the application of 30 CFR 75.1100–2(e) (quantity and location of firefighting equipment) to its Shoal Creek Mine (I.D. No. 01–02901) located in Jefferson County, Alabama. The petitioner proposes to use two portable fire extinguishers at electrical installations instead of a fire extinguisher and 240 pounds of rock dust. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

19. U.S. Steel Mining Company

[Docket No. M–96–141–C]

U.S. Steel Mining Company, P.O. Box 2200, Bessemer, Alabama 35021 has filed a petition to modify the application of 30 CFR 77.201 (methane content in surface installations) to its Concord Preparation Plant (I.D. No. 01–00329) located in Jefferson County, Alabama. The petitioner proposes to use a closed granular coal handling system at its preparation plant that consists of a series of mechanical flight conveyors that are installed in a closed system and not accessible during operation, to transport coal from a thermal dryer to a closed 400-ton storage bin, and then loaded into pressure-differential railroad cars; to install an atmospheric monitoring system that uses an aspirating system that samples for various gases at three locations within the coal handling system at all times during operation; to have the monitoring system designed so that a warning would be provided at a manned location whenever the system is operating and designed to initiate certain actions when certain levels of gas is detected within the closed system; and to purge the system by injecting nitrogen in order to keep the levels of oxygen within the system at acceptable levels. The petitioner has outlined in this petition specific procedures to be followed when using the proposed alternative method. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

20. Amax Coal Company

[Docket No. M–96–142–C]

Amax Coal Company, P.O. Box 144, Keensburg, Illinois 62852 has filed a petition to modify the application of 30 CFR 75.362(d)(2) (on-shift examination) to its Wabash Mine (I.D. No. 11–00877) located in Wabash County, Illinois. The petitioner proposes to use an extendable 20-foot probe to take methane tests. The petitioner has outlined in this petition specific procedures to be followed when using its alternative method. The petitioner states that application of the standard would result in a diminution of safety to the miners. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 3, 1997. Copies of these petitions are available for inspection at that address.

Dated: November 26, 1996.

Patricia W. Silvey,

*Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 96–30895 Filed 12–3–96; 8:45 am]

BILLING CODE 4510–43–P

## NATIONAL BANKRUPTCY REVIEW COMMISSION

### Meeting

**AGENCY:** National Bankruptcy Review Commission.

**ACTION:** Notice of public meeting.

**TIME AND DATE:** Tuesday, December 17, 1996; 8:30 a.m. to 5:00 p.m. and Wednesday, December 18, 1996; 8:30 a.m. to 3:30 p.m.

**PLACE:** U.S. House of Representatives, Rayburn Office Building, Meeting Room: 2237; located at the corner of Independence Avenue and South Capitol Street, Washington, D.C.

**STATUS:** The meeting will be open to the public.

**NOTICE:** This meeting notice amends the Notice of Public Meeting, FR Doc. 96–29749, published in the Federal Register on Thursday, November 21, 1996, at page 59244. On Tuesday, December 17, 1996, the meeting will now start at 8:30 a.m. instead of 8:45 a.m. and on Wednesday, December 18, 1996, the meeting will now end at 3:30 p.m. instead of 2:30 p.m. In addition to the open form for public participation that is scheduled for Wednesday, December 18, 1996, from 8:30 a.m. to 9:30 a.m., there will be an open forum for public participation on Wednesday, December 18, 1996, from 2:30 p.m. to 3:30 p.m.

**CONTACT PERSONS FOR FURTHER INFORMATION:** Contact Susan Jensen-Conklin or Carmelita Pratt at the National Bankruptcy Review Commission, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Suite G–350, Washington, D.C. 20544; Telephone Number: (202) 273–1813.

Susan Jensen-Conklin,

*Deputy Counsel.*

[FR Doc. 96–30837 Filed 12–3–96; 8:45 am]

BILLING CODE 6820–36–P

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meetings of Humanities Panel

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

**FOR FURTHER INFORMATION CONTACT:** Michael S. Shapiro, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 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 meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings 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:* December 3, 1996.
*Time:* 8:30 a.m. to 5:00 p.m.
*Room:* 430.
*Program:* This meeting will review applications for Education Development and Demonstration-History and Social Science, K–12 I submitted to the Division of Research and Education, for projects at the October 1, 1996 deadline.

*2. Date:* December 3, 1996.
*Time:* 8:30 a.m. to 5:00 p.m.
*Room:* 415.
*Program:* This meeting will review applications for Library and Archival Preservation and Access-U.S. History II submitted to the Division of Preservation and Access, for projects at the May 1, 1997 deadline.

*3. Date:* December 4, 1996.
*Time:* 8:30 a.m. to 5:00 p.m.
*Room:* 317.
*Program:* This meeting will review applications for Collaborative Research in European Studies submitted to the Division of Research and Education, for projects at the September 1, 1996 deadline.

*4. Date:* December 4, 1996.
*Time:* 8:30 a.m. to 5:00 p.m.
*Room:* 430.
*Program:* This meeting will review applications for Education Development and Demonstration-History and Social Science, K–12 II submitted to the Division of Research and Education, for projects at the October 1, 1996 deadline.

*5. Date:* December 5, 1996.
*Time:* 8:30 a.m. to 5:00 p.m.
*Room:* 317.
*Program:* This meeting will review applications for Collaborative Research in Asian and Eurasian Studies submitted to the Division of Research and Education, for projects at the September 1, 1996 deadline.

*6. Date:* December 5, 1996
*Time:* 8:30 a.m. to 5:00 p.m.
*Room:* 430
*Program:* This meeting will review applications for Education Development and Demonstration in American Literature and Art, K–16 submitted to the Division of Research and Education, for projects at the October 1, 1996 deadline.

*7. Date:* December 6, 1996
*Time:* 8:30 a.m. to 5:00 p.m.
*Room:* 415
*Program:* This meeting will review applications for Library and Archival Preservation and Access Projects-Anthropology, Folklore Music submitted to the Division of Preservation and Access, for projects at the May 1, 1997 deadline.

*8. Date:* December 9, 1996
*Time:* 8:30 a.m. to 5:00 p.m.
*Room:* 430
*Program:* This meeting will review applications for Education Development and Demonstration-Philosophy, History of Science, Classics, and Medieval Studies, K–16 submitted to the Division of Research and Education, for projects at the October 1, 1996 deadline.

*9. Date:* December 9, 1996
*Time:* 8:30 a.m. to 5:00 p.m.
*Room:* 317
*Program:* This meeting will review applications for Collaborative Research in Native American and Latin American Studies submitted to the Division of Research and Education, for projects at the September 1, 1996 deadline.

*10. Date:* December 10, 1996
*Time:* 8:30 a.m. to 5:00 p.m.
*Room:* 317
*Program:* This meeting will review applications for Collaborative Research in American History I submitted to the Division of Research and Education, for projects at the September 1, 1996 deadline.

*11. Date:* December 10, 1996
*Time:* 8:30 a.m. to 5:00 p.m.
*Room:* 415
*Program:* This meeting will review applications for United States Newspaper Program submitted to the Division of Preservation and Access, for projects at the May 1, 1997 deadline.

*12. Date:* December 11, 1996
*Time:* 8:30 a.m. to 5:00 p.m.
*Room:* 430
*Program:* This meeting will review applications for the Education Development and Demonstration-American and European History, K–16 submitted to the Division of Research and Education, for projects at the October 1, 1996 deadline.

*13. Date:* December 11, 1996
*Time:* 9:00 a.m. to 4:00 p.m.
*Room:* 317
*Program:* This meeting will review applications for Collaborative Research in American History II submitted to the Division of Research and Education, for projects at the September 1, 1996 deadline.

*14. Date:* December 12, 1996
*Time:* 8:30 a.m. to 5:00 p.m.
*Room:* 317
*Program:* This meeting will review applications for Collaborative Research in American History and Philosophy submitted to the Division of Research and Education, for projects at the September 1, 1996 deadline.

*15. Date:* December 13, 1996.
*Time:* 8:30 a.m. to 5:00 p.m.
*Room:* 430
*Program:* This meeting will review applications for the Education Development and Demonstration-Anthropology, Archaeology, Art, and Literature, K–16 submitted to the Division of Research and Education, for projects at the October 1, 1996 deadline.

*16. Date:* December 13, 1996.
*Time:* 8:30 a.m. to 5:00 p.m.
*Room:* 317.
*Program:* This meeting will review applications for Collaborative Research in The Arts Program submitted to the Division of Research and Education, for projects at the September 1, 1996 deadline.

*17. Date:* December 16, 1996.
*Time:* 8:30 a.m. to 5:00 p.m.
*Room:* 317.
*Program:* This meeting will review applications for Collaborative Research in Classical and Medieval Studies submitted to the Division of Research and Education, for projects at the September 1, 1996 deadline.

*18. Date:* December 17, 1996.
*Time:* 8:30 a.m. to 5:00 p.m.
*Room:* 317.
*Program:* This meeting will review applications for Collaborative Research in Literature submitted to the Division of Research and Education, for projects at the September 1, 1996 deadline.

Michael S. Shapiro,
*Advisory Committee Management Officer.*

[FR Doc. 96–30799 Filed 12–3–96; 8:45 am]
**BILLING CODE 7536–01–M**

## NATIONAL SCIENCE FOUNDATION

### United States Antarctic Program (USAP) Blue Ribbon Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* United States Antarctic (USAP) Program Blue Ribbon Panel (#1531).

*Date & Time:* December 20, 8:00 a.m.–6:00 p.m.; December 31, 1996, 8:30 a.m.–5 p.m.

*Place:* Room 1235, NSF, 4201 Wilson Boulevard, Arlington, VA.

*Type of Meeting:* Open.

*Contact Person:* Guy G. Guthridge, Office of Polar Programs, Room 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Telephone: (703) 306–1031.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* Examine a full range of infrastructure, management, and scientific options for the United States Antarctic Program so that the Foundation will be able to maintain the high quality of research and implement U.S. policy in Antarctica under realistic budget scenarios.

*Agenda:* The committee will continue analysis begun at its first meeting (October 11–12, 1996). It will receive presentations from Antarctic experts and will discuss options in the areas of research, research support, contractor tasking, military transition, cost-saving initiatives, health and safety context, environment and waste management, South Pole redevelopment, international aspects, science users' perspectives, and interagency involvement.

Dated: November 27, 1996.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 96–30777 Filed 12–3–96; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act Meeting

**TIME:** 9:30 a.m., Wednesday, December 11, 1996.

**PLACE:** The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

**STATUS:** Open.

**MATTERS TO BE DISCUSSED:**

6781 Aviation Accident Report: Ground Spoiler Activation in Flight/Hard Landing, ValuJet Airlines Flight 558, Douglas DC–9–32, N922VV, Nashville International Airport, Nashville, Tennessee, January 7, 1996.

6675A Railroad Accident Report: Derailment of Atchison, Topeka and Santa Fe Railway Company Train H–BALT1–31, Near Cajon Junction, California, February 1, 1996.

**NEWS MEDIA CONTACT:** Telephone: (202) 314–6100.

**FOR MORE INFORMATION CONTACT:** Bea Hardesty, (202) 314–6065.

November 29, 1996.

Bea Hardesty,

*Federal Register Liaison Officer.*

[FR Doc. 96–30937 Filed 12–2–96; 11:36 am]

BILLING CODE 7533–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–368]**

### Arkansas Nuclear One, Unit 2; Notice of Consideration of Issuance of Amedment to Facility Operating License, Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–6 issued to Entergy Operations, Inc. for operation of Arkansas Nuclear One, Unit 2 (ANO–2) located in Pope County, Arkansas.

The proposed amendments would change the surveillance requirements for the Arkansas Nuclear One, Unit 2 (ANO–2) steam generator tubing. This proposed change references a new generic topical report (CEN–630–P, ''Repair of ¾″ O.D. Steam Generator Tubes Using Leak-Tight Sleeves,'' Revision 01, November 1996).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves 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. 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:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed amendment continues to allow the ABB/Combustion Engineering (CE) tungsten inert gas (TIG) welded expansion transition zone (ETZ) and tube support sleeves to be used as an alternate tube repair method for the Arkansas Nuclear One, Unit 2 (ANO–2) steam generators along with process improvements which are included in the topical report to be referenced. The sleeve configuration was designed and analyzed in accordance with the criteria of Regulatory Guide (RG) 1.121 and Section III of the ASME Code and is unaffected by the enhancements that will be implemented. The consequences of leakage through the sleeved region of the tube, including the proposed enhancements, is bounded by the existing steam generator tube rupture (SGTR) analysis included in the ANO–2 Safety Analysis Report.

The proposed change reflects enhancements made to the installation inspection process which is identified in the currently licensed topical report (CEN–601–P, Revision 01–P). The new topical report (CEN–630–P, Revision 01) specifies that proper cleaning and inspection of the weld zone be performed prior to sleeve installation. Also, eddy current testing (ECT) has been added as part of the sleeve acceptance criteria to ensure the structural integrity of the tube-to-sleeve weld joint. The ECT added allows disposition of certain non-significant indications outside the sleeve's pressure boundary without subsequent repair of the tube. Other changes caused by referencing a generic topical report, instead of a site-specific analysis, increase the conservatism already present with the currently licensed process. The lower primary-to-secondary leakage limit ensures that any dose contributed from a potential steam generator tube leak will be considerably lower than the dosage specified in 10 CFR 100.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change to implement CEN–630–P, Revision 1, will not create a new or different type of accident. The changes reflect enhancements to the currently licensed installation/inspection process and would not affect any hypothetical accident as a result of potential tube or sleeve degradation in the repaired portion of the tube. Such hypothetical accidents remain bounded by the existing SGTR analysis. The sleeve design does not affect any other component or portion of the steam generator tube outside of the immediate area repaired.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety.

The currently licensed TIG welded sleeving repair of degraded steam generator tubes has been shown by analysis to restore

the integrity of the tube to its original design basis condition. By implementing the proposed enhancements, the quality of the sleeve welds will be increased thereby reducing the potential for leaving a weld indication in service.

Installation/inspection enhancements are being made to a process which is currently licensed for use at ANO–2 by the NRC staff. These enhancements would not have any adverse effects on the previously evaluated design transient or accident analysis. The enhancements only specify inspection methods of the weld zones which will ensure the integrity of the pressure boundary.

Reducing the allowable primary-to-secondary leakage rate through the steam generators actually increases the margin of safety by reducing potential dose contribution due to steam generator tube leakage.

Therefore, this change does not involve a significant reduction in the margin of safety.

Therefore, based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that the requested change does not involve a significant hazards consideration.

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.

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. 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 Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, 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 hearing and petitions for leave to intervene is discussed below.

By January 3, 1997, 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, N.W., Washington, DC, and at the local public document room located at the Tomlinson Library, Arkansas Tech University, Russellville, AR 72801. 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 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 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 20555–0001, 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 William D. Beckner, Director, Project Directorate IV–1: 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 20555–0001, and to Mr. Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005–3502, attorney for the licensee.

Non-timely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 24, 1996, 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 located at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland, this 29th day of November 1996.

For the Nuclear Regulatory Commission.

Kombiz Salehi,

*Acting Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 96–30900 Filed 12–3–96; 8:45 am]

BILLING CODE 7590–01–P

**[Docket No. 72–17 (50–344)]**

## Portland General Electric Company, et al.; Notice of Issuance of Environmental Assessment and Finding of No Significant Impact for the Independent Spent Fuel Storage Installation at Trojan Nuclear Plant

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a materials license under the requirements of Title 10, Code of Federal Regulations (10 CFR), Part 72, to Portland General Electric Company, et al. (PGE or the applicant), authorizing receipt and storage of spent fuel in an independent spent fuel storage installation (ISFSI) located at its Trojan Nuclear Plant (TNP) in Columbia County, Oregon. The Commission's Office of Nuclear Material Safety and Safeguards, Spent Fuel Project Office, has completed its environmental review in support of the issuance of a materials license. The ''Environmental Assessment (EA) Related to the Construction and Operation of the Trojan Independent Spent Fuel Storage Installation'' has been issued in accordance with 10 CFR Part 51.

Summary of Environmental Assessment

*Description of the Proposed Action:* The proposed licensing action would authorize the applicant to construct and operate a dry storage ISFSI at the Trojan site. The primary function of the ISFSI is to provide interim storage of spent fuel assemblies, fuel debris, and greater than Class C (GTCC) waste, which were generated at the Trojan Nuclear Plant during its operation.[1]

Currently, the spent fuel and fuel debris are stored in the Trojan spent fuel pool.

PGE has selected a dry storage system using Sierra Nuclear Corporation's TranStor Storage System design. The TranStor Storage System is a vertical, dry storage system which utilizes a ventilated concrete storage cask and a seal-welded steel basket to store spent nuclear fuel assemblies, fuel debris and GTCC waste.

[1] At present, licenses issued under the Commission's regulations at 10 CFR Part 72 are limited to the storage of spent fuel and other radioactive materials associated with spent fuel storage in an ISFSI. Storage of GTCC waste is not within the scope of a Part 72 license. However, on November 2, 1995, PGE submitted a petition for rulemaking requesting that the Commission amend its Part 72 regulations to specifically provide for the storage of GTCC waste in an ISFSI. See 61 FR 3619 (1996). Consideration of the inclusion of this type of waste in the EA for the Trojan ISSFSI should obviate the necessity for revisiting the environmental impacts of storage of GTCC waste at Trojan if the Commission grants PGE's petition and amends its regulations as requested.

The license for an ISFSI under 10 CFR Part 72 is issued for 20 years. However, the licensee may apply to the Commission to renew the license, if necessary, prior to its expiration.

*Need for the Proposed Action:* TNP was shutdown in November 1992, and on January 27, 1993, PGE notified the NRC of its decision to permanently cease power operation and subsequently defueled the reactor, storing the spent fuel in the TNP spent fuel pool. Currently, PGE has a possession-only license under 10 CFR Part 50 and applied to terminate its license on January 25, 1995, by submitting a decommissioning plan. The licensee proposed to decommission the facility using a dismantlement or DECON approach as defined in the ''Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities,'' NUREG–0586, dated August 1988.

PGE's plans for decommissioning the TNP include decontamination and dismantlement of contaminated structures, systems, and components. To facilitate decommissioning, the spent fuel and other contents of the spent fuel pool must be relocated. The licensee determined that an ISFSI would be the most economical method for the temporary storage of the spent fuel until acceptance of the spent fuel by the U.S. Department of Energy, which is responsible for the permanent disposal of spent fuel. Relocating the spent fuel to an ISFSI would allow TNP to proceed with decontamination and dismantlement of the structures, systems, and components without impacting the safe storage of spent fuel.

*Environmental Impacts of the Proposed Action:* As discussed in the EA, no significant construction impacts are anticipated. Trojan ISFSI construction activities will affect only a small fraction of the land area of TNP. With good construction practices, the potential for fugitive dust, erosion, and noise, typical of the planned construction activities, can be controlled to insignificant levels. The only resources irretrievably committed are the steel, concrete, and other construction materials used in the ISFSI pad, storage casks, and any operating equipment.

As discussed in the EA, there will be no radiological liquid or gaseous effluents during normal operation of the ISFSI. The estimated doses to both occupational workers and members of the public are below regulatory limits.

As discussed in the EA, no significant radiological impacts are expected during operation of the ISFSI. The only environmental interface of the ISFSI is

with the air surrounding the storage casks; the only discharge of waste to the environment is heated air from the cask's passive heat dissipation system. Climatological effects will be insignificant.

*Alternatives to the Proposed Action:* The ''Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light-Water Power Reactor Fuel,'' NUREG–0575, found that the ISFSIs represent a major means of interim storage at a reactor site. While the environmental impacts of the dry storage ISFSI option were not specifically addressed in the FGEIS, the use of alternative dry passive storage techniques for aged fuel appeared to be as feasible as wet storage and environmentally acceptable. However, environmental impacts need to be considered on a site-specific basis. Several alternatives were discussed in the EA, but none were more protective of the environment nor was any alternative sufficient to meet the spent fuel storage requirements for TNP. Because the Commission has concluded there are no significant environmental impacts associated with the proposed action, any alternative of equal or greater environmental impacts need not be evaluated.

*Alternative Use of Resources:* The only resources committed irretrievably and not previously considered in environmental documents relating to the TNP are the steel, concrete, and other construction materials used in the ISFSI.

*Agencies and Persons Contacted:* A representative of the Oregon Department of Energy was contacted for supporting documentation in connection with the preparation of the EA.

Finding of No Significant Impact

In summary, the TNP ISFSI is located in a small area within the confines of the TNP owner-controlled area and will require only a minor commitment of land resources. The proposed action is not expected to cause any significant release of effluents, and there will be no significant increases in individual and collective radiation doses to either the public or on-site workers. Potential off-site impacts from a postulated worst-case credible accident are a small fraction of the regulatory limits of 10 CFR 72.106 and well below the U.S. Environmental Protection Agency's Protective Action Guides. Therefore, the proposed action will not significantly affect the quality of the human environment. Accordingly, pursuant to the requirements of 10 CFR 51.31 and 51.32, the Commission has determined that a finding of no significant impact is appropriate and that an environmental impact statement need not be prepared for the issuance of a materials license for the Trojan ISFSI.

The EA for the proposed action, on which this finding of no significant impact is based, relied upon several environmental documents, with independent assessment of data, analyses, and results. The following documents were utilized: (1) ''Trojan Independent Spent Fuel Storage Installation Environmental Report'' (PGE–1070), March 26, 1996, as supplemented by letter dated May 22, 1996; (2) ''Final Environmental Statement Related to the Operation of the Trojan Nuclear Plant,'' August 1973; (3) Trojan ISFSI License Application (PGE–1068), Safety Analysis Report (PGE–1069), Decommissioning Plan (PGE–1061), and related documentation; (4) ''Environmental Assessment by the U.S. Nuclear Regulatory Commission Related to the Request to Authorize Facility Decommissioning—Trojan Nuclear Plant,'' December 1995; (5) ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions, 10 CFR Part 51; (6) ''Final Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel,'' NUREG–0575, August 1979.

The EA and other documents related to this proposed action are available for public inspection and for copying for a fee at the NRC Public Document Room, 2120 L Street, NW, Washington, DC 20555, and at the Local Public Document Room for TNP located at the Branford Price Miller Library, Portland State University, Portland, Oregon 97207.

Dated at Rockville, MD, this 22nd day of November 1996.

For the Nuclear Regulatory Commission.

Charles J. Haughney,

*Acting Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 96–30901 Filed 12–3–96; 8:45 am]

BILLING CODE 7590–01–P

## Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the State of Louisiana

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** This notice is to advise the public of the issuance of a Final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the State of Louisiana. The MOU provides the basis for mutually agreeable procedures whereby the State of Louisiana may utilize the NRC Emergency Response Data System (ERDS) to receive data during an emergency at a commercial nuclear power plant in Louisiana. Public comments were addressed in conjunction with the MOU with the State of Michigan published in the Federal Register Vol. 57, No. 28, February 11, 1992.

**EFFECTIVE DATE:** This MOU is effective October 31, 1996.

**ADDRESSES:** Copies of all NRC documents are available for public inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6383 or (301) 415–7559.

This attached MOU is intended to formalize and define the manner in which the NRC will cooperate with the State of Louisiana to provide data related to plant conditions during emergencies at commercial nuclear power plants in Louisiana.

Dated at Rockville, Maryland, this 27th day of November 1996.

For the Nuclear Regulatory Commission.

Edward L. Jordan,

*Director, Office for Analysis and Evaluation of Operational Data.*

Agreement Pertaining to the Emergency Response Data System Between the State of Louisiana and the U.S. Nuclear Regulatory Commission

*I. Authority*

The U.S. Nuclear Regulatory Commission (NRC) and the State of Louisiana enter into this Agreement under the authority of Section 274i of the Atomic Energy Act of 1954, as amended.

Louisiana recognizes the Federal Government, primarily the NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions to states by the Clean Air Act.

*II. Background*

A. The Atomic Energy Act of 1954, as amended, and the Energy

Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes, the NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on ''Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities'' (54 FR 7530, February 22, 1989). The policy statement provides that NRC will consider state proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This agreement is intended to be consistent with, and implement, the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate power plant safety by, among other things, responding to emergencies at licensee's facilities and monitoring the status and adequacy of the licensee's responses to emergency situations.

D. Louisiana fulfills its statutory mandate for preparedness, response, mitigation, and recovery in the event of an accident at a nuclear power plant through the Louisiana Revised Statutes, Subtitle II of Title 30, Chapter 6.

*III. Scope*

A. This Agreement defines the way in which NRC and Louisiana will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System (ERDS) during emergencies at nuclear power plants in the State of Louisiana.

B. It is understood by the NRC and the State of Louisiana that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the State of Louisiana, or to affect or otherwise alter the terms of any agreement in effect under the authority of Section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the State of Louisiana on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the State of Louisiana authority to (1) interpret or modify NRC regulations and NRC requirements imposed on the licensee; (2) take enforcement actions; (3) issue confirmatory letters; (4) amend, modify, or revoke a license issued by NRC; or (5) direct or recommend nuclear power plant employees to take or not to take any action. Authority for all such actions is reserved exclusively to the NRC.

*IV. NRC's General Responsibilities*

Under this agreement, NRC is responsible for maintaining the ERDS. ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one user terminal for the State of Louisiana during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10-mile Emergency Planning Zone (EPZ) lies within the State of Louisiana. The NRC agrees to provide unique software already available to NRC (not commercially available) that was developed under NRC contract for configuring an ERDS workstation.

*V. State of Louisiana General Responsibilities*

A. Louisiana (through its lead radiological agency) will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, Louisiana will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. Louisiana agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10 mile Emergency Planning Zone does not fall within its State boundary.

C. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the NRC.

*VI. Implementation*—Louisiana and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed:

A. Louisiana and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC and Louisiana agree to meet, as necessary, to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC and Louisiana will protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the State of Louisiana Public Record Act (Louisiana Revised Statute 44), 10 CFR 2.790, and other applicable authority.

D. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to the Louisiana Radiation Protection Division (State of Louisiana's lead radiological agency) by the NRC. The Louisiana Radiation Protection Division may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. For exercises in which the NRC is not participating, the Louisiana Radiation Protection Division will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

*VII. Contacts*

A. The principal senior management contacts for this Agreement will be the Director, Incident Response Division, Office for Analysis and Evaluation of Operational Data, and the Administrator, Louisiana Radiation Protection Division. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC and the Louisiana Radiation Division staff members on technical and other day-to-day activities.

*VIII. Resolution of Disagreements*

A. If disagreements arise about matters within the scope of this Agreement, NRC and Louisiana will work together to resolve these differences.

B. Resolution of differences between the State and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Incident Response Division management.

C. Differences which cannot be resolved in accordance with Sections

VIII.A and VIII.B will be reviewed and resolved by the Director, Office for Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

*IX. Effective Date*

This Agreement will take effect after it has been signed by both parties.

*X. Duration*

A formal review, not less than 1 year after the effective date, will be performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement will be subject to periodic reviews and may be amended or modified upon written agreement by both parties, and may be terminated upon 30 days written notice by either party.

*XI. Separability*

If any provision(s) of this Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

For the U.S. Nuclear Regulatory Commission,

James M. Taylor,

*Executive Director for Operations.*

For the State of Louisiana.

Dated: October 31, 1996.

Gus Von Bodungen,

*Assistant Secretary, Office of Air Quality and Radiation Protection, Department of Environmental Quality.*

[FR Doc. 96–30902 Filed 12–3–96; 8:45 am]

BILLING CODE 7590–01–M

## Biweekly Notice

## Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 8, 1996, through November 21, 1996. The last biweekly notice was published on November 19, 1996.

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 Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, 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 January 3, 1997, 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 20555-0001, 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 20555-0001, 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.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

*Date of amendment request:* October 31, 1996

*Description of amendment request:* The proposed change would revise the maximum allowable water temperature as measured at the respective intake structures from 95°F to 94°F and will increase the minimum main reservoir level from 205.7 feet mean sea level to 215 feet mean sea level in Technical Specification (TS) 3/4.7.5, Ultimate Heat Sink.

*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.

Since the proposed change does not affect the operation of any accident initiating systems, the probability of occurrence of an accident previously evaluated will not increase. Also, none of the proposed changes will cause plant systems to operate outside their design limits or create the likelihood of a radioactive release. Therefore, there would be no increase in the consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new component or system level interactions will be created by the proposed change in ultimate heat sink level and temperature, and no design limits will be exceeded. This change to [Technical] Specification 3/4.7.5 is more conservative than the current Specification limits and will serve only to restrict operation to a higher reservoir level and lower temperature than was previously allowed. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed amendment will establish a more conservative minimum main reservoir level such that safety-related heat exchangers served by Emergency Service Water will continue to remove their design-basis accident heat loads. Establishing a higher minimum reservoir level, combined with a more conservative reservoir temperature assumption, will involve an increase in the margin of safety. Also, the proposed change in maximum reservoir temperature from 95°F to 94°F will not result in any reduction in the margin of safety. A maximum pre-accident initial water temperature of 94°F is necessary to yield a post-accident (30-day) calculated maximum inlet temperature less than or equal to the design basis temperature of 95°F. Therefore, the proposed change 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:* Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605

*Attorney for licensee:* William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

*NRC Project Director:* Mark Reinhart, Acting

Duke Power Company, Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

*Date of amendment request:* November 4, 1996

*Description of amendment request:* The proposed amendments would eliminate from the Technical Specifications, Section 4.7.13.1, the ''during shutdown'' restriction pertaining to the 18-month Standby Shutdown System (SSS) diesel generator inspection. Unlike Catawba Nuclear Station, many nuclear plants do not have an SSS facility and associated diesel generator. The requirements in the Technical Specifications for the SSS diesel generator (shared between both units) were patterned after similar requirements for the emergency diesel generators. The current wording requires that both units be shut down to perform the subject inspection.

*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 standard for determining that a Technical Specification amendment request involves no significant hazards considerations requires that operation of the facility in accordance with the requested amendment will not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

3) Involve a significant reduction in the margin of safety.

*Criterion 1*

The proposed amendment seeks to change the surveillance requirements to allow the SSS DG [diesel generator] periodic inspection with one or both units on line. The surveillance can be safely completed as proposed without affecting unit operation. The equipment would not be removed from service for a time that would exceed the current Limiting Condition For Operation or the appropriate action statement would be entered. The probability or consequences of any accident previously evaluated will not be significantly increased because the removal of the SSS DG from service can be safely performed while one or both units are operating.

*Criterion 2*

The proposed amendment change does not change any actual surveillance requirements. The change simply allows the 18 month SSS DG inspection to be performed at different unit conditions. The performance of the surveillance with the units operating do not require any new component configurations that would reduce the ability of any equipment to mitigate an accident. The station is not degraded beyond that which has been previously evaluated. Therefore the proposed change does not create the possibility of a new or different kind of accident.

*Criterion 3*

The allowed outage time for the SSS DG, as specified by the Limiting Condition For Operation, defines the required margin of safety for equipment operability. Removing the SSS DG from service for periodic inspection and returning it to service within the allowed outage time 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 proposed amendments involve no significant hazards consideration.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

*NRC Project Director:* Herbert N. Berkow

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

*Date of amendment request:* October 30, 1996

*Description of amendment request:* The proposed changes would (1) completely rewrite Technical Specification (TS) 4.4.2 to incorporate a prestressed concrete containment surveillance program that is consistent with Regulatory Guide 1.35, (2) modify TS 3.6.7 by establishing new Limiting Conditions for Operation and required actions related to the structural integrity of the reactor buildings, (3) incorporate an editorial change to TS 6.6.3 to reference the relocated tendon surveillance reporting requirements, and (4) modify TS 3.6.7 Bases to describe the Reactor Building post-tensioning 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) Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment to Oconee Technical Specifications involves the implementation of an enhanced surveillance program for the reactor building prestressed concrete containment and the assurance of appropriate station response to abnormal degradation of the containment structure. The proposed change will move Oconee into a surveillance program which is consistent with accepted industry practice and a published NRC regulatory position. The adoption of Regulatory Guide 1.35 as a basis for the periodic inspection of the reactor building prestressed concrete containment and clearly defined station response to any indication of structural deterioration will assure acquisition of sufficient data to demonstrate that structural integrity is maintained and, if necessary, appropriate compensatory action(s) are taken. By assuring that any adverse trends in the behavior of the prestressed concrete containment are identified and acted upon in a timely manner, this change does not increase the probability or consequences of an accident previously evaluated.

2) Will the change create the possibility of a new or different kind of accident from any previously evaluated?

No. The proposed amendment to Oconee Technical Specifications involves the implementation of an enhanced surveillance program for the reactor building prestressed concrete containment and the assurance of appropriate station response to abnormal degradation of the containment structure. By adopting Regulatory Guide 1.35 as a basis for the surveillance inspection program for the reactor building prestressed concrete containment and clearly defining required station response to any indication of structural deterioration, sufficient data will be obtained to demonstrate that structural integrity is being maintained and that any adverse behavioral trends are identified and acted upon in a timely manner. Therefore, the proposed amendment does not create the possibility of any type of accident: new, different or previously evaluated.

3) Will the change involve a significant reduction in a margin of safety?

No. Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel and fuel cladding, Reactor Coolant System pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed Technical Specifications amendment will move Oconee into a surveillance program which is consistent with accepted industry practice and a published regulatory position. By ensuring more timely identification of, and response to, any adverse trend in the behavior of the reactor building prestressed concrete containment, continued maintenance of the structural integrity is enhanced. Therefore, the ability of the containment structure to perform the intended function of protecting the public

from radiation dose is further assured, and no reduction in any existing margin of safety will occur.

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:* Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

*Attorney for licensee:* J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036

*NRC Project Director:* Herbert N. Berkow

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

*Date of amendment request:* September 9, 1996

*Description of amendment request:* The proposed amendment would modify the design features section (Section 5.0) of the Technical Specifications (TSs) to make the design features section consistent with the four criteria specified in the Commission's Policy Statement on TSs (58 FR 39132) and with the guidance provided in the NRC's Standard Technical Specifications, Westinghouse Plants (NUREG-1431, Revision 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. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change reduces the content of the technical specification (TS) design feature section consistent with the Improved Standard Technical Specifications (ISTS) of NUREG-1431. The information that has been removed is also contained in the UFSAR [Updated Final Safety Analysis Report] or offsite dose calculation manual (ODCM); therefore, duplication of the information is eliminated to improve the use of the TS. Because the information removed from the TS is maintained in the UFSAR or ODCM where changes are controlled in accordance with regulatory requirements, there is no reduction in commitment and adequate control is provided. Elimination of information from the design feature section of the TS which duplicates information in the UFSAR enhances the usability of the TS without reducing commitments. These changes clarify and improve the understanding and readability of the TS. Since the requirements remain the same, these changes only affect the method of presentation and would not affect possible initiating events for accidents previously evaluated or any system functional requirement. Therefore, the proposed changes would 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 relocation of existing requirements, the elimination of requirements which duplicate existing information, and making administrative improvements are all changes that are administrative in nature. The proposed changes will not affect any plant system or structure, not [nor] will they affect any system functional or operability requirements. Consequently, no new failure modes are introduced as a result of the proposed changes. The proposed changes are consistent with the ISTS, for the most part, as plant-specific information is included in this section. Therefore, the proposed change will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes are administrative in nature in that no change to the design features of the facility are being made. The design features section is being reformatted to be consistent, for the most part, with the ISTS. The proposed changes do not affect the UFSAR design bases, accident assumptions, or technical specification bases. In addition, the proposed changes do not affect release limits, monitoring equipment or practices. 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:* B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001

*Attorney for licensee:* Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John F. Stolz

Entergy Gulf States, Inc., Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

*Date of amendment request:* October 24, 1996

*Description of amendment request:* The proposed amendment would revise the technical specifications to remove accelerated testing requirements for the standby diesel generators. The changes implement the provisions of Generic Letter (GL) 94-01, ''Removal of Accelerated Testing and Special Reporting Requirements For Diesel Generators'', dated May 31, 1994.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. This request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change will provide flexibility to structure the standby diesel generator maintenance program based on the risk significance of the structures, systems, and components that are within the scope of the Maintenance Rule. The removal of the diesel generator accelerated testing is acceptable as the maintenance rule applies site and system specific performance criteria to monitor diesel generator performance. This criteria includes a running availability and reliability goal as well as specific goals to monitor maintenance preventable functional failures. The performance criteria for the diesel generator reliability and unavailability established by the maintenance rule and the causal determinations and corrective actions required for maintenance preventable functional failures are considered to be an acceptable method for monitoring diesel generator performance.

The proposed change has no effect on the probability of the initiation of an accident, because the emergency diesel generators do not serve as the initiator of any event. Additionally, as diesel generator performance will continue to be assured by the maintenance rule, the proposed changes do not affect the ability to mitigate the consequences of an accident previously evaluated. The changes do not impact the diesel's design sources, operating characteristics, system functions, or system interrelationships. The failure mechanisms for the accidents previously analyzed are not affected and no additional failure modes are created that could cause an accident that has been previously evaluated. Since the diesel generator performance and reliability will continue to be assured by the maintenance rule, the proposed changes cannot involve a significant increase in the probability or consequences of an accident previously evaluated.

2. This request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change does not involve a change to the plant design or operation. As a result, the proposed changes does not affect any of the parameters or conditions that could contribute to the initiation of any accidents. The proposed changes only affect the methods used to monitor and assure diesel generator performance. The performance criteria for both the diesel generator reliability and unavailability established by the maintenance rule, and the

casual determinations and corrective actions required for maintenance preventable functional failures, is considered by GL 94-01 to be an acceptable method for monitoring diesel generator performance.

No [system, structure, or component] SSC, method of operating, or system interface is altered by this change. The changes do not impact the diesel's design sources, operating characteristics, system functions, or system interrelationships. The failure mechanisms for the accidents are not affected, and no additional failure modes are created. Because the diesel generator performance and reliability will continue to be assured by the maintenance rule, the proposed changes cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The request does not involve a significant reduction in a margin to safety.

The proposed changes only affect the methods used to monitor and assure diesel generator performance and reliability. The performance criteria for both the diesel generator reliability and unavailability established by the maintenance rule, and the casual determinations and corrective actions required for maintenance preventable functional failures, is considered by GL 94-01 to be an acceptable method for monitoring diesel generator performance. No margin to safety as defined in the basis for any technical specification is impacted by these changes. This change does not impact any uncertainty in the design, construction, or operation of any SSC. Diesel generator response to accident initiators is unchanged. No SSC, method of operating, or system interface is altered by this change. The changes do not impact the diesel's design sources, operating characteristics, system functions, or system interrelationships. Because the diesel generator performance and reliability will continue to be assured by the maintenance rule, the proposed changes cannot involve a significant reduction in the margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Government Documents Department, Louisiana State University, Baton Rouge, LA 70803

*Attorney for licensee:* Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005

*NRC Project Director:* William D. Beckner

Entergy Gulf States, Inc., Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

*Date of amendment request:* November 6, 1996

*Description of amendment request:* The proposed amendment would revise the River Bend Station (RBS) Fire Hazards Analysis Report and Safety Analysis Report to allow a deviation from 10 CFR Part 50, Appendix R, Section III.G.2.c with respect to the requirement for an area wide automatic fire suppression system in Fire Area C-16. The deviation would allow a 1-hour barrier to separate redundant trains of post fire safe shutdown equipment within the fire area and partial sprays on the protected train.

*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 request does not involve an increase in the probability or consequences of an accident previously evaluated.

The event of concern is a fire in Fire Area C-16. The low fire loading and minimal concentration of exposed combustible material in Fire Area C-16 would limit fire spread. However, for this scenario, all unprotected equipment in Fire Area C-16 will be assumed lost. Fire Area C-16 contains cables for both Division I and Division II components required for post fire safe shutdown. The loss of both divisions of cables could preclude the ability of the plant to achieve post fire safe shutdown. Protection of the required Division II cables in a 1-hour fire barrier in conjunction with a partial area, automatic suppression system installed above and below the protected trays will ensure that post fire safe shutdown can be achieved.

In summary, the probability of a fire occurring in Fire Area C-16 is not affected. However, if a fire were to occur in Fire Area C-16 which caused the loss of Division I powered components, Division II powered components, by virtue of the 1-hour fire barrier and partial area, automatic suppression system, would remain available. The low fire loading and minimal concentration of exposed combustible material in Fire Area C-16 would limit fire spread. The proposed fire protection scheme provides a level of protection commensurate with the original design. Therefore, this request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The request does not create the possibility of occurrence of a new or different kind of accident from any accident previously evaluated.

Fire Area C-16 will be protected by a partial area, automatic suppression system installed above and below the protected cable trays. Fire suppression systems are generally used to limit fire spread, once the heat of the fire opens thermally sensitive sprinklers. The low fire loading and minimal concentration of exposed combustible material in Fire Area C-16 would aid in limiting fire spread, and would also limit the severity of any plausible fire. The previous analysis assumed all Division I components and cables in the area would be lost, and that the installed fire barrier would adequately protect the Division II cables routed through C-16. The required Division II cables will be enclosed in a 1-hour fire barrier with a partial area, automatic suppression system. These features provide a level of protection commensurate with that of the previous design. In addition, the total combustible loading in the area results in a maximum theoretical worst case fire duration of less than 1-hour.

In summary, if a fire were to occur in Fire Area C-16 which caused the loss of Division I powered components, post fire safe shutdown could still be achieved using Division II. Therefore, this request does not create the possibility of occurrence of a new or different kind of accident from any accident previously evaluated.

3. The request does not involve a significant reduction in a margin of safety.

In this case, the margin of safety is implicit rather than being explicitly expressed as a numerical value. An implicit margin of safety involves conditions for NRC acceptance. Since the RBS Technical Specification Bases do not specifically address a margin of safety for fire protection, the SAR [Safety Analysis Report], the NRC's Safety Evaluation Report (SER), and appropriate other licensing basis documents were reviewed to determine if the proposed change would result in a reduction in a margin of safety. As stated, in part, in Attachment 4 to NPF-47 [Facility Operating License; NPF-47]:

EOI [Entergy Operations, Inc.] shall implement and maintain in effect all provisions of the approved fire protection program as described in the Final Safety Analysis Report for the facility through Amendment 22 and as approved in the SER dated May 1984 and Supplement 3 dated August 1985 subject to provisions 2 and 3 ....

As discussed in the Reason for Request, SSER [Supplemental Safety Evaluation Report] 3 dated August 1985 states, in part:

On the basis of its evaluation the staff finds that the applicant's fire protection program with approved deviations is in conformance with the guidelines of BTP CMEB [branch technical position, Chemical Materials and Engineering Branch] 9.5-1, [S]sections III.G, III.J, and III.O of Appendix R to 10 CFR [Part] 50, and GDC [General Design Criteria] 3, and is, therefore, acceptable.

Thus, the margin of safety in this case can be defined as conformance with the specified fire protection guidelines.

10 CFR [Part] 50, Appendix R, Section III.G.2, requires, in part, that redundant trains of post fire safe shutdown equipment located in the same fire area be separated by a 1-hour fire barrier and, in addition, that fire detection and an automatic fire suppression system be installed in the are under consideration. Since Fire Area C-16 will have a partial area, automatic suppression system, this fire area would deviate from the requirements of 10 CFR [Part] 50, Appendix R, Section III.G.2.c. However, as discussed previously, the installed partial area, automatic suppression system, the low fire loading and minimal amount of exposed combustibles compensate for the lack of a total, area wide, automatic fire suppression

system. There is no adverse impact on the ability to achieve and maintain post fire safe shutdown. Therefore, this request 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.

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*NRC Project Director:* William D. Beckner

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant Units 1 and 2, St. Lucie County, Florida

*Dates of amendment requests:* October 28, 1996 (Two letters)

*Description of amendment request:* The licensee proposed to change the St. Lucie Units 1 and 2 Technical Specifications (TS) to implement 10 CFR 50, Appendix J, Option B, for containment leakage testing by referring to Regulatory Guide 1.163, ''Performance-Based Containment Leakage-Test Program.'' Changes include relocating the details for containment testing to the ''containment leakage rate testing program'' and adding the requirements of the containment leakage rate testing program to TS 6.8.4, which describes facility programs. Changes are also proposed to remove Tables 3.6-1, ''Containment Leakage Paths,'' and 3.6-2, ''Containment Isolation Valves'' from TS and relocate the information to plant procedures.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated due to the following reasons:

a)These proposed changes are all consistent with NRC requirements and guidance for implementation of 10 CFR 50, Appendix J, Option B, except for the use of Bechtel Topical Report BN-TOP-1 for type A testing. BN-TOP-1 has been previously approved for use in accordance with 10 CFR 50 appendix J.

b) Based on industry and NRC evaluations performed in support of developing Option B, these changes potentially result in a minor increase in the consequences of an accident previously evaluated due to the increased testing intervals. However, the proposed changes do not result in an increase in the core damage frequency since the containment system is used for mitigation purposes only.

c) These changes are expected to result in increased attention to components with poor leakage test history as part of the performance-based nature of Option B, such that the marginally increased consequences from the expanded testing intervals may be further reduced or negated.

Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The use of the modified specifications can not create the possibility of a new or different kind of accident from any previously evaluated since the proposed amendments will not change the physical plant or the modes of plant operation defined in the facility operating license. No new failure mode is introduced due to the implementation of a performance-based program for containment leakage rate testing, since the proposed changes do not involve the addition or modification of equipment, nor do they alter the design or operation of affected plant systems, structures, or components.(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The operating limits and functional capabilities of the affected systems, structures, and components are basically unchanged by the proposed amendments. The increase in intervals between leak-test surveillances will not significantly reduce the margin of safety as shown by findings in NUREG 1493, ''Performance-Based Containment Leak-Test Program'', which was based on implementation of the performance-based testing of Option B.

Therefore these changes do not involve a significant reduction in the margin of safety.The NRC staff has reviewed the licensee's analysis and, based on thisreview, 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:* Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

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*NRC Project Director:* Frederick J. Hebdon

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389,St. Lucie Plant Units 1 and 2, St. Lucie County, Florida

*Date of amendment request:* October 30, 1996

*Description of amendment request:* The proposed amendments will revise Technical Specification (TS) 3/4.9.10, ''Refueling Operations, Water Level-Reactor Vessel.'' The Limiting Condition for Operation (LCO) specified for the minimum allowed refueling water level is not altered, but the Applicability, Action, and Surveillance Requirements are changed to remove inconsistencies with the definition of Core Alterations, and to achieve consistency with the generic Standard Technical Specifications for Combustion Engineering Plants (NUREG-1432). An editorial change is proposed for TS 3/4.9.9, ''Refueling Operations, Containment Isolation System,'' and, for St. Lucie Unit 1, the LCO is modified to conform with other related refueling specifications.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Certain evolutions performed with the UGS [upper guide structure] in place are not Core Alterations, and the revised LCO 3/4.9.10 will allow these activities to be performed at water levels other than prescribed by the existing LCO. Since these activities are performed with the UGS in place, the probability that a fuel handling accident would occur is not impacted by the proposed changes. The minimum water level required for Core Alterations and movement of irradiated fuel in containment is not altered by the proposed changes, nor are any assumptions or conditions changed that were used as inputs to the evaluation of fuel handling accident consequences. The changes to Specification 3/4.9.9 are administrative in nature and resolve an inconsistency between the operability requirements for the containment isolation system and the containment penetrations that the system would isolate at PSL1 [Plant St. Lucie 1]. Therefore, operation of either facility in accordance with its proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different

kind of accident from any accident previously evaluated.

The proposed changes are administrative in nature, in that the changes do not involve the addition or modification of equipment nor do they alter the design of plant systems. New failure modes are not introduced, and the physical plant or the modes of plant operation defined in the Facility License are not altered. Therefore, operation of either facility in accordance with its proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The safety margin associated with a fuel handling accident is determined, in part, by the minimum refueling water level allowed for conducting Core Alterations and movement of irradiated fuel in containment. The minimum water level required by LCO 3/4.9.10, or other factors considered as inputs to the safety analysis, is not changed by the proposed amendments. The revised applicability requirements for LCO 3/4.9.9 at PSL1 will allow the containment isolation system to be inoperable only during those Mode 6 conditions where Core Alterations or irradiated fuel movements within containment are not in progress, or each required containment penetration is otherwise closed. Therefore, operation of either facility in accordance with its proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendmentrequest involves no significant hazards consideration.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

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*NRC Project Director:* Frederick J. Hebdon

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:* October 23, 1996, as supplemented by letter dated November 6, 1996.

*Description of amendment request:* The proposed amendment would revise Technical Specification 3.4.6.1, regarding reactor coolant system leakage detection instrumentation, to adopt the requirements found in NUREG-1431, ''Standard Technical Specifications Westinghouse Plants,'' for the reactor coolant system leakage detection instrumentation.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involved a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change reduces the number of containment atmospheric radioactivity channels which must be OPERABLE when operating in MODES 1, 2, 3, and 4 from two to one. This change does not significantly increase the probability or consequences of a previously evaluated accident since the plant will continue to have diverse and independent means of detecting significant changes in the amount of leakage from the RCS [reactor coolant system]; the normal sump level and flow monitoring system, at least one of the two containment atmospheric radiation monitors, and the periodic precision RCS water inventory balance required by Technical Specification surveillance requirement 4.4.6.2.1.c. In addition, STP [South Texas Project] design includes advanced trending displays which can assist in detecting leakage based on changes in the volume control tank or pressurizer level. Other instruments, which are not listed in the Technical Specification related to leakage, but which can provide indication of leakage, are the containment pressure, temperature and humidity indicators. Good operating practice and commercial risk associated with long term inoperability of both monitors assures that an inoperable containment atmospheric radiation monitor will be promptly returned to service.

The proposed change also revises the limitation on continued operation with both containment atmospheric radiation monitors inoperable from 72 hours to 30 days. This change is based on the continued availability of diverse and redundant instrumentation discussed above to detect and indicate RCS leakage.

The Actions required as a result of this change include analysis of a containment atmospheric grab sample or performance of a precision RCS water inventory balance in accordance with surveillance requirement 4.4.6.2.1.c. The containment normal sump level flow monitoring system will also promptly identify changes in RCS leakage. Other installed instrumentation, such as containment pressure, temperature, and humidity, will provide indications of significant increases in leakage. Slower increases will be detected by the daily inventory balance or the daily grab samples analysis, and the three day inventory balance.

Inoperability of the on-line automatic containment normal sump level and flow monitoring system can be compensated for by the performance of a daily manual calculation, a precision RCS inventory balance as described in surveillance requirement 4.4.6.2.1.c, or the other available indications of increases in leakage such as the containment atmospheric radiation monitoring instruments and installed containment temperature, pressure and humidity instrumentation. The STP control room design also incorporates features which allow rapid detection of unexpected changes in the volume control tank and pressurizer level through available instrument trend displays. The combination of the compensatory measures, diverse and separate channels, and non-TS [non-technical specification] required instrumentation provides a sufficient level of detection to assure prompt identification and quantification of leakage with an inoperable containment normal sump level and flow monitoring system. The allowable outage time of 30 days provides assurance the normal containment sump level and flow monitoring system will be returned to service in a reasonable amount of time.

Based on the continued availability of adequate and redundant instrumentation to detect changes in RCS leakage rate, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not require the installation of any new or different kind of equipment. Nor does the change involve any significant new or different MODE of operation of the plant. The proposed change reduces the number of required containment atmospheric radiation monitors, and provides a 30 day allowed outage time for either the containment atmosphere radioactivity monitor or the containment normal sump level and flow monitoring system. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

In addition, as described above, the proposed change does not significantly reduce a margin of safety. Small changes in RCS leak rates are typically detected over a relatively long period of time. Diverse instrumentation continues to be available to plant operators which will assist in early detection of any change. The STP design provides additional non-Technical Specification human factors which assist in assuring any changes in leakage will be quickly detected.

The proposed change extends the amount of time that the containment atmospheric radiation monitors may be inoperable. The extension is based on the continued availability of equipment which provides a level of detection capability adequate to detect increases in RCS leakage and which continues to be diverse and independent. This protection is afforded by the continued OPERABILITY of the containment normal sump level and flow monitoring system, the daily performance of a precision RCS

inventory balance as described by surveillance requirement 4.4.6.2.1.c or the daily analysis of containment atmospheric grab samples, and other instrumentation such as pressure, temperature and humidity indicators.

The combination of the compensatory measures, diverse and separate channels, and non-TS required instrumentation provides a sufficient level of detection to assure prompt identification and quantification of leakage with an inoperable containment normal sump level and flow monitoring system. Additionally, the compensatory measure of performing either a daily manual calculation or precision RCS inventory balance, provides assurance that the level of safety is maintained when the containment normal sump level and flow monitoring system is inoperable. The allowable outage time of 30 days provides assurance the normal containment sump level and flow monitoring system will be returned to service in a reasonable amount of time.

Based on the compensatory actions and available installed equipment, the proposed changes do not represent a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

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*NRC Project Director:* William D. Beckner

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 amendment requests:* August 15, 1996

*Description of amendment requests:* The proposed amendments would revise the Containment Cooling Systems Limiting Conditions for Operation Technical Specifications to bring them into conformance with recently completed system analyses by no longer permitting both containment spray pumps to be inoperable at the same time.

*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[s] will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Operation of the Prairie Island plant in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. None of the proposed changes involve a physical modification to the plant.

These changes will require operability of at least one containment spray pump at all times and reduces the spray additive tank allowable outage time from 72 hours to 24 hours. Both of these changes are more conservative and safer than currently required in the Prairie Island Technical Specifications. These proposed changes do allow one containment fan cooler train out of service for 7 days instead of 72 hours as allowed by current Technical Specifications. Recent plant analyses confirm that one containment fan cooler train with one containment spray train is sufficient to meet the system design bases. Since the probability of an accident occurring is low while one containment fan cooler train is out of service, the probability and consequences of an accident are not significantly increased.

In total these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment[s] will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes, in themselves, do not introduce a new mode of plant operation, surveillance requirement or involve a physical modification to the plant.

The proposed changes do require more restrictive, safer containment spray train operability. The proposed changes also allow one containment fan cooler train to be out of service for 7 days instead of 72 hours as allowed by the current Technical Specifications. However, this change does not create the possibility of a new kind of accident.

The proposed changes do no alter the design, function, or operation of any plant components and therefore, no new accident scenarios are created.

Therefore, the possibility of a new or different kind of accident from any accident previously evaluated would not be created by these amendments.

3. The proposed amendment[s] will not involve a significant reduction in the margin of safety. This License Amendment Request require[s] one containment spray train to be operable at all times which is more restrictive than current Technical Specifications and thus the margin of safety is not reduced.

This License Amendment Request will also allow one containment fan cooler train to be out of service for 7 days instead of 72 hours as allowed by the current Technical Specifications. Since the remaining containment cooling components can mitigate an accident and the probability of a design basis accident are low during this time, this change does not significantly reduce the plant margin of safety.

Therefore, a significant reduction in the margin of safety would not be involved with these amendments.

Based on the evaluation described above, and pursuant to 10 CFR Part 50, Section 50.91, Northern States Power Company has determined that operation [of] the Prairie Island Nuclear Generating Plant in accordance with the proposed license amendment request does not involve any significant hazards considerations as defined by Nuclear Regulatory Commission regulations in 10 CFR Part 50, Section 50.92.

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.

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*NRC Project Director:* John N. Hannon

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 amendment requests:* September 24, 1996, as supplemented October 17, 1996.

*Description of amendment requests:* The proposed amendments would revise the Technical Specifications (TS) for the Prairie Island Nuclear Generating Plant to allow use of an alternate steam generator tube repair criteria (elevated F-star or EF*) in the tubesheet region when used with the repair method of additional roll expansion. The amendments incorporate revised acceptance criteria for tubes with degradation in the tubesheet region and enable the licensee to avoid unnecessary plugging and sleeving of 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:

1. The proposed amendment[s] will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The supporting technical and safety evaluations of the subject criterion

demonstrate that the presence of the tubesheet will enhance the tube integrity in the region of the hardroll by precluding tube deformation beyond its initial expanded outside diameter. The resistance to both tube rupture and tube collapse is strengthened by the presence of the tubesheet in that region. The results of hardrolling of the tube into the tubesheet is an interference fit between the tube and the tubesheet. Tube rupture cannot occur because the contact between the tube and tubesheet does not permit sufficient movement of tube material. The radial preload developed by the rolling process will secure a postulated separated tube end within the tubesheet during all plant conditions. In a similar manner, the tubesheet does not permit sufficient movement of tube material to permit buckling collapse of the tube during postulated LOCA [loss-of-coolant accident] loadings.

The EF* length of roll expansion is sufficient to preclude tube pullout from tube degradation located below the EF* distance, regardless of the extent of the tube degradation. The existing Technical Specification leakage rate requirements and accident analysis assumptions remain unchanged in the unlikely event that significant leakage from this region does occur. As noted above, tube rupture and pullout is not expected for tubes using the EF* criterion. Any leakage out of the tube from within the tubesheet at any elevation in the tubesheet is fully bounded by the existing steam generator tube rupture analysis included in the Prairie Island Plant USAR [updated safety analysis report]. For plants with partial depth roll expansion like Prairie Island, a postulated tube separation within the tube near the top of the roll expansion (with subsequent limited tube axial displacement) would not be expected to result in coolant release rates equal to those assumed in the USAR for a steam generator tube rupture event due to the limited gap between the tube and tubesheet. The proposed plugging criterion does not adversely impact any other previously evaluated design basis accident.

Leakage testing of roll expanded tubes indicates that for roll lengths approximately equal to the EF* distance, any postulated faulted condition primary to secondary leakage from EF* tubes would be insignificant.

2. The proposed amendment[s] will not create the possibility of a new or different kind of accident from any accident previously analyzed.

Implementation of the proposed EF* criterion does not introduce any significant changes to the plant design basis. Use of the criterion does not provide a mechanism to initiate an accident outside of the region of the expanded portion of the tube. Any hypothetical accident as a result of any tube degradation in the expanded portion of the tube would be bounded by the existing tube rupture accident analysis. Tube bundle structural integrity will be maintained. Tube bundle leaktightness will be maintained such that any postulated accident leakage from EF* tubes will be negligible with regard to offsite doses.

3. The proposed amendment[s] will not involve a significant reduction in the margin of safety.

The use of the EF* criterion has been demonstrated to maintain the integrity of the tube bundle commensurate with the requirements of Reg Guide 1.121 [≥Bases for Plugging Degraded PWR Steam Generator Tubes≥] (intended for indications in the free span of tubes) and the primary to secondary pressure boundary under normal and postulated accident conditions. Acceptable tube degradation for the EF* criterion is any degradation indication in the tubesheet region, more than the EF* distance below the bottom of the transition between the roll expansion and the unexpanded tube. The safety factors used in the verification of the strength of the degraded tube are consistent with the safety factors in the ASME [American Society of Mechanical Engineers] Boiler and Pressure Vessel Code used in steam generator design. The EF* distance has been verified by testing to be greater than the length of roll expansion required to preclude both tube pullout and significant leakage during normal and postulated accident conditions. Resistance to tube pullout is based upon the primary to secondary pressure differential as it acts on the surface area of the tube, which includes the tube wall cross-section, in addition to the inner diameter based area of the tube. The leak testing acceptance criteria are based on the primary to secondary leakage limit in the Technical Specifications and the leakage assumptions used in the USAR accident analyses.

Implementation of the tubesheet plugging criterion will decrease the number of tubes which must be taken out of service with tube plugs or repaired with sleeves. Both plugs and sleeves reduce the RCS (reactor coolant system) flow margin; thus, implementation of the EF* criterion will maintain the margin of flow that would otherwise be reduced in the event of increased plugging or sleeving.

Based on the above, it is concluded that the proposed change does not result in a significant reduction in margin with respect to plant safety as defined in the USAR or the Technical Specification Bases.

Based on the evaluation described above, and pursuant to 10 CFR Part 50, Section 50.91, Northern States Power Company has determined that operation of the Prairie Island Nuclear Generating Plant in accordance with the proposed license amendment request does not involve any significant hazards considerations as defined by NRC regulations in 10 CFR Part 50, Section 50.92.

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.

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*NRC Project Director:* John N. Hannon

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:* June 10, 1996, as supplemented July 25, 1996

*Description of amendment request:* The proposed amendment would change the differential temperature Technical Specification Allowable Values and Trip Setpoints for the Reactor Water Cleanup penetration room steam leak detection function.

*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 [of occurrence] [sic] or consequences of an accident evaluated.

FSAR section 5.2.5.1.3 addresses the ambient and differential room ventilation temperature leakage detection. This section states:

''...switch setpoints are based on the temperature rise resulting from a leak at system conditions corresponding to full reactor power.''

NRC Safety Evaluation on the RWCU system steam leak detection system (related to Amendment Number 123 to License NPF-14 and Amendment Number 90 to License NPF-22) reviewed and found acceptable the PP&L criteria for calculating the leak detection setpoints for the RWCU system, which include:

1. Setpoints are selected to detect and isolate a leak that is normally less than 25 gpm and below the flow rate corresponding for the critical crack size for the system piping.

2. Setpoints are set high enough to avoid inadvertent isolation caused by normal temperature transients or abnormal transients caused by non-leak conditions (such as loss of ventilation).

This NRC SER also stated that a leak rate of 25 gpm is less than those leak rates associated with the onset of unstable pipe ruptures. This fact is also shown in FSAR figure 5.2-10. This value of 25 gpm constitutes the design basis for the steam leak detection system.

The mixing and liquid energy addition assumption changes in the analysis do not affect this design basis. The analysis calculates the resulting room temperature increase from a 25 gpm leak. In fact, the new assumptions provide a more accurate yet conservative prediction of room temperature increases. Therefore, operation of the system is improved.

The proposed change leads to higher calculated room temperatures to be used in the differential temperature setpoint calculations. The engineering study was reviewed to determine if the higher calculated temperatures would have a negative impact on the High Energy Line Break and Leak Analysis environmental study which provides the basis for equipment qualification.

In determining the room temperatures, the engineering study considers ambient temperature setpoints at which the leaks will be isolated. The proposed action will not change the ambient temperature setpoints, and actuation of these instruments will ensure that the results of the engineering study will not be adversely affected. Therefore, no impact on equipment qualification is being introduced by this change.

FSAR chapter 15 was reviewed for potential impacts on the accident analyses. The 25 gpm leak outside containment is not specifically analyzed in FSAR chapter 15. However, other conditions which result in coolant leakage outside containment are analyzed in section 15.6.2 (Instrument Line Break) and 15.6.4 (Steam System Piping Break Outside Containment). As stated in the NRC SER, the 25 gpm RWCU leak rate is bounded by the analysis in FSAR section 15.6.4. FSAR section 15.6.2 also states that leak detection actuations will initiate operator actions, a fact that is not affected by the proposed change. Therefore, based on a review of FSAR chapter 15 it was concluded that no impact on the analyzed accident scenarios is created by the proposed change.

Based on the above discussions, it is demonstrated that the proposed change will not adversely impact system function or equipment. System performance will actually be improved since the new setpoints eliminate spurious isolations resulting from a less accurate model. The setpoint change has no impact on any equipment important to safety or any accidents previously analyzed in the FSAR. Therefore, the proposed change does not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed action does not create the possibility of a new or different kind of accident from any accident previously evaluated. Neither the system design basis nor the system function will be adversely affected. System performance will be enhanced since spurious differential temperature actuations will be reduced as a result of using the more accurate, yet conservative, COTTAP model. In addition to this, redundant temperature isolation function will continue to be provided by the existing high ambient temperature detectors.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed action does not involve a significant reduction in a margin of safety. The Technical Specification basis for the setpoints is to detect a leak below the flow rate corresponding to critical crack size for the system piping. As stated previously, the 25 gpm flow rate is an acceptable flow rate and is used to calculate the new temperatures.

Although the newly calculated RWCU penetration room temperatures will be higher (due to the improved model), the isolation actuation will be initiated by the high ambient temperature detectors before the penetration room temperatures reach the newly calculated values, as would happen under the old model. Therefore, system response is not adversely affected.

The current temperature values lead to differential temperature setpoints which are too low, causing spurious isolations. The use of the new temperature values will reduce the number of spurious isolations, reducing unnecessary challenges to safety systems during normal plant operations.

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, PA 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

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

*Date of amendment request:* September 18, 1995

*Description of amendment request:* The proposed Technical Specifications (TS) changes would revise TS Table 4.3.1.1-1, ''Reactor Protection System Instrumentation Surveillance Requirements'' to reflect the change in the calibration frequency for the Local Power Range Monitor (LPRM) signal from every 1000 Effective Full Power Hours (EFPH) to every 2000 Megawatt Days per Standard Ton (MWD/ST).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change in the calibration frequency of the Local Power Range Monitor (LPRM) signal does not make any physical change to the fuel or the manner in which the fuel responds to a transient or accident. The proposed TS change does not affect the fundamental method by which the LPRMs are calibrated. Also, the LPRM calibration frequency is not considered an initiator of any events analyzed in the SAR. Therefore, calibrating the LPRMs on a different frequency will not increase the probability of occurrence of an accident previously evaluated in the SAR.

The resulting nodal power uncertainty does not exceed the nodal power uncertainty accounted for in the existing Minimum Critical Power Ratio (MCPR) Safety Limit; thus, the MCPR Safety Limit is not affected by this TS Change, and, therefore, the initial conditions of any accident are unchanged. Since the calibration frequency change will not affect the course of any evaluated accident, the consequences of an accident previously evaluated in the SAR will not be increased.

Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change in the calibration frequency of the Local Power Range Monitor (LPRM) signal does not make any physical change to the plant or the manner in which the equipment responds to a transient or accident. The proposed TS change does not introduce a new mode of plant operation and does not involve the installation of any new equipment or instrumentation. The fuel will continue to be operated to the same safety limits since the Minimum Critical Power Ratio (MCPR) Safety Limit remains unchanged due to this TS change.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident, from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The following TS Bases were reviewed for potential reduction in the margin of safety:

2.0 Safety Limits and Limiting Safety System Settings;

3/4.1 Reactivity Control Systems;

3/4.2.1 Average Planar Linear Heat Generation Rate;

3/4.2.3 Minimum Critical Power Ratio:

3/4.2.4 Linear Heat Generation Rate;

3/4.3.1 Reactor Protection System Instrumentation;

3/4.3.6 Control Rod Block Instrumentation;

3/4.3.7.7 Traversing In-Core Probe System;

The GE Thermal Analysis Basis (GETAB) determination of the Minimum Critical Power Ratio (MCPR) Safety Limit allows a maximum total nodal uncertainty of the Traversing In-Core Probe (TIP) readings of which the Local Power Range Monitor (LPRM).

Update uncertainty is a part. The change in LPRM calibration frequency results in an LPRM Update uncertainty which, when combined with the other uncertainties which comprise the total TIP readings uncertainty, yields a total TIP readings nodal power uncertainty of less than the allowed GETAB uncertainty. Thus the change in LPRM

calibration frequency will not affect the MCPR Safety Limit.

The LPRMs are utilized as input to the Average Power Range Monitor (APRM) and Rod Block Monitor (RBM) systems. The primary safety function of the APRM system is to initiate a scram during core-wide neutron flux transients before the actual core-wide neutron flux level exceeds the safety analysis design basis. This prevents fuel damage from single operator errors or equipment malfunctions. The APRMs are calibrated at least once per week to the plant heat balance, utilize a radially and axially diverse group of LPRMs as input and are utilized to detect changes in average, not local, power changes. Therefore, the effects of changing the LPRM calibration frequency on the APRM system responses will be minimal due to any individual LPRM drift being practically canceled out (due to diversity of input) and/or due to the frequent recalibration of the APRMs to an independent power calculation (the heat balance). Thus, changing the LPRM calibration frequency will not impact the capability of the APRM system to perform the scram function, and there is no impact on transient delta-CPRs.

The RBM system is utilized in the mitigation of a Rod Withdrawal Error (RWE) event. The RBM system is designed to prevent the operator from increasing the local power significantly when withdrawing a control rod. Under Average Power Range Monitor - Rod Block Monitor Technical Specifications/Maximum Extended Load Line Limit Analysis (ARTS/MELLLA) on each selection of a control rod, the average of the assigned, unbypassed LPRMs is adjusted to equal a 100% reference signal for each of the two RBM channels. Each RBM channel automatically limits the local thermal margin changes by limiting the allowable change in local average neutron flux to the RBM setpoint. If the local average neutron flux change is greater than that allowed by the RBM setpoint, within either RBM channel, the rod withdrawal permissive is removed preventing further rod movement. Since the change in local neutron flux is calculated from the change in the average of the LPRM readings, and calibrated on every rod selection to the reference signal, offsets in individual LPRM readings due to calibration differences are effectively eliminated for a given RBM setpoint. Therefore, the constraints on the withdrawal of any given rod are unchanged, and there will not be any increase in RWE delta-CPR.

Since the MCPR Safety Limit is unaffected and the delta-CPR values are unchanged, the cycle CPR Operating limits are unchanged due to this TS change. Therefore, the proposed change in the frequency of LPRM signal calibration does not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Pottstown Public Library, 500 High Street, Pottstown, PA 19464

*Attorney for licensee:* J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, PA 19101

*NRC Project Director:* John F. Stolz

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

*Date of amendment request:* May 3, 1996

*Description of amendment request:* The proposed Technical Specifications (TS) changes would revise TS Surveillance Requirements 4.6.5.3.a and 4.6.5.4.a to modify specific requirements to perform surveillance flow testing of the Standby Gas Treatment and Reactor Enclosure Recirculation Systems from monthly to quarterly.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes do not involve any physical changes to plant systems or equipment. The proposed TS changes only change the Surveillance Requirements (SRs) surveillance test frequency pertaining to flow testing of the SGTS and RERS from monthly to quarterly. The periodic surveillance test frequencies provide adequate assurance that the equipment tested will remain in an operable condition. The test frequency interval for the flow testing of the SGTS and RERS was determined from the regulatory position in USNRC Regulatory Guide 1.52, ''Design, Testing, and Maintenance Criteria for Post Accident Engineered-Safety-Feature Atmosphere Clean-up System Air Filtration and Adsorption Units of Light-Water-Cooled Nuclear Power Plants''. As stated in Regulatory Position C.4.d, ''... each Engineered Safety Feature (ESF) atmosphere cleanup train should be operated at least 10 hours per month, with the heaters on (if so equipped), in order to reduce the buildup of moisture on the absorbers and HEPA filters.''

System operation on a monthly basis for the purpose of preventing moisture buildup on the absorbers as described in R.G. 1.52 is not required at Limerick due to the continuous dry instrument air purge described previously in the Safety Assessment section of this submittal. Therefore a change in the interval between tests from monthly to quarterly will not result in moisture accumulation which would reduce the capability of the absorber to remove the iodine species from the exhaust air flow stream.

The SGTS components are common to both units and must be run with the associated RERS for the surveillance test for each unit. The currently specified test frequency results in the SGTS being run at least twice per month or as many as eight (8) times per quarter for this surveillance, in addition to other required system surveillance tests which require the use of the components in this system. A change in surveillance test frequency from monthly to quarterly would reduce the wear on system components and thereby reduce the associated system downtime for maintenance and repairs. The consequent increased availability provides greater assurance that the system will be able to perform its mitigation function following any postulated accident.

Surveillance test frequency on a quarterly interval is considered adequate to verify operability, as demonstrated by the required quarterly test interval for other equipment important to safety which have a similar function, such as the requirement for quarterly verification of the isolation time of the secondary containment and refueling area isolation valves, as required by LGS TS Sections 4.6.5.2.1 and 4.6.5.2.2.

Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes only involve changes to the frequency in which the specified surveillances tests are performed. The proposed TS changes do not physically change the design or intended function of the systems, structures, or components associated with the SGTS or RERS. There will be no change to the existing redundancy of systems and components. The proposed change in surveillance test frequency will not introduce the possibility of any failure mechanisms of a different type than those already evaluated in the SAR. The existing components will not be used in any different manner and no new components will be added. Therefore with no physical changes and no new or different manner of system operation, no new failure mechanisms or equipment failure modes are created.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The margin of safety as defined in the LGS TS Bases has not been reduced. The specific basis for the 31 day surveillance interval is not given in the LGS TS Bases section nor in the LGS UFSAR Sections 6.5.1 or 9.4.2 which discuss the subject systems. However, Regulatory Position C.4.d of Regulatory Guide 1.52, Revision 2, relating to maintenance requirements, recommends:

≥Each ESF atmosphere cleanup train should be operated at least 10 hours per month, with the heaters on (if so equipped), in order to reduce the buildup of moisture on the absorbers and HEPA filters.''

The Bases for Surveillance Requirements (SR) 3.6.4.3.1 in the Standard Technical Specifications for General Electric Plants, BWR/4, which corresponds to the subject LGS TS test, also notes the need for ten (10) hours of operation per month for elimination of moisture in the filters.

The basis for the requirement for a monthly test with the heaters energized is clearly related to the desired elimination of moisture in the filters and absorbers. However, LGS UFSAR Table 6.5-2 states that LGS does not conform to R.G. 1.52, Position C.4.d because the SGTS and RERS trains are ''continuously purged with dry instrumentation air to prevent build-up of moisture.'' UFSAR Sections 6.5.1.1.2 and 6.5.1.3.2 provide additional discussion of this method of moisture control.

Therefore, the proposed TS changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Pottstown Public Library, 500 High Street, Pottstown, PA 19464

*Attorney for licensee:* J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, PA 19101

*NRC Project Director:* John F. Stolz

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

*Date of amendment request:* September 27, 1996

*Description of amendment request:* The proposed Technical Specifications (TS) changes would increase the Reactor Enclosure Secondary Containment maximum inleakage rate. This change will also impact secondary containment drawdown time and system flow rate assumptions, thereby, affecting charcoal filter bed efficiency and post accident dose analysis.

*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 TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Changing the Reactor Enclosure post drawdown inleakage rate from 1250 cfm to 2500 cfm does not involve any changes to the function or operation of any plant component or safety related system. The Reactor Enclosure Recirculation System (RERS) and the Standby Gas Treatment System (SGTS) will maintain their design function by mitigating the radiological consequences of the analyzed accident and mitigating the post LOCA temperatures within the Reactor Enclosures. No analyzed accident initiating events are impacted, no new accident initiators are created, and no new failure modes are created. There are no changes to the redundancy, separation, quality assurance or fire protection requirements for the associated components and systems.

The proposed changes to the LGS adsorber bed residence time will no longer fully meet the literal design guidance provided in Regulatory Guide (RG) 1.52, ''Design, Testing, and Maintenance Criteria for Post Accident Engineered-Safety-Feature Atmosphere Cleanup System Air Filter and Adsorption Units of Light-Water-Cooled Nuclear Power Plants,'' Revision 2, March 1978. This is because LGS's unique, yet more conservative, adsorber bed design is not addressed by the RG residence time design guidance. However, the LGS SGTS charcoal adsorbers still conform to the design function described in RG 1.52, based on the following: The LGS design with increased inleakage will continue to conform to the three conditions specified by RG 1.52, Position C.6.a, in order to maintain an assigned decontamination efficiency of 99%; there is a conservative amount of charcoal adsorber material provided by the LGS design, based on calculations performed in accordance with RG 1.3 ''Assumptions Used For Evaluating The Potential Radiological Consequences of a Loss of Coolant Accident For Boiling Water Reactors; and the LGS charcoal bed design is more conservative than the RG 1.52 design guidance, based on data (i.e., Iodine Penetration vs. Air Velocity) published by the charcoal manufacturer.

Therefore, the probability of occurrence and the consequences of a malfunction of equipment important to safety is not increased. Also, the probability of occurrence of an accident previously evaluated is not increased. However, the proposed changes do affect the leak tightness of the Unit 1 and Unit 2 Reactor Enclosure, which increases the consequences of a postulated accident previously evaluated.

Changing the Reactor Enclosure post drawdown inleakage rate from 1250 cfm to 2500 cfm will result in an increase in the calculated LOCA/LOOP Design Basis Accident (DBA) off-site and on-site doses. 10 CFR Part 100, and 10 CFR Part 50 Appendix A, General Design Criteria (GDC) 19, establish reference dose values used to determine site suitability and provide reasonable assurance that the facility can be operated following the analyzed accident without undue risk to the health and safety of the public. The proposed TS changes will increase the SGTS drawdown time from 2 minutes and 20 seconds to 15 minutes and 30 seconds. The drawdown time increase will not prevent the RERS/SGTS from performing all of their safety related functions. However, because it is conservatively assumed that all radioactive material released during the drawdown period is unfiltered, and because the drawdown period has been extended whereby more unfiltered radioactive material is assumed to be released following the DBA, there is a corresponding increase in the calculated Exclusion Area Boundary (EAB), Low Population Zone (LPZ), and Control Room doses. It is also assumed that the SGTS exhausts at the maximum inleakage rate throughout the entire DBA evaluation period (i.e., 30 days) where an increase in the maximum inleakage rate would also contribute to higher postulated EAB, LPZ, and Control Room doses. However, the proposed calculated doses do not exceed 10 CFR Part 100, or 10 CFR Part 50, Appendix A, DGC 19 reference doses.

Since the proposed doses resulting from the changes remain below 10 CFR Part 100, and 10 CFR Part 50, Appendix A, these proposed changes will not significantly increase the consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Changing the Reactor Enclosure post drawdown inleakage rate from 1250 cfm to 2500 cfm is not an accident initiator nor does it result in the occurrence of an accident. The changes do not affect the function or operation of any plant component or safety related system nor do they create any new failure modes.

In addition, the proposed changes do not involve any changes to the function or operation of any plant system or component nor will they adversely affect the Reactor Enclosure post LOCA environmental conditions. Furthermore, these changes will not create any new or different failure modes for the equipment important to safety within the Reactor Enclosure Secondary Containment.

Therefore, the possibility of an accident of a different type or a different type of malfunction of equipment important to safety than previously evaluated is not created.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

Changing the Reactor Enclosure post drawdown inleakage rate from 1250 cfm to 2500 cfm will result in reducing the margin of safety as defined in the LGS Updated Final Safety Analysis Report (UFSAR) relative to the off-site and on-site doses following a LOCA/LOOP DBA, and an increase of the UFSAR specified system drawdown time. From a system perspective, increasing the SGTS drawdown time from 2 minutes and 20 seconds to 15 minutes and 30 seconds will not prevent the RERS/SGTS from performing all of their safety related functions. There will be a postulated increase in the corresponding EAB, LPZ, and Control Room doses, since it is assumed that fuel damage occurs coincident with the LGS DBA (i.e, at time = 0), all radioactive material released during the drawdown time is unfiltered, and the drawdown time is proposed to be extended whereby more unfiltered radioactive material could be released. It is also assumed that the SGTS exhausts at the maximum inleakage rate throughout the entire DBA evaluation period (i.e., 30 days) where an increase in the maximum inleakage

rate would also contribute to higher postulated EAB, LPZ, and Control Room doses. However, these calculated doses will remain below 10 CFR Part 100, and 10 CFR Part 50, Appendix A, GDC 19 reference doses.

Therefore, these proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Pottstown Public Library, 500 High Street, Pottstown, PA 19464

*Attorney for licensee:* J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, PA 19101

*NRC Project Director:* John F. Stolz

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

*Date of amendment request:* October 1, 1996

*Description of amendment request:* The proposed amendment would allow for a one-time extension of the surveillance intervals for the containment isolation valve (CIV) seat leakage test, the isolation valve seal water test, the boron injection tank leakage test, the containment spray nozzle test, and the city water backup to the auxiliary boiler feed pump test. These tests would be performed during the refueling outage scheduled to begin in April 1997.

*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:

Regarding the Containment Isolation Valve seat leakage and Isolation Valve Seal Water tests:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The probability of a previously evaluated accident will not increase because CIV leakage does not provide any role in accident initiation. The CIVs provide containment isolation following a design basis accident.

The consequences of an accident previously evaluated will not significantly increase because the CIV leakage measurements contain significant margin to a more restrictive criteria based on the requested surveillance interval extension. As discussed in Section II, ''Evaluation of Changes,'' [see application dated October 1, 1996] based on an evaluation of past CIV leak tests, the proposed change will not result in an increase in containment leakage because the measured leakage in previous CIV leak tests shows large margin to a more restrictive criteria based on the requested surveillance interval extension. Also, the latest test of IVSWS [isolation valve seal water system] satisfied the established acceptance criteria.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

The proposed license amendment does not create the possibility of a new or different kind of accident from any previously evaluated. The proposed change only provides for a relatively short, one-time extension of the current leak-test interval for certain containment isolation valves. The proposed change does not involve the addition of any new or different type of equipment, nor does it involve operating equipment required for safe operation of the facility in a manner different from that addressed in the Final Safety Analysis Report. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed amendment does not involve a significant reduction in a margin of safety. The proposed change, for a one-time extension of the test interval, will not result in a significant reduction in a margin of safety because the test interval is being extended by only a short period and the measured leakage in previous CIV leak tests shows large margin to a more restrictive criteria based on the surveillance interval extension. In addition, the online leakage monitoring capability of the WCCPPS [weld channel containment penetration pressurization system] helps ensure that changes in CIV leakage during the extension period will be detected. Therefore, this change does not create a significant reduction in a margin of safety.

Regarding the Boron Injection Tank (BIT) leakage test:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change will not degrade the integrity of the BIT piping outside containment because no time dependent failure trends were observed in the review of past test results. The probability of a previously evaluated accident will not be increased because BIT leakage does not provide any role in accident prevention. The BIT leakage test only verifies that the BIT and associated piping meet specified leakage limits.

The consequences of an accident previously evaluated will not significantly increase because the BIT leakage test results show large margins to the allowable leakage limit.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

The proposed license amendment does not create the possibility of a new or different kind of accident from any previously evaluated. The proposed change does no[t] involve the addition of any new or different type of equipment, nor does it involve operating equipment required for safe operation of the facility in a manner that's different from that addressed in the Final Safety Analysis Report. Also, the increased surveillance interval (one-time only) will not adversely affect the integrity of the BIT piping and will not result in any new failure modes. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed license amendment does not involve a significant reduction in a margin of safety. Because of the large margin between the previous test and the allowable leak rate limit, the proposed change, for a one-time extension of the test interval, for the BIT leakage test does not adversely affect the performance of any safety related system, component, and does not result in increased severity of any of the accidents considered in the Final Safety Analysis Report. Based on past test results, the one-time extension of the leak test interval does not involve a significant reduction in a margin of safety.

Regarding the Containment Spray Nozzle test:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. As discussed in Section II, ''Evaluation of Changes,'' [see application dated October 1, 1996] based on an evaluation of past test results the proposed change will not degrade the reliability of the Containment Spray Nozzles because no time dependent failure trends were observed in the data review. The probability of a previously evaluated accident will not be increased because the Containment Spray Nozzles do not provide any role in accident prevention. The Containment Spray Nozzles provide a uniform spray distribution for containment cooling following postulated post-accident conditions.

The consequences of an accident previously evaluated will not increase because the Containment Spray Nozzle reliability is not degraded by this change.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

The proposed license amendment does not create the possibility of a new or different kind of accident from any previously evaluated. The proposed change does not involve the addition of any new or different type of equipment, nor does it involve operating equipment required for safe operation of the facility in a manner that is different from that addressed in the Final Safety Analysis Report. Also, the increased surveillance interval (one-time only) w[i]ll not adversely affect the functioning of the Containment Spray Nozzles and will not result in any new failure modes. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed license amendment does not involve a significant reduction in a margin of safety. The proposed change, for a one-time extension of the test interval, for the Containment Spray Nozzles does not adversely affect the performance of any safety related system, component, or instrument, or safety system setpoints and does not result in increased severity of any of the accidents considered in the Final Safety Analysis Report. Based on past test results, the one-time extension of the functional test interval will not adversely affect the functioning of the Containment Spray Nozzles. Therefore, this change does not create a significant reduction in a margin of safety.

Regarding the City Water Backup test:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change will not degrade the reliability of the City Water Backup Supply Valves for the AFW [auxiliary feedwater] System because no time dependent failure trends were observed in the review of past test results. The probability of a previously evaluated accident will not increase because the City Water Backup Supply Valves for the AFW System do not provide any role in accident prevention. The City Water Backup Supply Valves for the AFW System only provides a diverse source of water for the AFW system.

The consequences of an accident previously evaluated will not significantly increase because the City Water Backup Supply Valves for the AFW System are not assumed to function to mitigate any analyzed accident.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

The proposed license amendment does not create the possibility of a new or different kind of accident from any previously evaluated. The proposed change does not involve the addition of any new or different type of equipment, nor does it involve operating equipment required for safe operation of the facility in a manner that is different from that addressed in the Final Safety Analysis Report. Also, the increased surveillance interval (one-time only) will not adversely affect the functioning of the City Water Backup Supply Valves for the ABFP [auxiliary boiler feedpump] and will not result in any new failure modes. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed amendment does not involve a significant reduction in a margin of safety. The proposed change, for a one-time extension of the test interval, for the City Water Backup Supply Valves for the ABFP does not adversely affect the performance of any safety related system, component, or instrument, or safety system setpoints and does not result in increased severity of any of the accidents considered in the Final Safety Analysis Report. Based on past test results, the one-time extension of the functional test interval will not adversely affect the functioning of the City Water Backup Supply Valves for the AFW System. Therefore, this change does not create a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

*Attorney for licensee:* Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

*NRC Project Director:* S. Singh Bajwa, Acting

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

*Date of amendment request:* October 25, 1996

*Description of amendment request:* The proposed change to Hope Creek Technical Specification (TS) 3/4.1.3.5, ''Control Rod Scram Accumulator'', would: 1) permit a separate entry into a Technical Specification action statement for each inoperable control rod; 2) provide more specific applicability for required actions in operational condition 1 or 2 with one inoperable control rod scram accumulator (reactor pressure of greater than or equal to 900 psig would be specified); 3) provide more specific actions (verify charging water pressure) for two or more inoperable control rod scram accumulators and reactor pressure is greater than or equal to 900 psig; 4) provide more specific actions when reactor pressure is less than 900 psig and one or more control rod scram accumulators are inoperable (verify insertion of control rods associated with inoperable accumulators and verify that charging water header pressure is greater than or equal to 940 psig); and 5) provide specific actions in operational condition 5 with one or more withdrawn control rods inoperable; and 6) eliminate the requirements to perform a 18-month channel functional test of the leak detectors and the 18-month channel calibration of the pressure detectors.

*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 change incorporates the appropriate content of the improved BWR/4 Standard Technical Specifications, NUREG-1433, for Control Rod Scram Accumulators.

The proposed Technical Specification and required Action completion times are consistent with or more conservative than those approved for use in the improved Technical Specifications for inoperable control rod scram accumulators. In addition, the proposed surveillance requirements for the control rod scram accumulators are sufficient to adequately demonstrate operability as stated in the Bases for the improved Technical Specifications. Further, the proposed changes enhance the current Hope Creek Technical Specifications by reflecting improved techniques collectively learned by the industry. Therefore, the proposed changes do not significantly increase the risk or consequences of any accidents previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Neither the mechanism for initiating or completing a scram is modified by this proposed change. There are no physical changes to plant equipment proposed in the application. The proposed change does not create a means by which the scram function could be impeded or prevented. The proposed change is functionally equivalent to the current Technical Specifications, but provides additional operational flexibility to diagnose and resolve equipment issues that do not impact operability of the control rods before taking proscriptive actions which

result in significant plant transients (i.e. full power scram).

3. The proposed change does not involve a significant reduction in a margin of safety.

The operability of the accumulators and the scram function of the control rod drive system protects the Safety Limit Minimum Critical Power Ratio as well as the 1% cladding plastic strain fuel design limit. The proposed change does not reduce a margin of safety as defined in the Bases of the Technical Specification since the proposed change does not affect the maximum allowable scram times for control rods, nor does it change the maximum allowable number or minimum separation of inoperable control rods. The proposed change does not modify any instrument setpoints or functions. The proposed change will either maintain the present margins of safety or increase them, by reducing the need for unnecessary challenges to the reactor protection system and resulting plant shutdowns, while still maintaining the capability to complete a reactor scram.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

*Attorney for licensee:* M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

*NRC Project Director:* John F. Stolz

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

*Date of amendment request:* October 29, 1996

*Description of amendment request:* The proposed amendment would revise the mode of applicability for the motor-driven auxiliary feedwater (AFW) pump actuation on opening of the main feedwater (MFW) pump breakers to correct an error introduced during Amendment No. 61.

*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 less restrictive changes discussed in Section C.1 [of the licensee's application] do not involve a significant hazards consideration as discussed below:

1. Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes only correct an error which was introduced in Amendment No. 61 to the Ginna Station technical specifications. The changes revert the mode of applicability for the motor-driven AFW pump actuation on the opening of the MFW pump breakers to what existed previously. The change is essentially correction of a typographical error that was caused through use of the electronic version of NUREG-1431 in preparation of the Ginna Station ITS [Improved Technical Specifications]. There have been no subsequent plant modifications or changes to the accident analysis which would invalidate the previous NRC acceptance of only requiring this Function above 5% power. The accident analyses do not credit automatic initiation of AFW on MFW pump trip in MODE 2. As such, these changes do not impact initiators or analyzed events or assumed mitigation of accident or transient events. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or changes in the methods governing normal plant operation which existed prior to Amendment No. 61. The proposed changes will not impose any new or different requirements. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed changes will not reduce a margin of plant safety because there have been no subsequent plant modifications or changes to the accident analysis which would invalidate the previous NRC acceptance of only requiring this Function above 5% power. As such, no question of safety is involved, and 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:* Rochester Public Library, 115 South Avenue, Rochester, New York 14610

*Attorney for licensee:* Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005

*NRC Project Director:* S. Singh Bajwa, Acting

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

*Date of amendment request:* October 29, 1996

*Description of amendment request:* The proposed amendment would revise the Required Actions for the auxiliary feedwater (AFW) pump actuation on Steam Generator Level (SG) - Low Low logic to be consistent with those specified in NUREG-1431.

*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 less restrictive changes discussed in Section C.1 [of the licensee's application] do not involve a significant hazards consideration as discussed below:

1. Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes with respect to the Required Actions for AFW actuation on SG Level - Low Low logic provide consistency with NUREG-1431 by requiring an inoperable channel to be placed in the tripped condition within 6 hours. The affected logic then requires 1 of 2 channels in order to actuate such that there is no impact on any initiators or analyzed events or assumed mitigation of accident or transient events. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or changes in the methods governing normal plant operation. The proposed changes will not impose any new or different requirements. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed changes will not reduce a margin of plant safety because the AFW actuation on SG Level - Low Low still remains capable of performing its function with an inoperable channel placed in the tripped configuration. These changes are also consistent with those provided in NUREG-1431. As such, no question of safety is involved, and 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:* Rochester Public Library, 115 South Avenue, Rochester, New York 14610

*Attorney for licensee:* Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005

*NRC Project Director:* S. Singh Bajwa, Acting

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

*Date of amendment request:* September 4, 1996

*Description of amendment request:* The proposed amendment to the Technical Specifications would allow the use of four lead test assemblies (advanced zirconium-based alloys) in the North Anna, Units 1 and 2, reactor cores.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the four FCF [Framatome Cogema Fuels] lead test assemblies will not:

1.Involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The FCF lead test assemblies are very similar in design to the Westinghouse fuel that comprises the remainder of the core. The reload core design for North Anna cycles which incorporate the lead test assemblies will meet all applicable design criteria. In addition, the performance of the ECCS [emergency core cooling system] at North Anna Units 1 and 2 will not be affected by the insertion of the four lead test assemblies, so the criteria of 10 CFR 50.46 will be satisfied for use of these assemblies with fuel rods, guide thimble tubes, and instrumentation tubes fabricated with advanced zirconium-based alloys. The use of these fuel assemblies will not result in a change to the North Anna Units 1 and 2 reload design and safety analysis limits. The existing safety analyses based on the resident Westinghouse fuel will remain applicable for cycles which incorporate the lead test assemblies. Therefore, neither the probability of occurrence nor the consequences of any accident previously evaluated is significantly increased.

2. Create the possibility for a new or different type of accident from any accident previously evaluated. The FCF lead test assemblies are very similar in design (both mechanical and composition of materials) to the resident Westinghouse fuel. North Anna cores which incorporate the lead test assemblies will be designed to meet all applicable design criteria and ensure that all pertinent licensing basis criteria are met. Demonstrated adherence to these standards and criteria precludes new challenges to components and systems that could introduce a new type of accident. North Anna safety analyses based on the resident Westinghouse fuel will remain applicable for cores containing the lead test assemblies. All design and performance criteria will continue to be met and no single failure mechanisms have been created. In addition, the use of these fuel assemblies does not involve any alteration to plant equipment or procedures which would introduce any new or unique operational modes or accident precursors. Therefore, the possibility for a new or different kind of accident from any accident previously evaluated is not created.

3. Involve a significant reduction in the margin of safety. The use of the FCF lead test assemblies does not change the performance requirements on any system or component such that any design criteria will be exceeded, and will not cause the core to operate in excess of pertinent design basis operating limits. North Anna reload core designs for cycles which incorporate the lead test assemblies will specifically evaluate any pertinent differences between the lead test assemblies and the resident fuel, and will take into consideration the normal core operating conditions allowed in the Technical Specifications. Safety analyses based on the resident Westinghouse fuel will remain applicable for cores incorporating the FCF lead test assemblies. Analyses or evaluations will be performed each cycle to confirm that the criteria in 10 CFR 50.46 will be met. Therefore, the margin of safety as defined in the Bases to the North Anna Units 1 and 2 Technical Specifications is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

*Attorney for licensee:* Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

*NRC Acting Project Director:* Mark Reinhart

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

*Date of amendment request:* November 6, 1996

*Description of amendment request:* The proposed changes will modify the requirements for isolated loop startup to permit filling of a drained isolated loop via backfill from the reactor coolant system through partially open stop loop valves.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of the North Anna Power Station [in] accordance with the proposed changes will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The probability of occurrence of a positive reactivity addition accident is not being increased by the proposed Technical Specification change. The proposed restrictions on boron concentration and mixing, reactor coolant system inventory and reactivity and count rate monitoring provide a level of protection against reactivity addition accidents which is equivalent to that currently in place.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not introduce any new or unique failure modes or accident precursors. Eliminating the operability requirements for the loop stop valve interlocks does not create any new or different kind of accident scenario. Loop startup accidents in the various modes of operation have been analyzed. Operation of the loop stop valves will not change. New requirements have been imposed for the case of backfilling a drained loop from the reactor coolant system to ensure that core cooling and reactivity control are preserved throughout the backfill evolution.

3. Involve a significant reduction in any margin of safety. The new Technical Specification loop isolation and startup requirements for temperature, boron concentration, and shutdown margin fulfill the function of the loop stop valve interlocks. Therefore, the margin of safety as defined in any Technical Specification bases is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

*Attorney for licensee:* Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

*NRC Project Director:* Mark Reinhart (Acting)

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

*Date of amendment request:* October 31, 1996

*Description of amendment request:* The proposed amendment would revise the Kewaunee Nuclear Power Plant (KNPP) Technical Specifications (TS) by deleting the requirement for an annual submittal of a description of changes made pursuant to 10 CFR 50.59. Consistent with 10 CFR 50.59(b)(2), a description of changes will subsequently be included with the KNPP Updated Safety Analysis Report (USAR) update in accordance with 10 CFR 50.71(e). Additionally, the proposed amendment would correct minor administrative inconsistencies in the TS Table of Contents and in a footnote reference.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c)The NRC staff's review is presented below:

On August 31, 1992 (57 FR 39353), the NRC amended 10 CFR 50.59(b)(2) to reduce the regulatory burden on nuclear licensees. This action revised the requirements for the annual submission of reports for facility changes under 10 CFR 50.59. This action did not affect the substance of the evaluation or the documentation required for 10 CFR 50.59 type changes. It only affected the interval for submission of the information to the NRC. Instead of submitting the information annually, the information can be submitted on a refueling cycle basis, provided the interval between successive reports does not exceed 24 months.

In order to take advantage of this reduction in regulatory burden, the licensee has proposed an amendment to remove the submittal of a report of facility changes under 10 CFR 50.59 from the Technical Specification list of annual reporting requirements. Additionally, the licensee has proposed corrections to minor administrative inconsistencies in the TS Table of Contents and in a footnote reference. The proposed changes are administrative only and do 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.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311-7001

*Attorney for licensee:* Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497

*NRC Project Director:* Gail H. Marcus

## 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.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station,Plymouth County, Massachusetts

*Date of application for amendment:* May 1, 1996, as supplemented August 12, 1996.

*Brief description of amendment:* The amendment approves relocation of the administrative controls related to the quality assurance review and audit requirements of Section 6, Technical Specifications 6.5.B.8, ''Nuclear Safety Review and Audit Committee-Audits,'' from the Pilgrim Station Technical Specifications to the Boston Edison Quality Assurance Manual (BEQAM). This change is in accordance with the guidance contained in NRC Administrative Letter 95-06, ''Relocation of Technical Specification Administrative Controls Related to Quality Assurance.'' In addition, the Safety Evaluation includes the NRC staff review and approval of the BEQAM changes in support of this amendment.

*Date of issuance:* November 12, 1996

*Effective date:* November 12, 1996

*Amendment No.:* 168

*Facility Operating License No.* DPR-35: Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: June 5, 1996 (61 FR 28605) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 12, 1996. No significant hazards consideration comments received: No

*Local Public Document Room location:* Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

*Date of application for amendments:* August 29, 1996, as supplemented on September 20, 1996, and October 4, 1996.

*Brief description of amendments:* The amendments change the Technical Specifications to implement 10 CFR Part 50, Appendix J, Option B, by referring to Regulatory Guide 1.163, ''Performance-Based Containment Leakage-Test Program,'' with an exception as detailed in the licensee's application.

*Date of issuance:* November 12, 1996

*Effective date:* Immediately, to be implemented within 30 days.

*Amendment Nos.:* 175 and 162

*Facility Operating License Nos.* DPR-39 and DPR-48: The amendments revised the Technical Specifications.

*Date of initial notice in* Federal Register: October 9, 1996 (61 FR 52964). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 12, 1996. No significant hazards consideration comments received: No

*Local Public Document Room location:* Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

*Date of application for amendment:* August 14, 1996, as supplemented October 18, 1996, and related application of January 18, 1996

*Brief description of amendment:* The amendment revises the technical specifications (TS) to allow one-cycle deferral of the inspection of reactor coolant pump (RCP) flywheels.

*Date of issuance:* November 7, 1996

*Effective date:* November 7, 1996

*Amendment No.:* 175

*Facility Operating License No.* DPR-20. Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: September 24, 1996 (61 FR 50054) The October 18, 1996, letter provided an updated TS page. This change 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 amendment is contained in a Safety Evaluation dated November 7, 1996.No significant hazards consideration comments received: No.

*Local Public Document Room location:* Van Wylen Library, Hope College, Holland, Michigan 49423

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

*Date of application for amendments:* December 14, 1994, as supplemented by letters dated May 16 and August 29, 1996

*Brief description of amendments:* The amendments will incorporate guidance and recommendations for diesel generators contained in NUREG-1366, ''Improvements to Technical Specifications Surveillance Requirements,'' Generic Letter (GL) 93-05, ''Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operations,'' GL 94-01, ''Removal of Accelerated Testing and Reporting Requirements for Emergency Diesel Generators,'' and NUREG-1431, ''Revised Standard Technical Specifications for Westinghouse PWRs.''

*Date of issuance:* November 12, 1996

*Effective date:* As of the date of issuance to be implemented within 30 days

*Amendment Nos.:* 170 and 152

*Facility Operating License Nos.* NPF-9 and NPF-17: Amendments revised the Technical Specifications.

*Date of initial notice in* Federal Register: June 5, 1996 (61 FR 28612) The August 29, 1996, letter provided clarifying information that did not change the scope of the December 14, 1996, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 12, 1996.No significant hazards consideration comments received: No

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Entergy Gulf States, Inc., Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

*Date of amendment request:* August 1, 1996

*Brief description of amendment:* The amendment revises the technical specifications to incorporate requirements for limiting the time that the hydrogen mixing isolation valves on the drywell are open. The amendment also changes the time from 7 days to 31 days to determine the cumulative time the valves are open.

*Date of issuance:* November 12, 1996

*Effective date:* November 12, 1996

*Amendment No.:* 89

*Facility Operating License No.* NPF-47. The amendment revised the Technical Specifications/operating license.

*Date of initial notice in* Federal Register: September 25, 1996 (61 FR 50343) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 12, 1996.No significant hazards consideration comments received. No.

*Local Public Document Room location:* Government Documents Department, Louisiana State University, Baton Rouge, LA 70803

Entergy Operations, Inc., System Energy Resources, Inc., SouthMississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

*Date of application for amendment:* May 9, 1996, as supplemented by letter dated August 27, 1996.

*Brief description of amendment:* The amendment changed Surveillance Requirements (SRs) 3.4.4.3, Safety/Relief Valves, 3.5.1.7, Automatic Depressurization System Valves, and 3.6.1.6.1, Low-Low Set Valves, of the Technical Specifications and allows the licensee to perform the surveillance of the relief mode of operation of the safety/relief valves on the main steam lines without physically lifting the disk of a valve off the seat at power. The changes stated that the required operation of the valve to verify is that the relief-mode actuator strokes when the valve is manually actuated and the frequency of the surveillances are in accordance with the inservice testing program for the valves.

*Date of issuance:* November 18, 1996

*Effective date:* November 18, 1996

*Amendment No:* 130

*Facility Operating License No.* NPF-29. Amendment revises the Technical Specifications.

*Date of initial notice in* Federal Register: September 11, 1996 (61 FR 47971) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 18, 1996. No significant hazards consideration comments received: No

*Local Public Document Room location:* Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120.

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:* June 3, 1996, as supplemented October 23, 1996

*Brief description of amendment:* The amendment clarifies a restriction on shutdown margin monitor operability while changing operational modes, so that it only limits reactivity changes caused by boron dilution and rod withdrawal. The amendment also corrects a technical specification numerical reference so that the specification number cited is in agreement with Amendment 99, dated December 29, 1994.

*Date of issuance:* November 14, 1996

*Effective date:* As of the date of issuance, to be implemented within 60 days.

*Amendment No.:* 131

*Facility Operating License No.* NPF-49. Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: June 20, 1996 (61 FR 31559) The October 23, 1996, letter provided clarifying information that did not change the scope of the June 3, 1996, application and the initial proposed no significant hazards consideration determination.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 14, 1996No 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, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT 06385.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

*Date of application for amendment:* May 30, 1996

*Brief description of amendment:* The proposed change to the anticipated transient without scram recirculation pump trip logic for the James A. Fitzpatrick Nuclear Power Plant allows for a high pressure trip setpoint which is dependent upon the number of safety/relief valves which are out of service.

*Date of issuance:* November 7, 1996

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 237

*Facility Operating License No.* DPR-59: Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: July 3, 1996 (61 FR 34896) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 7, 1996.No significant hazards consideration comments received: No

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

*Date of application for amendment:* May 30, 1996, as supplemented October 17, and November 8, 1996

*Brief description of amendment:* The proposed amendment changes the FitzPatrick safety limit minimum critical power ratio from its current value of 1.07 for two recirculation loop operation to 1.09 and from 1.08 to 1.10 for single recirculation loop operation for the Cycle 13 operation.

*Date of issuance:* November 14, 1996

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 238

*Facility Operating License No.* DPR-59: Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: July 3, 1996 (61 FR 34896) The October 17 and November 8, 1996 letters provided supplemental information that did not change the initial no significant hazards consideration determination.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 14, 1996.No significant hazards consideration comments received: No

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Southern Nuclear Operating Company, Inc., Docket No. 50-364, Joseph M. Farley Nuclear Plant, Unit 2, Houston County, Alabama

*Date of amendment request:* August 23, 1996, as supplemented by letters dated September 16, November 6, 11 and 14, 1996

*Brief description of amendment:* The amendment changes the Technical Specifications (TS) to allow installation of laser welded elevated tubesheet sleeves. Specifically, the amendment is for one cycle only for Farley Unit 2. Permanent, generic TS changes for Westinghouse laser welded sleeves for both units will be submitted prior to the next Unit 1 refueling outage currently scheduled for spring 1997.

*Date of issuance:* November 20, 1996

*Effective date:* As of the date of issuance to be implemented within 30 days

*Amendment No.:* 117

*Facility Operating License No.* NPF-8: Amendment revises the Technical Specifications.

*Date of initial notice in* Federal Register: September 11, 1996 (61 FR 47982) The September 16, November 6, 11 and 14, 1996, letters provided clarifying information that did not change the scope of the August 23, 1996, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 20, 1996.No significant hazards consideration comments received: No

*Local Public Document Room location:* Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

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:* July 17, 1995.

*Brief description of amendments:* These amendments revise the frequency of surveillance requirements for certain plant protective system instrumentation contained in Technical Specifications (TS) 3.3.1, ''Reactor Protective System (RPS) Instrumentation - Operating,'' TS 3.3.2, ''Reactor Protective System (RPS) Instrumentation - Shutdown,'' TS 3.3.3, ''Control Element Assembly Calculators (CEACs),'' TS 3.3.4, ''Reactor Protective System (RPS) Logic and Trip Initiation,'' TS 3.3.5, ''Engineered Safety Features Actuation System (ESFAS) Instrumentation,'' and TS 3.3.6, ''Engineered Safety Features Actuation System (ESFAS) Logic and Manual Trip.''

*Date of issuance:* November 18, 1996

*Effective date:* November 18, 1996, to be implemented within 30 days of the date of issuance.

*Amendment Nos.:* Unit 2 - 133 ; Unit 3 - 122

*Facility Operating License Nos.* NPF-10 and NPF-15: The amendments revised the Technical Specifications.

*Date of initial notice in* Federal Register: August 30, 1995 (60 FR 45185) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 18, 1996.No significant hazards consideration comments received: No.Temporary

*Local Public Document Room location:* Science Library, University of California, P. O. Box 19557, Irvine, California 92713

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

*Date of application for amendment:* September 4, 1996

*Brief description of amendment:* This amendment revises Technical

Specification (TS) 6.2.3, ''Facility Staff Overtime,'' by removing specific overtime limits and working hours and by adding procedural controls to perform a monthly review of overtime hours.

*Date of issuance:* November 8, 1996

*Effective date:* November 8, 1996, to be implemented not later than 90 days after issuance

*Amendment No.:* 212

*Facility Operating License No.* NPF-3: Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: October 9, 1996 (61 FR 52970) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 1996.No significant hazards consideration comments received: No.

*Local Public Document Room location:* University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

*Date of application for amendment:* July 18, 1996

*Brief description of amendment:* The amendment adopts ASTM D-3803-1989 as the laboratory testing standard for charcoal samples from the charcoal adsorbers in the auxiliary/fuel building emergency exhaust system.

*Date of issuance:* November 13, 1996

*Effective date:* November 13, 1996, to be implemented within 30 days of the date of issuance.

*Amendment No.:* 118

*Facility Operating License No.* NPF-30: The amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: August 14, 1996 (61 FR 42285) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 13, 1996.No significant hazards consideration comments received: No.

*Local Public Document Room location:* Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

*Local Public Document Room location:* Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Dated at Rockville, Maryland, this 26th day of November 1996.

For the Nuclear Regulatory Commission

Steven A. Varga,

*Director, Division of Reactor Projects - I/II Office of Nuclear Reactor Regulation*

[Doc. 96–30714 Filed 12–3–96; 8:45 am]

BILLING CODE 7590–01–F

## NUCLEAR WASTE TECHNICAL REVIEW BOARD

### Pahrump, Nevada: Yucca Mountain Testing and Exploration Program, Environmental Impact Statement, Interim Storage Studies, Transportation Infrastructure, Options for Reducing Hydrogeologic Uncertainties in the Proposed Repository Waste Emplacement Area, and Performance Assessment Issues; Board Meeting

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board will hold its winter meeting on Tuesday and Wednesday, January 28–29, 1997, in Pahrump, Nevada. The meeting will be held at the Bob Ruud Community Center, 150 N. Highway 160, Pahrump, Nevada 89048; Tel (702) 727–9991. Sleeping accommodations are available in the Saddle West Hotel, 1220 S. Highway 160, Pahrump, Nevada 89048; Tel (702) 727–1111; Fax (702) 727–5315. To receive the preferred rate, reservations must be made by December 27, 1996. The meeting is open to the public and will begin at 8:30 a.m. both days.

On the first morning, the Board will hear presentations by representatives of the Department of Energy (DOE) and its contractors on the exploration and testing program at Yucca Mountain, Nevada; plans for preparing the environmental impact statement for repository development; and generic studies on the development of an interim spent fuel storage facility. The Board is particularly interested in hearing about how long it would take to construct such a facility and to develop a transportation infrastructure to move significant quantities of waste. The Board plans to invite Nye County representatives to briefly summarize the results of their scientific investigations at the Yucca Mountain site.

The afternoon session will examine the issues associated with DOE plans to reduce, by late 1998, the current uncertainties about the movement of moisture through the proposed repository waste emplacement area. The focus will be on options for gathering additional data, including what data would be sought, and how the data would be obtained.

On the second day of the meeting, the morning session will address the transportation of waste to a potential repository at the Yucca Mountain site, including an update on the DOE's recent privatization initiative and on more local issues such as route selection and emergency preparedness. The Board plans to invite representatives from Nevada state and local governments, industry associations, and public interest groups to make presentations. A roundtable discussion will cover key topics raised during the presentations.

The afternoon session will be devoted to a discussion of performance assessment. The Board has asked for presentation on the DOE's newly drafted siting guidelines, 10 CFR 960, including the basis for the proposed revisions. The Board also would like to know about DOE plans to make the logic and reasoning that underlie performance assessment ''transparent'' to both scientific and lay communities.

Time has been set aside for public comment and questions on both days. To ensure that everyone wishing to speak is provided time to do so, the Board encourages those who have comments to sign the Public Comment Register, which will be located at the registration table. A time limit may have to be set on the length of individual remarks; however, written comments of any length may be submitted for the record.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the Nation's spent nuclear fuel and defense high-level waste. In the same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for the disposal of that waste.

Transcripts of this meeting will be available via e-mail, on computer disk, or on a library-loan basis in paper format from Davonya Barnes, Board staff, beginning February 26, 1997. For further information, contact Frank Randall, External Affairs, 1100 Wilson Boulevard, Suite 910, Arlington, Virginia 22209; (Tel) 703–235–4473; (Fax) 703–235–4495.

Dated: November 22, 1996.

William Barnard,

*Executive Director, Nuclear Waste Technical Review Board.*

[FR Doc. 96–30882 Filed 12–3–96; 8:45 am]

BILLING CODE 6820–AM–M

## POSTAL RATE COMMISSION

**[Order No. 1142; Docket No. A97–5]**

### Oakley, Illinois 62552 (Ferne E. Miller, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued November 27, 1996.

Before Commissioners: Edward J. Gleiman, Chairman; H. Edward Quick, Jr., Vice-Chairman; George W. Haley; W.H. ''Trey'' LeBlanc III

*Docket Number:* A97–5.

*Name of Affected Post Office:* Oakley, Illinois 62552.

*Name(s) of Petitioner(s):* Ferne E. Miller.

*Type of Determination:* Closing.

*Date of Filing of Appeal Papers:* November 26, 1996.

*Categories of Issues Apparently Raised:*

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404(b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

*The Commission orders:*

(a) The Postal Service shall file the record in this appeal by December 11, 1996.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Margaret P. Crenshaw,

*Secretary.*

Appendix

November 26, 1996—Filing of Appeal letter

November 27, 1996—Commission Notice and Order of Filing of Appeal

December 20, 1996—Last day of filing of petitions to intervene [see 39 CFR 3001.111(b)]

December 31, 1996—Petitioner's Participant Statement or Initial Brief [see 39 C.F.R. 3001.115 (a) and (b)]

January 21, 1997—Postal Service's Answering Brief [see 39 CFR 3001.115(c)]

February 4, 1997—Petitioner's Reply Brief should Petitioner choose to file one [see 39 CFR 3001.115(d)]

February 11, 1997—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116]

March 26, 1997—Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. 404(b)(5)]

[FR Doc. 96–30821 Filed 12–3–96; 8:45 am]

**BILLING CODE 7710–FW–P**

## PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

### Meetings

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, December 10 and 11, 1996, at the Madison Hotel, 15th & M Streets, NW., Washington, DC, 202/862–1600.

The Full Commission will convene at 8:00 a.m. on December 10, 1996, and adjourn at approximately 5:15 p.m. On Wednesday, December 11, 1996, the meeting will convene at 8:00 a.m. and adjourn at approximately 3:00 p.m. The meetings will be held in Executive Chambers 1, 2, and 3 each day.

There also will be a joint meeting of the Prospective Payment Assessment Commission and the Physician Payment Review Commission on Wednesday, December 11, 1996. The meeting will be held at the Sheraton City Centre Hotel, 1143 New Hampshire Avenue, NW., Washington, DC, 202/775–0800. The meeting will convene at approximately 3:30 p.m. and adjourn at approximately 5:30 p.m.

All meetings are open to the public.

Donald A. Young,

*Executive Director.*

[FR Doc. 96–30814 Filed 12–3–96; 8:45 am]

**BILLING CODE 6820–BW–M**

## RAILROAD RETIREMENT BOARD

### Proposed Collection; Comment Request

**SUMMARY:** In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Title and purpose of information collection:* Nonresident Questionnaire; OMB 3220–0145. Under Public Law 98–21 and 98–76 benefits under the Railroad Retirement Act payable to annuitants living outside the United States may be subject to taxation under United States income tax laws.

Whether the social security equivalent and non-social security equivalent portions of Tier 1, Tier 2, vested dual benefit, or supplemental annuity payments are subject to tax withholding, and whether the same or different rates are applied to each payment, depend on a beneficiary's citizenship and legal residence status, and whether exemption under a tax treaty between the United States and the country in which the beneficiary is a legal resident.

To effect the required tax withholding, the Railroad Retirement Board (RRB) needs to know a nonresident's citizenship and legal residence status.

To secure the required information, the RRB utilizes Form RRB–1001, Nonresident Questionnaire, as a supplement to an application as part of the initial application process, and as an independent vehicle for obtaining the needed information when an annuitant's residence or tax treaty status changes. Completion is voluntary. One response is requested of each respondent.

The RRB proposes a minor editorial change to Form RRB–1001 to incorporate language required by the Paperwork Reduction Act of 1995. The completion time for Form RRB–1001 is

estimated at 5 minutes at the time of an initial filing and 3 minutes when completed as part of the tax exemption renewal process.

**ADDITIONAL INFORMATION OR COMMENTS:** To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

*Clearance Officer.*

[FR Doc. 96–70881 Filed 12–3–96; 8:45 am]

**BILLING CODE 7905–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–26615]**

## Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 27, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 23, 1996, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

*Cinergy Corp., et al. (70–8933)*

Cinergy Corp. (''Cinergy''), a registered holding company, its wholly-owned nonutility holding company subsidiary, Cinergy Investments, Inc. (''Investments''), and Cinergy's wholly-owned service company subsidiary, Cinergy Services, Inc. (''Cinergy Services''), all located at 139 East Fourth Street, Cincinnati, Ohio 45202, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and rules 45, 54, 90 and 91 thereunder.

Cinergy and Investments request authorization to form and provide guaranties in respect of a new wholly-owned nonutility subsidiary, expected to be named Cinergy Solutions, Inc. (''Solutions''), which will market a wide variety of energy-related products and services exclusively to nonassociate commercial/industrial customers (including governmental, institutional and utility companies) and residential customers. Applicants state that Solutions will offer an integrated package of ''value-added'' energy-related products and services to enable customers to reduce energy costs, improve energy efficiency and increase productivity. Such services/products will be marketed to nonassociates on a local, regional, nationwide and, as opportunities develop, international basis. The services would be priced based on competitive market rates. Solutions will also develop, acquire, own and operate certain energy-related projects.

Applicants request authorization to conduct its proposed business activities directly through Solutions, wholly-owned subsidiaries of Solutions, and subsidiaries of Solutions jointly owned with joint venture nonassociates. As part of Solutions' project development and ownership activities, Applicants further request authority for Solutions to acquire, directly or indirectly through subsidiaries, securities or assets of nonassociate companies that derive substantially all their revenues from the development, ownership or operation of such projects. Finally, in connection with the formation of Solutions and its contemplated business activities, Cinergy Services requests authorization to provide an expanded range of support services to Solutions (including any subsidiary thereof) and other system nonutility companies pursuant to an amendment to the existing Cinergy system nonutility service agreement (''NUSA'').

Solutions intends to offer a complete menu of energy management and efficiency services and related consulting services, often on a turnkey basis. These activities (collectively, ''Energy Management Services'') may also entail the marketing, installation, operation and maintenance of various products and services designed to implement the solutions recommended in the course of providing these services. Solutions will market Energy Management Services primarily to commercial/industrial customers, but also on a smaller scale to residential customers. Specifically, Energy Management Services will include: (1) Identification (through energy audits or otherwise) of energy and other resource (water, labor, maintenance, materials, etc.) cost reduction or efficiency opportunities; (2) design of facility and process modifications or enhancements to realize such opportunities; (3) management, or direct construction and instillation, of energy conservation or efficiency equipment; (4) training of client personnel in the operation of equipment; (5) maintenance of energy systems; (6) design, management or direct construction and installation of new and retrofit heating, ventilating, and air conditioning (''HVAC''), electrical and power systems, motors, pumps, lighting, water and plumbing systems, and related structures, to realize energy and other resource efficiency goals or to otherwise meet a customer's energy-related needs; (7) system commissioning (i.e., monitoring the operation of an installed system to ensure that it meets design specifications); (8) reporting of system results; (9) design of energy conservation programs; (10) implementation of energy conservation programs; (11) provision of conditioned power services (i.e., services designed to prevent, control or mitigate adverse effects of power disturbances on a customer's electrical system to ensure the level of power quality required by the customer, particularly with respect to sensitive electronic equipment); and (12) other similar or related activities.

Solutions also proposes to market comprehensive asset management services (''Asset Management Services'') on a turnkey basis or otherwise, in respect of energy-related systems, facilities and equipment (e.g., electric utility systems and assets, including distribution systems and substations; transmission facilities; electric generation facilities, including standby generation facilities and self-generation facilities; boilers; chillers, i.e., refrigeration and coolant equipment; HVAC; and lighting systems) located on or adjacent to premises of commercial/industrial customers and used by such

customers in connection with their business activities. Likewise, these services would be marketed to other owners of utility assets or systems such as municipalities and electric cooperatives. Additionally, these services would be marketed to developers, owners and operators of nonassociate independent power production facilities (''IPPs''), including both qualifying and non-qualifying cogeneration or small power production facilities within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA'') (such qualifying facilities, ''QFs'') and exempt wholesale generators and foreign utility companies within the meaning of the Act, as well as to developers, owners and operators of nonassociate district thermal energy systems, i.e., energy systems consisting of central production plants that distribute steam, hot water and/or chilled water through underground pipes to customer buildings.

In particular, Asset Management Services will include development; engineering; design; construction and construction management; pre-operational start-up testing and commissioning; long-term operations and maintenance, including system overhaul; load control and network control; fuel procurement, transportation and storage; fly-ash and other waste disposal; management and supervision; technical, training and administrative support; and any other managerial or technical services required to operate, maintain and manage energy-related assets physically associated with customer premises or to operate, maintain and manage municipality or electric cooperative-owned utility systems, IPPs and district thermal energy systems. Without obtaining the prior approval of the Commission in a separate filing, Solutions will not undertake any Asset Management Service if, as a result thereof, Solutions would become a ''public utility company'' within the meaning of the Act.

Solutions further proposes; to market to nonassociates, primarily commercial/industrial customers, general technical consulting services with respect to energy-related matters (''Consulting Services''). Specifically, the Consulting Services will include technical and consulting services involving technology assessments, power factor correction and harmonics mitigation analysis, commercialization of electro-technologies, meter reading and repair, rate schedule analysis and design, environmental services, engineering services, billing services including conjunctive billing, summary billing for customers with multiple locations and bill auditing, risk management services, communications systems, information systems/data processing, system planning, strategic planning, finance, feasibility studies, and other similar or related services.

Solutions also proposes to develop, acquire, own and operate ''Projects,'' i.e.: (a) QFs and facilities necessary or incidental thereto, including thermal energy utilization facilities purchased or constructed primarily to enable the QF to satisfy the useful thermal output requirements under PURPA; and (b) district thermal energy systems and other facilities used for the production, conversion and distribution of thermal energy products, such as steam, heat, hot water and chilled water. Project development activities will include Project due diligence and design review; market studies; site inspection; preparation of bid proposals (including posting of bid bonds, cash deposits and the like); applications for required permits or regulatory approvals; acquisitions of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal ''host'' users, fuel suppliers and other Project contractors; negotiation and execution of related financing commitments and agreements; engineering and construction of Projects; and similar activities antecedent to the acquisition, ownership and operation of a Project. In connection with its Project development and ownership activities, Applicants request authorization for Solutions to acquire securities or assets of nonassociate companies that derive substantially all their revenues from the development, ownership or operation of Projects.

Solutions would also market energy-related services and products (''Consumer Services'') exclusively to residential and small commercial customers: (1) Service lines repair/extended warranties—repair of underground utility service lines owned by and located on the customer's property and extended service warranties covering the cost of such repairs; (2) surge protection—meter-based and plug-in equipment to protect customer household appliances and electronic equipment from power surges, including due to lightning; (3) appliances merchandising/repair/extended warranties—marketing of HVAC and other energy-related household appliances and, in connection therewith or separately, marketing of appliance inspection and repair services and extended service warranties covering the cost of repairing customers' appliances; (4) utility bill insurance—utility bill payment protection, for a monthly fee for a specified number of months, in the event the customer becomes unemployed, disabled or dies; (5) gas pilot lighting of pilot lights for customers; and (6) other similar or related services.

Applicants further propose that Solutions furnish its own or broker nonassociate third-party financing to commercial, industrial and residential customers, both to support sales to customers of goods and services included within Energy Management Services, Asset Management Services and Consumer Services and in connection with sales of energy-related equipment where the customer is not otherwise purchasing goods and services promoted by Solutions. Customer financing will take the form of direct loans, installment purchases, operating or finance lease arrangements (including sublease arrangements) and loan guarantees.[1] Interest on loans and imputed interest on lease payments will be based on prevailing market rates. The obligations will have terms of one to thirty years and will be secured or unsecured. Solutions also may assign obligations acquired from customers to banks, leasing companies or other financial institutions, with or without recourse.

Applicants request authorization for Solutions to undertake the proposed business activities on its own, either directly or through one or more wholly-owned direct or indirect subsidiaries of Solutions, formed as corporations, partnerships, limited liability companies or other legal entities. Applicants state that the decision in particular cases whether to conduct specific business activities directly through Solutions or indirectly through one or more wholly-owned subsidiaries of Solutions will hinge on applicable business, legal, tax, accounting and strategic considerations. In addition, to mitigate risk or access skills and relationships that Solutions may require, applicants expect that Solutions will pursue proposed business activities in certain instances through alliances with nonassociates. Certain of these alliances may be relatively informal, not

[1] As discussed below, Cinergy and Investments expect to invest up to $100 million in Solutions (and its subsidiaries) to finance the proposed activities. The amount of funds that may be made available for the proposed customer financing activities is included in the $100 million.

involving the formation of any new entities.

Others may encompass formal joint ventures, possibly involving the formation of one or more wholly- or partly-owned subsidiaries of Solutions. Applicants also request authorization for Solutions to form any such joint venture subsidiaries, as in the preceding case solely for the purpose of implementing Solutions' proposed business activities. As noted above, as part of Solutions' proposed Project development and ownership activities, applicants request authority for Solutions to acquire securities or assets of nonassociate companies deriving substantially all their revenues from the development, ownership or operation of Projects.

In connection with its incorporation and initial capitalization, Solutions is expected to issue and sell up to 100 shares of no par value common stock to Investments for nominal cash consideration (not to exceed $1,000). Thereafter, from time to time through December 31, 2001, in order to assist in the financing of Solutions' proposed business activities, Cinergy and Investments do not expect to invest more than $100 million in Solutions (including any subsidiaries of Solutions), either by acquiring securities of Solutions or making cash capital contributions to Solutions, in exempt transactions pursuant to rules 52 and 45(b)(4).

Cinergy and Investments request authority through December 31, 2001 to guarantee debt and other obligations of Solutions (including any subsidiaries of Solutions) incurred in the ordinary course of business in a maximum principal amount at any one time outstanding not to exceed $250 million. Debt financing of Solutions proposed to be guaranteed by Cinergy or Investments (a) will not exceed a term of 15 years, and (b) will bear interest (1) at a floating rate not in excess of 200 basis points over the prime rate, London Interbank Offered Rate or other appropriate index in effect from time to time, or (2) at a fixed rate not in excess of 250 basis points above the yield at the time of issuance of U.S. Treasury obligations of a comparable maturity. Any commitment and other fees on the debt will not exceed 75 basis points per annum on the total amount of debt financing. Other obligations incurred by Solutions in the ordinary course of its business as to which Cinergy and Investments propose to guarantee or otherwise act as indemnitor or surety are expected often to involve Solutions' obligation to perform under contracts with customers to which it is a party. Guarantees issued by Cinergy or Investments in these circumstances may take the form of procuring bid bonds and the like or guaranteeing Solutions' performance or other similar direct or indirect guarantees of Solutions' contractual or other obligations. Applicants anticipate that these parent company ''backstops'' will be required to establish Solutions' financial credibility to certain customers as a prerequisite to obtaining the customer's business and/or on the most favorable terms.

Cinergy states that it will not seek recovery through higher rates to customers of Cinergy's utility subsidiaries in order to compensate it or Investments for any potential losses they may sustain, or inadequate returns they may realize, resulting from investments in Solutions or guarantees of Solutions' debt or other obligations.

Initially, Solutions is expected to have limited full-time staff, primarily executive, management, and administrative personnel. Applicants expect that Solutions will make extensive use of outside contractors and consultants in performing its proposed business activities.

Applicants propose that Cinergy Services render an expanded range of support services to Solutions (including any subsidiaries thereof) and the other Cinergy system nonutility companies. Pursuant to the NUSA, which was authorized by the Commission in its 1994 order approving the merger that created Cinergy and certain ancillary transactions including the formation of Cinergy Services (HCAR 26146, Oct. 21, 1994), Cinergy Services may provide certain services, primarily administrative and management-type services, to Cinergy's nonutility subsidiaries, priced at cost for the domestic nonutility subsidiaries, as determined pursuant to rule 90 under the Act, and at fair market value for certain foreign subsidiaries of Cinergy pursuant to section 13(b)(1) and rule 83, and otherwise in accordance with applicable rules and regulations promulgated by the Commission pursuant to Section 13(b) of the Act. Specifically, the services that Cinergy Services may currently render to its nonutility associates are as follows: (1) Information systems, (2) transportation, (3) human resources, (4) facilities, (5) accounting, (6) public affairs, (7) legal, (8) finance, (9) internal audit, (10) investor relations, (11) planning and (12) executive. Under the Cinergy system Utility Service Agreement (''USA''), also approved in the Commission's 1994 merger order and pursuant to which Cinergy Services renders services at cost to Cinergy's utility subsidiaries, a much broader range of services are made available. In addition to the same 12 services made available to the client companies under the NUSA, the following additional services may be provided by Cinergy Services to the utility subsidiaries: (1) Electric system maintenance, (2) marketing and customer relations, (3) electric transmission and distribution engineering and construction, (4) power engineering and construction, (5) materials management, (6) power planning, (7) rates, (8) rights of way, (9) environmental affairs and (10) fuels.

Applicants request authorization for Cinergy Services to provide certain additional services under the NUSA, priced in accordance with the Commission's 1994 merger order and otherwise rendered in conformance with Section 13(b) of the Act and the applicable rules and regulations thereunder. Applicants state that the proposed additional services are in general very similar to those additional services under the USA (enumerated above) that are not currently available under the NUSA and that the proposed additional services are intended to accommodate the scope of Solutions' proposed business activities as well as that of the Cinergy system's other nonutility subsidiaries.

Specifically, the proposed additional services (collectively, ''Additional NUSA Services'') are as follows: (1) Energy-related facility maintenance, (2) engineering and construction, (3) marketing and customer relations, (4) materials management, (5) fuels, (6) environmental affairs, (7) rates, (8) rights of way and (9) energy-related system operations.

Applicants state that the Additional NUSA Services would be implemented by means of a restatement of existing Appendix A to the NUSA (which lists and describes the currently available services under the NUSA). Applicants do not otherwise in any respect propose to amend the NUSA.

Applicants state that the Additional NUSA Services are roughly parallel to the additional functions already made available to Cinergy's utility subsidiaries under the USA. Consequently, applicants do not anticipate a need to add any new employees to Cinergy Services solely to implement the Additional NUSA Services. Applicants represent that the provision of the Additional NUSA Services will not impair Cinergy Services' ability to provide the full range of services that it currently provides to the system utility companies under the USA. All costs associated

with Cinergy Services personnel rendering any Additional NUSA Services (including compensation, benefits and overhead) will be fully reimbursed by Solutions and other system companies that request and receive such services in accordance with section 13(b) of the Act and the applicable rules and regulations thereunder, including rules 90 and 91.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96–30811 Filed 12–3–96; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–37988; File No. SR–CBOE–96–71]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Closing Time for Equity and Narrow-Based Index Options

November 26, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on November 20, 1996, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules governing the hours of trading in equity options and narrow-based index options. After the change, the Exchange will close trading in equity and narrow-based index options at 3:02 p.m. (Chicago time) instead of at 3:10 p.m. (Chicago time), as is the case now. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to change the close of the normal trading hours in equity and narrow-based index options from 3:10 p.m. (Chicago time) to 3:02 p.m. (Chicago time). After the change, the time of the close of trading in these CBOE options will more closely correspond to the normal time set for the close of trading on the primary exchanges listing the stocks underlying the CBOE options. The primary exchanges generally close at 3:00 p.m. (Chicago time).

When the Exchange determined to change its closing time for equity options and narrow-based index options, it determined that there were still reasons to continue trading options for some period of time after the close of trading of the primary markets for the underlying securities. Specifically, the extended period allows options traders to respond to late reports of closing prices over the consolidated tape. If the price of a late reported trade on an underlying security was substantially different from the previous reported price, the extended trading session would give options traders the opportunity to bring options quotes into line with the closing price of the underlying security. However, because of improvements in the processing and reporting of transactions, there are usually no significant delays in the reporting of closing prices. Therefore, a ten minute session is no longer needed to trade options after the underlying securities close trading.

The Exchange believes the need to continue trading options for some period of time after the close of trading on the primary markets for the underlying securities outweighs the obvious problems with continuing to trade options while stocks are longer traded. The Exchange has learned through experience with a 3:10 close that pricing aberrations can occur if an option is traded when the underlying stock is no longer trading. There is obviously a close relationship in the price of the underlying stock and the overlying option. As a result, it is difficult for the market to price options accurately when the underlying security is not trading. It is for this reason that the halt of trading in an underlying security is a factor to be considered in determining whether to halt trading in the overlying option under CBOE Rule 6.3.

In recent weeks, the Exchange has become particularly cognizant of the pricing problems that result when the Exchange remains open after the close of the primary exchange for the underlying stocks. A number of issuers have adopted the practice of disseminating important corporate news after the close of trading on the primary exchange. Issuers often wait until after 3:00 p.m. Chicago time to release the news because they realize that the news might have a short-term disruptive effect on the market price of the stock that can be minimized if investors are able to digest the significance of the news after the markets have closed and overnight. However, despite efforts of the Exchange to remind issuers that most Exchange products trade until 3:10 p.m., important corporate news is often disseminated between 3:00 p.m. and 3:10 p.m. As a result, the Exchange is often deluged with option orders after a significant news announcement after 3:00 p.m., most often between 3:02 p.m. and 3:10 p.m. These orders have a disruptive effect on the market at a time when the Exchange is attempting to close in a fair and orderly fashion.[3] Among the possible deleterious effects is that customer orders might not be filled as quickly as they might otherwise be filled in more normal conditions. In addition, orders regularly are routed through the Exchange's Retail Automatic Execution System (''RAES'') and are executed in rapid succession on markets that have not had a chance to be updated to reflect the significant news.[4] Weighing the benefits to be

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Although the Exchange has the ability to call a ''fast'' market under current Exchange Rule 6.6 in an effort to deal with the problems caused by news announcements after 3:00 p.m., this procedure requires the assessment of the situation by two Floor Officials. As a result, the Rule 6.6 procedure does not permit the Exchange to act quickly enough to prevent the possible deleterious effects of an unexpected news announcement.

[4] Orders routed through the RAES system are assigned execution prices instantaneously as determined by the prevailing market quotes that exist at the time of the order's entry into the system. As a result, these orders might be assigned a price before the market-makers will have had the chance to update the quotes based upon the unexpected news announcement. To respond to the problem presented when issuers make significant news

Continued

obtained by a brief extended trading session against the difficulties presented when options trade after the underlying securities have closed, the Exchange has determined that a two minute extended session is the correct balance.

The Exchange also proposes to change the closing time for narrow-based indexes under Rule 24.6 because these indexes are subject to the same pricing problems as options on individual stocks. A significant news announcement on one component of a narrow-based index could have a significant effect on that index. The Exchange is not at this time proposing to change the closing time of 3:15 p.m. for broad-based index options because it is unlikely that a significant news announcement by the issuer of one component stock of a broad-based index is likely to have a significant effect on the price of that broad-based index.

The Exchange is also proposing to amend Interpretations .02 and .03 of its trading rotation rule, Rule 6.2, to reflect the changes in the closing time for stock options and narrow-based index options from 3:10 p.m. to 3:02 p.m. Chicago time. A change would also be made to allow a closing rotation in non-expiring options to be held five minutes after news of such rotation is disseminated. Currently, the rule requires notice of ten minutes before a closing rotation may be held.

Finally, the Exchange is proposing to amend Interpretation .01 to Rule 6.1 to make it clear that the Board may designate a person or persons to change the hours for the trading of options when unusual conditions exist. This change is consistent with the Exchange's current Rule 24.6.

2. Statutory Basis

The proposed rule changes further the objectives of Section 6(b)(5) of the Act, in that they are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange states that it believes that the proposed rule change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–96–71 and should be submitted by December 26, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96–30812 Filed 12–3–96; 8:45 am]

**BILLING CODE 8010–01–M**

announcements during the ten minute period after the close of trading in stocks, the Exchange filed a rule with the Commission which permits the Exchange to employ a system to suspend the operation of the RAES system in the event of news announcements near the close of trading. *See* Securities Exchange Act Release No. 37885 (October 29, 1996), 61 FR 56724 (approving CBOE–96–55).

[5] 17 CFR 200.30–3(a)(12).

**[Release No. 34–37985; File No. SR–OCC–96–16]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Permanent Approval on an Accelerated Basis of a Proposed Rule Change Concerning Equity TIMS

November 25, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 8, 1996, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant permanent approval of the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks permanent approval of OCC's use of its Theoretical Intermarket Margin System (''TIMS'') for calculating clearing margin positions in equity options.[2] Since its initial temporary approval of Equity TIMS in 1991, the Commission has extended the temporary approval five times.[3]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Equity TIMS is a modified version of OCC's Non-Equity TIMS, which is OCC's margin system used to calculate requirements on options for which the underlying asset is anything but an equity security. Securities Exchange Act Release No. 23167 (April 22, 1986), 51 FR 16127 [File No. SR–OCC–85–21] (order approving Non-Equity TIMS). On March 1, 1991, the Commission temporarily approved a proposed rule change that authorized OCC to use TIMS to calculate clearing member margin requirements on equity options. At that time, OCC phased out its previous margin system, known as the ''production system,'' and since then has used Equity TIMS to calculate its clearing members' margin requirements on equity option positions. For a complete description of Equity TIMS, refer to Securities Exchange Act Release No. 28928 (March 1, 1991), 56 FR 9995 [File No. SR–OCC–89–12] (order approving the use of Equity TIMS to calculate margin on equity options on a temporary basis through May 31, 1992).

[3] Securities Exchange Act Release Nos. 30761 (May 29, 1992), 57 FR 24286 [File No. SR–OCC–92–15] (order extending the approval of Equity TIMS through May 31, 1993); 32388 (May 28, 1993), 58 FR 31989 [File No. SR–OCC–93–06] (order extending the approval of Equity TIMS through May 31, 1994); 34065 (May 13, 1994), 59 FR 26534 [File No. SR–OCC–94–03] (order extending the approval of Equity TIMS through May 31, 1995); 36003 (July 21, 1995), 60 FR 38880 [File No. SR–OCC–95–07] (order extending the approval of Equity TIMS through May 31, 1996) and 37449 (July 17, 1996), 61 FR 38498 [File No. SR–OCC–96–06] (order extending the approval of Equity TIMS through November 30, 1996).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

Equity TIMS utilizes options price theory (*i.e.*, an option pricing model) to project the cost of liquidating each clearing member's long and short equity option positions on which OCC is entitled to assert a lien in the event of a ''worst case'' theoretical change in the price of the underlying securities. This projected liquidation cost is then used by Equity TIMS to calculate for each clearing member a margin requirement to cover that cost.

OCC presented a report to Commission staff in April 1995 pursuant to staff inquiries as to whether volatility for a ten-year period should be used to determine equity options margin intervals. OCC's analysis suggests that a ten-year time frame presents problems in adequately assessing the potential future volatility of individual equities. OCC asserts that some equities (*e.g.*, those in initial public offerings) with traded options experienced high volatility less then ten years ago but now are well established, less volatile securities. However, some equities with traded options that historically have experienced lower volatility have experienced volatility increases due to market factors or changes in the business climate.

Accordingly, OCC explored alternatives to using a ten-year period for determining equity options margin intervals. As a result of its research into such alternatives, OCC believes that the use of a four-year stable distribution for the purposes of determining equity margin intervals within Equity TIMS should address the Commission's concerns. Stable distributions essentially seek to fit a probability distribution to a sample of historical data without any implicit assumptions of normalcy. OCC believes that stable distribution parameters will provide it with a greater breadth and quality of information from a given period of historical data and proposes to use a four-year period for purposes of setting option margin intervals.

OCC believes the proposed rule change is consistent with the requirements of Section 17A of Act and the rules and regulations promulgated thereunder because Equity TIMS should enhance OCC's ability to safeguard the securities and funds for which it is responsible.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change will impose any burden on competition.

*(C*) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that OCC's proposal to utilize Equity TIMS meets this requirement. Because the Commission wanted to analyze and to monitor the results of the use of Equity TIMS before determining whether to grant permanent approval, the Commission previously approved the proposed rule change on a temporary basis. Because OCC's use of Equity TIMS during the temporary approval period has resulted in better assessments of OCC's risk exposure associated with the clearance and settlement of its clearing members' equity option positions and has resulted in calculations of clearing margin that more accurately reflect the risk exposure, the Commission is now permanently approving Equity TIMS.

OCC has requested that the Commission find good cause for approving the proposal prior to the thirtieth day after the publication of notice of filing of the proposed rule change. The Commission finds good cause for approving OCC's proposal prior to the thirtieth day after publication of notice of filing because accelerated approval will allow OCC to continue to use Equity TIMS without interruption at the conclusion of the current temporary approval period. The Commission notes that during the previous temporary approval periods neither OCC nor the Commission have received any adverse comments regarding Equity TIMS, and none are expected with regard to this filing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of OCC. All submissions should refer to file number SR–OCC–96–16 and should be submitted by December 26, 1996.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–96–16) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96–30813 Filed 12–3–96; 8:45 am]

BILLING CODE 8010–01–M

[4] The Commission has modified the text of the summaries prepared by OCC.

[5] 17 CFR 200.30–3(a)(12) (1996).

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**[Release No. 34–37993; File No. SR–OCC–96–14]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Revision of Fees

November 27, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on

[1] 15 U.S.C. 78s(b)(1) (1988).

October 29, 1996, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends OCC's schedule of fees to reflect the replacement of microfiche with CD–ROM as the media for providing subscribing clearing members with copies of OCC generated reports.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to amend OCC's schedule of fees to reflect the replacement of microfiche with CD–ROM as the media for providing subscribing clearing members with copies of OCC generated reports.[3] OCC currently provides subscribing clearing members with microfiche copies of OCC generated reports on a fee per fiche basis. OCC now is proposing to change the media on which the clearing reports are stored from microfiche to CD–ROM. OCC will create the CD–ROMs containing reports for subscribing clearing members on a monthly basis. A reader for the CD–ROMs has been added to the enhanced clearing member interface equipment (''ECMI Equipment'') used by clearing members, which will allow subscribing clearing members to access reports on their ECMI Equipment. OCC also will offer to convert the most immediate thirty-six months' worth of historical reports to the CD–ROM format for those clearing members desiring to subscribe to that portion of the service.

The conversion to CD–ROM requires a change in OCC's schedule of fees. OCC proposes to charge subscribing clearing members $75 per month per CD–ROM. OCC estimates that one month's worth of reports for each subscribing clearing member will currently fit into one CD–ROM. The same fee structure (*i.e.*, $75 per month per CD–ROM) will be applied to any clearing member desiring to obtain historical reports. During the conversion period, OCC will waive the first month fee for a CD–ROM if a clearing member also receives microfiche. While OCC intends to complete the conversion by December 1996, it has not finalized a conversion schedule. Accordingly, the fee applicable to reports on microfiche has not been deleted from OCC's schedule of fees. OCC anticipates that the conversion to CD–ROM will generate savings of nearly $7,000 per month to its overall membership although certain individual clearing members might experience a small increase in their current monthly costs.

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act[4] and the rules and regulations thereunder because it provides for the equitable allocation of reasonable dues, fees, and other charges among OCC's participants.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments have been solicited or received. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and pursuant to Rule 19b–4(e)(2)[6] promulgated thereunder because the proposal changes a due, fee, or other charge imposed by OCC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–96–14 and should be submitted by December 26, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96–30879 Filed 12–3–96; 8:45 am]

BILLING CODE 8010–01–M

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] These reports contain information regarding clearing members' daily clearance and settlement activity.

[4] 15 U.S.C. 78q–1(b)(3)(D) (1988).

[5] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[6] 17 CFR 240.19b–4(e)(2) (1996).

[7] 17 CFR 200.30–3(a)(12) (1996).

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[FRA Docket No. RST–95–3]**

### Addendum to Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the New York State Department of Transportation (NYDOT) requested an addendum to its request for a waiver of compliance with certain requirements of the CFR in order to operate various types of equipment at higher cant deficiencies.

In its original request (see 60 Federal Register No. 230, November 30, 1995) NYDOT requested a waiver from certain requirements of 49 CFR Part 213, *Track Safety Standards,* for the purpose of operating Rohr Turboliner trainsets at up to eight inches of cant deficiency on the Empire Corridor extending from New York City, New York, to Niagara Falls, New York.

NYDOT now requests to add the National Railroad Passenger Corporation's (Amtrak) equipment to its request: FL–9, FL–9 AC, Genesis I and II locomotives, Bombardier Shoreliner coaches, M–1 and M–3 electric-propelled coaches. NYDOT also proposes to limit its request to underbalance levels up to six inches and limit the territory of its request to that portion of the Empire Corridor extending between Penn Station, New York, and Poughkeepsie, New York, over track owned by Amtrak and Metro-North Commuter Railroad.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments on this petition. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning this proceeding should identify the appropriate docket number (e.g., Waiver Petition Docket No. RST–95–3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at FRA's temporary docket room located at 1120 Vermont Avenue, NW., Room 7051, Washington, DC 20005.

Issued in Washington, DC, on November 25, 1996.

Phil Olekszyk,

*Deputy Associate Administrator for Safety Compliance and Program Implementation.*

[FR Doc. 96–30883 Filed 12–3–96; 8:45 am]

BILLING CODE 4910–06–P

## Surface Transportation Board

**[STB Finance Docket No. 33264]**

## Indiana Harbor Belt Railroad Company—Trackage Rights Exemption—Consolidated Rail Corporation

Consolidated Rail Corporation (Conrail) has agreed to grant non-exclusive overhead trackage rights to Indiana Harbor Belt Railroad Company (IHB) over Conrail's Bernice Line from its connection with trackage which IHB operates at Dolton, Cook County, IL (M.P. 293.4±) to Acme Steel, Riverdale, Cook County, IL (M.P. 294.9±).

The transaction is scheduled to be consummated on November 26, 1996.

The trackage rights will enable IHB to provide rail service to Acme Steel.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33264, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423. In addition, a copy of each pleading must be served on Roger A. Serpe, Esq., Indiana Harbor Belt Railroad Company, 175 West Jackson Boulevard, Suite 1460, Chicago, IL 60604.

Decided: November 26, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

*Secretary.*

[FR Doc. 96–30717 Filed 12–3–96; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF THE TREASURY

## Office of Thrift Supervision

## Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Office of Thrift Supervision, Department of Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the Merger Application.

**DATES:** Written comments should be received on or before February 3, 1997 to be assured of consideration.

**ADDRESSES:** Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0016. These submissions may be hand delivered to 1700 G Street, NW. From 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Pamela Schaar, Corporate Activities Division, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7205.

**SUPPLEMENTARY INFORMATION:**

*Title:* Merger Application.

*OMB Number:* 1550–0016.

*Form Number:* OTS Form 1588.

*Abstract:* The Bank Merger Act and OTS regulations require thrifts that propose to combine with either another thrift or insured depository institution to obtain written approval from the OTS.

*Current Actions:* OTS is proposing to renew this information collection without revision.

*Type of Review:* Extension of currently approved collection.

*Affected Public:* Business or For Profit.

*Estimated Number of Respondents:* 96.

*Estimated Time Per Respondent:* 36 hours.

*Estimated Total Annual Burden Hours:* 3,456 hours.

*Request for Comments:* Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 21, 1996.

Catherine C.M. Teti,

*Director, Records Management and Information Policy.*

[FR Doc. 96–30792 Filed 12–3–96; 8:45 am]

**BILLING CODE 6720–01–P**

## Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Office of Thrift Supervision, Department of Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the Application to convert from mutual to stock form of ownership.

**DATES:** Written comments should be received on or before February 3, 1997 to be assured of consideration.

**ADDRESSES:** Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0014. These submissions may be hand delivered to 1700 G Street, NW. From 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Pamela Schaar, Corporate Activities Division, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7205.

**SUPPLEMENTARY INFORMATION:**

*Title:* Application from Mutual to Stock Conversions.

*OMB Number:* 1550–0014.

*Form Number:* Not Applicable.

*Abstract:* This application provides OTS with information necessary to review the proposed conversion from mutual to stock form of institution and ensure that the members of the mutual institution are provided with sufficient information to make an informed decision about the conversion.

*Current Actions:* OTS is proposing to renew this information collection without revision.

*Type of Review:* Extension of currently approved collection.

*Affected Public:* Business or For Profit.

*Estimated Number of Respondents:* 61.

*Estimated Time Per Respondent:* 500 hours.

*Estimated Total Annual Burden Hours:* 30,500 hours.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 21, 1996.

Catherine C.M. Teti,

*Director, Records Management and Information Policy.*

[FR Doc. 96–30793 Filed 12–3–96; 8:45 am]

**BILLING CODE 6720–01–P**

## Submission for OMB Review; Comment Request

November 21, 1996.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N. W., Washington, D.C. 20552.

*OMB Number:* 1550–0005.

*Form Number:* OTS Forms 138, 138E, and 138F.

*Type of Review:* Extension of Currently Approved Collection.

*Title:* Application for Permission to Organize, A Federal Savings Association.

*Description:* The information collected is evaluated by the OTS staff to determine whether requests by organizing groups for permission to establish a new Federal savings association comply with applicable Federal laws and OTS regulations and policies.

*Respondents:* Savings and Loan Associations and Savings Banks.

*Estimated Number of Respondents:* 3.

*Estimated Burden Hours Per Respondent:* 98 hours average.

*Frequency of Response:* 1 per year.

*Estimated Total Reporting Burden:* 294 hours.

*Clearance Officer:* Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, N. W., Washington, D.C. 20552.

*OMB Reviewer:* Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C. M. Teti,

*Director, Records Management and Information Policy.*

[FR Doc. 96–30794 Filed 12–03–96; 8:45 am]

**BILLING CODE 6720–01–P**

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Submission for OMB Review; Comment Request

November 21, 1996.

The Office of Thrift Supervision (OTS) has submitted the following

public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

*OMB Number:* 1550–0007.

*Form Number:* OTS Form 1582.

*Type of Review:* Extension of Currently Approved Collection.

*Title:* Application for conversion from a state-chartered association to a Federally-chartered association

*Description:* Section 5(i) of the Home Owners' Loan Act and 12 CFR Sections 543.8 and 552.2 require the OTS to act on requests by state-chartered institutions proposing to convert to Federal charter.

*Respondents:* Savings and Loan Associations and Savings Banks.

*Estimated Number of Respondents:* 60.

*Estimated Burden Hours Per Respondent:* 4 hours average.

*Frequency of Response:* 1 per year.

*Estimated Total Reporting Burden:* 240 hours.

*Clearance Officer:* Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, N.W., Washington, D.C. 20552.

*OMB Reviewer:* Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C. M. Teti,

*Director, Records Management and Information Policy.*

[FR Doc. 96–30795 Filed 12–03–96; 8:45 am]

BILLING CODE 6720–01–P

## Submission for OMB Review; Comment Request

November 21, 1996.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

*OMB Number:* 1550–0006.

*Form Number:* OTS Forms 1450 and 1558.

*Type of Review:* Extension of Currently Approved Collection.

*Title:* Branch Offices.

*Description:* 12 CFR Section 545.92 requires federally-chartered institutions proposing to establish a branch office or to change the location of a branch office to file an application or notice with the OTS. Section 228 of the Federal Deposit Insurance Corporation Improvement Act requires insured thrifts to adopt a policy with respect to branch closings.

*Respondents:* Savings and Loan Associations and Savings Banks.

*Estimated Number of Respondents:* 1,379.

*Estimated Burden Hours Per Respondent:* 1.94 hours average.

*Frequency of Response:* 1 per year.

*Estimated Total Reporting Burden:* 2,685 hours.

*Clearance Officer:* Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

*OMB Reviewer:* Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C.M. Teti,

*Director, Records Management and Information Policy.*

[FR Doc. 96–30796 Filed 12–3–96; 8:45 am]

BILLING CODE 6720–01–P

## Submission for OMB Review; Comment Request

November 21, 1996.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

*OMB Number:* 15550–0037.

*Form Number:* OTS Form 1240.

*Type of Review:* Extension of Currently Approved Collection.

*Title:* Trust Powers.

*Description:* 12 CFR Section 550.2 requires a savings association proposing to exercise fiduciary powers to file an application indicating which trust services it wishes to offer and providing sufficient information for the OTS to aspprove or deny the application.

*Respondents:* Savings and Loan Associations and Savings Banks.

*Estimated Number of Respondents:* 13.

*Estimated Burden Hours Per Respondent:* 9 hours.

*Frequency of Response:* 1 per year.

*Estimated Total Reporting Burden:* 117 hours.

*Clearance Officer:* Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

*OMB Reviewer:* Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C.M. Teti,

*Director, Records Management and Information Policy.*

[FR Doc. 96–30797 Filed 12–3–96; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Wednesday
December 4, 1996

Part II

# Department of Housing and Urban Development

**24 CFR Part 242**

**Multifamily Mortgage Insurance—Risk-Sharing for Hospitals; Proposed Rule**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 242

**[Docket No. FR–3914–P–01]**

**RIN 2502–AB53**

### Multifamily Mortgage Insurance—Risk-Sharing for Hospitals

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** The Department is proposing to expand the concept of risk-sharing to insuring mortgages to finance the new construction or rehabilitation of hospitals or improvement of hospitals. This program is structured under existing mortgage insurance authority. The program would provide a new form of credit enhancement for constructing and rehabilitating hospitals.

**DATES:** Comments must be submitted on or before February 3, 1997.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. FAXED comments will not be accepted.

**FOR FURTHER INFORMATION CONTACT:** John U. Sepulveda, Director, Hospital Mortgage Insurance Staff, Office of Housing, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–0599. The above telephone number may be accessed through TTY by calling the Federal Relay Service at (202) 708–9300 or 1–800–877–8339). (Except for the ''800'' number, these are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:**

Background

HUD is reviewing all its mortgage insurance programs in an effort to make them more accessible and responsive to end-users.

Risk-sharing has already been successfully implemented for multifamily mortgage insurance and has been recently proposed for single family mortgage insurance. Thus, the proposed rule for hospitals represents a continuation of the Department's efforts to ''partner'' effectively with State finance agencies and others to improve the delivery of credit enhancement.

HUD recognizes the need for many of the market-driven, cost-saving reforms which are sweeping hospitals and the health care industry, such as: (1) The shift from inpatient hospital care to outpatient (ambulatory) care; (2) the shift from fee-for-service to managed care; and (3) the shift from independent stand-alone hospitals to vertically and horizontally integrated health care systems. HUD expects to seek statutory authority to give FHA greater flexibility to design and implement products which will be responsive to these changes. The proposed risk-sharing program represents what we can do NOW under existing statutory authority. Implementing risk-sharing now for the Section 242 program will enable the Department to build a partnering infrastructure involving State health care facility financing agencies, private mortgage and bond insurers and investment and mortgage bankers, which will ensure that hospitals and related health care facilities retain access to capital during this period of major structural changes in the industry.

The primary purpose of the Hospital Risk-Sharing program is to provide a new form of credit enhancement for constructing and rehabilitating hospitals, i.e., using insurance by HUD, pursuant to risk-sharing agreements with qualified public and private financing agencies, to develop and improve hospitals. Using a risk-shared credit enhancement program should leverage access to capital markets and thereby result in hospital facilities and services appropriate to local needs. By permitting State financing agencies and private sector financing firms to risk-share with HUD in the construction and rehabilitation of hospitals, HUD expects a more efficient financing process which should maximize the hospitals ability to get the lowest cost financing available in the market place.

HUD further expects that by allowing a risk-sharing finance partner to underwrite, process and service the loans and to manage and dispose of property that goes into unremedied default the hospital program will be run very effectively. HUD also expects that the Hospital Risk-Sharing program will increase the chances of the insured hospital's successful operation as the risk-sharing partners have a financial incentive to assure cost effective operations and will be in closer proximity to the hospital thereby having a better understanding of local market conditions. Finally, if a hospital encounters adverse economic conditions that force its failure, HUD's risk-sharing partner should be in a better position to minimize HUD's losses as it would have a more complete understanding as to what disposition alternatives are available and which one would maximize HUD's financial position.

HUD is proposing to use the authority to insure mortgages under the Hospital Insurance Program under section 242 pursuant to the coinsurance authority under section 244 of the National Housing Act to design such a Hospital Risk-Sharing Mortgage Insurance Program. The program would be similar to the Multifamily Risk-Sharing Insurance Program set out at 24 CFR part 266. As with that program, HUD and the mortgagee would share the risk of loss as specified in the risk-sharing agreement. The risk-sharing agreement is a contract setting out the rights and obligations of HUD and the mortgagee. (See § 242.304 for a summary of its contents.) The Department would issue the insurance commitments and would endorse mortgage notes for insurance. Mortgages would have to meet HUD's normal underwriting requirements for the hospital full insurance program.

The Commissioner's endorsement of the mortgage note for insurance would specify whether the Department, upon a mortgage default, would pay a full initial claim or would pay an initial claim based upon the full initial claim amount multiplied by HUD's percentage of the risk. The latter formula is new to this program.

In the event of a mortgage default, HUD would pay an insurance claim shortly after the default and would receive a debenture or note in like amount from the mortgagee (§ 242.428). The mortgagee would retain the mortgage. At the end of five years or upon sale of the hospital after foreclosure or acquisition by the mortgagee, HUD would determine the total loss and the parties would make the necessary payments for each to have its respective share of the loss.

HUD is also proposing a cap on its share of the loss equal to the unpaid principal balance of the mortgage note as of the date of default multiplied by HUD's percentage of the risk (§ 242.450). Operating deficits after default constitute a liability over which HUD would have no control. Since the mortgagee will retain the mortgage after default, the Department believes that a cap will provide a stronger economic incentive to service the mortgage in a manner that will minimize accrual of operating deficits than would a straight risk-sharing formula.

Section 242.430 contains a partial payment of claims procedure similar to

that provided in § 266.630 of the Multifamily Risk-Sharing Insurance Program rule. HUD has implemented this procedure under the authority provided in section 244(a) of the National Housing Act for HUD to determine the method of calculating insurance benefits. It is not based on section 541 of the National Housing Act, which authorizes partial payments of claim for certain full insurance programs.

This proposed rule follows the Multifamily Risk-Sharing Insurance Program rule on sharing of mortgage insurance premiums, namely, they are shared in direct proportion to share of risk (§ 242.404). The Department specifically invites public comment on this structure, particularly in view of the proposed sharing of the initial claim payment and of HUD's cap on liability. It should be noted that, under section 244(a) of the National Housing Act, the total premium charged may not exceed the premium applicable under the full insurance program, which is, in general, 0.5 percent of unpaid principal balance. (See 24 CFR 207.252 to 207.252c and 242.251.)

As part of its effort at streamlining its regulations, the Department has chosen to leave much of the detailed procedures to be established contractually through the risk-sharing agreement rather than in this rule. This proposed rule does contain, in detail, the claims payment requirements. This is consistent with the Department's historic practice in both its single family and multifamily mortgage insurance programs of having the contract of insurance evidenced by issuance of a mortgage insurance certificate or by endorsement of the note, with an incorporation by reference of the appropriate regulations. That method has proved highly efficient for those high-volume programs where the contract of insurance must follow readily-assignable mortgages. The Hospital Risk-Sharing Program should be a much smaller volume program in terms of numbers of mortgages. The mortgages themselves would not be assignable (§ 242.416). The Department seeks comment on the feasibility and desirability of establishing these requirements contractually through the risk-sharing agreement or addenda to the risk-sharing agreement.

Findings and Certifications

*Paperwork Reduction Act Statement*

The proposed information collection requirements contained at §§ 242.304, 242.426, 242.430, 242.430, 242.432, 242.440, and 242.442 of this rule have been submitted to the Office of Management and Budget (OMB) for review, under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

(a) In accordance with 5 CFR 1320.5(a)(1)(iv), the Department is setting forth the following concerning the proposed collection of information:

(1) Title of the information collection proposal: Risk-Sharing for Hospitals

(2) Summary of the collection of information:

The information collection requirements identified in the proposed rule consist of: (i) the application for hospital mortgage insurance; and (ii) documents relating to the filing of a claim for mortgage insurance benefits pursuant to a risk-sharing agreement.

(3) Description of the need for the information and its proposed use:

(A) The application for hospital mortgage insurance consists of a Form HUD–92013 (OMB No. 2502–0029) and series of supporting documents, including, for example: a Certificate of Need (in States that require a Certificate of Need) or a State-sponsored study demonstrating need (in States that do not require Certificates of Need); a project narrative; organizational documents; accreditation reports; audited financial statements and operating statistics for the last five years; a five-year business plan; a detailed feasibility study; architectural/engineering documentation; and assurances of compliance with applicable Federal statutes and Executive Orders. This information is used to: (i) verify the hospital's eligibility for FHA mortgage insurance; (ii) ascertain the need for a proposed hospital construction project and define its scope, design and cost; (iii) assess the applicant hospital's financial strength and project feasibility; and (iv) provide a basis for thorough evaluation and underwriting of the proposed project.

(B) Documents relating to the claim for mortgage insurance benefits include the following standard HUD forms: Notice of Default, Form HUD–92426 (OMB No. 2502–0041); Application for Initial Claim Payment, Form HUD–92747 (OMB No. 2502–0419); and Form HUD–92742, Application for Final Claim Payment and Fiscal Data in Support of Claim for Insurance Benefits (OMB No. 2502–0415); and non-standard forms including an appraisal of the defaulted hospital and annual certified statement of amounts due. This information is used to compute the amount of the insurance benefits which the risk-sharing lender is entitled to receive in the event of a claim.

(4) Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:

The application for hospital mortgage insurance is prepared jointly by the applicant hospital and its investment banker (mortgagee). Documents relating to claims for mortgage insurance benefits are prepared by the mortgagee. The estimated number of respondents and proposed frequency of responses are included in paragraph (5), immediately below.

(5) Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

| Description of annual information collection | Number of respondents | Responses per respondent | Total annual responses | Hours per response | Total burden |
|---|---|---|---|---|---|
| § 242.304 HUD 92013, Hospital—Section 242, Application for Project Mortgage Insurance, OMB No. 2502–0029 [1] | 3 | 1 | 3 | 750 | 2,250 |
| § 242.426(c) HUD 92426, Notice of Default Status on Multifamily Housing Projects OMB No. 2502–0041 [1] | 1 | 1 | 1 | 1 | 1 |
| § 242.426(d) Application for Initial Claim Payment: HUD 92747, Application for Insurance Benefits, OMB No. 2502–0419 [1] | 1 | 1 | 1 | 0.08 | 0.08 |
| § 242.426(d) Application for Partial Claim Payment | 1 | 1 | 1 | 1 | 1 |
| § 242.430(b) Partial Claim Payment Mortgagee Submission | 1 | 1 | 1 | 20 | 20 |
| § 242.430(d)(5) Annual Certified Statement of Amounts Due | 1 | 1 | 1 | 5 | 5 |
| § 242.432 Withdrawal of Claim: HUD 92426, Notice of Default Status on Multifamily Housing Projects, OMB No. 2502–0041 [1] | 1 | 1 | 1 | 1 | 1 |
| § 242.440 Appraisal | 1 | 1 | 1 | 100 | 100 |

| Description of annual information collection | Number of respondents | Responses per respondent | Total annual responses | Hours per response | Total burden |
|---|---|---|---|---|---|
| § 242.442 HUD 92742, Application For Final Claim Fiscal Data in Support of Claim for Insurance Benefits, OMB No. 2502–0415[1] .... | 1 | 1 | 1 | 0.5 | 0.5 |

[1] These items involve existing information collection requirements for which HUD is adjusting burden hour estimates or is seeking reinstatement of an OMB control number.

(b) In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR–3447) and must be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

*Executive Order 12866*

This proposed rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866, Regulatory Planning and Review. Any changes made to the proposed rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, room 10276, 451 Seventh Street, SW, Washington, DC 20410.

*Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW, Room 10276, Washington, DC 20410–0500.

*Unfunded Mandates Reform Act*

The Secretary has reviewed this proposed rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this proposed rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the proposed rule is not subject to review under the Order. Specifically, the requirements of this proposed rule are directed to lenders and do not impinge upon the relationship between the Federal government and State and local governments.

*Executive Order 12606, the Family*

The General Counsel, as the Designated Official under Executive order 12606, The Family, has determined that this proposed rule would not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs would result from promulgation of this proposed rule, as those policies and programs relate to family concerns.

*Impact on Small Entities*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would provide a risk-sharing alternative to full mortgage insurance and should be beneficial to both small and large entities.

The Catalog of Federal Domestic Assistance program number is 14.128.

List of Subjects in 24 CFR Part 242

Hospitals, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, part 242 of title 24 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 242—MORTGAGE INSURANCE FOR HOSPITALS

1. The authority citation for part 242 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715n(t), and 1715z–7; 42 U.S.C. 3535(d). Subparts C and D are also issued under 12 U.S.C. 1715z–9.

2. The heading for subpart A is revised to read as follows:

### Subpart A—Eligibility Requirements—Full Insurance Program

3. The heading for subpart B is revised to read as follows:

### Subpart B—Contract Rights and Obligations—Full Insurance Program

4. New subparts C and D are added, to read as follows:

#### Subpart C—Eligibility Requirements—Risk-Shared Insurance Program



#### Subpart D—Contract Rights and Obligations—Risk-Shared Insurance Program

Mortgage Insurance Premiums

## Subpart C—Eligibility Requirements—Risk-Shared Insurance Program

### § 242.301 Purpose and scope.

This subpart C and subpart D of this part provide for the sharing of the risk of loss, by the Commissioner and mortgagees that enter into risk-sharing agreements, through insurance under section 242 of the National Housing Act pursuant to section 244 of the National Housing Act of mortgages securing loans to hospitals.

### § 242.302 Definitions.

(a) For purposes of this subpart C and subpart D of this part, the term:

*Contract of insurance* means the agreement evidenced by the endorsement of the Commissioner upon the credit instrument given in connection with an insured mortgage, incorporating by reference the regulations in this subpart and subpart D of this part and the applicable provisions of the National Housing Act. The endorsement shall indicate whether the initial claim amount under § 242.428 will be based on the Commissioner's percentage of the risk.

(b) See § 200.3 of this chapter for other applicable definitions.

### § 242.303 Eligibility to enter into risk-sharing agreement.

To be eligible to enter into a risk-sharing agreement, a mortgagee must be approved for participation under the National Housing Act in accordance with §§ 202.11 through 202.14 and §§ 202.17 through 202.19, of this chapter. The mortgagee must also meet such additional net worth and capital requirements as the Commissioner may prescribe and must have experience in originating and servicing mortgages in connection with hospitals, health care facilities, or both, that is acceptable to the Commissioner.

### § 242.304 Risk-sharing agreement.

The risk-sharing agreement shall include provisions relating, but not necessarily limited, to the following:

(a) The risk sharing level or levels at which the mortgagee shall participate in the program, subject to the Commissioner's maximum liability. The mortgagee's share of the loss may not be less than 10 percent of the loss;

(b) Capital, loss reserves, and escrow requirements for the mortgagee;

(c) The particular functions to be performed by each party with respect to mortgage origination, underwriting, mortgage servicing and claims settlement. The risk-sharing agreement shall provide for the Commissioner to issue mortgage insurance commitments and to endorse mortgage notes for insurance;

(d) Fees;

(e) Required certifications;

(f) Reports; and

(g) Audits.

### § 242.305 Cross-cutting regulations.

(a) *General.* Sections 200.31 (debarment and suspension), 200.32 (participation and compliance requirements), and 200.33 (labor standards) of this chapter and part 200, subpart J, of this chapter (equal employment opportunity) apply to this program.

(b) *Environmental review requirements.* To comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and related laws and authorities, HUD will ensure that each hospital site proposed for insurance under this subpart is visited and will prepare the applicable environmental reviews as set forth in part 50 of this title and for the related environmental criteria and standards in part 51 of this title and other applicable regulations. These requirements must be completed before HUD may issue a mortgage insurance commitment.

## Subpart D—Contract Rights and Obligations—Risk-Shared Insurance Program

Mortgage Insurance Premiums

### § 242.400 Mortgage insurance premium: Insurance upon completion.

(a) *Initial premium.* For mortgages insured upon completion, on the date of the final closing, the mortgagee shall pay to the Commissioner an initial premium equal to the prescribed percentage, as indicated in § 242.404(b), of the face amount of the mortgage.

(b) *Premium payable with first payment of principal.* On the date of the first payment of principal the mortgagee shall pay a second premium (calculated on a per annum basis) equal to the prescribed percentage of the average outstanding principal obligation of the mortgage from the final closing date to the year following the date of the first principal payment, less the amount paid on the date of the final closing.

(c) *Subsequent premiums.* Until one of the conditions is met under § 242.406(a), the mortgagee on each anniversary of the date of the first principal payment shall pay to the Commissioner an annual mortgage insurance premium equal to the prescribed percentage of the average outstanding principal obligation of the mortgage, without taking into account delinquent payments, or partial claim payment under § 242.430, or prepayments, for the year following the date on which the premium becomes payable.

### § 242.402 Mortgage insurance premium: Insured advances.

(a) *Initial premium.* For mortgages involving insured advances, on the date of the initial closing, the mortgagee shall pay to the Commissioner an initial premium equal to the prescribed percentage, as indicated in § 242.404(b), of the face amount of the mortgage.

(b) *Interim premium.* On each anniversary of the initial closing, the mortgagee shall pay an interim mortgage insurance premium equal to the prescribed percentage of the face amount of the mortgage. The mortgagee shall continue to pay the interim mortgage insurance premiums until the date of the first principal payment.

(c) *Premium payable with first payment of principal.* On the date of the first principal payment, the mortgagee shall pay a mortgage insurance premium equal to the prescribed percentage of the average outstanding principal obligation of the mortgage for the year following the date of the first principal payment. The mortgagee shall adjust this payment by deducting an amount equal to the

portion of the last premium paid that is attributable to the months after the date of the first payment to principal. Any partial month is to be counted as a whole month. The mortgagee shall remit the net adjusted mortgage premium to the Commissioner and refund the amount of the adjustment (over-payment) to the mortgagor.

(d) *Subsequent premiums.* Until one of the conditions is met under § 242.406(a), the mortgagee on each anniversary of the date of the first principal payment shall pay to the Commissioner an annual mortgage insurance premium equal to the prescribed percentage of the average outstanding principal obligation of the mortgage, without taking into account delinquent payments, prepayments, or a partial claim payment under § 242.430, for the year following the date on which the premium becomes payable.

**§ 242.404 Mortgage insurance premium: Other requirements.**

(a) *Premium calculations on or after first principal payment.* The premiums payable to the Commissioner on and after the first principal payment shall be calculated in accordance with the amortization schedule prepared by the mortgagee for final closing and the prescribed percentage as set forth in the sliding scale chart in paragraph (b) of this section without taking into account delinquent payments or prepayments.

(b) *Prescribed percentages.* The following sliding scale chart provides the prescribed percentage, based upon the respective share of risk, that is to be used in calculating mortgage insurance premiums under this section:

| Percentage share of risk | | Prescribed percentage for calculating mortgagee's annual MIP |
|---|---|---|
| HUD | Mortgagee | |
| 90 | 10 | .45 |
| 75 | 25 | .375 |
| 50 | 50 | .25 |
| 40 | 60 | .2 |
| 30 | 70 | .15 |
| 20 | 80 | .1 |
| 10 | 90 | .05 |

(c) *Closing information.* The mortgagee shall provide final closing information to the Commissioner within 15 days of the final closing in a format prescribed by the Commissioner. In addition, the mortgagee shall submit a copy of the amortization schedule. This amortization shall be used to compute and collect all future mortgage insurance premiums subject to § 242.400(c) or § 242.402(d). If the mortgage is modified, the mortgagee shall submit to the Commissioner a copy of the revised amortization schedule, which shall be used to compute and collect all future mortgage insurance premiums subject to § 242.400(c) or § 242.402(d).

(d) *Due date for premium payments.* Mortgage insurance premiums are due on the first day of the month of the anniversary of the first payment to principal. Any premium received by the Commissioner more than 15 days after the due date, shall be assessed a late charge of 4 percent of the amount of the premium payment due. Mortgage insurance premiums that are paid to the Commissioner more than 30 days after the due date shall begin to accrue interest at the rate prescribed by the Treasury Fiscal Requirements Manual.

**§ 242.406 Mortgage insurance premium: Duration and method of paying.**

(a) *Duration of payments.* Mortgage insurance premium payments must continue annually until one of the following occurs:

(1) The mortgage is paid in full;

(2) A deed to mortgagee is filed for record;

(3) An application for initial claim payment is received by the Commissioner; or

(4) The contract of insurance is otherwise terminated.

(b) *Method of payment.* The mortgagee shall pay any mortgage insurance premium required by this part in cash.

**§ 242.408 Mortgage insurance premium: Pro rata refund.**

If the contract of insurance is terminated by payment in full or is terminated by the mortgagee on a form prescribed by the Commissioner, after the date of the first payment to principal, the Commissioner shall refund any mortgage insurance premium for the period after the effective date of the termination of insurance. The refund shall be mailed to the mortgagee for credit to the mortgagor's account. In computing the pro rata portion of the annual mortgage insurance premium, the date of termination of insurance shall be the last day of the month in which the mortgage is prepaid or the Commissioner receives a notification of termination, whichever is later. No refund shall be made if the insurance was terminated because of the submission of an application for initial claim payment or if the termination occurs before the date of the first payment to principal.

Insurance Endorsement

**§ 242.412 Insurance endorsement.**

(a) *Initial endorsement.* The Commissioner shall indicate his or her insurance of the mortgage by endorsing the original credit instrument.

(b) *Final endorsement.* When all advances of mortgage proceeds have been made and all other applicable terms and conditions have been complied with to the satisfaction of the Commissioner, the Commissioner shall indicate on the original credit instrument the total of all advances that have been approved for insurance and again endorse such instrument.

(c) *Effect of endorsement.* From the date of initial endorsement, the Commissioner and the mortgagee shall be bound by the provisions of this subpart to the same extent as if they had executed a contract including the provisions of this subpart and the applicable sections of the Act.

Assignments

**§ 242.416 Transfer of partial interest under participation agreement.**

The mortgagee may not assign the mortgage. However, a partial interest in an insured mortgage or pool of insured mortgages may be transferred under a participation agreement or arrangement (such as a declaration of trust or the issuance of pass-through certificates), without obtaining the approval of the Commissioner, if the following conditions are met:

(a) Legal title to the insured mortgage or mortgages shall be held by the mortgagee; and

(b) The participation agreement, declaration of trust or other instrument under which the partial interest is transferred shall provide that:

(1) The mortgagee shall remain mortgagee of record under the contract of insurance;

(2) The Commissioner shall have no obligation to recognize or deal with anyone other than the mortgagee with respect to the rights, benefits, and obligations of the mortgagee under the contract of insurance; and

(3) The mortgagor shall have no obligation to recognize or do business with any one other than the mortgagee or, if applicable, its servicing agent with respect to rights, benefits, and obligations of the mortgagor or the mortgagee under the mortgage.

Termination

**§ 242.420 Termination of contract of insurance.**

The contract of insurance shall terminate if any of the following occurs:

(a) The mortgage is paid in full;

(b) The mortgagee acquires the mortgaged property and notifies the Commissioner that it will not file an insurance claim;

(c) A party other than the mortgagee acquires the property at a foreclosure sale;

(d) The mortgagee notifies the Commissioner of termination of insurance (voluntary termination);

(e) The mortgagee or its successors commit fraud or make a material misrepresentation to the Commissioner with respect to information furnished in connection with the contract of insurance on the mortgage or while the contract of insurance is in existence;

(f) The receipt by the Commissioner of an Application for Final Claims Settlement; or

(g) If the mortgagee acquires the mortgaged property and fails to make an initial claim.

**§ 242.422 Notice and date of termination by the Commissioner.**

The Commissioner shall notify the mortgagee that the contract of insurance has been terminated and shall establish the effective date of termination. The termination shall be the last day of the month in which one of the events specified in § 242.420 occurs.

Claim Procedures

**§ 242.426 Notice of default and filing an insurance claim.**

(a) *Definition of default.* (1) A monetary default exists when the mortgagor fails to make any payment due under the mortgage.

(2) A covenant default exists when the mortgagor fails to perform any other covenant under the provision of the mortgage or the regulatory agreement, which is incorporated by reference in the mortgage. A mortgagee becomes eligible for insurance benefits on the basis of a covenant default only after the mortgagee has accelerated the debt and the owner has failed to pay the full amount due, thus converting a covenant default into a monetary default.

(b) *Date of default.* For purposes of this subpart, the date of default is:

(1) The date of the first uncorrected failure to perform a mortgage covenant or obligation; or

(2) The date of the first failure to make a monthly payment that is not covered by subsequent payments, when such subsequent payments are applied to the overdue monthly payments in the order in which they were due.

(c) *Notice of default.* If a default (as defined in paragraph (a) of this section) continues for a period of 30 days, the mortgagee must notify the Commissioner within 10 days thereafter. Unless waived by the Commissioner, the mortgagee must submit this notice monthly, on a form prescribed by the Commissioner, until the default has been cured or the mortgagee has filed an application for an initial claim payment. In cases of mortgage acceleration, the mortgagee must first give notice of the default to HUD and the mortgagor.

(d) *Timing of claim filing.* Unless a written extension is granted by the Commissioner, the mortgagee must file an application for initial claim payment (or, if appropriate, for partial claim payment) within 75 days from the date of default, but not earlier than the first day of the month following the month for which a payment was missed. Upon request of the mortgagee, the Commissioner may extend, up to 180 days from the date of default, the deadline for filing a claim. In those cases where the mortgagee certifies that the hospital owner is in the process of transacting a bond refunder, refinancing the mortgage, or changing the ownership for the purpose of curing the default and bringing the mortgage current, the Commissioner may extend the deadline for filing a claim beyond 180 days, not to exceed 360 days from the date of default.

**§ 242.428 Initial claim payments.**

(a) *Determination of initial claim amount.* (1) The initial claim amount is based on the unpaid principal balance of the mortgage note as of the date of default, plus interest at the mortgage note rate from date of default to date of initial claim payment. The mortgage note interest component of the initial claim amount is subject to curtailment as provided in paragraph (b) of this section. The resulting amount is the initial claim amount, unless the Commissioner's endorsement of the note for insurance provided that the initial claim amount shall be based on the Commissioner's percentage of risk. If the endorsement so provided, the resulting amount is multiplied by the Commissioner's percentage of the risk to obtain the initial claim amount.

(2) The Commissioner shall make an initial claim payment to the mortgagee that is equal to the initial claim amount, less any delinquent mortgage insurance premiums, late charges and interest, assessed under § 242.404(d).

(3) The mortgagee must use the proceeds of the initial claim payment to retire any bonds or any other financing mechanisms securing the mortgage within 30 days of the initial claim payment. Any excess funds resulting from such retirement or repayment shall be returned to the Commissioner within 30 days of the retirement.

(b) *Curtailment of interest for late filings.* In determining the mortgage note interest component of the initial claim amount, if the mortgagee fails to meet any of the requirements of this section within the specified time (including any granted extension of time), the Commissioner shall curtail the accrual of mortgage note interest by the number of days by which the required action was late.

(c) *Method of payment.* The Commissioner shall pay the claim in cash, unless the mortgagee requests payment in debentures.

**§ 242.430 Partial payment of claims.**

(a) *General.* When the Commissioner receives a claim for a partial payment under § 242.426(d), the Commissioner may make a partial payment of claim in accordance with the requirements of this section. If the mortgagee has not previously received a partial claim payment, the mortgagee may file a claim for a partial claim payment under § 242.430. Otherwise, the mortgagee must file for an initial claim payment under § 242.428.

(b) *Mortgagee submission.* In addition to any other requirements set forth in administration instructions, the mortgagee must provide the following information with its application for a partial claim payment:

(1) The amount by which the mortgagee will reduce the principal on the insured mortgage and the amount of delinquent interest on the insured mortgage that the mortgagee will defer based on the anticipated closing date; and

(2) A certification that:

(i) The amount of the principal reduction of the insured first mortgage does not exceed 50 percent of the unpaid principal balance;

(ii) The relief resulting from the partial claim payment when considered with other resources available to the hospital are sufficient to restore the financial viability of the hospital;

(iii) The hospital is or can (at reasonable cost) be made structurally sound;

(iv) The management of the hospital is satisfactory; and

(v) The default under the insured mortgage was beyond the control of the mortgagor.

(c) *Claim processing.*—(1) *Acceptable application.* If the mortgagee's application is acceptable, the Commissioner shall notify the mortgagee to process the partial payment, which will include the modification of the existing mortgage

and the execution by the mortgagor of a second mortgage payable to the mortgagee. When the second mortgage is closed, the mortgagee shall notify the Commissioner, in a form and manner prescribed in administrative instructions. Upon receipt of notice from the mortgagee, the Commissioner shall make the partial claim payment.

(2) *Unacceptable application.* If the application is unacceptable, the Commissioner shall either advise the mortgagee of the information needed to make the application acceptable or return the application for further action. The mortgagee is granted an extension of 30 days from the date of any notification for further action. If the Commissioner determines that a partial payment of claim is not feasible, the application will be processed as an application for an initial claim payment.

(d) *Requirements.*—(1) *One partial claim payment.* Only one partial claim payment may be made under a contract of insurance.

(2) *Partial claim payment amount.* The amount of the partial claim payment is equal to the amount of relief provided by the mortgagee in the form of a reduction in principal and a reduction of delinquent interest due on the insured mortgage times the lesser of the Commissioner's percentage of the risk of loss or 50 percent.

(3) *Second mortgage.* Repayment of the relief provided by the mortgagee must be secured by a second mortgage to the mortgagee. This second mortgage may provide for postponed amortization and may not be assigned by the mortgagee. This second mortgage is not insured under this part and may not be insured under any other HUD-related insurance program.

(4) *Partial claim repayment by mortgagee.* The mortgagee must remit to the Commissioner a percentage of all amounts collected on the mortgagee's second mortgage within 15 days of receipt by the mortgagee. The applicable percentage is equal to the percentage used in paragraph (d)(2) of this section to determine the partial claim payment amount. Payments made after the 15th day must include a 5 percent late charge plus accrued interest at the debenture rate.

(5) *Certified statements of amounts collected.* As long as the second mortgage remains of record, the mortgagee must submit to the Commissioner an annual certified statement of the amounts collected by the mortgagee. The mortgagee must submit a final certified statement within 30 days after the second mortgage is paid in full, foreclosed, or otherwise terminated.

**§ 242.432 Withdrawal of claim.**

In case of a default and subsequent filing of claim, the mortgagee shall determine the form of workout or modification and will inform the Commissioner of the type of mortgage relief determined to be appropriate. If the default is cured after the claim is made but before the initial claim payment is paid by the Commissioner, the mortgagee may, in writing, withdraw the claim, and insurance will continue as if the default had not occurred.

**§ 242.434 Reinstatement of the contract of insurance.**

(a) *Conditions for reinstatement.* After the initial claim payment, the Commissioner may reinstate the contract of insurance on the following conditions:

(1) The mortgagee has not acquired the hospital;

(2) The mortgagor has cured the default; and

(3) The mortgagee requests that the Commissioner reinstate the contract of insurance.

(b) *Notification of reinstatement.* If reinstatement is acceptable to the Commissioner, the Commissioner shall notify the mortgagee of the date the contract of insurance will be reinstated and shall advise the mortgagee of the payment needed to reinstate the contract of insurance.

(c) *Payment.* Within 30 days of the date of the notice under paragraph (b) of this section, the mortgagee shall pay the Commissioner an amount equal to the initial claim amount, as determined under § 242.428(a)(1), plus an amount equal to the accrued and unpaid interest on the mortgagee Debenture through the reinstatement date, plus an amount equal to the mortgage insurance premium for the period from the date of reinstatement of the contract of insurance to the next anniversary date for payment of the mortgage insurance premium.

(d) *Cancellation of debenture.* Upon receipt from the mortgagee of the amount specified in paragraph (c) of this section, the Commissioner shall return the mortgagee debenture for cancellation.

(e) *Continuation of contract of insurance.* Upon reinstatement, the contract of insurance shall continue as if the default had not occurred.

**§ 242.436 Issuance of mortgagee Debenture.**

(a) *Condition to initial claim payment.* The mortgagee must issue an instrument in the form of a debenture to the Commissioner within 30 days of receiving the initial claim payment. The mortgagee Debenture shall meet the following requirements and shall be in a form that has been approved by the Commissioner as part of the application approval process.

(b) *Term of mortgagee Debenture.* The mortgagee Debenture shall be dated the same date that the initial claim payment is issued. The mortgagee Debenture shall have a term of five years in order to afford the mortgagor ample time to cure the default or the mortgagee time to foreclose and/or resell the hospital. The Commissioner may provide a written extension of the five year term if the mortgagee certifies and provides documentation that the hospital owner has filed bankruptcy and the mortgagee is taking action to have the hospital discharged from the bankruptcy. The mortgagee Debenture shall, during this extended period, continue to bear interest as described below at HUD's published debenture rate at the earlier of initial endorsement or final endorsement. Interest shall be due and payable annually on the anniversary date of the initial claim payment. Interest is due on the full face amount of the mortgagee Debenture through the term of the mortgagee Debenture or through the date an application for final claim payment is received by the Commissioner.

(c) *Mortgagee Debenture amount.* (1) The mortgagee Debenture shall be for the full initial claim amount as determined under § 242.428(a)(1) (minus any excess funds returned to HUD under § 242.428(a)(3)).

(2) The full amount of the mortgagee Debenture shall be payable to HUD upon maturity, unless the mortgagee Debenture is canceled because of:

(i) A reinstatement of the contract of insurance under § 242.434; or

(ii) Final claim settlement under § 242.452.

(d) *Mortgagee Debenture interest rate.* The mortgagee Debenture shall bear interest at HUD's published debenture rate at the earlier of initial endorsement or final endorsement. Interest shall be due and payable annually on the anniversary date of the initial claim payment and on the date of redemption when redeemed or canceled before an anniversary date. Interest shall be computed on the full face amount of the mortgagee Debenture through the term of the mortgagee Debenture.

(e) *Form of mortgagee Debenture.* The mortgagee Debenture should follow the standard form of a State/Municipal Debenture issued under the Uniform Commercial Code, where applicable, and shall be supported by the full faith and credit of the mortgagee. For

mortgagees that operate as departments or divisions of States or units of local government and where such mortgagees cannot pledge the full faith and credit of the mortgagee, such mortgagees may collateralize their obligation through a letter of credit, reinsurance, or other forms of credit acceptable to the Commissioner.

(f) *Debenture registration.* Unless otherwise required by law, including State or local laws, or other governing bodies, the Commissioner will not require the mortgagee Debenture to be ''Registered'' (with the Securities and Exchange Commission) as it is a direct, or private, placement that is supported by the full faith and credit of the mortgagee and is not a public offering.

**§ 242.438 Foreclosure and acquisition.**

The mortgagee is not required to foreclose the insured mortgage. It may accept a deed-in-lieu of foreclosure.

**§ 242.440 Appraisals.**

Where actions taken or caused to be taken by the mortgagee have the effect of the recovery of less than the face amount of the mortgagee Debenture held by the Commissioner, an appraisal should be made to determine the value of the hospital. The appraisal should assume a willing buyer and a willing seller. The appraisal must be done within the 45 day period immediately preceding the date when the mortgagee files an application for final claim settlement. If at the time of final claim settlement the mortgagee has not sold the hospital, an appraisal should be made to determine the value of the hospital at its highest and best use.

**§ 242.442 Application for final claim settlement.**

The mortgagee shall file an application for final settlement in accordance with the Commissioner's administrative procedures not later than 30 days after any of the following:

(a) Sale of the property after foreclosure or after acquisition by deed-in-lieu of foreclosure; or

(b) Expiration of the term of the mortgagee debenture.

**§ 242.444 Determining the amount of loss.**

The amount of the total loss to be shared by the Commissioner and the mortgagee is equal to:

(a) The amount of the initial claim payment;

(b) Plus all items set forth in § 242.446; and

(c) Less all items set forth in § 242.448.

**§ 242.446 Items included in total loss.**

In computing the total loss, the following items are added to the amount described in § 242.444(a):

(a) The amount of all payments that the mortgagee made from its own funds and not from hospital income for:

(1) Taxes, special assessments, and water bills that are liens before the Mortgage; and

(2) Fire and hazard insurance on the property.

(b) A reasonable amount of acquisition costs actually paid by the mortgagee. These costs may not include loss or damage resulting from the invalidity or unenforceability of the Mortgage lien or the unmarketability of the Mortgagor's title.

(c) Reasonable payments that the mortgagee made from its own funds and not from hospital income for:

(1) Preservation, operation and maintenance of the property;

(2) Repairs necessary to meet the requirements of local laws;

(3) Expenses in connection with the sale of property; and

(4) Bankruptcy expenses approved by the Office of General Counsel.

(d) The amount of mortgagee Debenture interest paid by the mortgagee to the Commissioner.

**§ 242.448 Items deducted from total loss.**

In computing insurance benefits, the following items are deducted from the amounts described in § 242.446(a) and (b):

(a) All amounts received by the mortgagee on account of the mortgage after the date of default;

(b) All cash, and/or funds related to the mortgaged property, including deposits and escrows made for the account of the mortgagor that the mortgagee holds (or to which it is entitled);

(c) The amount of any undrawn balance under a letter of credit that the mortgagee accepted in lieu of a cash deposit for an escrow agreement;

(d) Any net income from the mortgaged property/hospital that the mortgagee received after the date of default;

(e) The proceeds from the sale of the hospital or the appraised value of the hospital as provided in § 242.442 as follows:

(1) If the mortgagee disposes of the hospital through a negotiated sale, the amount deducted shall be the higher of the sales price or the appraised value.

(2) If the mortgagee disposes of the hospital through a competitive bid procedure approved by the Commissioner, the amount deducted shall be the sales price, even if it is lower than the appraised value.

(3) If the mortgagee has not disposed of the hospital within 5 years from the date of issuance of the mortgagee Debentures (unless an extension has been granted pursuant to § 242.436), the amount deducted shall be the appraised value;

(f) Any and all claims that the mortgagee has acquired in connection with the acquisition and sale of the property. Claims include but are not limited to returned premiums from canceled insurance policies, interest on investments of reserve for replacement funds, tax refunds, refunds of deposits left with utility companies, and amounts received as proceeds of a receivership; and

(g) The amount of daily mortgagee Debenture interest accrued but not paid from the anniversary date of the last mortgagee Debenture interest payment to the date an application for final claim payment is received by the Commissioner.

**§ 242.450 Determining share of loss.**

The total loss computed in § 242.444 shall be shared by the Commissioner and the mortgagee in accordance with their respective percentage of risk subject to the maximum cap on the Commissioner's liability, as specified in the note and the addendum to the risk-sharing agreement between the Commissioner and the mortgagee. The Commissioner's maximum loss on any risk-shared insurance claim shall not exceed the unpaid principal balance of the mortgage note as of the date of default.

**§ 242.452 Final claim settlement and mortgagee Debenture redemption.**

(a) *Final claim payment.* If the initial claim amount, as determined under § 242.428(a)(1), is less than the Commissioner's share of the loss, the Commissioner shall make a final claim payment to the mortgagee that is equal to the difference between the Commissioner's share of the loss and the initial claim amount and shall return the mortgagee Debenture to the mortgagee for cancellation.

(b) *Mortgagee reimbursement payment.* If the initial claim amount, as determined under § 242.428(a)(1), is more than the Commissioner's share of the loss, the mortgagee shall, within 30 days of notification by the Commissioner of the amount due, remit to the Commissioner an amount that is equal to the difference between the initial claim amount and the Commissioner's share of the loss. The funds must be remitted in a manner prescribed in the Commissioner's administrative procedures. The

mortgagee Debenture will be considered redeemed upon receipt of the cash payment. A 5 percent penalty will be charged and interest at the debenture rate will begin to accrue if the cash payment is not received within the prescribed period. If a mortgagee is in default under an existing debenture and files a claim on another hospital under this part, the Commissioner will charge the mortgagee's Dedicated Account for the amount owed the Department if such an account was required by the risk-sharing agreement. The Commissioner may inform the rating agencies of the mortgagee's failure to pay on their debt obligation and of its violation of the risk-sharing agreement.

(c) *Losses.* Losses sustained as a consequence of the (sole) negligence of a mortgagee (*e.g.*, failure to acquire adequate hazard insurance where such insurance is available) shall be the sole obligation of the mortgagee, notwithstanding the risk apportionment otherwise agreed to by the Commissioner and the mortgagee.

(d) *Supplemental claim.* Any supplemental claim must be filed within one year from date of final claim settlement.

**§ 242.454 Recovery of costs after final claim settlement.**

If, after final claim settlement, the mortgagee recovers additional sums as the result of the sale of the hospital or otherwise, the total amount of such recovery shall be shared by The Commissioner and the mortgagee in accordance with the prescribed percentage of shared risk.

**§ 242.456 Program monitoring and compliance.**

The Commissioner will monitor the performance of the mortgagee for compliance with the provisions of this subpart.

Dated: September 3, 1996.

Nicolas P. Retsinas,

*Assistant Secretary for Housing-Federal Housing Commissioner.*

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Part III

# Environmental Protection Agency

**40 CFR Part 82**

**Protection of Stratospheric Ozone: Reconsideration of the Ban on Fire Extinguishers Containing HCFCs; Final Rule**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 82

**[FRL–5658–7]**

**RIN 2060–AG19**

# Protection of Stratospheric Ozone: Reconsideration of the Ban on Fire Extinguishers Containing HCFCs

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Through this action EPA is amending the Class II Nonessential Products Ban promulgated under Section 610 of the Clean Air Act Amendments to provide an exemption for portable fire extinguishing equipment that contains hydrochlorofluorocarbons (HCFCs) for non-residential applications. EPA proposed and is today promulgating this exemption based on new and compelling information. EPA believes an exemption from the ban on sales and distribution for portable fire extinguishers used in non-residential applications that contain HCFCs is necessary to ensure that an effective substitute to halon, a class I ozone depleter, is readily available.

EPA believes that this amendment, while decreasing the regulatory burden on HCFC extinguishant manufacturers and distributors, will not compromise the goals of protecting public health and the environment.

**EFFECTIVE DATE:** January 3, 1997.

**ADDRESSES:** Comments and additional supporting materials are contained in the Air Docket Office, Public Docket No. A–93–20, Waterside Mall (Ground Floor), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500. Dockets may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** Cindy Newberg, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, DC 20460, (202) 233–9729. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

**SUPPLEMENTARY INFORMATION:** The contents of this preamble are listed in the following outline:



## I. Regulated Entities

Entities regulated by this action are those that wish to manufacturer, sell, or distribute in interstate commerce portable fire extinguishers that contain hydrochlorofluorocarbons (HCFCs) for non-residential applications. Regulated categories and entities include:

| Category | Examples of regulated entities |
|---|---|
| Industry .... | Manufacturers of fire extinguishants.<br>Manufacturers and distributors of portable fire extinguishers.<br>Fire protection specialists. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your company is regulated by this action, you should carefully examine the applicability criteria contained in Section 610(d) of the Clean Air Amendments of 1990; discussed in regulations published on December 30, 1993 (58 FR 69638); and discussed below. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

## II. Background

In 1993, EPA promulgated a rulemaking to establish regulations that implemented the statutory ban on nonessential products containing or manufactured with class II ozone-depleting substances under Section 610(d) of the Clean Air Act Amendments of 1990 (58 FR 69638). This final rule was developed by EPA to clarify definitions and to provide exemptions, as authorized under Section 610(d). EPA was not required to promulgate regulations since the ban was self-executing. The substances affected by the Class II Ban are plastic foam products, aerosol products and pressurized dispensers. For additional information concerning this rulemaking and for a complete list of exempted and excluded products, the reader should review the final regulations published in the Federal Register December 30, 1993 (58 FR 69638). These rules are also codified at 40 CFR Part 82 Subpart C.

## III. Portable Fire Extinguishers

### *A. Background*

In the December 30, 1993 initial rulemaking, the Agency exempted from the Class II Ban the use of HCFCs in portable fire extinguishers until such time as ''suitable'' substitutes for HCFCs in this application became ''commercially available'' (58 FR 69646). The inclusion of fire extinguishers in the class II ban was intended to be consistent with the class I ban, whereby CFCs used in fire extinguishers were banned since suitable substitutes were commercially available (January 15, 1993, 58 FR 4768). EPA distinguished between total flooding fire suppression systems, which were not identified as pressurized dispensers, and portable fire extinguishers, which the Agency interpreted as falling into the category of pressurized dispensers (58 FR 69647).

Since that final rule was promulgated, EPA learned new information as to significant complications in determining broad suitability of substitute fire extinguishants. EPA received two petitions requesting that the Agency reconsider the Class II Ban as it relates to portable fire extinguishers. Copies of these petitions are in Air Docket A–93–20. Through these petitions, subsequent verbal and written communications with industry representatives, and additional research by the Agency, EPA learned new and compelling information concerning the availability of fire extinguishants suitable to replace halon and CFCs in streaming applications. Based on this information, EPA determined that it was appropriate to propose revising the Class II Ban as it relates to portable non-residential fire extinguishers. A Notice of Proposed Rulemaking (NPRM) was published in the Federal Register on July 18, 1996 (61 FR 37430).

### *B. Notice of Proposed Rulemaking*

In the NPRM, EPA stated that portable fire extinguishers for commercial applications present a unique dilemma, for a variety of reasons. First, their specific intended use is to protect human life and property. The fire extinguishant is typically discharged

only in response to a threat to life or property. Second, one type of extinguishant is not universally suitable for all situations, in that different types of fires, different environments in which fires are potentially to be fought, and different types of property being protected, each dictate a particular set of characteristics, found in varying degrees in various extinguishants. Third, the fire protection industry's codes, standards and regulations are extremely complex, such that states and localities adopt standards parallel to a national standard at vastly divergent times. Furthermore, some states and localities have adopted different versions of fire codes. Additionally, typical insurance industry requirements mandate conformance with local codes before proper insurance coverage can be obtained.

Given these unique circumstances, for purposes of section 610(d), determining the suitability and thus, commercial availability, of a substitute for use generally in portable fire extinguishers for non-residential applications becomes extremely elusive. Therefore, since suitability and commercial availability cannot be determined adequately for purposes of the Class II Ban, the NPRM proposed replacing the limited exemption that already exists with a total exemption for portable fire extinguishers for non-residential applications from the Class II Ban. This change in the regulatory language would simply reflect the present situation and provide a consistent determination regarding suitability based on current information for the regulated community. Furthermore, it would relieve the regulated community from the burdensome task of monitoring federal, state, and local activities concerning the review of other substitutes and attempting to assess at what point the standard of commercial availability has been achieved.

EPA also stated that if at some future date, compelling information is brought to the Agency's attention indicating that suitable substitutes are widely available for fire extinguishing applications, EPA may ultimately conclude that suitable substitutes are commercially available and undertake appropriate notice and comment procedures to remove this exemption. A more complete discussion of what information EPA considered appears in the NPRM.

*C. Major Comments Received*

EPA requested comment and received fifteen comments on the NPRM. Thirteen comments supported the proposed changes to the Class II Ban. Below is a summary of the comments and EPA's responses.

EPA received two comments from other federal agencies, the Department of Energy (DOE) and the Federal Aviation Administration (FAA). DOE indicated that to date, its efforts to replace Halon 1211 have been unsuccessful. Several DOE facilities require clean agents. Therefore, DOE indicated that DOE would benefit from having extinguishers that use HCFCs available for their special needs. EPA recognizes that clean agents are used in unique environments.

FAA stated that it has approved the use of HCFC Halotron I, an American Pacific product, for uses pertaining to airport rescue and fire fighting, and that this agent is listed as acceptable with use restrictions under EPA's Significant New Alternatives Policy (SNAP) Program. FAA stated that it ''concurs with [EPA's] decision to provide an exemption for the use of hydrachlorufluorcarbons (sic) (HCFC) in either fixed or mobile portable fire extinguishers under section 610 of the Clean Air Act.'' EPA would like to clarify that the NPRM was a proposal, and at that time no final decision had been made. Also, since the FAA's listing of Halotron I as approved for uses regulated by FAA was consistent with a separate exemption in the original class II ban, today's action should not directly affect FAA's decision.

The comment from FAA refers to the SNAP program; therefore, EPA believes it is appropriate to delineate the differences between SNAP and the Class II Ban. Under Section 610(d), the burden is on EPA to actually decide that one kind of extinguishant cannot be exempted from the ban by determining that the substitute will be just as effective and available as the replaced extinguishant. Under Section 612, the burden on EPA is merely to deem substitutes acceptable if they do not present other health or environmental hazards. The latter task does not extend to banning those substances that the substitute claims to replace, nor does it include an examination of efficacy. In addition, the SNAP use conditions for Halotron I correspond to the regulations implementing the Class II Ban.

American Pacific Corporation submitted seven separate comments that were copies of letters sent to EPA's Administrator, Carol Browner, from members of Congress. Six of these letters were sent during the summer of 1995 and one letter was sent in April 1996. These letters all express support for the petition filed on behalf of Halotron and contained in Air Docket A–93–20. EPA responded to each of these letters at the time the letters were received.

EPA received one comment from a trade association representing the airline industry. This comment stated that the process of identifying suitable substitutes for halon for aircraft application has been very demanding. Since there are currently no approved ''drop-in'' replacements fully developed for specific aircraft applications, the commenter stated that it is essential that alternatives such as HCFC extinguishants be available. EPA understands these concerns.

Two additional commenters indicated their support for the regulatory changes. The first commenter, a distributor of fire suppression equipment, agreed with EPA's analysis. The commenter stated that the fire protection industry is highly regulated; however, these regulations are not necessarily consistent throughout the country. EPA agrees that there exists a myriad of fire protection requirements. The second commenter indicated that for their uses, HCFC-based portable fire extinguishers would be a suitable substitute to Halon 1211. EPA recognizes the need to use a clean agent for specific situations.

One commenter, supporting the proposed regulatory changes, stated that Halotron I had an ozone-depleting potential (ODP) of less than 0.025, 130 times lower than the ODP for Halon 1211. This commenter suggested that EPA revise the proposed language to include an ODP upper limit for HCFCs used in portable fire extinguishers. This commenter suggested that a limit of 0.025 should be established. EPA was intrigued by this suggested limitation. However, since no other product exempted from the Class II Ban has an ODP limit, EPA did not believe it was appropriate to establish such a limit for portable fire extinguishers. In addition, it is unclear what EPA's authority would be to impose such a limit, since § 610 only authorizes EPA to create exemptions where no other substitutes, other than a class I or class II substance, is available.

One commenter, the National Fire Protection Association (NFPA), neither endorsed nor opposed the NPRM. Instead, NFPA indicated that it was in the process of determining the suitability of extinguishers containing HCFCs and other replacements for non-residential fire protection applications through its consensus standards writing process. NFPA requested that EPA consider commenting on a Tentative Interim Amendment (TIA) that would permit HCFCs and other alternatives to be used to satisfy the minimum selection and replacement requirements for any non-residential building requiring fire extinguishers. EPA

recognizes the important role NFPA standards play in fire protection. EPA did not specifically comment on the TIA. EPA believes that the rulemakings concerning acceptable and unacceptable substitutes for halon promulgated under Section 612 of the Act, indicates what criteria EPA considers and how information is evaluated by the Agency.

EPA received one comment opposing the potential exemption. The commenter, Friends of the Earth (FOE), stated that a permanent exemption will have adverse impacts on human health and the environment and is unnecessary, given the availability of effective alternatives. FOE further stated that this exemption would translate into a significant chlorine loading burden for the stratosphere over the coming decades. FOE stated that recent scientific research indicates the need to take more aggressive action to protect human health and the environment. Moreover, FOE stated that suitable and commercially available alternatives are already being used to replace halon fire extinguishers in a wide variety of settings. FOE stated that water, carbon dioxide, dry chemicals, and foam agents have been proven safe and reliable alternatives. Also, recent research has led to the development and use of new agents and technologies such as inert gas mixtures, water-mist or fogging systems, and powdered aerosols. Based on this information, FOE does not believe that EPA should amend the Class II Ban.

While EPA agrees that it is necessary to take appropriate measures to eliminate the use of ozone-depleting substances, EPA disagrees with FOE's analysis regarding the availability of substitutes for all non-residential fire extinguishing. Since substitutes are not universally available, Class II substances are currently being used and EPA does not believe that this amendment will increase such use primarily for economic reasons. EPA agrees that many uses of HCFCs should be discouraged, particularly emissive uses. Generally, the Class II ban has been successful in limiting the uses of HCFCs. However, EPA has not found any indication that there would be significant human health or environmental effects associated with modifying the Class II Ban, as proposed, to revise the current exemption for portable fire extinguishers. Since substitutes are not universally available, Class II substances can currently be used and EPA does not believe this rule amendment will increase such use primarily for economic reasons. As one commenter stated, the ODP for Halotron I is less than 0.025. EPA reviewed information concerning the cumulative adjusted chlorine loading that could be attributed to Halotron I. It appears that given the narrow use for such a product and its low ODP, any noticeable increase in the chlorine loading will be negligible. In 1999, 2017, 2024, and 2025, there could be an increase of only 0.001 parts per billion (ppb) attributed to permitting HCFC portable fire extinguishers in the United States.

FOE's comment listed various substitutes for halon that are non-ozone-depleting. EPA agrees that these substitutes should be evaluated by anyone planning to replace Halon 1211. As EPA stated in the initial rulemaking and in the July 18, 1996 NPRM, ''non-halocarbon alternatives to Halon 1211 are already in widespread use in selected commercial applications because of their effectiveness, and due to the current regulatory climate, their use has been increasingly adopted wherever possible'' (58 *FR* 69647, 61 *FR* 37431). In the NPRM, EPA further states that the Agency believes where non-gaseous agents can be used, appropriate consideration for these substitutes already occurs (61 *FR* 37431). However, such substitutes are not available for all fire extinguishing uses and EPA believes that they are already being used wherever appropriate. In essence, this amendment preserves the status quo and EPA does not believe it will lead to increased HCFC use. Therefore, EPA does not believe that the regulatory changes as proposed would have significant human health or environmental impacts. Moreover, EPA stated in the NPRM at some future date, if compelling information is brought to the Agency's attention indicating that suitable substitutes are widely available, EPA could undertake appropriate notice and comment procedures to remove this exemption (61 *FR* 37432).

### *D. Today's Action*

EPA is today promulgating regulatory changes to the Class II Ban. These changes, consistent with the NPRM, are based on information regarding the suitability and commercial availability of substitutes for purposes of the Class II Ban. As proposed, EPA is today replacing the limited exemption that already exists with a total exemption for portable fire extinguishers for non-residential applications from the Class II Ban. If at some future date, compelling information is brought to the Agency's attention indicating that suitable substitutes are widely and consistently available for fire extinguishing applications, EPA may ultimately conclude that suitable substitutes are commercially available and undertake appropriate notice and comment procedures to remove this exemption.

## IV. Summary of Supporting Analysis

### *A. Executive Order 12866*

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

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

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

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

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

It has been determined by OMB and EPA that this action to promulgate an amendment to the final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

### *B. Unfunded Mandates Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains

why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this action is estimated to result in the expenditure by State, local, and tribal governments or private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. As discussed in this preamble, this action provides relief by permitting the use of non-residential portable fire extinguishers that contain HCFCs; and therefore, would increase the flexibility in choosing a particular fire extinguishant, thus reducing the net effect of the burden of part 82 subpart C of the Stratospheric Protection regulations on regulated entities, including State, local, and tribal governments or private sector entities.

*C. Paperwork Reduction Act*

Any information collection requirements in a rule must be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Because no informational collection requirements are adopted by today's action, EPA has determined that the Paperwork Reduction Act does not apply to this rulemaking and no Information Collection Request document has been prepared.

*D. Regulatory Flexibility Analysis*

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this rule. Any impact this rule will have on small entities will be to provide relief from regulatory burdens. EPA has determined that this action will not have a significant adverse economic impact on a substantial number of small businesses.

V. Submission To Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 82

Aerosols, Administrative practice and procedure, Air pollution control, Environmental protection, Chemicals, Exports, Government procurement, Hydrochlorofluorocarbons, Imports, Labeling, Nonessential products, Portable fire extinguishers, Pressurized dispensers, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: November 27, 1996.

Carol M. Browner,

*Administrator.*

Title 40, Code of Federal Regulations, Part 82, is amended to read as follows:

## PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for Part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.62 is amended by removing paragraphs (j) and (k).

3. Section 82.68 is amended by removing and reserving paragraphs (f) and (g).

4. Section 82.70 is amended by revising paragraph (a)(2)(vii) to read as follows:

**§ 82.70 Nonessential Class II products and exceptions.**

* * * * *

(a) * * *

(2) * * *

(vii) Portable fire extinguishing equipment used for non-residential applications; and

* * * * *

[FR Doc. 96–30867 Filed 12–3–96; 8:45 am]

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Federal Register

Wednesday
December 4, 1996

## Part IV

# The President

**Proclamation 6961—To Facilitate Positive Adjustment to Competition From Imports of Broom Corn Brooms**

**Memorandum of November 28, 1996—Action Under Section 203 of the Trade Act of 1974 Concerning Broom Corn Brooms**

Federal Register
Vol. 61, No. 234
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# Presidential Documents

Title 3—

The President

Proclamation 6961 of November 28, 1996

## To Facilitate Positive Adjustment to Competition From Imports of Broom Corn Brooms

By the President of the United States of America

A Proclamation

1. On July 2, 1996, the United States International Trade Commission (''USITC'') made an affirmative determination in its investigation under section 202 of the Trade Act of 1974, as amended (''Trade Act'')(19 U.S.C. 2252), with respect to imports of broom corn brooms provided for in heading 9603 of the Harmonized Tariff Schedule of the United States (''HTS''). Under section 202 of the Trade Act, the USITC determined that such brooms are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing a like or directly competitive article. Further, the USITC found, pursuant to section 311(a) of the North American Free Trade Agreement Implementation Act (''the NAFTA Implementation Act'')(19 U.S.C. 3371(a)), that imports of such brooms produced in Mexico, considered individually, account for a substantial share of total imports of broom corn brooms and contribute importantly to the serious injury caused by imports, but that such brooms produced in Canada do not so account or contribute. The USITC's determination and its recommendations to address the serious injury were reported to me on August 1, 1996.

2. On August 30, 1996, I determined, pursuant to section 312(a) of the NAFTA Implementation Act (19 USC 3372(a)), that imports of broom corn brooms from Mexico, considered individually, account for a substantial share of total imports and contribute importantly to the serious injury caused by imports; but that imports of broom corn brooms from Canada do not so account or contribute. Acting pursuant to section 203 of the Trade Act (19 U.S.C. 2253), I determined to take appropriate and feasible action within my power that will facilitate efforts by the domestic industry to make a positive adjustment to competition from imports of broom corn brooms. I further determined that action would not be implemented at that time and directed the United States Trade Representative (''USTR'') to negotiate and conclude, within 90 days, agreements pursuant to the terms of section 203(a)(3)(E) of the Trade Act (19 U.S.C. 2253(a)(3)(E)) concerning broom corn brooms exported to the United States, and to carry out any agreements reached. Moreover, I determined that, not later than the end of this 90-day period (November 28, 1996), I would implement action of a type described in section 203(a)(3). Such negotiations were undertaken by the USTR but have failed to achieve satisfactory agreements concerning such brooms exported to the United States.

3. Pursuant to section 203 of the Trade Act (19 U.S.C. 2253), and after taking into account the considerations specified in section 203(a)(2) of the Trade Act, I have determined to implement action of a type described in section 203(a)(3). Such action shall take the form of an increase in, or imposition of, any duty on imported brooms (except whisk brooms), wholly or in part of broom corn and provided for in HTS subheading 9603.10.50 and, with respect to imports that exceed certain specified annual levels, HTS subheading 9603.10.60. Such increase in, or imposition of, duty on such goods shall be effective for a three-year period, and shall apply to imports from all countries, except Canada and Israel and developing

countries that account for less than three percent of the relevant imports over a recent representative period. Pursuant to section 203(a)(1)(A) of the Trade Act (19 U.S.C. 2253(a)(1)(A)), I have further determined that these actions will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

4. Section 604 of the Trade Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 203 and 604 of the Trade Act, do proclaim that:

(1) (a) In order to apply to specified broom corn brooms (except whisk brooms) that are either produced in Mexico or goods of Mexico under the terms of general note 12 to the HTS for purposes of the NAFTA, or that are products of countries other than Canada or Israel and other than countries enumerated in general note 4(a) to the HTS as that note existed on November 28, 1996 (except as otherwise specified), the foregoing goods classifiable under HTS subheading 9603.10.50, rates of duty other than those specified for such subheadings in the rates of duty column 1 of the HTS during the three-year period beginning on the effective date of this proclamation, the HTS is modified as provided in section A of the Annex to this proclamation.

(b) During the period from November 28, 1996, through November 27, 1999, inclusive, the symbol ''MX'' in parentheses following the ''Free'' rate of duty in the special subcolumn of rates of duty column 1 of the HTS for subheading 9603.10.50 shall be deleted. Upon the close of November 27, 1999, such symbol ''MX'' shall be reinserted in subheading 9603.10.50 in alphabetical sequence in the parentheses following the ''Free'' rate of duty in the special subcolumn of HTS rates of duty column 1, unless the actions taken in this proclamation are earlier expressly modified or terminated.

(c) In order to provide that such goods of Mexico under the terms of general note 12 shall be subject to a NAFTA rate of duty during the period from November 28, 1999, through December 31, 2004, inclusive, the HTS is further modified as provided in section B of the Annex to this proclamation.

(2) In order to establish tariff-rate quotas for brooms classifiable in HTS subheading 9603.10.60 (except such brooms that are the product of Israel or goods of Canada under the terms of general note 12 to the HTS) during the period from November 28, 1996, through November 27, 1999, inclusive, the HTS is further modified as provided in section C of the Annex to this proclamation.

(3) (a) All broom corn brooms (except whisk brooms) the product of designated beneficiary countries under the CBERA and the ATPA pursuant to HTS general note 7(a) and general note 11(a), respectively, the foregoing goods classifiable under HTS subheadings 9603.10.50 and 9603.10.60, shall cease to be accorded duty-free entry into the customs territory of the United States during the period from November 28, 1996, through the close of November 27, 1999, inclusive, except as provided in section C of the Annex to this proclamation.

(b) During the time period specified in paragraph (3)(a), the symbols ''E,'' and ''J,'' in parentheses following the ''Free'' rate of duty in the special subcolumn of rates of duty column 1 of the HTS for subheadings 9603.10.50 and 9603.10.60 shall be deleted. Upon the close of November 27, 1999, such symbols ''E,'' and ''J,'' shall be reinserted in such subheadings in

alphabetical sequence in the parentheses following the ''Free'' rate of duty in the special subcolumn of HTS rates of duty column 1, and eligible goods the product of designated CBERA and ATPA beneficiary countries shall again be accorded duty-free entry into the customs territory of the United States without quantitative limitation, unless the actions taken in this proclamation are earlier expressly modified or terminated.

(4) Any provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(5) The modifications to the HTS made by this proclamation, including the Annex thereto, shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. on November 28, 1996, as provided in the Annex to this proclamation, unless such actions are earlier expressly modified or terminated.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of November, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.

Billing code 3195–01–P

## ANNEX

### MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

**SECTION A.** Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after November 28, 1996, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by inserting in numerical sequence the new provisions set forth below, applicable during the time periods specified therein, with the language inserted in the columns entitled "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special" and "Rates of Duty 2"; and upon the close of November 27, 1999, these provisions and superior text thereto shall be deleted from the HTS:

| | | | | |
|---|---|---|---|---|
| | "Brooms (except whisk brooms), wholly or in part of broom corn, valued not over 96¢ each, in quantities in excess of the in-quota quantity for such goods (provided for in subheading 9603.10.50): | | | |
| | If entered during the period from November 29, 1996, through November 27, 1997: | | | |
| 9903.96.01 | Products of countries enumerated in general note 4(a) to the HTS as that note existed on November 28, 1996 to the tariff schedule, except products of Panama, and goods of Canada under the terms of general note 12 to the tariff schedule... | 32¢ each | Free (E,J) | |
| 9903.96.02 | Other..... | 33¢ each | Free (IL)<br>33¢ each (MX) | 33¢ each |
| | If entered during the period from November 29, 1997, through November 27, 1998: | | | |
| 9903.96.03 | Products of countries enumerated in general note 4(a) to the HTS as that note existed on November 28, 1996 to the tariff schedule, except products of Panama, and goods of Canada under the terms of general note to the tariff schedule..... | 32¢ each | Free (E,J) | |
| 9903.96.04 | Other..... | 32.5¢ each | Free (IL)<br>32.5¢ each (MX) | 32.5¢ each |
| | If entered during the period from November 29, 1998, through November 27, 1999: | | | |

| | | | | | |
|---|---|---|---|---|---|
| 9903.96.05 | : | Products of countries enumerated in general note 4(a) to the HTS as that note existed on November 28, 1996 to the tariff schedule, except products of Panama, and goods of Canada under the terms of general note 12 to the tariff schedule... | : 32¢ each | : Free (E,J): | |
| 9903.96.06 | : | Other..... | : 32.1¢ each: | Free (IL) : 32.1¢ (MX): | : 32.1¢ each" |

**B.(1). Effective with respect to eligible goods of Mexico, under the terms of general note 12 to the tariff schedule, that are entered, or withdrawn from warehouse for consumption, on or after November 28, 1996, and through the close of November 27, 1999, as provided herein, subheading 9906.96.02 is modified by striking "22.4% (MX)" and by inserting, effective on each of the dates set forth below, the following new rates of duty for such goods of Mexico:**

| | |
|---|---|
| November 28, 1996 | "33% (MX)" |
| November 28, 1997 | "32.5% (MX)" |
| November 28, 1998 | "32.1% (MX)" |

(2). Effective with respect to eligible goods of Mexico, under the terms of general note 12 to the tariff schedule, that are entered, or withdrawn from warehouse for consumption, on or after November 28, 1999, and through the close of December 31, 1999, HTS subheading 9906.96.01 is modified by deleting "Free" from the special subcolumn of rates of duty column 1 and by inserting in lieu thereof "16%". Effective with respect to such eligible goods of Mexico that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2000--

B(2)(i) HTS subheading 9603.10.60 is modified by deleting from the special duty rates subcolumn the expression "See 9906.96.01-9906.96.02 (MX) (s)" and by inserting in lieu thereof the expression "16% (MX)"; and

(ii) Subheadings 9906.96.01 and 9906.96.02, the superior text beginning with the word "Brooms," and the superior text beginning with the word "Valued" are deleted from the HTS.

C. Effective with respect to goods (except goods of Canada under the terms of general note 12 to the tariff schedule and except products of Israel) that are entered, or withdrawn from warehouse for consumption, on or after November 28, 1996, and through the close of November 27, 1999, subchapter III of chapter 99

of the HTS is further modified by inserting immediately after subheading 9903.96.06 (as added by section (a) of this annex) the following new provisions, applicable during the time periods specified therein, with the language inserted in the columns entitled "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special" and "Rates of Duty 2"; and upon the close of November 27, 1999, these provisions and superior text shall be deleted from the HTS:

| | | | |
|---|---|---|---|
| | "Brooms (except whisk brooms), wholly or in part of broom corn, valued over 96¢ each: | | |
| | (provided for in subheading 9603.10.60): | | |
| 9903.96.10 | If the product of Panama and entered during the period from November 28 in a year beginning in 1996 through November 27 in the following year, inclusive, in quantities not in excess of 41,000 dz..... | | Free (E) |
| 9903.96.11 | If the product of Honduras and entered during the period from November 28 in a year beginning in 1996 through November 27 in the following year, inclusive, in quantities not in excess of 37,000 dozen..... | | Free (E) |
| 9903.96.12 | If the product of Colombia and entered during the period from November 28 in a year beginning in 1996 through November 27 in the following year, inclusive, in quantities not in excess of 12,000 dozen..... | | Free (J) |

| | | | | |
|---|---|---|---|---|
| 9903.96.13 | If the product of any country except Panama, Honduras, Colombia, Mexico, Canada, or Israel, and entered during the period from November 28 in a year beginning in 1996 through November 27 in the following year, in quantities not in excess of 2,000 dozen..... | 32% | Free (IL) | 32% |
| | Other: | | | |
| | Entered during the period from November 28, 1996, through November 27, 1997, inclusive: | | | |
| 9903.96.14 | Products of any country enumerated in general note 4(a) to the HTS as that note existed on November 28, 1996 to the tariff schedule (except Panama, Honduras or Colombia), and goods of Canada under the terms of general note 12 to the tariff schedule..... | 32% | Free (E,J) | |
| 9903.96.15 | Other..... | 33% | Free (IL) | 33% |
| | Entered during the period from November 28, 1997, through November 27, 1998, inclusive: | | | |
| 9903.96.16 | Products of any country enumerated in general note 4(a) to the HTS as that note existed on November 28, 1996 to the tariff schedule (except Panama, Honduras or Colombia), and goods of Canada under the terms of general note 12 to the tariff schedule..... | 32% | Free (E,J) | |
| 9903.96.17 | Other..... | 32.5% | Free (IL) | 32.5% |
| | Entered during the period from November 28, 1998, through November 27, 1999, inclusive: | | | |
| 9903.96.18 | Products of any country enumerated | | | |

| | | | | |
|---|---|---|---|---|
| | | in general note 4(a) to the HTS as | | |
| | | that note existed on November 28, | | |
| | | 1996 to the tariff schedule (except | | |
| | | Panama, Honduras or Colombia), | | |
| | | and goods of Canada under | | |
| | | the terms of general note 12 | | |
| | | to the tariff schedule..... | 32% | Free (E,J) |
| | | | | |
| 9903.96.19 | | Other..... | 32.1% | Free (IL) |
| | 32.1%" | | | |

[FR Doc. 96–31005
Filed 12–3–96; 8:45 am]
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# Presidential Documents

Memorandum of November 28, 1996

## Action Under Section 203 of the Trade Act of 1974 Concerning Broom Corn Brooms

Memorandum for the Secretary of the Treasury, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Labor, [and] the United States Trade Representative

On August 1, 1996, the United States International Trade Commission (USITC) submitted to me a report that contained: (1) a determination pursuant to section 202 of the Trade Act of 1974 (''the Trade Act'') that imports of broom corn brooms are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry; and (2) a finding pursuant to section 311(a) of the North American Free-Trade Agreement (NAFTA) Implementation Act (''NAFTA Act'') and that imports of broom corn brooms produced in Mexico account for a substantial share of total imports of such brooms and contribute importantly to the serious injury caused by imports.

On August 30, 1996, I determined to take appropriate and feasible action that will facilitate efforts by the domestic industry to make a positive adjustment to competition from imports of broom corn brooms. I did not implement at that time any of the actions recommended by the USITC, because I determined that it would be more appropriate first to seek a negotiated solution with appropriate foreign countries that would address the serious injury to our domestic broom corn broom industry, promote positive adjustment, and strike a balance among the various interests involved.

I therefore directed the Trade Representative to negotiate and conclude, within 90 days, agreements of a type described in section 203(a)(3)(E) of the Trade Act, and to carry out any agreements reached. I also directed the Secretaries of Agriculture, Commerce, and Labor to develop and present, within 90 days, a program of measures designed to enable our domestic industry producing broom corn brooms to adjust to import competition.

The Trade Representative has informed me that her negotiations did not result in agreements meeting the goals that I had previously set. Therefore, after considering all relevant aspects of the investigation, including the factors set forth in section 203(a)(2) of the Trade Act, and the results of the activities undertaken over the previous 90 days, I have implemented actions of a type described in section 203(a)(3). I have determined that these actions will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

Specifically, I have proclaimed tariff relief for a period of three years that will provide time for the domestic industry to implement an adjustment plan that will facilitate its positive adjustment to import competition. This action meets the needs of the domestic industry, while striking a balance with the other interests of the United States by providing the minimum tariff relief necessary to promote such adjustment. No tariff relief is being provided on four of the six tariff subheadings subject to the injury determination. In addition, for the largest tariff subheading, duty-free treatment will be provided on a substantial annual quantity of broom corn broom imports from all import sources. In short, this action provides the domestic industry with substantial temporary relief from increased import competition, while

also assuring our trading partners significant continued duty-free access to the United States market.

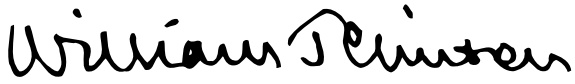
I also note the substantial resources identified by the Departments of Agriculture and Commerce that can provide loans, grants, technical and in-kind assistance to the domestic industry as it implements its adjustment plan. Taken together, these programs have the potential to match the financial contribution that the domestic industry will make as it implements its adjustment plan. I urge the domestic industry to submit the necessary applications for consideration under the individual programs, and direct the Secretaries of Agriculture and Commerce to provide the appropriate assistance to the industry in completing the application process. I also direct the Departments of Agriculture and Commerce to give priority consideration to adjustment assistance requests, with the intent of providing the maximum appropriate assistance available.

The Trade Adjustment Assistance (TAA) program of the Department of Labor has already provided support for employees of broom corn broom manufacturers that have been laid off due to import competition. This assistance remains available, and I instruct the Secretary of Labor to give priority consideration to processing such TAA requests.

An additional issue considered during the course of the last 90 days was the possible circumvention of U.S. customs laws. As a result of information provided by the broom corn broom industry and other information collected by the U.S. Customs Service, an investigation is underway to determine whether any imports of broom corn brooms are entering the commerce of the United States in a manner inconsistent with U.S. law. I instruct the Secretary of the Treasury to pursue this matter with the intent of concluding this investigation within 90 days, and taking any other steps necessary to ensure broom corn broom imports do not circumvent U.S. law.

I also note that, pursuant to Section 204 of the Trade Act, the International Trade Commission will monitor developments with respect to the domestic industry, including progress and specific efforts made by workers and firms in the domestic industry to make a positive adjustment to import competition.

The United States Trade Representative is authorized and directed to publish this determination in the Federal Register.



THE WHITE HOUSE,
*Washington, November 28, 1996.*

[FR Doc. 96–31006
Filed 12–3–96; 8:45 am]
Billing code 3190–01–M

# Reader Aids

Federal Register

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## FEDERAL REGISTER PAGES AND DATES, DECEMBER



## CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT TODAY

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**COMMERCE DEPARTMENT**

**Export Administration Bureau**

National security industrial base regulations; revision; published 12-4-96

**ENVIRONMENTAL PROTECTION AGENCY**

Treatment works construction; loan guarantees; CFR part removed; published 12-4-96

**TRANSPORTATION DEPARTMENT**

**Federal Highway Administration**

Practice and procedure:

Single State insurance registration; published 12-4-96

**TREASURY DEPARTMENT**

**Foreign Assets Control Office**

Sanctions; blocked persons, specially designated nationals, terrorists, and narcotics traffickers, and blocked vessels; list; published 12-4-96

## COMMENTS DUE NEXT WEEK

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Magnuson Act provisions; comments due by 12-9-96; published 11-8-96

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ADP/telecommunications Federal Supply Schedules; comments due by 12-9-96; published 10-8-96

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On-highway compression-ignition engines in nonroad vehicles; use and replacement provisions; comments due by 12-12-96; published 11-12-96

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## TABLE OF EFFECTIVE DATES AND TIME PERIODS—DECEMBER 1996

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

| DATE OF FR PUBLICATION | 15 DAYS AFTER PUBLICATION | 30 DAYS AFTER PUBLICATION | 45 DAYS AFTER PUBLICATION | 60 DAYS AFTER PUBLICATION | 90 DAYS AFTER PUBLICATION |
|---|---|---|---|---|---|
| December 2 | December 17 | January 2 | January 16 | January 31 | March 3 |
| December 3 | December 18 | January 2 | January 17 | February 3 | March 3 |
| December 4 | December 19 | January 3 | January 21 | February 3 | March 4 |
| December 5 | December 20 | January 6 | January 21 | February 3 | March 5 |
| December 6 | December 23 | January 6 | January 21 | February 4 | March 6 |
| December 9 | December 24 | January 8 | January 23 | February 7 | March 10 |
| December 10 | December 26 | January 9 | January 24 | February 10 | March 10 |
| December 11 | December 26 | January 10 | January 27 | February 10 | March 11 |
| December 12 | December 27 | January 13 | January 27 | February 10 | March 12 |
| December 13 | December 30 | January 13 | January 27 | February 11 | March 13 |
| December 16 | December 31 | January 15 | January 30 | February 14 | March 17 |
| December 17 | January 2 | January 16 | January 31 | February 18 | March 17 |
| December 18 | January 2 | January 17 | February 3 | February 18 | March 18 |
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